

Friday, 8 to 4:30, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

**FOR FURTHER INFORMATION CONTACT:**

Chilton McLaughlin at (913) 551-7666, or by e-mail at [Mclaughlin.chilton@epa.gov](mailto:Mclaughlin.chilton@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving Nebraska's Research, Development and Demonstration permit program and updates to the approved Municipal Solid Waste Landfill Permit (MSWLP) program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments to this action. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: November 6, 2006.

**John B. Askew,**

Regional Administrator, Region 7.

[FR Doc. E6-19387 Filed 11-15-06; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Parts 383, 384, 390, and 391

[Docket No. FMCSA-1997-2210]

RIN 2126-AA10

### Medical Certification Requirements as Part of the CDL

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to merge information from the medical certificate into the Commercial Driver's License (CDL) process as required by section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). This NPRM would implement section 215 by requiring interstate CDL holders subject to the physical qualification requirements of the FMCSRs to provide a current original or copy of their medical examiner's certificates to their State Driver Licensing Agency (SDLA). It would also require the SDLA to record on the Commercial Driver License Information System (CDLIS) driver record the certification the driver made regarding applicability of 49 CFR part 391, and, for drivers subject to part 391, the medical status information proposed in this NPRM. The driver's certification as to the applicability of part 391 and the specified medical certification status information would be made available to personnel authorized in 49 CFR part 384 via CDLIS and National Law Enforcement Telecommunication System (NLETS) electronic inquiries, and on the CDLIS motor vehicle record (CDLIS MVR) obtained by employers and drivers. CDL drivers would no longer be required to carry the medical examiner's certificate, because their certification status would be verified electronically.

**DATES:** Comments must be received by February 14, 2007.

**ADDRESSES:** You may submit comments identified by DOT Docket Number FMCSA-1997-2210 by any of the following methods:

- *Web site:* <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic site.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.
- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions must include the Agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (RIN

2126-AA10). Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please refer to the Privacy Act heading for

#### FURTHER INFORMATION CONTACT.

**Docket:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Room 8301, Washington, DC 20591; Telephone: (202) 366-4001; E-mail address: [Maggi.Gunnels@dot.gov](mailto:Maggi.Gunnels@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Outline of the NPRM

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**A. Legal Basis**

Section 215 of MCSIA (Pub. L. 106-159, 113 Stat. 1767 (Dec. 9, 1999)) (set out as a note to 49 U.S.C. 31305) provides that: "The Secretary shall initiate a rulemaking to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses." The population of drivers required to obtain a CDL is different from the population of drivers required to obtain a medical certificate. For that reason, in order to implement this congressional mandate, the proposed rule reconciles the differences between the scope of the Agency's authority to regulate the physical qualifications of drivers of commercial motor vehicles (CMVs) and its authority to establish requirements for the issuance of commercial driver's licenses. The proposed rule would place requirements on only those drivers required to obtain a CDL from a State who are also required to obtain a certificate from a medical examiner indicating that they are physically qualified to operate a commercial motor vehicle in interstate commerce. The proposed rule would also establish requirements to be implemented by States that issue CDLs to such drivers. These requirements would ensure that accurate and timely information about the medical examiner's certificate would be contained in the electronic CDLIS driver record maintained in compliance with the CDL regulations. Finally, the proposed rule would require States to take certain actions against CDL holders if such information is not kept accurate and up-to-date in a timely manner.

**1. Authority Over Drivers Affected**

*a. Drivers Required To Obtain a Medical Certificate.* FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce. (49 U.S.C. 31136(a)(3) and 31502(b)) For this purpose, CMVs are defined in 49 U.S.C. 31132(1) and 49 CFR 390.5. There are four basic categories of vehicles covered by this definition:

- Those with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW), whichever is greater, of at least 10,001 pounds;
- Those designed or used to transport for compensation more than 8 passengers, including the driver;
- Those designed or used to transport not for compensation more than 15 passengers, including the driver; or
- Those used to transport hazardous materials that require a placard on the

vehicle under 49 CFR subtitle B, chapter I, subchapter C.

In addition, the vehicles in these categories must be "used on the highways in interstate commerce to transport passengers or property." (*Id.*) Interstate commerce, for purposes of this provision, is based on the definitional provisions of 49 U.S.C. 31132(4) and 31502(a) and long-standing administrative and judicial interpretations of those sections (and their predecessors), and defined in 49 CFR 390.5 as follows:

Interstate commerce means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

With certain limited exceptions,<sup>1</sup> FMCSA has fulfilled the statutory mandate of 49 U.S.C. 31136(a)(3) by establishing physical qualification standards for all drivers covered by these provisions. (49 CFR 391.11(b)(4)). Such drivers must also obtain from a medical examiner a certification indicating that the driver is physically qualified to drive a CMV. (49 CFR 391.41(a), 391.43(g) and (h)). The proposed rule would not make any change in the requirements for obtaining a medical certificate. But, on the basis of this authority, it would require drivers subject to the medical examiner's certificate requirement who are also required to obtain a CDL, to furnish the original or a copy of the certificate to the licensing State. As explained in the Summary Cost Benefit Analysis in this Notice, the proposed rule should improve compliance by CMV operators with the physical qualification standards in the FMCsRs. By doing so, the proposed rule would aid the Agency in ensuring that the physical condition of CMV operators is adequate to enable them to operate safely and that such operation does not have a deleterious effect on their health, as required by section 31136(a)(3) and (4). The other minimum requirements of section 31136, set out in subsections (a)(1) and (2), are not applicable to the proposed rule, because it does not involve either the safety of CMV equipment or the operational activities of the operators.

*b. Drivers Required To Obtain a CDL.* The authority for FMCSA to require an operator of a CMV to obtain a CDL rests on different statutory provisions than those authorizing the promulgation of physical and medical qualifications for such operators; the authority is found in 49 U.S.C. 31302. The requirement to obtain a CDL is applicable to drivers of specified CMV categories that are different from the categories specified in 49 U.S.C. 31132(1) and the implementing

regulations, as discussed in the preceding section. The four categories of CMVs for which an operator is required to have a CDL, as defined in 49 U.S.C. 31301(4) and specified in 49 CFR 383.5, are:

- Those with a gross combination weight rating or gross combination weight, of at least 26,001 pounds, including towed units with gross vehicle weight rating or gross combination weight of more than 10,000 pounds;
- Those with a gross vehicle weight rating or gross vehicle weight of at least 26,001 pounds;
- Those designed to transport at least 16 passengers, including the driver; or
- Those of any size used to transport either hazardous materials that require a placard on the vehicle under 49 CFR part 172, subpart F, or any quantity of a material listed as a select agent or toxin under 42 CFR part 73.

In addition, the vehicles involved must be used "in commerce to transport passengers or property." (49 U.S.C. 31301(4)). The term "commerce" is defined for the purpose of the CDL statutes and regulations as:

trade, traffic, and transportation—

(A) in the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) in the United States that affects trade, traffic, and transportation described in subclause (A) of this clause. (49 U.S.C. 31301(2). See also 49 CFR 383.5.)

However, the statutory provisions governing CDLs also contain a limitation on the scope of the authority granted to FMCSA. The provision at 49 U.S.C. 31305(a)(7) states that:

The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

\* \* \* \* \*

(7) shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, *to the extent the regulations apply to the individual*; (Emphasis added).

The current CDL provisions require each CDL driver either to certify that he/she meets the qualification requirements contained in 49 CFR part 391 or, if the driver expects to operate entirely in intrastate commerce and is not subject to part 391 but is subject to State driver qualification requirements, to certify that he/she is not subject to part 391. (49 CFR 383.71(a)(1)).

Therefore, reading all of these statutory provisions as a whole, FMCSA interprets section 215 of MCSIA to be applicable only to CDL holders or applicants operating or intending to operate in interstate commerce, as

<sup>1</sup> See 49 CFR 390.3(f) and 391.2.

defined in 49 CFR 390.5. The proposed rule would require CDL holders and applicants operating in interstate commerce to furnish evidence of their physical qualifications (in addition to certifying), by providing the required medical certificate to the State issuing the CDL.

## *2. Authority To Regulate State CDL Programs*

FMCSA, in accordance with 49 U.S.C. 31311 and 31314, has authority to prescribe procedures and requirements for the States to observe in order to issue CDLs. (See, generally, 49 CFR part 384.) In particular, under section 31314, in order to avoid loss of funds apportioned from the highway trust fund, each State shall comply with the following requirement:

(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by [FMCSA] under section 31305(a) of [Title 49 U.S.C.]. (49 U.S.C. 31311(a)(1). See also 49 CFR 384.201.).

If a State does not comply with these requirements, it is also subject to possible loss of grant funds under the Motor Carrier Safety Assistance Program (MCSAP). (See 49 CFR 350.217.).

On the basis of this authority, the proposed rule would require States issuing CDLs to drivers operating or intending to operate in interstate commerce, to obtain all information on the required medical examiner's certificate for entry into the CDLIS driver record. The proposed rule would also require the States to take certain specified actions if such information is not provided by the CDL applicant or holder.

## **B. Background**

### *1. Current CDL Information and Recordkeeping Systems*

The Commercial Driver's License Information System or CDLIS is the existing information system that serves as a clearinghouse and depository of all information about the licensing, identification, and disqualification of CDL operators of commercial motor vehicles. This NPRM uses the term "CDLIS driver record" as the name of the electronic record containing a CDL driver's status and history located in the database of the driver's State-of-Record.<sup>2</sup> The motor vehicle record (MVR) is the

term, that by convention and usage, generally describes the driver history information provided from the driver record to the driver or employer by a SDLA, usually for a fee. Historically the FMCSRs have used a variety of terms such as driver record or driving record in the context of various requirements for motor carriers to investigate and obtain the driving history and status of all operators of commercial motor vehicles, both CDL and non-CDL. This NPRM proposes to standardize usage of the terms CDLIS driver record for CDL drivers, and driver record for non-CDL drivers to refer to the computer record stored by the SDLA. It further proposes to standardize usage of the terms CDLIS motor vehicle record (CDLIS MVR) for CDL drivers and motor vehicle record (MVR) for non-CDL drivers, to mean the driver history information provided to the driver or employer by the SDLA from the driver record.

Different methods are used for obtaining responses from the CDLIS driver record by different user groups. Federal and State MCSAP personnel largely use the FMCSA CDLIS-Access software developed and operated by FMCSA, and provided to these personnel. State and local police performing traffic enforcement as part of MCSAP or other operations, predominantly use the National Law Enforcement Telecommunications System to obtain whatever form of the driver status and/or history information the SDLA provides from the CDLIS driver record. Drivers and motor carriers have access to CDLIS driver record information by purchasing the MVR from the SDLA, subject to the limitations in 49 CFR 384.225(e).

### *2. Medical Certification of CDL Drivers Subject to Part 391*

With limited exceptions, all drivers who operate CMVs, as defined in 49 CFR 390.5, in interstate commerce must comply with the qualification requirements of 49 CFR part 391 (49 CFR 391.1). This includes CDL drivers operating in interstate commerce (49 U.S.C. 31305(a)(7)).

There are exceptions from the medical certification requirement provided under 49 CFR 390.3(f) including, for example, drivers engaged in transportation performed by Federal, State or local governments, and school bus drivers providing school to home and home to school transportation. Additional exceptions are also provided under 49 CFR 391.2 and include drivers engaged in certain custom farm operations, the seasonal transportation of bees using CMVs controlled and

operated by a beekeeper, and the operation of certain farm vehicles.

Each driver subject to the physical qualification requirements must be examined and certified by a medical examiner, as defined in 49 CFR 390.5, at least once every 2 years. For certain drivers, such as those with severe cases of hypertension or other acute medical conditions, more frequent medical reexamination may be required by medical examiners to determine whether the driver can still be certified.

Medical examiners document the results of the examination on a medical examination report (also referred to as the "long form"). If the medical examiner determines that a driver is physically qualified in accordance with 49 CFR 391.41(b), the examiner certifies the driver meets the physical qualification standards by completing a form substantially in accordance with the medical examiner's certificate contained in 49 CFR 391.43. The certificate also contains check boxes indicating whether the driver is subject to any restrictions while operating a CMV, such as wearing corrective lenses or a hearing aid, or whether the driver was granted a medical variance and thus the certificate must be accompanied by a medical exemption document or a skill performance evaluation (SPE) certificate.

A driver granted an exemption or SPE certificate must carry an original or copy of the accompanying documentation, e.g., exemption document or SPE certificate, at all times while operating a CMV in interstate commerce. See, e.g., 49 CFR 391.49(j)(1). The driver must also provide an original or copy of the Medical Examiner's certificate to the employing motor carrier who must retain it in the driver's qualification file (sections 391.51(b)(7) and 391.51(d)(4)).

### *3. Current CDL Requirements Regarding Physical Qualifications*

Before the enactment of section 215 of MCSIA, the Commercial Motor Vehicle Safety Act (CMVSA) provided that FMCSA "may require issuance of a certification of fitness to operate a commercial motor vehicle to an individual passing the tests \* \* \*" (49 U.S.C. 31305(a)(8)). Because the authority is permissive, not mandatory, the current regulations that implement the CDL program only require the States to obtain a certification from the driver that either the driver qualification provisions of 49 CFR part 391 apply, or that the driver operates entirely in intrastate commerce. Most States meet this requirement by providing an appropriate box on the CDL application form for the driver to check.

<sup>2</sup> "State of Record" is the jurisdiction that maintains the CDLIS driver record for every CDL driver licensed within its jurisdiction. See 49 CFR 384.107 and AAMVA, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures Manual."

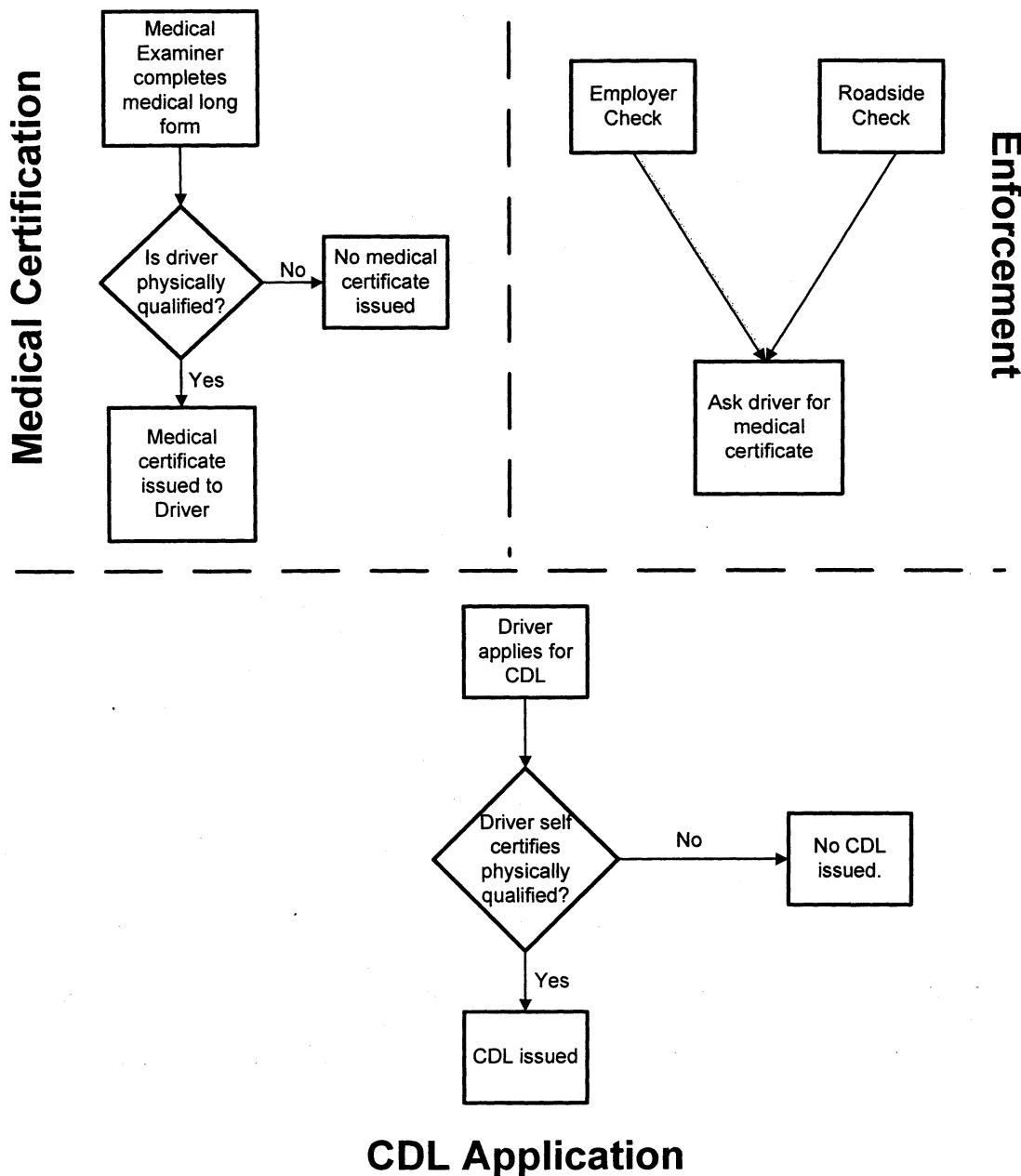
Drivers are not currently required by the CDL regulations to provide an original or copy of the medical examiner's certificate to the SDLA as proof of the driver's physical qualification to operate a CMV in interstate commerce. Likewise, there are no CDL compliance regulations that require the SDLA to ensure that: (1) The

driver's medical certification is accurate; (2) the driver who self certifies he or she is subject to part 391 has a current medical certification; or (3) the medical examiner's certificate for the driver does not expire during the course of the licensing period. Diagram 1, "Existing System," illustrates the current way CDL drivers meet these

requirements, and highlights that there is a lack of integration currently between the existing medical certification and CDL licensing processes. The purpose of this NPRM is to address this situation.

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## Diagram 1: Existing System



#### 4. State Feasibility Pilot Tests

In September 1990, the Federal Highway Administration (FHWA) (predecessor Agency to FMCSA) entered into a contract with the Association for the Advancement of Automotive Medicine (AAAM) and the American Association of Motor Vehicle Administrators (AAMVA) to assess the feasibility of integrating the medical certification and CDL issuance and renewal processes. AAAM and AAMVA worked with FHWA to help select States to participate in six pilot tests, and determine whether States could assume some level of responsibility for ensuring CDL drivers are certified as physically qualified before a CDL is issued or renewed.

The States selected to test various approaches for merging the medical certification and CDL processes were Alabama, Arizona, Indiana, Missouri, North Carolina and Utah. During the study, each pilot State had to address a variety of budgeting, operational and technical challenges. All six States achieved at least 1 full year of operations data and demonstrated it would be feasible for SDLAs to take a more active role in verifying that a CDL applicant has obtained medical certification such as that being proposed in this rule. For purposes of this NPRM, we briefly discuss the results of the tests. However, more details about the individual concepts tested by each State are in the final report. The final report for the study, entitled "Prototype State Medical Review Program," dated January 31, 1995, is included in the rulemaking docket.

Two States wanted to test the possibility of placing the driver's medical certification status on the CDLIS driver record. Each was successful in demonstrating this could be operationally implemented. During the pilot test, these two States placed information about the medical certification status on the CDLIS driver record and made this information electronically available to the SDLA and, ultimately, to Federal and State enforcement personnel who could use it as part of roadside inspections or traffic enforcement. The other four States explored methods for verifying medical certification as part of issuing the CDL that did not include recording the medical certification status on the driver record. As such, they are not germane to the MCSIA section 215 requirement to make the certificate part of the CDL.

#### 5. Advance Notice of Proposed Rulemaking

In 1994, FHWA issued an advance notice of proposed rulemaking (ANPRM) (59 FR 36338, July 15, 1994) titled "Commercial Driver Physical Qualifications as Part of the Commercial Driver's License Process." The ANPRM requested comments on the concept of requiring the States to verify the medical certification of CMV drivers and include documentation within the States' CDL information systems. The ANPRM indicated the Agency was considering a rulemaking to require State licensing agencies to review and verify the accuracy of the medical examination report (long form), and record documentation of the medical certification status on CDLIS driver record, prior to issuing or renewing a CDL. States would thus ensure that all applicants seeking a CDL for the purpose of operating CMVs in interstate commerce were in compliance with the medical certification standards before issuing the CDL. Medical examination reports would be sent to the SDLA for review and evaluation by a State Medical Review Board to achieve better quality control over the medical certifications issued, before the State could issue a CDL. FHWA prepared a report summarizing all the public comments to the ANPRM, entitled "Summary of Comments to the ANPRM: CDL Medical Fitness." A copy of the report is included in the docket.

#### 6. Negotiated Rulemaking Advisory Committee

After evaluating the public comments received in response to the ANPRM, FHWA announced its intention to form a Negotiated Rulemaking Advisory Committee (Committee) to develop an NPRM for merging the medical certification and CDL issuance and renewal processes. A notice of intent to form the Committee was published in the **Federal Register** on April 29, 1996 (61 FR 18713). The Agency invited interested parties to comment on the proposal to establish the Committee, and to submit applications or nominations for Committee membership. The notice provided a preliminary list of entities identified as interested parties that should be included in the negotiated rulemaking process, either directly as members of the Committee or as part of a broader caucus of similar or related interests.

On July 23, 1996, FHWA published a notice in the **Federal Register** (61 FR 38133) announcing the first meeting of the Committee, the membership, and major issues the Committee would

consider. Twenty-five organizations and FHWA were represented on the Committee. The charter for the Committee was approved by the Secretary on July 12, 1996, with an expiration date of July 12, 1998. The Committee held several meetings between August 7, 1996, and November 20, 1997.

#### Commercial Driver Physical Qualifications Negotiated Rulemaking Advisory Committee

Membership List (Approved by Secretary Peña 7/10/96)

1. Federal Highway Administration
2. American Association of Motor Vehicle Administrators
3. New York (State commercial driver licensing agency)
4. Utah (State commercial driver licensing agency)
5. Wisconsin (State commercial driver licensing agency)
6. Montana (State commercial driver licensing agency)
7. Commercial Vehicle Safety Alliance
8. International Association of Chiefs of Police
9. American Trucking Associations
10. National Private Truck Council
11. National School Transportation Association
12. United Motor Coach Association & American Bus Association (sharing one seat on the committee)
13. Owner-Operator Independent Drivers Association
14. Independent Truckers and Drivers Association
15. Teamsters Union
16. Amalgamated Transit Union
17. Lancer Insurance
18. AI Transport
19. American Insurance Association
20. National Association of Independent Insurers
21. Advocates for Highway and Auto Safety
22. Farmland Industries
23. American College of Occupational and Environmental Medicine
24. Association for Advancement of Automotive Medicine
25. American Academy of Occupational Health Nurses
26. American Academy of Physicians' Assistants

Although the Committee did not reach consensus concerning the major issues considered (and listed in the July 23, 1996, notice), the Committee supported moving forward with a rulemaking proposal focused on improving the availability of information about driver physical qualifications, and recording medical

certification information on the CDLIS driver record. Copies of the Committee's report and all documents considered by the Committee are available in the public docket for this rulemaking.

### C. Rulemaking Proposal

#### 1. Highlights of Proposed New CDL Licensing Processes

This rulemaking would apply to all CDL holders who: (1) Operate CMVs as defined in 49 CFR 383.5; and (2) are subject to the driver qualification requirements under 49 CFR part 391. FMCSA proposes in this NPRM to add a requirement that CDL holders to

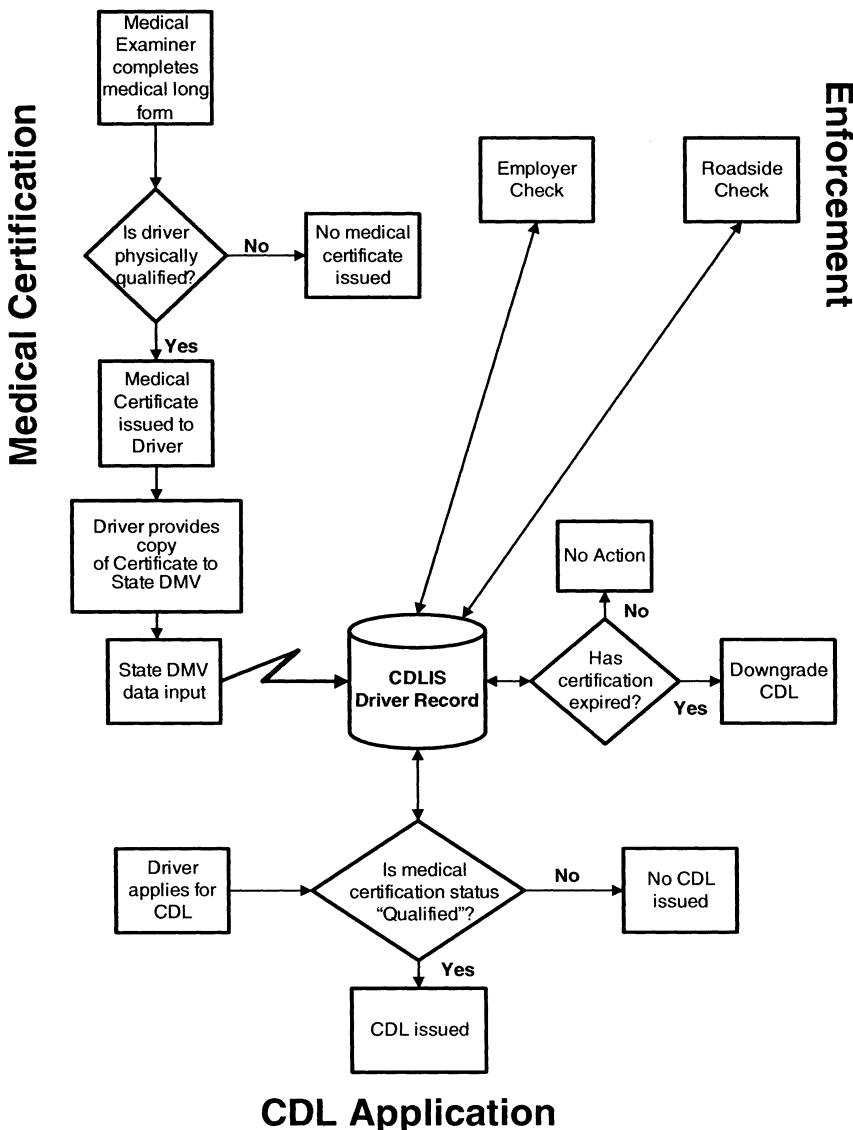
whom 49 CFR part 391 applies must begin providing an original or copy (at the option of the SDLA) of their medical examiner's certificate to their SDLA for recording of information specified in this NPRM on the CDLIS driver record. The States would be provided the flexibility to establish their own processes for receiving this information from drivers. SDLAs would also be required to downgrade a CDL if the driver's medical certification is no longer valid. A "CDL downgrade" means the State either: (1) Restricts a previously unrestricted CDL to intrastate transportation or to interstate transportation excepted from part 391 as

provided in 49 CFR 390.3(f) or 391.2; or (2) The State removes the CDL privilege entirely from the driver's license.

Diagram 2, Proposed System, illustrates how the CDL and medical certification processes would be integrated. The process begins with obtaining medical certification. The new requirements are for recording the medical examiner's certificate information on the CDLIS driver record, and making the medical certification information available to FMCSA and State licensing and enforcement agencies as part of CDLIS inquiries.

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## Diagram 2: Proposed System



The proposal is to clarify which CDL drivers are subject to part 391 and to

require the SDLAs to record the driver's certification regarding applicability of

part 391 on the CDLIS driver record. For those drivers subject to part 391, they

would be required to provide a current original or copy of their medical examiner's certificate to their SDLA. The SDLA would be required to record the proposed medical certification status information on the CDLIS driver record. Additionally the SDLA would be required to provide the medical certification status information to all authorized personnel specified in 49 CFR 384.225(e) via the established access methods. These methods include CDLIS electronic inquiries, NLETS electronic inquiries for CDL drivers, and on the CDLIS MVR (as specifically defined in proposed 49 CFR 384.105) that all States sell to employers and drivers.

As a result of these CDL recordkeeping and information collection provision proposals, any future actions by the Agency that enhance the quality of the medical examination process would flow directly into the CDLIS driver record and thus would be available for use by all persons who are authorized to access this information. This NPRM, along with planned future rulemaking actions, would reduce the likelihood of States and employing motor carriers receiving improper or false medical certification documents from drivers.

Anticipated future actions include establishing a National Registry of Medical Examiners required by 49 U.S.C. 31149(d). The creation of the National Registry was authorized by section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, 1726 (Aug. 10, 2005)). By that provision, Congress indicated FMCSA should implement a capability to accept as valid only medical examiner's certificates issued by medical examiners on the National Registry. FMCSA anticipates the required action to establish the National Registry would include standards to ensure that medical examiners on the Registry fully understand the physical qualification requirements applicable to drivers subject to part 391, and that enough examiners are certified.

## *2. Potential Impacts on States*

*a. General.* States would continue to require each driver to certify what type of driving they do, either: (1) Subject to the qualification requirements of part 391; or (2) not subject to those requirements. The SDLA in each State would be required to modify its procedures, *e.g.*, forms or computer systems, to make the certification for type of driving electronically accessible from the CDLIS driver record. This

includes status and history responses to CDLIS and NLETS inquiries, and on the CDLIS MVR responses generated from the CDLIS driver record and provided to the driver or employer by the SDLA.

The States would also be required to establish procedures for receiving the medical examiner's certificates from drivers subject to part 391. The process would include date stamping the certificate when received by the State; recording, within 2 business days, all required information proposed by this NPRM from the medical examiner's certificate onto the CDLIS driver record for all CDL drivers subject to part 391; and retaining the certificate or an image of the certificate for 6 months. Drivers, employers and enforcement personnel would be depending on the timely posting of the medical examiner's certificate information. The Agency is seeking comments on whether the number of days allowed for posting the medical certification data should be longer than 2 business days, and whether the retention period should be longer than 6 months.

Additionally, the States would be required to verify whether the driver is subject to part 391, and if so that the current medical certification status is designated as "qualified" before taking any action to issue, renew, transfer or upgrade that driver's CDL. Further, the States would be required to update the medical certification status of the CDLIS driver record within 2 business days if the certification expires, to show the driver as "not-qualified." The State must then complete a downgrade of the CDL within 60 days of the driver becoming not-qualified. Additionally, the States would be required to notify drivers of any possible CDL downgrade actions resulting from expired medical certification information. (See section "d. Notification of Drivers," below.) The Agency is seeking comments about whether the proposed 2 business days for updating the medical certification status and the proposed 60 days for downgrading the CDL are reasonable and appropriate.

The States would further be required to make the driver's medical certification status information, and if applicable, medical examiner's certificate information, electronically accessible as part of the information obtained from the CDLIS driver record by authorized users, including the FMCSA, State licensing and enforcement agencies, drivers, and employers. Enforcement personnel would obtain this data electronically via CDLIS or NLETS. Employing motor carriers and drivers would obtain it on the CDLIS MVR. The States would have

to modify their programs that provide the following responses: CDLIS, CDLIS equivalent for NLETS and CDLIS MVR to include the medical certification status information.

States such as California and Indiana already have programs that require drivers to provide copies of the Medical Examination Report (long form) to the State as part of the State's CDL program. This rule does not propose submission of the long form. Those States already are denying a new or renewal of a CDL or taking action against an existing CDL if the State does not receive an updated certification by the time the previous one expires. They are also placing information about the current medical certification status on the driver record.

FMCSA is also seeking comments on how drivers could verify that the data regarding their medical certification status information is timely and properly recorded on their CDLIS driver record. The normal process for verification and correction of information on the CDLIS driver record is for drivers to go to an SDLA office in their licensing State and obtain a copy of their CDLIS MVR. Because of the ongoing operational nature of updates of medical certification status information, FMCSA requests comments on whether there is a more efficient method by which CDL drivers could accomplish this data quality review of their medical certification status information.

*b. States Would Record Additional Specified Data if the Driver Is Subject to Part 391.* This proposal builds on the proposal developed by the negotiated rulemaking advisory committee. The SDLAs would become the keepers of the record for the medical examiner's certification information. The SDLA would then become the primary source for verification of medical certification status. It is therefore critical that the States record enough information to enable enforcement officials to trace the medical examiner's certificate back to the medical examiner in cases where investigations occur and find there are problems with the driver's certification.

FMCSA would require States to modify their information systems to add new data fields to the CDLIS driver record. One data field would record which of the two possible certifications the driver made regarding the applicability of part 391.

If the driver certifies he or she is subject to part 391, then FMCSA would require the State to record on the CDLIS driver record the following information:

- Medical examiner's name.
- Medical examiner's license or certificate number and the State that issued it.

- Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, required by 49 U.S.C. 31149(d), as added by section 4116(a) of SAFETEA-LU requires one).<sup>3</sup>
- Date of physical examination/issuance of the medical examiner's certificate to the driver.
- Medical certification status determination (receipt of a current medical examiner's certificate means "qualified.")
- Expiration date of medical examiner's certificate (this can vary, depending on CDL driver's medical condition, from 3 months to 2 years).
- Information from FMCSA that a medical variance was issued to the driver.
- Any restriction (e.g., corrective lenses, hearing aid, etc.).
- Date the information is entered on CDLIS driver record.

States would be required to keep a copy or an electronic image, including the time stamp, of the medical examiner's certificate received from the driver for 6 months so that FMCSA may request access to these certificates to verify States are inputting information in an accurate and timely manner as part of a State CDL compliance review.

c. *State Input of Data for Medical Variances.* FMCSA proposes adding information about the existence of medical variances, for example, the existence of a vision exemption or SPE certificate, to the CDLIS driver record maintained by the SDLA. Enforcement personnel could obtain both the current medical certification status, ascertain whether the driver has a medical variance, and determine the identity of the medical examiner, all by an electronic inquiry to CDLIS.

Interstate drivers (both CDL and non-CDL) granted an exemption from one or more of the FMCSRs are required by its terms and conditions to carry the exemption document or legible copy in their possession while driving. Drivers who are granted a SPE certificate are required by regulation to carry the SPE certificate or a legible copy. (49 CFR 391.49(j)). It is important for enforcement personnel to know about the existence of medical variances that require the driver to carry such additional supporting information.

<sup>3</sup> Section 31149(d) becomes effective August 10, 2006. See section 4116(f) of SAFETEA-LU. FMCSA plans to implement regulations establishing the National Registry of Medical Examiners in the future. In order to minimize the number of times States have to update their information systems, States may want to make provisions in the CDLIS driver record to accept this information should it be required.

Enforcement personnel are directed to ask such drivers to show them the required additional documentation the driver is required to carry as a condition of that medical variance. This requirement to include information about existing medical variances on the CDLIS driver record thus ensures that enforcement personnel can verify whether the driver is in compliance with the conditions for the issuance.

d. *Notification of Drivers.* Currently, most States notify drivers when an action is going to be taken against their driver license privilege. In this NPRM, FMCSA proposes that States notify interstate CDL drivers when they plan to downgrade the driver's license based on the lack of a valid medical certificate. FMCSA believes each State already has an automated system that generates notices for drivers who are identified for suspension action. The Agency further believes that these State systems could be modified to identify and notify drivers whose medical certification status has expired, and whose CDLs thus must be downgraded.

FMCSA included the cost of adding CDL drivers subject to part 391 to these State notification systems, as part of the developmental costs for the proposed rule during years one through three. The ongoing major cost of the notification system would be operational, at an estimated cost of \$0.40 per driver notified. For calculating the maximum possible impact on the States, FMCSA used the worst case scenario that would show all drivers receiving a notice of a CDL downgrade, for a total national cost of \$1.29 million per year, which is included in the total estimated State costs discussed later in the preamble's Summary Cost Benefit Analysis section. (See section F. "Summary Cost Benefit Analysis."). FMCSA is seeking comment concerning the number of notifications the States would need to mail to CDL drivers receiving notice of a downgrade.

e. *Costs.* FMCSA estimates that the requirements set forth in this NPRM would cost the States \$18.3 million over the first 3 years of implementation and would decrease to \$4.0 million per year in the fourth year and afterward. For further detail on the cost issue, see section F. "Summary Cost Benefit Analysis," contained below in this NPRM, or the more detailed stand alone Regulatory Evaluation document contained in the docket. FMCSA is seeking comments about whether these evaluations of the cost impacts are accurate.

### 3. Potential Impacts on Motor Carriers Employing CDL Drivers

a. *Carrier Would Request a Copy of the CDLIS Motor Vehicle Record from the Current State of Licensure Before Allowing the Driver to Operate a CMV in Interstate Commerce.* Under the proposed rule, the motor carrier that employs a CDL driver subject to part 391 to operate a CMV would need to obtain the driver's CDLIS MVR, verify the driver has a medical certification status of qualified, and place that CDLIS MVR in the driver qualification (DQ) file, (thereby documenting medical certification for such CDL drivers) before allowing the driver to operate a CMV for the motor carrier.

Under FMCSA's current regulation, the motor carrier has up to 30 days to obtain the driver's MVR (for both CDL and non-CDL drivers) and place it in the DQ file (49 CFR 391.23(b)). The driver is immediately permitted to begin operating a CMV pending completion of the driver record check. However, the proposed rule would change this current practice by requiring the motor carrier to obtain and place a copy of the driver's CDLIS MVR in the DQ file before allowing an interstate CDL driver to operate a CMV. FMCSA believes the 30-day timeframe specified in § 391.23(b) is a hold-over from years ago when this process was accomplished via regular U.S. mail. Now States offer driver's MVRs electronically, and numerous companies sell a service to assist motor carriers to obtain MVRs. FMCSA believes many motor carriers are already obtaining MVRs electronically, generally before making an offer to hire the driver. For this reason, this NPRM would not impose any significant additional burden on motor carriers except those that are letting newly hired drivers operate a CMV before verifying the driver holds a valid CDL. There would be no change in the current 30 days allowed to obtain a motor vehicle record for non-CDL drivers who must also provide a copy of their medical examiner's certificate.

Under this proposed rule, motor carriers would no longer be required to place a copy of a current medical examiner's certificate in the DQ file for CDL drivers subject to part 391. Information about the current medical certification status for those drivers would be on the CDLIS MVR the motor carrier is already required to obtain and place in the DQ file. However, the motor carrier would be required, under the proposed rule, to obtain and file a copy of any medical exemption granted to a CMV driver (both CDL and non-CDL). Carriers are already required to obtain a

copy of an SPE certificate. (49 CFR 391.49(j)(1))

b. *Costs.* FMCSA believes the net cost impact on motor carriers would at worst be neutral, and more likely is a modest cost saving. Carriers would be relieved of obtaining or making a copy of the medical examiner's certificate and placing a copy of it in the DQ file for CDL drivers subject to part 391. This proposal would expand an existing requirement for the motor carrier to obtain or make a copy of *any* medical variance, *e.g.*, Medical Exemption document or SPE certificate, granted to a CMV driver and place it in the driver qualification file for the small number of drivers with such a medical variance. However, motor carriers would also be required to obtain the CDLIS MVR before allowing CDL drivers to operate a CMV.

#### *4. Potential Impacts on Drivers.*

a. *Privacy Rights.* FMCSA does not believe the proposed rule would have an adverse effect on drivers' privacy for the following reasons. First, none of the driver's confidential medical information (*i.e.* specific details from the "long form" or the actual medical records maintained by medical examiners) would be placed on the CDLIS driver record—the SDLA would post the FMCSA-specified status information regarding whether the driver is currently medically certified, which does not include confidential information. A status of not-qualified does not violate any privacy right, as it does not provide any detail as to the reason for being not-qualified. In other words, a status of not-qualified could just as well mean the driver decided not to take a physical examination because he or she is not currently working as a CDL driver. Second, information about the issuance of medical variances is already public. Information about the granting of any exemptions, *e.g.*, vision, diabetes, is published in the **Federal Register** (49 U.S.C. 31315(b)).

Alternatively, if a driver has a medical examiner's certificate based on having an SPE certificate, the medical examiner's certificate has the box checked saying it is only valid when accompanied by an SPE certificate. Thus, any enforcement personnel or potential employer would or should know about the condition requiring the driver to have in his or her possession an SPE certificate or a legible copy whenever operating a CMV. (49 CFR 391.49(j)(1). Finally, access to the data on the CDLIS driver record is restricted to only FMCSA, States, motor carrier employers for authorized use and the driver. (49 CFR 384.225(e)).

Enforcement personnel accessing this information via NLETS are similarly restricted to official use. The Driver Privacy Protection Act (18 U.S.C. 2721–2725) provides additional restrictions on access to the driver record. However, FMCSA is seeking comments about whether there would be any issues under the Privacy Act (5 U.S.C. 552a) regarding access to CDL drivers' medical examiner's certificate information arising from the provisions set forth in this proposal.

*b. Impact if a Driver Is Found Operating a CMV with a Medical Certification Status of "Not-qualified" or No CDL Privilege Because of a Downgrade of the CDL.*

This rulemaking proposal would require the appropriate medical certification status information to be placed on the CDLIS driver record for all CDL holders, and would remove the requirement for CDL drivers subject to part 391 to carry the medical examiner's certificate. However, the proposal would also establish that the medical certification status information be made available to enforcement personnel as well as to drivers and employing motor carriers. This is expected to become an increasingly valuable enforcement tool, particularly in conjunction with anticipated future rulemakings dealing with driver physical qualifications, such as establishment of the Congressionally-mandated National Registry of Medical Examiners. Nonetheless, nothing in this proposed rule prevents a CDL driver subject to the requirements of part 391 from retaining a copy of the medical examiner's certificate for his or her own records, particularly in the event an SDLA fails or delays in entering the information onto the CDLIS driver record. All non-CDL drivers would continue to provide a copy or original of the medical examiner's certificate to their employing motor carrier, a requirement not changed by this proposed rule.

This NPRM proposes a new requirement that a CDL driver subject to part 391 would have his or her CDL downgraded within 60 days of the medical certification status expiring, *i.e.*, the status becoming "not-qualified." Under 49 CFR part 383 after such a downgrade, a driver found operating a CMV in interstate commerce without a valid CDL, when the regulations require the driver to hold one, could receive a traffic offense citation for violating § 383.51(c)(6). Thus the downgrade proposed in this NPRM could lead to a traffic conviction requiring a 60-day CDL disqualification on the CDLIS driver record for the first offense. This conviction would be retained and

considered in any future licensing action, including intrastate CDL eligibility.

This proposed downgrade within 60 days would provide safety benefits by significantly enhancing incentives for drivers to comply with the medical certification standards. Drivers could be placed out-of-service as part of a roadside inspection or traffic enforcement stop, if a driver is found operating a CMV in interstate commerce with a downgraded CDL that resulted from the medical certification status becoming not-qualified because the driver failed to obtain the required new medical examiner's certificate. Currently, the driver could be cited and possibly fined for operating a CMV without a valid medical certification, but generally the driver would be allowed to continue to drive. Additionally, unless this violation results in a carrier compliance review or other enforcement action, it has little impact on the motor carrier. (See 49 CFR 391.41(a)). By linking the medical certification status to the eventual status of the CDL, this proposed rule would provide greater enforcement tools to address driver qualification issues.

If a driver's medical status becomes not-qualified, but the CDL has not yet been downgraded, the driver can be cited under current § 390.37 for not keeping his/her medical status current. In addition, while not proposed in this NPRM, FMCSA has the option of adding a similar, new disqualifying offense for a serious traffic violation under Table 2 of 49 CFR 383.51(c). This disqualifying offense would be applicable if a driver operates a commercial motor vehicle requiring a CDL in interstate commerce during the proposed 60-day window of having received a medical certification status of "not-qualified," but the CDL has not yet been downgraded. If such a disqualifying offense were established, then any CDL driver operating in interstate commerce not excepted from part 391 who does not have a current medical examiner's certificate on file with their SDLA could receive a traffic citation for this serious traffic violation. FMCSA seeks comments about whether FMCSA should add such a disqualifying offense to Table 2 of § 383.51(c) for operating a CMV without the required medical certification.

*c. Provision of Documentation to Motor Carrier for Medical Variance.* All drivers who operate CMVs in interstate commerce pursuant to a medical variance, such as an Medical Exemption or SPE certificate, would be required to provide their employing motor carrier with a copy of the medical variance document. The employing motor carrier

would be required to place it in the DQ file.

d. *Provision Requiring CDL Drivers to Provide Medical Certificate to SDLA.* Under the proposed rule, a CDL would not be issued, renewed, upgraded or transferred by the SDLA to a driver subject to 49 CFR part 391 qualification requirements, unless the State has on record a current medical examiner's certificate. Initially, drivers would not need to obtain a new medical examiner's certificate. Beginning 3 years after the effective date, drivers would be required to provide a copy or an original, as determined by the SDLA, of either their existing medical examiner's certificate or a new one, to their SDLA before any licensing action, including a renewal. Drivers would also be required to provide a copy or original of each new medical examiner's certificate to their SDLA. The information from these certificates, including their expiration dates, would be added to the CDLIS driver record by the SDLA. If the driver has not provided a current medical examiner's certificate within 5 years after the effective date of a final rule on this subject, or the certification expires, the CDL medical certification status would be marked as "not-qualified," and the SDLA would be required to initiate a downgrade of the driver's CDL. The driver would be notified by the SDLA that the CDL would be downgraded.

e. *Number of Drivers Subject to the Proposed Process.* The group of CDL drivers that would be most impacted by this rulemaking would be those not actively driving, are subject to 49 CFR part 391, but who are retaining their CDL without maintaining their medical certification. To estimate the number of possible drivers affected, FMCSA performed the following analysis.

As of August of 2005, there were approximately 12.2 million CDL index or pointer records in the CDLIS central site index. The Agency estimates 10 percent of the CDLIS driver records associated with these index pointers are inactive. Based on an analysis of the split of inter- and intrastate drivers from the annual Drug and Alcohol Testing survey conducted by FMCSA, the Agency estimates about 74 percent of the estimated active 10.98 million CDLIS driver records are for interstate drivers, or about 8.13 million. For purposes of this analysis, it is assumed none of these are operating in excepted interstate commerce, i.e., all of them are subject to part 391. If all of these CDL drivers, who had self-certified they were qualified to operate in interstate commerce, wish to retain their CDL, they would be required to present a

copy or original of a current medical examiner's certificate to their SDLA, either at the time of the next issuance (as defined in 49 CFR 384.105(b)) of their CDL or when the medical certificate expires, whichever occurs first. Thereafter, they would have to provide the medical certificate every time it expired. Two years after the States would be required to be in compliance with this proposal (no later than 5 years after the effective date of a final rule on this subject), all of these drivers would not be allowed to continue operating CMVs in interstate commerce unless their CDLIS driver record includes the information that they have submitted a current medical examiner's certificate, prepared by a medical examiner, as defined in 49 CFR 390.5, to their SDLA demonstrating they are physically qualified under part 391.

FMCSA estimates from its annual Drug and Alcohol Testing survey that 3.1 million CDL drivers of the estimated 8.13 million CDLs who self certified they are subject to part 391, are "actively" driving for a living. Therefore, the Agency estimates 5.03 million of these CDL drivers who certified that part 391 applies to them are not actively driving. The Agency further estimates that 2.26 million of these 5.03 million drivers would elect to obtain medical certification and retain their CDLs, while the remaining 2.77 million would have their CDL downgraded. This would leave a pool of 5.36 million medically certified CDL drivers (2.26 million + 3.1 million). Refer to the separate Regulatory Evaluation in the docket for this rulemaking for a more detailed discussion of the number of drivers likely to be affected by this proposal. (Note. This analysis does not include any attempt to estimate the number of CDL drivers who operate in excepted service, i.e., who operate in interstate commerce but are excepted from part 391 and do not need medical certification to retain their CDL.)

f. *Impact of the New Code "W" on Drivers Domiciled in Canada, Mexico, and the United States.* Drivers of commercial motor vehicles who are domiciled in and licensed by, Canada or Mexico are subject to the requirements of U.S. law while operating a CMV in the United States. (49 U.S.C. 31132(4), 31502(a) and 31301(2)). These drivers must meet the FMCSA physical qualifications and must possess a license issued by their country of domicile that the U.S. has recognized as comparable to a U.S. CDL.

FMCSA previously determined that the Canadian Provinces and Territories have medical and physical qualification

requirements comparable to those applicable in the United States, with certain exceptions (49 CFR 391.41, note, as added by 67 FR 61818, October 2, 2002) The Canadian equivalent to CDLIS contains documentation of driver physical qualification, although the program requirements vary by Province and Territory.

FMCSA also determined that the Licencias Federales de Conductor issued by the United Mexican States is itself evidence that the operator has met physical qualification standards required by the United States. (Commercial Driver's License Reciprocity with Mexico, (57 FR. 31454, July 16, 1992).) Proof of compliance with the medical certification requirements is recorded within the Mexican Licencias Federales de Conductor information system, as well as marked on the license document. Drivers must renew both their medical certification and Licencia Federal together every 2 years.

FMCSA considers both licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code and the Licencias Federales de Conductor issued by the United Mexican States, to satisfy the CDL requirements of 49 CFR part 383 (49 CFR 383.23(b)(1), note 1) and to be compatible with the U.S. CDLs.

As indicated in the footnote to 49 CFR 391.41, Canada and the United States have entered into a reciprocity agreement that Canadian drivers who do not meet the physical qualification requirements specified in the Canadian National Safety Code, but are issued a Provincial or Territorial waiver/exemption, will be excluded from operating a CMV in the United States. Similarly, U.S. CDL drivers granted a medical variance will be excluded from operating a CMV in Canada. At a technical level, it was jointly determined by AAMVA and Canadian Council of Motor Transport Administrators (CCMTA) that a code of "W" would be placed on the commercial driver's license document to identify those drivers who are issued a waiver/exemption or variance to exclude them from operating in the other country.

This NPRM proposes to establish a new restriction code by revising section 383.95 to specify a new restriction code "W" to be placed on the CDL document to identify U.S. CDL holders subject to part 391 who have obtained a medical examiner's certificate with a medical variance in order to operate CMVs in the United States. If implemented, this restriction will allow U.S. enforcement

personnel to identify drivers who are required to carry the documentation supporting the medical variance, and Canadian authorities to identify U.S. CDL drivers who therefore are prohibited by Canadian jurisdictions from operating a CMV in Canada. Similarly, implementation of a "W" restriction on Canadian licenses would allow the United States to identify Canadian drivers who do not meet U.S. physical qualification standards.

The U.S. has not yet discussed with Mexico the proposed creation or use of a "W" restriction on the CDLs issued in the United States. Therefore, the Agency is unable to assess the potential impact this restriction could have on U.S. drivers who intend to operate CMVs in Mexico.

**g. Costs.** FMCSA estimates that the requirements set forth in this NPRM would cost drivers a total of \$3.22 million per year beginning in the fourth year after the effective date of a final rule on the subject and every year thereafter. For more detail on the cost issue, see section F, "Summary Cost Benefit Analyses," below in this NPRM, or the more detailed stand alone Regulatory Evaluation document contained in the docket.

#### D. Implementation Date

FMCSA proposes to begin enforcement of the requirements set forth in this NPRM 3 years after the effective date of a final rule on the subject. The Agency believes the standard 3-year phase-in period would provide the States with sufficient time to pass required State implementing legislation, to modify their information systems to begin recording the medical examiner's certificate information onto the CDLIS driver record, and to begin making that information available from the CDLIS driver record. Also, the proposed 3-year phase-in period would ensure employing motor carriers and drivers have an opportunity to familiarize themselves with the new requirements and that CDL drivers are prepared to provide a valid medical examiner's certificate to their SDLA as required by this NPRM.

The Agency will also be working with the States to modernize CDLIS, as required by section 4123 of SAFETEA-LU. The CDLIS modernization plan will include a date by which all States must use the new version of CDLIS. Both the CDLIS modernization effort and inclusion of the medical examiner's certificate information on the CDLIS driver record will require States to update their CDLIS computer programs. The Agency requests comments about the importance of having the

implementation schedule for this rule coincide with the implementation date for CDLIS modernization.

The Agency is seeking comments about how many States will require passage of legislation to authorize them to carry out the proposals in this rulemaking, and whether the proposed three-year implementation period is sufficient.

#### E. Section-by-Section Explanation of Changes

##### Part 383

*Conforming amendments.* Throughout parts 383, 384, and 391 terms used referring to a driver record or driver history have been revised for clarity. The term "CDLIS driver record" refers to the electronic record of driver information and history stored by the State-of-Record as part of CDLIS. The Agency's use of the term "motor vehicle record" refers to the information provided to a driver or employer about the status and history of a driver. The term "CDLIS MVR" refers to the information provided to a driver or employer about the status and history of a driver that holds a CDL.

*Section 383.5.* FMCSA proposes to add definitions for "CDLIS driver record" and "CDL downgrade."

*Section 383.71(a).* FMCSA proposes to revise the certification requirement in the CDL application process to clarify how applicants should certify if they operate in interstate commerce, but are excepted from part 391.

*Section 383.71(g).* FMCSA proposes to add a new requirement that applicants who are subject to part 391 must begin providing their SDLA an original or a copy (at the State's option) of each medical examiner's certificate they obtain.

*Section 383.73(a)(5).* FMCSA proposes to have the SDLA enter on the CDLIS driver record the certification made according to § 383.71(a)(1) and, if the driver is required to have a medical certificate, record the information from the certificate in the CDLIS driver record.

*Section 383.73(b)(6).* FMCSA proposes to add a requirement for the SDLA, when a driver applies for a license transfer, to verify whether the driver is subject to part 391, and if so, whether the medical certification status is designated as "qualified" before taking any licensing action. To accommodate the period of time between the implementation date and when all drivers are required to submit medical certification information to the SDLA, FMCSA also proposes to allow drivers to provide SDLAs with their

existing medical examiner's certificates. Those certificates must be issued with a date that is prior to 3 years after the effective date of the final rule on this subject, until the certificate expires, as evidence of current medical certification.

*Section 383.73(c)(5).* FMCSA proposes to add the same requirement as § 383.73(b)(6) for the license renewal process.

*Section 383.73(d)(3).* FMCSA proposes to add the same requirement as § 383.73(b)(6) to the license upgrade process.

*Section 383.73(j).* FMCSA proposes to add a new CDLIS recordkeeping requirement for medical certification status information. A number of items displayed on the medical examiner's certificate would be recorded on the CDLIS driver record. The medical certification status information must be updated within 2 business days of receiving a new medical examiner's certificate, or a current certification expiring. If a driver's medical certification expires, the SDLA must initiate a downgrade of the CDL. The SDLA must accept and record within 2 business days on the CDLIS driver record any medical variance issued by FMCSA to a driver.

*Section 383.95.* FMCSA proposes to add a second restriction and to rename the section. The new restriction would be coded as "W" and would indicate the driver has received a medical variance.

##### Part 384

*Section 384.105.* FMCSA proposes to add a definition for CDLIS Motor Vehicle Record. The basic term of motor vehicle record was adopted from the existing usage. FMCSA solicits comments on whether some other descriptive title should be used instead, such as CDLIS driver history, or CDLIS driver and employer report.

*Section 384.107.* The Agency would revise paragraph (b) to incorporate by reference the most recent version of the CDLIS State Procedures Manual as of the final rule.

*Section 384.206(a).* FMCSA proposes to revise this compliance requirement to include performing the record checks specified in § 383.73.

*Section 384.206(b)(3).* The Agency would revise § 384.206(b) by adding a third required action to the two existing ones. This change would mean that a CDL for a driver subject to part 391 must be downgraded if the medical certification expires and no new medical examiner's certificate is provided.

*Section 384.225.* The Agency would revise all paragraphs under (e) to refer

to the CDLIS driver record, and clarify in paragraphs (e)(3) and (4) that drivers and motor carriers obtain this information according to State procedures on the CDLIS MVR. The Agency would also add a new paragraph (f) to require States to provide the medical certificate information on the CDLIS, CDLIS MVR and CDL NLETS status and history responses. The title of the section would be changed from "Record of violations" to "CDLIS driver recordkeeping" to more accurately describe its contents.

*Section 384.231.* The Agency would update the reference to the CDLIS State Procedures manual to be to the most recent version incorporated by reference into § 384.107(b).

*Section 384.234.* The Agency would add a new compliance requirement to the existing State requirements in part 384 to comply with the State provisions specified in the proposed new § 383.73(j).

#### Part 390

*Section 390.5.* FMCSA proposes to add a new definition for "medical variance" as an inclusive term for all Federal programs dealing with physical qualification, including exemptions, and skill performance evaluation certificates. This definition does not cover waivers issued under subpart B of part 381. These waivers are issued for short periods of time and any waivers will be addressed through program documentation and not the driver's licensing systems.

FMCSA also proposes to add a definition for "motor vehicle record."

#### Part 391

*Section 391.2.* In § 391.2, FMCSA proposes to change the section name from "General exemptions" to "General exceptions." This proposed change would establish consistency with the term "exception" as used in § 390.3(f) and to remove confusion with the different meaning of the word "exemption" as used in 49 CFR 381, Subpart C and 49 CFR 391.62.

*Section 391.23(m).* FMCSA proposes to add a new paragraph (m) to explicitly specify what the employer must do with regard to CDL drivers subject to part 391 to comply with the long-existing requirement in § 391.41(a). This paragraph makes it explicit that substituting the driver's CDLIS MVR for the medical examiner's certificate has an impact on the timing of when the motor carrier must obtain and place the MVR in the DQ file as part of the hiring process. All non-CDL drivers would continue to be required to provide a copy or original of the medical

examiner's certificate to their employing motor carrier.

*Section 391.41(a).* The Agency proposes to amend § 391.41(a) to delete the existing exception reference to § 391.67, and to add an exception that CDL drivers subject to part 391 would be excluded from the requirement to carry the medical examiner's certificate because their current medical certification status information would be on the electronic CDLIS driver record, and could be verified via CDLIS or NLETS inquiries, and on the CDLIS MVR for drivers and employers. Again, all non-CDL drivers would continue to be required to provide a copy or original of the medical examiner's certificate to their employing motor carrier.

*Section 391.43(g).* The Agency proposes to amend § 391.43(g) to remove the requirement for the medical examiner to provide a copy of the medical examiner's certificate to the employing motor carrier, and to add a requirement that the examiner should retain a copy of all certificates for the duration of the certificate.

*Section 391.51.* FMCSA proposes to update the requirements for what must be contained in the driver qualification (DQ) file regarding medical certification for CDL drivers subject to part 391. These CDL drivers would no longer need to carry a medical examiner's certificate because the current status of their certification would be electronically available from CDLIS. Employers would satisfy the documentation requirement by obtaining the copy of the driver's CDLIS MVR they are already required to obtain from the SDLA and to place it in the DQ file.

#### F. Summary Cost Benefit Analysis

The regulatory evaluation describes and evaluates the proposal contained in this NPRM, as well as two other alternatives that were considered by the Agency. No changes are proposed in the physical qualification standards or medical advisory criteria for determining whether a driver may be medically certified as physically qualified to operate a CMV. A number of provisions are proposed to modify the procedures used to document a driver's current medical certification status as a condition for obtaining or retaining a CDL, and to enable motor carriers and enforcement personnel to verify the driver's medical certification status.

Currently, CDL drivers subject to part 391 must certify that they meet the driver qualifications in 49 CFR part 391, in order to operate CMVs in interstate commerce. These drivers are required to carry a current medical examiner's

certificate while driving, and motor carriers must keep a copy of the medical examiner's certificates of all such drivers they employ on file. The purpose of these certificates is to prove that the driver is physically qualified to operate a CMV in interstate commerce. Under current regulations, no information about the driver's self-certification regarding applicability of part 391 or any medical certification status information is required to be placed on the CDLIS driver record, and the driver does not need to show the medical examiner's certificate to State officials when applying for, renewing, upgrading, or transferring a CDL in most States.

#### Alternative 1

This alternative would require medical certification status to be listed on the physical driver's license document of any driver holding a CDL who intends to operate a CMV in interstate commerce. In conducting this analysis, the Agency has assumed that in order to implement this alternative, the expiration periods for CDLs (average period of 5 years) and medical examiner's certificates (maximum period of 2 years) would need to be synchronized. While it is possible that States could list two separate expirations on a license, one for the license renewal and one for medical certification, SDLAs would still have to issue a new CDL each time the medical certification expired. As a result, listing two dates would not be likely to reduce processing costs. This alternative would require all States to renew both CDLs and medical certifications every time a medical certification was issued, and would therefore require them to process a much higher volume of CDLs. Drivers would also have to pay CDL renewal fees much more frequently. Currently, CDL renewal fees average \$45 per renewal.

This alternative, like the others listed below, would also require that States: (1) Receive from the driver a medical examiner's certificate, and (2) post specified information from it on the electronic CDLIS driver record prior to issuing, renewing, upgrading or transferring that driver's CDL. Implementing this proposal would require SDLAs to modify their driver licensing computer systems to accommodate this new information. In addition, States would need to establish methods for receiving medical examiner's certificates from drivers either via mail or fax, or by having drivers present the medical examiner's certificate in-person at a SDLA office.

Table 1 below provides an itemized list by year of the costs incurred under this alternative. Costs in years 6 and

later are identical to those for year 5 and are aggregated in the table. The net present value of the costs of this

alternative over 10 years, assuming a 7 percent discount rate, is \$526 million.

TABLE 1.—TOTAL COST OF ALTERNATIVE 1  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Licensing Costs *	\$0	\$0	\$0	\$97,000	\$97,000	\$485,000	\$679,000
Mailing Costs *	0	0	0	4,500	4,500	22,500	31,500
Planning and Design **	1,785	1,785	0	0	0	0	3,570
State Compliance Reviews ***	0	0	0	1,700	1,700	8,500	11,900
State Training Costs **	425	425	425	0	0	0	1,275
State Computer Systems Development **	4,250	4,250	4,250	0	0	0	12,750
State Computer Operations **	0	0	0	510	510	2,550	3,570
Data Entry Costs **	0	0	0	4,400	4,400	22,000	30,800
CDLIS Testing Costs **	250	250	250	0	0	0	750
 Total costs .....	6,710	6,710	4,925	108,110	108,110	540,550	775,115
Total Costs (7 percent discount rate) .....	6,710	6,271	4,302	88,250	82,477	338,170	526,180
Total Costs (3 percent discount rate) .....	6,710	6,515	4,642	98,936	96,054	439,901	652,758

\* Cost to be borne by drivers.

\*\* Cost to be borne by States.

\*\*\* Cost to be borne by Federal Government.

#### Alternative 2

Under this alternative, States would be responsible for receiving, recording and providing data from a medical examiner's certificate received from the driver prior to the State issuing, renewing, updating or transferring a CDL for a driver who operates in interstate commerce. The State would be responsible for including the medical certification status information on all reports provided to persons authorized to access information from the CDLIS driver record. This includes those using CDLIS and NLETS to make the inquiry, and drivers and employing motor carrier requesting a CDLIS MVR. The SDLA would also be required to downgrade a

CDL if the medical certification expires. It is anticipated States would prefer mail delivery of certifications from drivers rather than in-person delivery, because this is expected to be less costly to both States and drivers. The SDLA would then record the specified certificate information on the electronic CDLIS driver record. Implementing this change would enable enforcement personnel to gain electronic access to verify CDL drivers have a medical certification status of "qualified" during roadside inspections or traffic stops.

The changes proposed under this alternative would ensure that all CDL drivers operating in interstate commerce who are not excepted from the driver qualification requirements of part 391

would have a medical certification status of "qualified" prior to the State issuing, renewing, upgrading or transferring a CDL. In addition, if a driver fails to obtain a new medical examiner's certificate before the old one expires, the State would be required to: (1) Update the status of that driver's medical certification status to "not-qualified," and (2) begin taking action to downgrade that driver's commercial driving privileges unless a new, valid medical examiner's certificate is obtained by the driver. Table 2 below presents an itemized list of the costs associated with this alternative. The 10-year costs of this alternative are \$59 million when discounted at 7 percent.

TABLE 2.—TOTAL COST OF ALTERNATIVE 2  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Planning and Design** .....	\$1,785	\$1,785	\$0	\$0	\$0	\$0	\$3,570
State Compliance Reviews*** .....	0	0	0	1,700	1,700	8,500	11,900
State Computer Systems Development** .....	4,250	4,250	4,250	0	0	0	12,750
State Computer Operations** .....	0	0	0	510	510	2,550	3,570
Training** .....	425	425	425	0	0	0	1,275
SDLA Data Entry Extra Time/Staffing** .....	0	0	0	2,200	2,200	11,000	15,400
CDLIS Testing Costs** .....	250	250	250	0	0	0	750
Mailing Costs* .....	0	0	0	4,500	4,500	22,500	31,500
 Total .....	6,710	6,710	4,925	8,910	8,910	44,550	80,715
 Present Value (Disc. at 7%) .....	6,710	6,271	4,302	7,273	6,797	27,871	59,224
Present Value (Disc. at 3%) .....	6,710	6,515	4,642	8,154	7,916	36,255	70,192

\* Cost to be borne by drivers.

\*\* Cost to be borne by States.

\*\*\* Cost to be borne by Federal Government.

**Alternative 3**

This alternative is similar to Alternative 2, with the exception that FMCSA would receive medical examiner's certificates through the mail or facsimile transmission from drivers, rather than having drivers submit the form directly to their licensing State. FMCSA would then enter the data and electronically route it directly to the licensing State as a CDLIS transaction,

so that the information would be recorded on the driver's electronic CDLIS driver record.

This alternative would require States to develop the capacity to receive medical certification information on drivers electronically. State CDL computer systems already have a similar capacity to receive traffic convictions that occur in other States, transmitted electronically from these States, so

developing this capacity is possible. This alternative would also require FMCSA to develop the recordkeeping capacity to receive and record medical examiner's certificates for all CDL licensed interstate drivers. Table 3 below presents the costs associated with this alternative. The net present value of the total cost of this proposed rule after 10 years is \$63 million when discounted at 7 percent.

**TABLE 3.—TOTAL COST OF ALTERNATIVE 3**  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Planning and Design ** .....	\$1,785	\$1,785	\$0	\$0	\$0	\$0	\$3,570
State Compliance Reviews *** .....	0	0	0	1,700	1,700	8,500	11,900
State Computer Systems Development** .....	5,500	5,500	5,500	0	0	0	16,500
State Computer Operations** .....	0	0	0	510	510	2,550	3,570
Federal Computer Start Up *** .....	150	125	0	0	0	0	275
Federal Computer Maintenance .....	0	0	0	12	12	60	84
Training ** .....	425	425	425	0	0	0	1,275
Data Entry Extra Time / Staffing *** .....	0	0	0	2,200	2,200	11,000	15,400
Mailing Costs ** .....	0	0	0	4,500	4,500	22,500	31,500
CDLIS Testing Costs ** .....	300	300	300	0	0	0	900
<b>Total .....</b>	<b>8,160</b>	<b>8,135</b>	<b>6,225</b>	<b>8,922</b>	<b>8,922</b>	<b>44,610</b>	<b>84,974</b>
Present Value (Disc. At 7%) .....	8,160	7,603	5,437	7,283	6,807	27,908	63,198
Present Value (Disc. At 3%) .....	8,160	7,898	5,868	8,165	7,927	36,304	74,322

\*Cost to be borne by driver.

\*\*Cost to be borne by State.

\*\*\*Cost to be borne by Federal Government.

Alternative 2 is the least expensive of the 3 alternatives, although Alternative 3 is fairly cost competitive. Alternative 1 is by far the most expensive of the three alternatives. Its higher costs are due mainly to the need to synchronize the CDL renewal and medical certification renewal periods.

Alternative 1 would entail a much higher volume of CDL renewals at SDLAs and, as a result, States would incur more costs and drivers would have to pay renewal fees much more frequently.

The costs to the various entities under Alternative 2 are summarized in Table

4 below. These costs are undiscounted. States would bear costs in the range of \$4–\$6.7 million per year under this alternative for the first three years, and drivers would bear costs of slightly more than \$3 million per year once they begin submitting their medical certificates to the States after year 3.

**TABLE 4.—SUMMARY OF COSTS TO VARIOUS DRIVERS/ENTITIES, ALTERNATIVE 2 UNDISCOUNTED**  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Later years
State Costs .....	\$6,710	\$6,710	\$4,925	\$3,998
Driver Costs .....	0	0	0	3,212
Federal Costs .....	0	0	0	1,700
<b>Total .....</b>	.....	.....	.....	<b>8,910</b>

**Benefits**

The Agency believes all three alternatives would offer comparable safety benefits. These benefits would result from preventing a limited percentage of physically not-qualified drivers from obtaining a CDL to operate CMVs in interstate commerce. FMCSA believes such not-qualified drivers are more likely to be involved in crashes than those who are qualified. The Agency estimates the proposed changes

could result in the prevention of as many as 10 percent of the crashes attributable to physically not-qualified drivers. These benefits are expected to stem from a deterrent effect because the drivers would be providing their medical examiner's certificate to a government official, rather than a motor carrier, and may be less likely to engage in forgery. In addition, having easy electronic access to tracking information from the driver's medical certificate

should facilitate any desired investigations of fraud in the medical certification system at the State and Federal level, and is likely to assist in exposing drivers that engage in untruthful statements about their medical certification status. Thus, certain types of fraud might be deterred.

This proposed rule would also provide safety benefits by providing drivers with a greater incentive to renew their medical certifications on time.

Currently, there are only minor penalties for driving with an expired medical certification. In addition, this violation is only caught if the driver is targeted for a roadside inspection or stopped for violating traffic laws. Since penalties are so light and there is a good probability of escaping detection, many drivers put off renewing their medical certifications until well after their old ones have expired. Once the medical certification becomes part of the CDLIS driver record, detection of expired medical certifications will become automated. In addition, States would have to send the drivers notice that action is being taken to downgrade their CDL unless a new medical certificate is submitted. As a result of this enhanced enforcement, drivers are more likely to renew their medical certifications in a timely manner.

FMCSA believes that this more timely renewal by CDL drivers of medical certifications is likely to provide enhanced safety benefits for the entire motor carrier industry. During the 2-

year renewal period between medical examinations some percentage of drivers will develop physical problems that make them physically unqualified to drive. For instance, a driver may have experienced a decline in eyesight, developed high blood pressure, kidney problems, or heart problems. If these drivers put off obtaining a new medical examination, they would remain an increased safety risk. However, if they are medically examined on schedule, the medical problems that have developed in the interim can be discovered and treated effectively. Effective treatment of the physical problem would reduce the safety risk the driver poses, and hence will yield safety benefits to the public in the form of fewer crashes involving physically unqualified drivers. The Agency acknowledges the fact that the level of the safety benefits that would accrue from the proposed changes in this NPRM are to some extent uncertain, and therefore has conducted a sensitivity

analysis using two different levels of assumed safety benefits.

If this proposed rule resulted in the avoidance of 10 percent of the crashes attributable to physically unqualified drivers, it would prevent approximately 268 crashes per year. The Agency estimates that the average cost of a truck or bus crash with a CDL driver is \$69,439. Avoiding 268 crashes would therefore result in approximately \$18.6 million in annual undiscounted crash avoidance benefits. At this possible level of benefit, Alternative 2 would be cost beneficial, with an estimated 10-year net benefit of \$20.7 million, assuming a 7 percent discount rate. Alternative 2 would also be cost beneficial if it resulted in avoiding only 4 fatal truck or bus crashes per year. These figures are summarized in Table 5 below. Alternative 3 would also be cost beneficial at this level of crash avoidance, with a slightly lower total net benefit of \$16.8 million. Alternative 1 would not be cost-beneficial at this level of benefit.

TABLE 5.—10-YEAR BENEFIT COST COMPARISON—ALL CRASHES 7 PERCENT DISCOUNT RATE  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Discounted Crash Avoidance Benefits ....	\$0	\$0	\$0	\$7,596	\$14,197	\$58,211	\$80,004
Discounted Total Costs .....	6,710	6,271	4,302	7,273	6,797	27,871	59,224
Discounted Net Benefits .....	−6,710	−6,271	−4,302	322	7,400	30,341	20,780

An alternative benefit-cost comparison for Alternative 2 based on an assumption of only a 5 percent reduction in crashes attributable to preventing physically not-qualified drivers from obtaining a CDL to operate

CMVs is presented in Table 6 below. The proposed rule would not be cost beneficial at this level of crash prevention. The net present value of net costs under this level of benefits is \$19 million. At this level of benefit, none of

the alternatives would be cost beneficial. Were this proposed rule to result in no safety benefits, its total 10-year cost would be \$59 million.

TABLE 6.—10-YEAR BENEFIT COST COMPARISON, ALTERNATIVE 2 WITH REDUCED CRASH AVOIDANCE 7 PERCENT DISCOUNT RATE  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Discounted Crash Avoidance Benefits ....	\$0	\$0	\$0	\$3,798	\$7,099	\$29,106	\$40,003
Discounted Total Costs .....	6,710	6,271	4,302	7,273	6,797	27,871	59,224
Discounted Net Benefits .....	−6,710	−6,271	−4,302	−3,475	301	1,235	−19,222

Because of the speculative nature of the benefits, it is possible that none of the Alternatives is cost beneficial under the terms of this proposal. This proposal implements the congressional mandate in section 215 of MCSIA. FMCSA anticipates it would also implement the National Registry of Medical Examiners as required by SAFETEA-LU, which the Agency believes could make further improvements in the medical certification program. The proposed

requirements set forth in this NPRM are an important first step, and the Agency is separately considering additional changes to improve the medical certification processes in the future. The current changes proposed here are critical precursors for delivering electronic verification of improved medical certification information to State driver licensing agencies and roadside and traffic enforcement personnel as part of their programmatic

processes. The FMCSA is also hopeful that substantial information quality improvements would result from the anticipated future rulemakings in the medical certification arena. FMCSA anticipates the combination of this proposed rule and future actions involving the medical certification program would achieve substantial safety benefits to the public. A full description of how these costs and benefits estimates were developed is in

the Regulatory Evaluation in the docket of the rulemaking)

## G. Rulemaking Analyses

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

FMCSA determined this proposed rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures. The NPRM is significant because of the level of congressional and public interest in the proposed rule. The NPRM has been reviewed by the Office of the Secretary and the Office of Management and Budget (OMB).

This rulemaking would require States to verify that CDL holders who are subject to the physical qualification requirements under 49 CFR part 391 have obtained a medical examiner's certificate issued by a medical examiner, or certify that they are either operating entirely in excepted interstate commerce or entirely in intrastate commerce. The States would be required to enter either: (1) The information from the medical examiner's certificate, or (2) the information from the CDL application that the driver claimed exempt status or plans to operate entirely intrastate, onto the CDLIS driver record to be available to Federal and State enforcement agencies via CDLIS or NLETS inquiries and to drivers and employers on the CDLIS MVR.

The development costs the States would incur to implement this proposed rule include the cost to modify each State's information systems to enable them to record which certification the CDL driver made, and for those so required, information from the medical examiner's certificate to verify the driver's physical qualification. Operational costs to States include hiring and maintaining sufficient staff to receive these certificates from interstate CDL drivers at least every 2 years (in some cases more often), and to perform data entry functions to record all information from the paper medical examiner's certificates. State costs also include a requirement to downgrade the driver's CDL and to notify the driver of the planned downgrade, as well as updating the programs that provide the following responses: CDLIS, CDLIS equivalent for NLETS and CDLIS MVR status and history to users authorized in 49 CFR 384.225(e) to include specified medical certification status information. More details about these requirements are discussed under the section titled,

"Executive Order 13132 (Federalism)," below.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires Federal Agencies to take small businesses' particular concerns into account when developing, writing, publicizing, promulgating and enforcing regulations. To achieve this goal, the Act requires that agencies detail how they have met these concerns, by including a Regulatory Flexibility Analysis (RFA). An initial RFA, which accompanies an NPRM, must include the following five elements:

(1) A description of the reasons why action by the Agency is being considered.

The Agency has identified numerous instances in which drivers who are physically unqualified or have failed to be medically examined have obtained CDLs and operated CMVs in violation of Federal regulations. The Agency believes, and research suggests,<sup>4</sup> that physically unqualified drivers are significantly more likely to be involved in motor vehicle crashes. The continued operation of CMVs by physically unqualified drivers therefore poses a significant risk to the health and safety of the general public. FMCSA believes that the changes being proposed here would, if implemented, reduce the number of large truck crashes that occur, and the losses in property, health, and lives that are associated with them.

(2) A succinct statement of the objectives of, and legal basis for, the proposed rule.

The objectives of the proposed rule are to inhibit physically unqualified drivers from falsely certifying they are qualified or submitting fraudulent medical examiner's certificates, and thus reduce the number of physically unqualified drivers who are obtaining CDLs and operating CMVs in interstate commerce in violation of Federal regulations. This proposed rule would also bring the CDL process into compliance with the requirements of section 215 of MCSIA, that requires FMCSA to initiate a rulemaking to provide for a Federal medical qualification certificate to be made part of the CDL. The changes being proposed

<sup>4</sup> See for instance: Ogden, E.J.D. and Moskowitz, H. "Effects of Alcohol and Other Drugs on Driver Performance." *Traffic Injury Prevention*. 5:185–198. 2004.

J. Terran-Santos, M.D., A. Jimenez-Gomez, M.D., J. Cordero-Guevara, M.D., and the Cooperative Group Burgos-Santander. 1999. "The Association Between Sleep Apnea and the Risk of Traffic Accidents." *New England Journal of Medicine*. 340:11. pp. 847–851

here would bring the Agency into compliance with that mandate.

(3) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule would apply.

The latest estimates from the Agency's MCMIS database (February 2006) indicate a total of approximately 685,000 interstate motor carriers. However, FMCSA analysts believe the number of truly "active" motor carriers (*i.e.*, those currently moving freight or passengers, operating under their own authority, and with required filings on record with FMCSA) is probably less than 500,000. For this analysis, FMCSA used the estimate of 475,500, which is based on research conducted in calendar year 2005. This number includes both for-hire and private interstate carriers. For this analysis, the Agency assumes that 75 percent of existing motor carriers are defined as small entities, since the Economic Census data and conversations with trade associations both indicate that approximately 75 percent of motor carriers qualify as small businesses. Therefore, of the 475,500 current motor carriers in MCMIS, approximately 356,625 are considered small entities and this proposed rule would apply to all that use CDL drivers operating in interstate commerce.

The changes being considered here would slightly reduce the paperwork and documentation requirements on employing motor carriers. Motor carriers are currently required to obtain a copy of the medical certificate from each driver they hire prior to letting that driver operate a CMV in interstate commerce. Motor carriers are also required to obtain from the drivers' SDLAs the MVR for all drivers they employ. This proposed rule change would enable motor carriers to get both the medical examiner's certificate and MVR from the licensing SDA with one transaction. This proposed change would therefore reduce the current reporting and recordkeeping requirements for all motor carriers.

(4) A description of the proposed reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

These proposed rules would change the source from which motor carriers gather medical certification status for CDL drivers operating in interstate commerce. Currently, drivers provide an original or copy of the medical

examiner's certificates to motor carriers. If this proposed rule were to go into effect, motor carriers would instead obtain driver medical certification status information for interstate CDL drivers from the driver's licensing SDLA, as part of the driver's MVR that the motor carrier must already collect when hiring a new driver. This NPRM would also reduce recordkeeping requirements for those drivers who must comply with the proposed requirements because they would no longer be required to carry a copy of their medical examiner's certificate with them while driving a CMV. However, driver reporting requirements would be increased very slightly—most interstate CDL drivers would need to mail a copy of their medical examiner's certificates to their SDLA each time they receive a new certificate rather than provide their current employing motor carrier with a copy.

(5) An identification, to the extent practicable, of all Federal rules which may duplicate, overlap, or conflict with the proposed rule.

This proposed rule would make information from the medical certificate a part of the commercial driver's license. FMCSA is not aware of any other regulations which would duplicate, overlap, or conflict with the proposed rule.

The entire Regulatory Flexibility analysis is available in the docket for this proposal. FMCSA has preliminarily determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

FMCSA seeks comments on the Regulatory Flexibility analysis set forth in this NPRM.

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

This proposed action would meet 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 13045 (Protection of Children)*

FMCSA analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

#### *Executive Order 12630 (Taking of Private Property)*

This proposed rulemaking would not involve taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *Executive Order 13132 (Federalism)*

This proposed action was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (64 FR 43255, August 10, 1999), which requires agencies to develop "an accountable process to ensure meaningful and timely input by State and local government officials in the development of regulatory policies that have Federalism implications." Policies that have Federalism implications are defined in the Order 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 the various levels of government." Under Executive Order 13132, Federal agencies may not issue a regulation that has Federalism implications, that imposes substantial direct 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 or the Agency consults with State and local officials early in the process of developing the proposed regulation. Also, Federal agencies may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with local government officials early in the process of developing the proposed regulation.

If FMCSA believes it complies by having consulted with the States, Executive Order 13132 requires FMCSA to provide to OMB in a separately identified section of the preamble to the rulemaking a "Federalism Summary Impact Statement (FSIS)." The FSIS must include: (1) A description of the extent of FMCSA's prior consultation with State and local government officials; (2) a summary of the nature of their concerns; (3) the Agency's position supporting the need to issue the regulation; and (4) a statement of the extent to which the concerns of State and local government officials have been met. Also, when FMCSA transmits a draft final rule with Federalism implications to OMB for review pursuant to Executive Order 12866, FMCSA must include a certification

from the Agency's Federalism official stating that FMCSA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Nothing in this proposal would directly preempt any State law or regulation. However, FMCSA believes this proposed action has Federalism implications because it would impose new direct operational costs on States, which would no longer be funded by FMCSA beginning 3 years after implementation, and limit State policymaking discretion if the State chooses to issue CDLs in compliance with the proposed revisions. Thus, the requirements of section 6 of the Executive Order regarding consultation would apply to this proposed rule. FMCSA will consult with State officials, including elected officials, on this proposal. In addition, FMCSA requests comments to the docket from elected State officials regarding the proposals in this NPRM.

#### *Preliminary Federalism Summary Impact Statement (FSIS)*

Over the years, State officials have been consulted on a variety of possible approaches for addressing the issue of including the medical certification information with the CDL. Alternative models for how the 1999 congressional mandate could be implemented were prepared and discussed with the American Association of Motor Vehicle Administrators (AAMVA) which sought additional feedback from some of its members regarding the models. AAMVA provided a document of their members' comments on those models, which is included in the docket. Most recently, FMCSA sent a letter to the States through the National Governors' Association advising them this proposed rule would be published this fall proposing requirements for the States to make changes to their CDL process and CDLIS implementations. A copy of the letter is included in the docket for this rulemaking.

In addition to consultation, State and local officials have had the opportunity to provide official comments on this proposal. An ANPRM on this subject was published July 15, 1994 (59 FR 36338). Comments are in the docket, as is a summary of the comments prepared by FMCSA. An Advisory Committee was convened for a negotiated rulemaking. Materials from that Committee are in the docket.

*Summary of the Nature of State and Local Government Officials' Concerns.* States have consistently expressed concern about what resources would be necessary to achieve compliance with whatever alternative is proposed as a

regulation. This NPRM would require States to obtain a medical examiner's certificate from the driver and post specified current medical certification status information on the CDLIS driver record. States would also be required to check the driver's medical certification status: (1) Prior to the CDL issuance, renewal, transfer and upgrade processes; (2) during the licensing period to detect expiration of the medical certification; and (3) as part of roadside and traffic enforcement activities. If the medical certification expires, the State would be required to downgrade the CDL and notify the driver that his/her CDL would be downgraded. To facilitate gathering information about possible impacts on States, FMCSA previously prepared draft concept models. These models were based in part on the work of the previous Committee and the public comments received in response to the ANPRM. Those draft models were presented to staff members of the AAMVA on June 17, 2003, for feedback about the feasibility of the models from a technical standpoint, potential costs with regard to modifications of State information systems necessary to implement various possible requirements, and preferred approach.

The first model was based on using the medical examiner's certificate paper approach developed and recommended by the Committee. That model was expanded to include State capability for identifying problems and trends associated with medical certification, e.g., a driver passing a medical examination after recently failing an examination conducted by a different examiner (possible "medical examiner shopping"). That capability is not included in this NPRM. The second model was premised on a more technology-based approach, which included processes to monitor medical examiners' performance (e.g., certifying individuals as meeting the physical qualification standards when, in fact, such individuals do not meet the requirements). A copy of the two models provided to AAMVA, and the feedback received from AAMVA, is included in the rulemaking docket. FMCSA seeks comments from States and other interested parties regarding the impacts the Agency assessed previously in its draft concept models for this proposed rule.

An alternative FMCSA discussed with the States as part of the negotiated rulemaking for more explicitly addressing whether a driver is physically qualified within the CDL program was to require States to obtain, review, and approve the medical

examination report (long form.) The States opposed that proposal.

Another alternative examined in the Regulatory Impact Analysis for this proposal was to make the medical examiner's certificate and the CDL the same document and to require the driver to obtain a new CDL each time the driver is reexamined by a medical examiner. FMCSA determined that the costs of that approach would be extremely high because the medical examination schedule (maximum duration of 2 years) is dramatically shorter than the current CDL renewal cycle (on average, every 5 years). The approximate 5-year CDL renewal cycle would need to be changed to require drivers to renew their CDL, on average, much more often than every 2 years.

Currently, 49 CFR 391.45 requires that all drivers who operate CMVs in interstate commerce must be medically examined and certified as physically qualified at least once every 2 years. Section 391.45(c) essentially requires a driver to be medically reexamined at any time an employer is concerned the driver's abilities to perform his/her usual duties may be impaired. FMCSA guidance to medical examiners says drivers should be given less than a 2-year certification if they have medical conditions that need more frequent monitoring. The medical exemptions for vision and diabetes granted by FMCSA under 49 CFR part 381 require annual reexamination and recertification. It is documented in a report available from the American Trucking Research Institute that there is a large turnover in employment among drivers.<sup>5</sup> Each time a driver changes employers, the new employer has the opportunity, as a condition of employment, to require a new medical examination, and a number of larger carriers do so. Because of these reasons, FMCSA estimates that at least 20 percent of the drivers granted a 2-year medical examiner's certificate are required to obtain at least one additional certificate during that 2-year period.

Another alternative suggested by the States as part of the negotiated rulemaking, was that, as part of the requirement for each driver to submit his/her medical examiner's certificate to the State, the State would only record specified information from it on the CDLIS driver record, and make no other changes to the existing licensing

processes. This alternative is potentially the least intrusive on existing CDL procedures used by the States, and is the one proposed in this NPRM.

This NPRM would require the driver to maintain a valid medical certification status on his/her CDLIS driver record. Drivers would accomplish this by providing the SDLA with a current medical examiner's certificate documenting current medical certification status before the SDLA issues, renews, upgrades, or transfers a CDL, and every time the certificate expires. The SDLA would record the medical certification status information on the CDLIS driver record within 2 business days of receiving it. If the medical certification expires, the State would be required to downgrade the driver's CDL.

The States would be required to notify the driver of the impending CDL downgrade as part of the process. This would be an incremental addition to existing driver notification systems operated by all States, but would increase the number of notifications they would send out. However, because CDL drivers are only a small percentage of the total number of CMV drivers, this should be a relatively small percentage increase in the volume of driver notifications required of States. This NPRM also proposes a revised standard for how employers and enforcement personnel would verify a driver's current medical certification status as part of their responsibilities.

**FMCSA Position Supporting Need to Issue this Regulation.** This proposed requirement is congressionally-mandated by section 215 of MCSIA, which requires FMCSA to initiate rulemaking to provide for a medical qualification certificate to be made a part of the commercial driver's license program. This requirement is national in scope, requiring regulation of an aspect of safety for drivers engaged in interstate commerce. This proposal would establish a requirement for States to obtain a medical examiner's certificate from the CDL driver and record the information from it within 2 business days, documenting his or her physical qualifications to drive a CMV in interstate commerce.

In developing this NPRM, FMCSA intends for States to have the maximum administrative discretion possible to determine how they choose to satisfy the proposed minimum medical certification and CDL regulations set forth in this NPRM. Through AAMVA, FMCSA works to develop and oversee technical details necessary for the CDLIS to successfully operate in compliance with the Agency's

<sup>5</sup> "Empty Seats and Musical Chairs: Critical Success Factors in Truck Driver Retention", Chapter III, prepared by the Gallup Organization for the American Trucking Associations (ATA) Foundation, October 1997. A copy of this report is available online at [http://www.atri-online.org/research/safety/images/Musical\\_Chairs.pdf](http://www.atri-online.org/research/safety/images/Musical_Chairs.pdf).

regulations. There is no preemption of State law.

After the 3-year phase-in period proposed in this NPRM to allow for development and implementation of the proposed new CDLIS capabilities, FMCSA would begin monitoring whether the new requirements are being

met as part of the standard State CDL compliance review process. If a State is determined, as part of the State CDL compliance review, not to have implemented the required minimum changes required by this proposal, the normal process specified in the 49 CFR 384, CDL compliance regulations for

notifying the State about potential withholding of Federal-aid highway funds, would apply.

FMCSA estimates the States would incur approximately the following costs to implement, and then operate the new procedures and CDLIS capabilities proposed in this NPRM.

TABLE 7.—SUMMARY STATE COSTS

Year	Total national cost	Average cost/state
Year 1 .....	\$6.7 million .....	\$131,000
Year 2 .....	6.7 million .....	131,000
Year 3 .....	4.9 million .....	96,000
Continuing Years .....	4.0 million .....	78,400

*FMCSA Anticipates Federal Funds Would Be Available for the First 3 years to Pay Most of the Direct Costs Incurred by the States and Local Governments in Complying with the Regulation.*  
 SAFETEA-LU provides two grant programs to assist the States in improving the CDL program, and for modernizing CDLIS as required by 49 U.S.C. 31309(e)(1)(D). FMCSA would consult with AAMVA and the States on how the CDLIS changes proposed in this NPRM could be included as part of the CDLIS modernization specifications. An additional possible source of limited grant funds would be from the SAFETEA-LU State MCSAP grant funds. (49 U.S.C. 31102). Expenses to implement the proposed CDL changes would be allowable as part of these grant programs for the first 3 years of implementing these requirements. These are 80 percent federal grant funds, and 20 percent State matching funds that cannot come from any other grant. Beyond the first 3 years, the Agency assumes that the States would adjust their fees to cover the remaining costs to comply with this proposal.

*Statement of Extent to Which FMCSA Has Addressed the Concerns of State and Local Government Officials.*

FMCSA believes the approach proposed for implementing the congressional requirement in section 215 of MCSIA responds to the concerns raised by State and local officials prior to the Agency's development of this NPRM to minimize any potential unfunded impacts on the States. The Agency has proposed steps necessary to achieve the objectives of the statute, and is providing all affected State and local officials notice and an opportunity for appropriate participation in the proceedings. In addition to the required publication of this notice in the **Federal Register**, FMCSA also proposes to continue to work through AAMVA early in the rulemaking process to bring these issues to the immediate attention of AAMVA's members, and to foster the maximum participation of elected State and local governmental officials in developing a final rule on the subject.

FMCSA requests comments from elected State or local officials on these Federalism implications. All comments should be submitted to the docket for this rulemaking.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 requires that Agencies prepare

analyses of proposals that would result in the expenditure by State, local and tribal governments, or by the private sector, of \$100 million or more in any 1 year. Department of Transportation guidance requires that we use a revised threshold figure of \$120.7 million, which is the value of \$100 million in 2005 after adjusting for inflation. FMCSA has preliminarily determined that the impact of this proposed rulemaking would not be that large in any projected year.

The estimated costs of this proposed rule are presented in the table below. The estimated costs to States of this proposed rule would not exceed \$7 million in any 1 year. This figure is well below the \$120.7 million threshold used by the Department in making an unfunded mandate determination.<sup>6</sup> Total 5 year costs are estimated at \$26.3 million, so costs average slightly more than \$5 million per year. This proposed rule would not impose a Federal mandate resulting in the net expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more (adjusted annually for inflation) in any one year. 2 U.S.C. 1531, *et seq.*

TABLE 8.—STATE COSTS OF PROPOSAL  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Planning and Design .....	\$1,785	\$1,785	\$0	\$0	\$0	\$3570
State Computer System Development .....	4,250	4,250	4,250	0	0	12,750
State Computer System Operation .....	0	0	0	510	510	1020
State Staff Training .....	425	425	425	0	0	1275
Data Entry Costs .....	0	0	0	2,200	2,200	4,400
Mailing Costs .....	0	0	0	1,288	1,288	2,576
CDLIS Testing Costs .....	250	250	250	0	0	750
5 Year Total .....	.....	.....	.....	.....	.....	26,341

<sup>6</sup> Memorandum titled: *Departmental Guidance: Threshold of Significant Regulatory Actions Under*

the Unfunded Mandates Reform Act of 1995, From

Assistant Secretary for Transportation Policy, April 5, 2004.

*Executive Order 12372  
(Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal Agency must obtain approval from OMB for each collection of information it conducts, sponsors or requires through regulations. FMCSA analyzed this proposal and determined that its implementation would increase the currently approved information

collection burdens covered by OMB Control No. 2126–0006, titled “Medical Qualification Requirements,” which must be renewed by December 31, 2006; and OMB Control No. 2126–0011, titled “Commercial Driver Licensing and Test Standards,” which must be renewed by April 30, 2007. Table 9 captures the current and proposed burden hours associated with the two approved information collections.

TABLE 9.—CURRENT AND PROPOSED INFORMATION COLLECTION BURDENs

OMB approvals number	Annual burden hours currently approved	Adjustment burden hours proposed	Change burden hours proposed	Annual burden hours proposed
2126–0006 .....	1,185,876	0	118,449	1,304,325
2126–0011 .....	1,272,988	(62,597)	0	1,210,391
<b>Totals .....</b>	<b>2,458,864</b>	<b>(62,597)</b>	<b>118,449</b>	<b>2,514,716</b>

Following is an explanation of how each of the two information collections shown above would be impacted by this proposal.

**2126–0006 Medical Qualification Requirement.** This rulemaking would increase slightly the information collection burden associated with the medical qualification requirement. The increase is attributed to FMCSA adjusting its estimate of the total number of medical examinations and the associated burden hours from 1,185,876 to 1,304,325 hours, and the proposed requirement for motor carriers to maintain a copy of the vision or diabetes exemption in the driver qualification file. Currently, FMCSA manages vision and diabetes exemption programs under its authority provided at 49 U.S.C. 31136(e) and 31315. Drivers that are granted an exemption are required under the terms and conditions of the exemption programs to carry on their person a copy of the exemption at all times but motor carriers are not required to maintain a copy of the exemption that may be granted from the physical qualifications standards. If a final rule is adopted, the estimated information collection burden for the medical qualification requirement would increase from 1,185,876 to 1,304,325 hours annually [1,301,378 hours for medical certificates + 11 hours for resolution of medical conflicts + 167 hours for SPE certificates + 946 hours for vision exemptions + 3 hours for migrant workers + 1,820 hours for diabetes exemptions].

FMCSA notes that the proposed rule would eliminate the requirement for motor carriers to maintain a copy of the medical certificate in the driver qualifications file of CDL holders.

However, because the proposed rule would require the SDLA to maintain a copy of the CDL driver's certificate for at least 6 months from the date it is filed with the licensing agency, and to maintain the information from the certificate on the CDLIS driver record for interstate CDL holders, the information collection burden reductions for motor carriers are offset by the information collection burden increases for the SDLAs. The Agency would retain the requirement for a carrier to place a copy of the medical certificate in the driver qualification file for non-CDL drivers so that portion of the information collection burden remains unchanged. A copy of FMCSA's preliminary supporting statement is included in the docket referenced at the beginning of this NPRM. FMCSA requests comments on its estimates of the information collection burdens proposed in OMB Control Number 2126–0006.

**2126–0011, Commercial Driver Licensing and Test Standards.** This information collection supports the DOT Strategic Goal of Safety by requiring that CDL drivers of CMVs subject to part 391 are properly licensed according to all applicable Federal requirements. The information being collected ensures that CDL drivers are qualified to hold a CDL and operate CMVs, and that States are administering their CDL programs in compliance with the Federal requirements.

There would be a new requirement for SDLAs to collect and post to the CDLIS driver record the information contained on the medical examiner's certificate of CDL driver applicants and holders who are subject to part 391.

A driver applicant applying for a CDL for the first time who is subject to the requirements of 49 CFR part 391 would provide an original or a copy of the medical examiner's certificate to the SDLA before it would issue the CDL. The SDLA would then post the information from the certificate to the driver's electronic CDLIS driver record for access by authorized personnel. When the driver renews, updates or transfers the CDL, the SDLA would verify whether the driver must have a medical certification, and if so that the driver's current medical certification is still valid before taking the licensing action.

For drivers required to have a medical certification, in addition to providing the medical examiner's certificate to the SDLA for the initial application for a CDL, whenever a driver renews his/her medical certification either because it is about to expire, because there is a change in a medical condition or because it is requested by his/her employer, the driver must provide an original or copy of the new medical certificate to the SDLA. It is expected that the driver would mail the certificate to the SDLA. The SDLA would post the new medical examiner's certificate information to the electronic CDLIS driver record within 2 business days of receipt.

If at any time the driver is no longer medically certified to operate in interstate commerce, the SDLA would notify the driver. The SDLA would also change the medical status on the electronic CDLIS driver record within 2 business days to either “not qualified,” “excepted” or “intrastate only,” if the driver can meet the State's intrastate medical requirements. If the status is

"not qualified," the SDLA would proceed with established State procedures for downgrading the CDL privilege. The process would be completed and recorded on the electronic CDLIS driver record by the State within 60 days of the driver becoming not qualified.

This proposed medical certification status information on the CDLIS driver record would not be required to start until 3 years after the effective date of a final rule on this subject; thus, there would be no change in the total annual burden hours due to this new program change. During these 3 years, the SDLAs would, however, incur a combined one-time estimated cost of \$18,245,006 to make systems revisions in order to accommodate the recordkeeping requirements of this proposed new requirement. This includes development of capabilities to record information from the medical examiner's certificate on the CDLIS driver record. It also includes updating all necessary systems to provide medical certification status information as part of the responses to inquiries by all users authorized under 49 CFR 394.225(e). During the first 3 years,

there would be a change in the total annual burden hours due to the net results of: (1) Program adjustments in regard to the increase in the number of CDLIS driver records from 11.3 to 12.2 million and (2) the decease in the number of active CDLIS driver records (*i.e.* records of former drivers that must be retained to meet State and/or Federal record retention requirements).

Starting in the 4th and subsequent years, the additional decease in proposed total annual burden hours is due to the implementation of the new program change requiring States to collect and post the driver medical certification information on the interstate CDL holder's electronic CDLIS driver record.

The major assumptions used for calculation of the information collection annual burden hours include the following: (1) Currently, approximately 10% of the 12.2 million (or 1.22 million) CDLIS driver records are inactive drivers; (2) it will take 3 years for States to pass legislation and make the necessary system revisions before the first medical certificate would be posted to the CDLIS driver record; (3) there are approximately 4.2 million active CDL holders and 74% (or 3.1 million) are

interstate drivers; and (4) of the remaining 6.78 million inactive CDL holders (12.2 – 1.22 – 4.2 million = 6.78 million), approximately 55% of these drivers (or 2.76 million) would not retain their CDL once the proposed requirements are implemented in the 4th year.

The following table summarizes the annual information collection burden hours for current and proposed information collection activities for the first 3 years and the subsequent years. The total proposed annual burden of 1,210,401 hours for the first 3 years represents a decrease of 62,597 hours from the currently-approved total annual burden of 1,272,998 hours due to program adjustments discussed above. The additional decease in proposed total annual burden of 163,786 hours in subsequent years is due to the program changes implementing the new requirement as described above. A detailed analysis of the annual burden hour changes for each information collection activity can be found in the Supporting Statement of OMB Control Number 2126-0011. The Supporting Statement and its attachments are in the public docket for this rulemaking.

Current and proposed information collection activities for states and CDL drivers	Currently approved annual burden hours	Proposed annual burden hours for first 3 Years (program adjustment)	Proposed annual burden hours for subsequent years (program change)
State to obtain and record the medical certificate information .....	0	0	127,667
State recording of medical certification status .....	0	0	3,118
State to verify the medical certification status of all interstate CDL drivers .....	0	0	1,710
Driver to notify employer of convictions/disqualifications .....	629,445	610,000	456,667
Driver to complete previous employment paperwork .....	395,500	384,300	287,700
States to complete compliance certification documents .....	1,632	1,632	1,632
CDLIS recordkeeping .....	237,004	204,302	158,064
Drivers to complete the CDL application .....	9,417	10,167	10,167
<b>Total Current Burden .....</b>	<b>1,272,998</b>	<b>1,210,401</b>	<b>1,046,725</b>

**Comments.** FMCSA requests your comments on whether the proposed information collection is necessary for FMCSA to achieve the goal of reducing truck and bus crashes, including: (1) Whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments on this information collection burden directly to OMB. The OMB must receive your

comments by December 18, 2006. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

#### National Environmental Policy Act

The Agency analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this proposed action is covered by a

Categorical Exclusion (CE) under Appendix 2, paragraph 6(t) in the Order from further environmental documentation. The CE relates to regulations that ensure States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986 by having appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license. In addition, the Agency believes that the proposed action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the FMCSA preliminarily

determines that the proposed action does not require an environmental assessment or an environmental impact statement.

The Agency analyzed this proposed rule under section 176(c) of the Clean Air Act, as amended (CAA), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this proposed action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance. (Refer to 40 CFR 93.153(c)(2).) It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonable that the proposed rule would not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet mix of motor carriers. Drivers are currently required to obtain and maintain medical certification as proof they meet the physical qualification standards of 49 CFR part 391. This proposed rulemaking would establish a requirement for States to record this medical certification information for CDLIS driver records accessible to FMCSA and State licensing and enforcement agencies through CDLIS and CDLIS equivalent for NLETS, and to drivers and employers on the CDLIS MVR. FMCSA requests public comment on these preliminary determinations.

#### *Executive Order 13211 (Energy Effects)*

FMCSA analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency determined, preliminarily, that it would not be a "significant energy action" under that executive order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *Privacy Impact Assessment*

FMCSA conducted a privacy impact assessment of this proposed rule as required by Section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Pub. L. 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the proposed rule on the privacy of information in an identifiable form and related matters. The entire privacy impact assessment is available in the docket for this proposal.

#### **List of Subjects**

##### **49 CFR Part 383**

Administrative practice and procedure, Highway safety, and Motor carriers.

##### **49 CFR Part 384**

Administrative practice and procedure, Highway safety, and Motor carriers.

##### **49 CFR Part 390**

Motor carriers, Reporting and recordkeeping requirements, Safety.

##### **49 CFR Part 391**

Motor carriers, Reporting and recordkeeping requirements, Safety.

In consideration of the foregoing, FMCSA proposes to amend parts 383, 384, 390 and 391 of title 49, Code of Federal Regulations (49 CFR parts 383, 384, 390 and 391) as follows:

#### **PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES**

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

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1766, 1767 (Dec. 9, 1999); sec. 1012(b) of Pub. L. 107–56; 115 Stat. 397 (October 26, 2001); sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726 (Aug. 10, 2005); and 49 CFR 1.73.

2. Amend § 383.5 to add definitions for "CDLIS driver record" and "CDL Downgrade" in alphabetical order to read as follows:

##### **§ 383.5 Definitions.**

\* \* \* \* \*

**CDL downgrade** means the State either: (1) Restricts an unrestricted CDL to intrastate transportation, or interstate transportation excepted from part 391 as provided in 49 CFR 390.3(f) or 391.2; or (2) the State removes the CDL privilege entirely from the driver license.

**CDLIS driver record** means the electronic record in the Commercial Driver's License Information System established under 49 U.S.C. 31309 containing a CDL driver's individual status and history.

\* \* \* \* \*

3. Amend § 383.71 by revising paragraph (a) introductory text and paragraph (a)(1) and by adding a new paragraph (g) to read as follows:

##### **§ 383.71 Driver application procedures.**

(a) *Initial Commercial Driver's License.* Prior to obtaining a CDL, an applicant must meet the following requirements:

(1) An applicant must certify either:

(i) He or she operates or expects to operate in interstate commerce, and is both subject to and meets the qualification requirements under part 391 of this chapter; or

(ii) He or she operates in interstate commerce, but engages exclusively in transportation or operation excepted from the qualification requirements of part 391 of this chapter, or he or she operates only in intrastate commerce and therefore is subject to State driver qualification requirements.

\* \* \* \* \*

(g) An applicant who certifies according to (a)(1)(i) of this section must:

(1) At his or her first licensing action (new CDL, renewal, transfer or upgrade) on or after [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], provide the State with an original or copy of a medical examiner's certificate prepared by a qualified medical examiner, as defined in § 390.5 of this chapter, and

(2) In order to maintain a medical certification status of "qualified," on or after [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], provide the State with all subsequently issued medical examiner's certificates.

4. Amend § 383.73 to:

a. Redesignate existing paragraph (a)(5) to be (a)(6);

b. Add a new paragraph (a)(5);

c. Amend paragraph (b)(4)(ii) by removing the "and" from the end;

d. Amend paragraph (b)(5) by removing the period and adding ";" and" at the end;

e. Add paragraph (b)(6);

f. Amend paragraph (c)(3) by removing "and" at the end;

g. Amend paragraph (c)(4) by removing the period and adding ";" and" at the end;

h. Add paragraph (c)(5);

i. Amend paragraph (d)(1) by removing "and" at the end;

j. Amend paragraph (d)(2) by removing the period and adding ";" and" at the end; and

k. Add paragraphs (d)(3) and (j), to read as follows:

##### **§ 383.73 State procedures.**

(a) \* \* \*

(5) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], record on the CDLIS driver record the certification made by the driver according to § 383.71(a)(1). If the driver certified according to § 383.71(a)(1)(i), then record all required information from the medical examiner's certificate to the CDLIS driver record in

accordance with paragraph (j) of this section.

\* \* \* \*

(b) \*

(6)(i) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], verify from the CDLIS driver record that the medical certification status is qualified if the CDLIS driver record indicates the applicant is subject to part 391 of this chapter under the provisions of § 383.71(a)(1)(i).

(ii) Exception. A driver may present a currently valid medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE]. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(c) \* \* \*

(5)(i) Beginning [DATE 3 YEARS AFTER THE EFFECTIVE DATE OF A FINAL RULE] verify from the CDLIS driver record that the medical certification status is qualified if the CDLIS driver record indicates the applicant is subject to part 391 of this chapter under the provisions of § 383.71(a)(1)(i).

(ii) Exception. A driver may present a currently valid medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE]. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(d) \* \* \*

(3)(i) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE] verify from the CDLIS driver record that the medical certification status is qualified if the CDLIS driver record indicates the applicant is subject to part 391 of this chapter under the provisions of § 383.71(a)(1)(i).

(ii) Exception. A driver may present a current medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE]. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

\* \* \* \*

**(j) Medical certification**

**recordkeeping.** (1) *Application for CDL.* Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], for each operator of a commercial motor vehicle required to have a commercial driver's license, the current licensing State must record the driver's certification information from

§ 383.71(a)(1). For drivers subject to part 391 of this chapter, the State must date stamp the medical examiner's certificate required by § 383.71(g) when received, retain the certificate, a copy, or an image for 6 months, and within 2 business days record the information from the medical examiner's certificate, including:

- (i) Medical examiner's name;
- (ii) Medical examiner's license or certificate number and the State that issued it;
- (iii) Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, required by 49 U.S.C. 31149(d), as added by section 4116(a) of SAFETEA-LU (Pub. L. 109-59, 119 Stat. 1144, 1726 (Aug. 10, 2005)), requires one);<sup>7</sup>
- (iv) Date of physical examination/issuance of the medical examiner's certificate to the driver;
- (v) Medical certification status determination;
- (vi) Expiration date of the medical examiner's certificate;
- (vii) Existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification or grandfather provisions;
- (viii) Any restriction (e.g., corrective lenses, hearing aid, etc.); and
- (ix) Date the medical examiner's certificate information was posted to the CDLIS driver record.

(2) *Medical certification status updates.* (i) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], the State must, within 2 business days of receiving the original or copy of a medical examiner's certificate from the driver, post the medical examiner's certificate information specified in paragraph (a) of this section to the CDLIS driver record.

(ii) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], if a driver's medical certification or medical variance expires, or the FMCSA notifies the State that a medical variance was removed/rescinded, the State must:

(A) Update the CDLIS driver record within 2 business days to show the driver's current CMV medical certification status as "not qualified" and proceed with established State procedures for downgrading the license.

<sup>7</sup> Section 31149(d) becomes effective August 10, 2006. (SAFETEA-LU section 4116(f)). Although the FMCSA plans to implement regulations establishing the National Registry of Medical Examiners in the future, in order to minimize the number of times States have to upgrade their licensing systems, States may want to make provisions in the CDLIS driver record to accept this information should it be required.

The CDL downgrade must be completed and recorded within 60 days of the driver becoming not qualified to operate a CMV.

(B) Notify the CDL holder of his/her CDL not-qualified status and that the CDL is being downgraded.

(iii) Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], the State must, within 2 business days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, update the CDLIS driver record to include the medical variance information provided by FMCSA.

(iv) Beginning [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], if a driver subject to part 391 of this chapter has failed to provide a current medical examiner's certificate, the State must mark that CDLIS driver record as "not qualified" and downgrade the CDL following procedures in paragraph (j)(2)(ii) of this section.

5. Revise § 383.95 to read as follows:

**§ 383.95 Restrictions.**

(a)(1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(2) For the purposes of the skills test, and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

(b) If the State is notified according to § 383.73(j)(2)(iii) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDL document by placing a "W" restriction on the CDL, if issued, indicating there is information about a medical variance on the CDLIS driver record.<sup>8</sup>

**PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM**

6. Revise the authority citation for 49 CFR part 384 to read as follows:

**Authority:** 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106-159, 113 Stat. 1753, 1767 (Dec. 9, 1999); and 49 CFR 1.73.

7. Amend § 384.105(b) by adding in alphabetical order the definition for

<sup>8</sup> In accordance with the agreement between Canada and the United States (see footnote to § 391.41), drivers with a "W" restriction on their commercial driver license are restricted from operating a CMV in the other country.

CDLIS Motor Vehicle Record to read as follows:

**§ 384.105 Definitions.**

\* \* \* \*

(b) *CDLIS motor vehicle record (CDLIS MVR)* means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by States to users authorized in § 384.225(e)(3) and (4).

\* \* \* \*

8. Revise § 384.107(b) to read as follows:

**§ 384.107 Matter incorporated by reference.**

\* \* \* \*

(b) *Materials incorporated.* The AAMVA, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures Manual," Version 4.0.2, March 2006, ICR approved for §§ 384.225(f) and 384.231(d).

\* \* \* \*

9. Amend § 384.206 to:

a. Amend paragraphs (a)(2)(ii) and (iii) to replace the phrase "driving record" with the phrase "driver record" wherever it occurs; and

b. Revise paragraphs (a)(1) and (b) to read as follows:

**§ 384.206 State record checks.**

(a) *Required checks.*

(1) *Issuing State's records.* Before issuing, renewing, upgrading or transferring a CDL to any person, the driver's State of domicile must, within the period of time specified in § 384.232, check its own records as follows:

(i) The driver record of the person in accordance with § 383.73(a)(3) of this chapter; and

(ii) For a driver certifying according to § 383.71(a)(1)(i) of this chapter, the information on the person's CDLIS driver record about medical certification by a medical examiner, as defined in § 390.5 of this chapter.

\* \* \* \*

(b) *Required action.* Based on the findings of the State record checks prescribed in this section, the State of domicile must do one of the following as appropriate:

(1) Issue, renew, upgrade or transfer the applicant's CDL;

(2) In the event a State obtains adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials, or penalties that are called for in any applicable sections of this subpart; or

(3) In the event the State has no information concerning the applicant's

medical certification from drivers subject to part 391 of this chapter, or the medical certification status is "not-qualified," the State must deny the requested CDL licensing action and downgrade an existing CDL.

**§ 384.208 [Amended]**

10. Amend § 384.208(b) by replacing the phrase "driver's record" with the phrase "CDLIS driver record".

11. Amend § 384.225 to:

a. Revise the section heading;

b. Amend paragraphs (b),

(c) introductory text, and (d) by replacing the term "driver history" wherever it occurs with the term "CDLIS driver record"; and

c. Revise paragraphs (a) and (e) and add a new paragraph (f) to read as follows:

**§ 384.225 CDLIS driver recordkeeping.**

The State must:

(a) Record and maintain as part of the CDLIS driver record:

(1) All convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(2) Medical certification status information.

\* \* \* \*

(e) Only the following users or their authorized agents may receive the designated information:

(1) States—All information on all CDLIS driver records.

(2) Secretary of Transportation—All information on all CDLIS driver records.

(3) Driver—Only information on that driver's CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(4) Motor Carrier or Prospective Motor Carrier—After notification to a driver, all information on that driver's, or prospective driver's, CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(f) The content of the report provided a user authorized by paragraph (e) of this section from the CDLIS driver record, or a copy of this record maintained for this purpose, must be comparable to the applicable report that would be generated by a CDLIS State-to-State request for a driver status (SG) or driver history (SB), as defined in the March 2006 edition of the "CDLIS State Procedures Manual," version 4.0.2., (incorporated by reference, see § 384.107) and must include the medical certification status information of the driver.

**§ 384.226 [Amended]**

12. Amend § 384.226 by replacing the phrase "driver's record" with the phrase "CDLIS driver record".

**§ 384.231 [Amended]**

13. Revise § 384.231(d) by replacing the phrase "October 1998 edition of the AAMVANet, Inc.'s 'Commercial Driver License Information System (CDLIS) State Procedures,' Version 2.0." with the phrase "March 2006 edition of the AAMVA, Inc.'s 'CDLIS State Procedures Manual,' Version 4.0.2 and all other CDLIS documents referenced in the manual."

14. Add new § 384.234 to read as follows:

**§ 384.234 Driver medical certification recordkeeping.**

The State must meet the medical certification recordkeeping requirements of § 383.73(j) of this chapter regarding the driver's physical qualification as specified in the qualification standards of part 391 of this chapter.

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL**

15. The authority citation for part 390 continues to read as follows:

**Authority:** 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106-159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

16. Amend § 390.5 by adding in alphabetical order the definitions for "medical variance" and "motor vehicle record" as follows:

**§ 390.5 Definitions.**

\* \* \* \*

*Medical variance* means a driver has received one of the following that allows issuance of a medical certification:

(1) An exemption from FMCSA permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or § 391.64 of this chapter;

(2) A skill performance evaluation certificate from FMCSA permitting operation of a commercial motor vehicle pursuant to § 391.49 of this chapter.

\* \* \* \*

*Motor vehicle record* means the report generated from the driver record and provided to a driver or employer about the driving status and history of a driver.

\* \* \* \*

## PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

17. Revise the authority citation for part 391 to read as follows:

**Authority:** 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

18. Amend § 391.2 by revising the heading to read as follows:

### § 391.2 General exceptions.

\* \* \* \*

19. Amend § 391.23 to:

- a. Revise paragraphs (a)(1) and (b); and
- b. Add paragraph (m) to read as follows:

### § 391.23 Investigation and inquiries.

(a) \* \* \*

(1) An inquiry to the State driver license agency in every State where the driver held a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each State driver license agency required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from the State or States, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State. The inquiry to the State driver license agencies must be made in the form and manner each agency prescribes.

\* \* \* \*

(m)(1) The motor carrier must obtain a copy of, and place in the driver qualification file, the medical examiner's certificate required by § 391.43, and any medical variance on which the certification is based, before allowing the driver to operate a CMV.

(2) *Exception.* Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], before allowing the operation of a CMV by any driver required to have a commercial driver's license under part 383 of this chapter, and subject to the requirement of § 391.41(a) to be physically qualified to operate a CMV, the employing motor carrier must verify and document in the driver qualification file that the driver is currently medically certified, using the

CDLIS motor vehicle record defined at 49 CFR 384.105 and obtained from the current licensing State in response to the inquiry required by paragraph (a)(1) of this section. Until [DATE 5 YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE] for CDL drivers subject to part 391, if there is no medical certification status information on the CDLIS motor vehicle record obtained from the current State driver licensing agency, the employing motor carrier may accept an original or copy of a medical examiner's certificate issued for that driver prior to [DATE 3 YEARS AFTER THE EFFECTIVE DATE OF FINAL RULE] and place a copy of it in the driver qualification file before allowing the driver to operate a CMV.

### § 391.25 [Amended]

20. Amend § 391.25 to:

- a. Amend paragraph (a) by replacing the phrase "into the driving record" with the phrase "to obtain the motor vehicle record";
- b. Amend paragraph (b) introductory text by replacing the phrase "driving record" with the phrase "motor vehicle record"; and
- c. Amend paragraph (c)(1) by replacing the phrase "response from each State agency to the inquiry" with the phrase "motor vehicle record".

21. Amend § 391.41 to revise paragraph (a) to read as follows:

### § 391.41 Physical qualifications for drivers.

(a) (1) A person subject to this part must not drive a commercial motor vehicle unless he/she is medically certified as physically qualified to do so, and, except as provided in paragraph (a)(3) of this section, has on his/her person the original, or a copy, of a medical examiner's certificate that he/she is physically qualified to drive a commercial motor vehicle.<sup>9</sup>

<sup>9</sup> Effective December 29, 1991, the Administrator determined that the new Licencia Federal de Conductor issued by the United Mexican States is recognized as proof of medical fitness to drive a CMV. The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian commercial driver's license is proof of medical fitness to drive a CMV. Therefore, Canadian and Mexican CMV drivers are not required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid commercial driver license issued by the United Mexican States, or a Canadian Province or Territory and whose license and medical status, including any waiver or exemption, can be electronically verified. Drivers from any of the countries who have received a medical authorization that deviates from the mutually accepted compatible medical standards of the resident country are not qualified to drive a CMV in the other countries. For example, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers, but are issued a waiver by one of

(2) A person is physically qualified to drive a commercial motor vehicle if:

(i) That person meets the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirements in § 391.43; or

(ii) That person obtained a medical variance and has complied with the medical examination requirement in § 391.43.

(3) Exception. Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(g) of this chapter documenting that he/she meets the physical qualification requirements of this part, no longer needs to carry on his/her person the medical examiner's certificate specified at § 391.43(h), or a copy. If there is no medical certification information on that driver's CDLIS motor vehicle record defined at 49 CFR 384.105, a current medical examiner's certificate issued prior to [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE] will be accepted until [DATE 5 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE].

\* \* \* \*

22. Amend § 391.43 by revising paragraph (g) to read as follows:

### § 391.43 Medical examination; certificate of physical qualification.

\* \* \* \*

(g) If the medical examiner finds that the person he/she examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), the medical examiner shall complete a certificate in the form prescribed in paragraph (h) of this section and furnish it to the person who was examined. The medical examiner shall retain a copy of the certificate for the duration of the certificate and give the original to the person examined.

\* \* \* \*

23. Amend § 391.51 to:

a. Amend paragraph (b)(2) by replacing the phrase "response by each State agency concerning a driver's driving record" with the phrase "motor vehicle record received from each State driver licensing agency".

b. Amend paragraph (b)(4) by replacing the phrase "response of each State agency" with the phrase "motor vehicle record received from each State driver licensing agency".

the Canadian Provinces or Territories, are not qualified to drive a CMV in the United States. U.S. drivers who received a medical variance from FMCSA are not qualified to drive a CMV in Canada.

c. Amend paragraph (d)(1) by replacing the phrase “response of each State agency” with the phrase “motor vehicle record received from each State driver licensing agency”; and

d. Revise paragraphs (b)(7), (b)(8), (d)(4) and (d)(5) to read as follows:

**§ 391.51 General requirements for driver qualification files.**

\* \* \* \*

(b) \*

(7) The Medical Examiner’s Certificate as required by § 391.43(g) or a legible copy of the certificate. Beginning [DATE 3 YEARS AFTER EFFECTIVE DATE OF A FINAL RULE], the motor carrier employer meets this requirement for drivers subject to this part who are required to have a commercial driver’s license under part 383 of this chapter by including the CDLIS motor vehicle record defined at 49 CFR 384.105 and obtained from the current licensing State in the driver qualification file, if that record contains medical certification status information. If that driver obtained the medical certification based on having a medical variance, the motor carrier must also include a copy of the medical variance in the driver qualification file; and

(8) A Skill Performance Evaluation certificate obtained from a Field Administrator, Division Administrator, or State Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter.

\* \* \* \*

(d) \*

(4) The Medical Examiner’s Certificate as required by § 391.43(g) or a legible copy of the certificate, and any supporting medical variance; and

(5) A Skill Performance Evaluation Certificate issued in accordance with § 391.49; or the Medical Exemption document issued by a Federal medical program in accordance with part 381 of this chapter.

Issued on: November 9, 2006.

**John H. Hill,**  
Administrator.

[FR Doc. E6-19246 Filed 11-15-06; 8:45 am]  
**BILLING CODE 4910-EX-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[I.D. 102006A]

**New England and Mid-Atlantic Fishery Management Councils; Public Hearings**

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

**ACTION:** Rescheduling of a public hearing.

**SUMMARY:** NOAA Fisheries Service and the Mid-Atlantic Fishery Management Council (MAFMC) have rescheduled a public hearing on a draft amendment that would establish standardized bycatch reporting methodology (SBRM) for every fishery management plan (FMP). The New England and Mid-Atlantic Fishery Management Councils (Councils) previously announced public hearings and requested comment on the draft amendment (October 31, 2006). The New England Fishery Management Council’s (NEFMC) hearing date is unchanged.

**DATES:** The MAFMC’s public hearing will be on December 13, 2006, in New York City, NY. The NEFMC’s public hearing will be on November 14, 2006, in Gloucester, MA. Written comments must be received at the appropriate address, e-mail address, or fax number (see **ADDRESSES**) by 5 p.m., local time, on December 29, 2006.

**ADDRESSES:** NMFS and the Councils will accept comments at two public hearings. For specific locations, see **SUPPLEMENTARY INFORMATION**. You may submit comments on the draft amendment by any of the following methods:

- E-mail: *SBRMcomment@noaa.gov*
- Mail: Patricia A. Kurkul, Regional Administrator, NOAA Fisheries Service, Northeast Regional Office, 1 Blackburn Drive, Gloucester MA 01930. Mark the outside of the envelope: “Comments on SBRM Amendment.”
- Fax: (978) 281-9135, Attention: Patricia A. Kurkul.

Copies of the draft SBRM amendment and the public hearing document may be obtained by contacting the NMFS Northeast Regional Office at the above address. The documents are also available via the internet at: <http://www.nero.noaa.gov/nero/regis/com.html>.

**FOR FURTHER INFORMATION CONTACT:**

Michael Pentony, Senior Fishery Policy Analyst, (978) 281-6283.

**SUPPLEMENTARY INFORMATION:** The initial notice of the public hearings by both Councils was published in the **Federal Register** on October 31, 2006, (71 FR 63749). The New York City hearing has been moved one day to relieve a scheduling conflict.

**Meeting Dates, Times, and Locations**

The public hearings have been scheduled to coincide with the date and location of New England and Mid-Atlantic Fishery Management Council meetings.

Tuesday, November 14, 2006, at 5:30 p.m. – Tavern on the Harbor, 30 Western Ave., Gloucester, MA 01930, telephone: (978) 283-4200.

Wednesday, December 13, 2006, at 7 p.m. – Skyline Hotel, 725 10th Ave., New York, NY 10019, telephone: (212) 586-3400.

**Special Accommodations**

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids at the Gloucester, MA, meeting should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Requests for such services at the New York, NY, meeting should be directed to M. Jan Saunders, (302) 674 2331 extension 18. Requests for accessibility accommodations must be received at least at least 5 days prior to the meeting dates.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 09, 2006.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

[FR Doc. E6-19398 Filed 11-15-06; 8:45 am]

**BILLING CODE 3510-22-S**