

by a party, the date on which a party certifies it to have been deposited in the mail or delivered to a courier, or the date of email transmission.” 46 CFR 502.2(b) (previously 46 CFR 114(c)).

The Commission also seeks comment on the possible applicability of the FRCP to proceedings before the Commission consistent with its responsibilities under the Administrative Procedure Act. 5 U.S.C. 551–559. The Commission’s rules currently provide that the FRCP will apply in situations that are not covered by a specific Commission rule to the extent the federal rules are consistent with sound administrative practice. 46 CFR 502.12. The presiding officer also has discretion to waive any rules “to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires.” 46 CFR 502.10. The Commission desires to ensure that procedures are consistent with modern practice while giving due regard to limitations on its resources and the nuances of its own procedures and requirements.

#### B. Modernization of Discovery Rules

The Shipping Act of 1984 provides: “In an investigation or adjudicatory proceeding under this part—\* \* \* (2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).” 46 U.S.C. 41303(a). In 1984, the Commission promulgated discovery rules based primarily on the federal rules as they then existed. 49 FR 44369 (November 6, 1984). The Commission also promulgated minor amendments to Rule 201 in 1999 and Rule 203 in 1993, but in all other respects the rules are unchanged since 1984. The Commission’s discovery rules are set forth in 46 CFR subpart L.

The Federal rules regulating discovery have been amended many times since 1984. Some amendments concerned matters that hardly existed in 1984, such as electronic discovery. FRCP 26, 34. Other amendments altered established discovery procedures, including the scope of discovery (compare FRCP 26(b)(1) with 46 CFR 502.201(h)); the requirement to provide initial disclosures, including identification of expert witnesses (FRCP 26(a)); procedures for claiming privilege or protecting trial-preparation materials (FRCP 26(b)(5)); a limitation of number (FRCP 30(a)(2)) and conduct of depositions (FRCP 30(d)); and a limitation on the number of interrogatories (FRCP 33(a)(1)). The

thirty-day period to respond to interrogatories and requests for production of documents that existed in the FRCP in 1984 was not included in the Commission’s rules.

The Commission seeks public comments on whether to revise its discovery rules to conform more closely to the FRCP as they are formulated today. The Commission believes that to achieve the optimum result, any revision should consider the views of the parties and attorneys who would be subject to the revised rules. Therefore, it seeks their views through this advance notice of proposed rulemaking.

Interested parties may address the following questions or other concerns:

1. What specific problems, if any, have you experienced with the Commission’s current rules of discovery?
2. What specific problems, if any, would you foresee if the Commission were to adopt particular provisions of the discovery rules as they currently exist in the FRCP, giving due regard to the differences in the nature of the proceedings and practice before the federal courts and before the Commission?

#### C. Informal Docket or Small Claims Procedures

Subpart S of the Commission’s rules, 46 CFR 502.301–502.305, governs informal procedures for adjudication of small claims. These procedures were established for use by complainants when the amount in controversy is \$50,000 or less. In those cases, an appointed settlement officer will make a decision without necessity of formal proceedings. A complainant may request a Subpart S proceeding, but a respondent can elect not to consent to such proceeding. If a respondent does not consent, the matter will be heard by an administrative law judge under Subpart T, Formal Procedure for Adjudication of Small Claims.

The Commission is seeking comment on Subpart S proceedings, in particular as to: effecting service when parties make themselves unavailable for service of claims and decisions, or become unreachable after initially participating in a proceeding; dismissal of claims if service on the respondent cannot be achieved; and if the Commission’s rules on ex parte communications, 46 CFR 502.11, should apply to Informal Docket proceedings. The Commission is particularly interested in commenters’ experience with small claims procedures used by other government entities that the Commission might use as guidance when amending its own rules.

The Commission will be able to better consider whether and how its Rules of Practice and Procedure should be amended if commenters provide specific examples regarding the current rules and possible improvement of the rules. Commenters transmitting comments by e-mail should indicate “FMC 502 ANPR” in the subject line of the e-mail. All e-mail comments should be sent to [secretary@fmc.gov](mailto:secretary@fmc.gov).

By the Commission.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–8204 Filed 4–5–11; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 384

[Docket No. FMCSA–2011–0039]

RIN 2126–AB33

#### Commercial Driver’s License Information System State Procedures Manual, Release 5.2.0

**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 incorporate by reference the most recent version of the American Association of Motor Vehicle Administrators, Inc.’s (AAMVA) Commercial Driver’s License Information System (CDLIS) State Procedures Manual (the Manual). All State driver licensing agencies would use this updated version of the Manual to develop the process required in transmitting, receiving, recording and updating information on a CDLIS driver record. Such information includes, but is not limited to, the commercial driver’s license (CDL) holder’s physical description, commercial and noncommercial driving status, medical certification status, convictions, disqualifications and accidents. The purpose of this proposal is to enhance the safety of commercial motor vehicle (CMV) operations on our nation’s highways.

**DATES:** Comments must be received by June 6, 2011.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–

2011-0039 using any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>.
- *Fax*: 202-493-2251.
- *Mail*: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- *Hand Delivery*: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

*Instructions*: All submissions must include the Agency name and docket number (FMCSA-2011-0039) for this rulemaking. To avoid duplication, please use only one of these four methods. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please refer to the Privacy Act heading for further information.

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

*Docket*: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

*Privacy Act*: Anyone may 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** notice published on April 11, 2000 (65 FR 19476).

**FOR FURTHER INFORMATION CONTACT**: Mr. Robert Redmond, Senior Transportation Specialist, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001; Telephone: (202) 366-5014; E-mail address: [robert.redmond@dot.gov](mailto:robert.redmond@dot.gov).

**SUPPLEMENTARY INFORMATION** This NPRM is organized as follows:

- I. Legal Basis
- II. Background

- III. Purpose and Scope of the CDLIS State Procedures Manual
- IV. Incorporation By Reference
- V. Implementation Date
- VI. Section Analysis
- VII. Regulatory Analyses

### I. Legal Basis

Section 206 of the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98-554, title II, 98 Stat. 2832, 2834, codified at 49 U.S.C. 31136) directed the Secretary of Transportation to regulate commercial motor vehicles (CMVs) and the drivers and motor carriers that operate them. The Secretary was also directed to issue regulations governing the physical condition of drivers. The Secretary delegated these authorities to FMCSA (*see* 49 CFR 1.73(g)).

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, title XII, 100 Stat. 3207-170, codified at 49 U.S.C. chapter 313) required the Secretary of Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for State issuance of CDLs. The Act also specified information States must include on each CDL (49 U.S.C. 31308).

FMCSA, in accordance with 49 U.S.C. 31308, has authority to prescribe procedures and requirements the States must observe in issuing CDLs and CDL learner permits. To avoid loss of Federal-aid highway funds, 49 U.S.C. 31314 requires each State to comply substantially with 49 U.S.C. 31311(a), which prescribes the requirements for State participation in the CDL program. To ensure that the States are able to exchange information about CDL holders efficiently and effectively through CDLIS, as required by 49 U.S.C. 31311(a)(5)-(9), (15), (18)-(19), and (21), the rule proposed today would require States issuing CDLs and CDL learner permits to follow all the procedures described in Version 5.2.0 of the CDLIS State Procedures Manual when posting, transmitting, and receiving all information on a CDL driver's CDLIS driver record.

### II. Background

FMCSA is required by statute to maintain an information system that serves as the clearinghouse and depository of information about the licensing, identification and disqualification of operators of CMVs. (49 U.S.C. 31309). CDLIS is the information system that serves that function.

In 1988, the Federal Highway Administration (FHWA) entered into a designation agreement with AAMVA's affiliate AAMVAnet, Inc. to create and

operate CDLIS. Under that agreement, CDLIS must contain all the information required in 49 U.S.C. 31309(b). The 1988 agreement states that AAMVAnet will "cooperate fully with FHWA with respect to the operation of CDLIS including, but not limited to, information content and the development of standards relating to access to CDLIS by States and various employers and employees." Pursuant to section 106(b) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748, 1757, 49 U.S.C. 113 note), the 1988 agreement automatically transferred to FMCSA upon the Agency's establishment and remained in effect until FMCSA and AAMVA, the party that inherited the responsibilities of its affiliate AAMVAnet, Inc. entered into a superseding agreement in 2008. Copies of the 1988 and 2008 agreements are in the public docket for this rulemaking.

In August 2005, section 4123 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized FMCSA to establish a modernization plan for CDLIS (Pub. L. 109-59, 119 Stat. 1144, 1734, partly codified at 49 U.S.C. 31309(e) *et seq.*). Section 4123 also authorized grants to States or organizations representing States for the modernization of CDLIS. (49 U.S.C. 31309(f)).

On May 2, 2006, FMCSA published the CDLIS Modernization Plan in the **Federal Register** (71 FR 25885). The Plan detailed the statutory requirements for modernization, the phases of the modernization plan, and the availability of grant funding for AAMVA and the States to comply with CDLIS modernization requirements. Since May 2006, AAMVA has received grants from FMCSA to complete the tasks enumerated in the Modernization Plan.

On June 9, 2008, FMCSA and AAMVA entered into a new cooperative agreement regarding the operation, maintenance, and modernization of CDLIS. While FMCSA authorizes AAMVA to maintain and operate CDLIS, FMCSA does not own CDLIS and it is not a Federal system of records. FMCSA and AAMVA work closely together to monitor State compliance with the CDLIS specifications, as set forth in the May 2, 2006 **Federal Register** notice, and their annual grant agreements. FMCSA has awarded AAMVA Federal financial assistance grants to maintain an active Help Desk for State personnel, to conduct regularly occurring CDLIS training courses for State personnel, and to provide States with regular CDLIS transaction and

error reports to improve their compliance efforts.

The goals of the 2008 agreement, to which any amendments must be made in writing and signed by all parties, are to provide a framework for the ongoing operation, maintenance, administration, enhancement, and modernization of CDLIS by AAMVA. The modernization will ensure compliance with applicable Federal information technology security standards; electronic exchange of all information including the posting of convictions; self-auditing features to ensure that data are being posted correctly and consistently by the States; and integration of an individual's CDL and the medical certificate as required in the final rule on "Medical Certification Requirements as Part of CDL." (73 FR 73096, December 1, 2008). Finally, the agreement provides a schedule for modernization of the system. The updated Version 5.2.0 of the State Procedures Manual implements the CDLIS modernization effort.

### III. Purpose and Scope of the CDLIS State Procedures Manual

The CDLIS State Procedures Manual (Release 5.2.0) outlines the standard administrative practices required of the fifty States and the District of Columbia when participating in CDLIS. The 13 Canadian provinces and territories and the Mexican General Directorship of Federal Motor Carrier Transportation (DGAF) will also adopt the Version 5.2.0 update of the State Procedures Manual. Version 5.2.0 of the State Procedures Manual supersedes the CDLIS State Procedures Manual (Release 4.1.0) of September 2007.

The primary audience for this Manual is State personnel involved in CDL programs, and their counterparts in Canada and Mexico, including administrative employees involved in driver licensing and computer-technology staff supporting the CDLIS transactions. The Manual contains background information about the laws mandating CDLIS and discusses types of CDLIS users. The Manual also includes descriptions, excerpted from the CDLIS System Specifications (Release 5.2.0), of the nation-wide computerized data-exchange transactions used to electronically record and report driver information. Further, the Manual provides guidance on administrative driver licensing procedures that involve CDLIS, including issuing, renewing, transferring withdrawing, and reinstating a driver's license, and posting convictions. The Manual does not address CDL or CDL learner's permit

program requirements outside the scope of CDLIS.

The CDLIS State Procedures Manual (Release 5.2.0) addresses changes that were made as part of the modernization effort to make CDLIS more efficient in handling the increasing number of driver records and data transactions. These changes include new rules for processing transactions, procedures for handling data transaction errors and clarifications of existing rules and procedures for processing data transactions. The following is a summary of the changes:

Comply with applicable Federal information technology security standards:

- The network was upgraded to comply with National Institute of Standards and Technology (NIST) and other Federal standards, including the encryption of messages (note: all States have completed this upgrade).
  - FMCSA has encouraged States to follow the NIST standards in their internal systems that maintain driver history information used in messages sent via CDLIS.
  - Because the CDLIS Central Site stores a significant accumulation of personally identifiable information (PII), FMCSA has overseen a Certification and Accreditation by independent auditors to ensure that it provides sufficient safeguards and mitigates the risk of that data being compromised or accessed by unauthorized personnel.
- Provide for the electronic exchange of all information, including posting of convictions:

- Medical Certificate information, driver self-certification of operating status, medical certification status, information regarding variances and exemptions from medical requirements have all been added to the driver history record exchanged via CDLIS.
  - A new nationwide driver license restriction code of 'V' was created to be used on the license document and CDLIS messages to ensure law enforcement would ask the driver to provide variance information during a traffic stop.
  - A new CDLIS message will allow FMCSA to quickly locate a driver's State and license number after a crash.
- Contain self-auditing features to ensure that data is being posted correctly and consistently by the States:
- Message edit-checks were added to ensure that data in driver history is being posted correctly and consistently by the States.
  - Reports have been created to assist FMCSA in monitoring State compliance with Federal regulations related to

timeliness, data quality, and various capabilities.

- States will be required to provide data from their licensing systems to verify that it matches the information on the Central Site; States will be provided error reports to take action to correct any data conflicts.

- Non-PII data will be used to create statistical reports related to the national CDL program.

The Manual also addresses the rules and procedures for recording and transmitting the new medical certification data that is being added to CDLIS driver records.

### IV. Incorporation by Reference

When the regulatory requirements for State participation in the CDL program were adopted as 49 CFR part 384 (59 FR 26029, May 18, 1994), they included the provision that the States must adhere to program requirements specified by the Agency and the designated operator of CDLIS. Section 384.231(d) states that each "State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219." In fact, the information collection requirements built into CDLIS were specified broadly by FHWA in 1988 and more precisely by FMCSA in 2008. Those requirements have formed the basis for several editions of the CDLIS State Procedures Manual. In 2002, FMCSA, therefore, incorporated by reference into § 384.231(d) Version 2.0 of the Manual (67 FR 49742, July 31, 2002) and later updated the rule to incorporate Version 4.1.0 (73 FR 73096, December 1, 2008).

FMCSA believes that uniform practices among the States can only be ensured by incorporating by reference the latest CDLIS State Procedures Manual (Release 5.2.0), published in February 2011. This most recent version of the Manual will be made available for inspection at the Department of Transportation Library and the National Archives and Records Administration. Copies of the Manual may also be obtained through AAMVA. Further details and contact addresses and telephone numbers are provided in 49 CFR 384.107. AAMVA plans to update this Manual as needed to reflect changing legal requirements and best practices in the operation of CDLIS. Incorporating Release 5.2.0 by reference, however, should ensure that each State complies with the specific version required by FMCSA.

FMCSA is providing the public an opportunity to comment on the incorporation by reference of Release 5.2.0 of the Manual.

Section 552(a)(1) of title 5, United States Code, authorizes agencies, with the approval of the Director of the Federal Register, to incorporate by reference into regulations materials already published elsewhere. This reduces the volume of material published in the **Federal Register** and the Code of Federal Regulations. This NPRM is part of the process of incorporating the AAMVA CDLIS State Procedures Manual by reference. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued rule, would then have the force and effect of law.

## V. Implementation Date

The Agency is currently working with AAMVA and the States to modernize CDLIS, as required by section 4123 of SAFETEA-LU. The modernization plan requires all States to use Release 5.2.0 of the CDLIS State Procedures Manual by January 30, 2012. Both the CDLIS modernization effort and inclusion of information from the medical examiner's certificate on CDLIS driver records will require States to update their CDLIS computer programs.

This NPRM would require States to comply with Release 5.2.0 of the CDLIS State Procedures Manual by January 30, 2012. The Agency believes the standard 3-year phase-in period is unnecessary because, under the modernization plan, the States are currently working to pass required implementing legislation, modify their information systems to comply with the new modernized CDLIS, begin recording the medical examiner's certificate information onto the CDLIS driver record, and making that information available from the CDLIS driver record.

## VI. Section Analysis

### Part 384

*Section 384.107.* The Agency would revise paragraph (b) to incorporate by reference the Release 5.2.0 version of the CDLIS State Procedures Manual.

*Section 384.301.* The agency would add, as a conforming amendment, a new paragraph (e) specifying that the State must comply with requirements of this rule by January 30, 2012.

## VII. Regulatory Analyses

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

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866 and the Department of Transportation regulatory policies and procedures (DOT Order 2100.5, 44 FR 11034, February 26, 1979). These proposed regulations will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These proposed regulations do not alter the budgetary effects of entitlements, grants, use fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

This rule is directed to State driver licensing agencies. This NPRM would merely incorporate the CDLIS State Procedures Manual (Release 5.2.0). Separate regulations require States to comply with the substantive requirements of the Manual. Release 5.2.0 merely sets processes and procedures to ensure that these other regulations are uniformly implemented. As a result, the rule would not impose significant costs on the States.

The only new statutory requirements that are addressed in the Manual are related to the merging of the medical examiner's certificate into the CDLIS driver record and those listed in the May 2, 2006 **Federal Register** notice detailing the plan to modernize CDLIS. The costs associated with the implementation of the new medical examiner's certificate requirements were addressed in the final rule on "Medical Certification Requirements as Part of the CDL" published on December 1, 2008 (72 FR 73096). The costs associated with the modernization of CDLIS were addressed in the "CDLIS Modernization Plan" published on May 2, 2006 (71 FR 25885).

### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act, as amended, 5 U.S.C. 601–612, FMCSA has considered the effects of this proposed regulatory action on small entities and determined that this proposed rule would not have a significant impact on a substantial number of small entities, as defined by

the U.S. Small Business Administration. This rulemaking proposal would primarily affect States and their processes and procedures for maintaining electronic driver history records.

### *Unfunded Mandates Reform Act of 1995*

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, or tribal governments or the private sector, in the aggregate, of \$140.8 million (which is the value of \$100 million in 2009 after adjusting for inflation) or more in any one year.

The Unfunded Mandates Reform Act requires new Federal regulations to be accompanied by an analysis of their fiscal impacts on State, local, and tribal governments and on private industry. As discussed above in the section on "Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures," the only new requirements in the CDLIS State Procedures Manual relate to the merging of the medical examiner's certificate into the CDLIS driver record and the modernization of CDLIS. Any costs associated with the implementation of the merging of the medical examiner's certificate into CDLIS were addressed in the final rule on "Medical Certification Requirements as Part of the CDL" published on December 1, 2008 (72 FR 73096). The costs associated with the modernization of CDLIS were addressed in the "CDLIS Modernization Plan" published on May 2, 2006 (71 FR 25885).

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

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

This proposed rulemaking would not affect a 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)*

FMCSA has analyzed this proposed rule in accordance with the principles and criteria of Executive Order 13132, "Federalism," and has determined that this rulemaking does not have federalism implications.

The Federalism Executive Order applies to "policies that have federalism implications," which is defined as regulations and other actions 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." Section 1(a). Further, Section 3(b) of the Federalism Order provides that "[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance."

The proposed rule would amend the CDL program authorized by CMVSA. States have been issuing CDLs in accordance with Federal standards for over two decades. The CDL program does not have preemptive effect because it is voluntary. States may withdraw at any time, although doing so would result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule would make only small, though numerous, incremental changes to the requirements already imposed on participating States, FMCSA has determined that it would not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

#### *Privacy Impact Assessment*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rulemaking would require States to adopt uniform processes and procedures to maintain electronic driver history records in CDLIS, but would not require the collection of PII.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. The CDLIS records, however, are not transferred from FMCSA to the States; they are created and maintained by the States. FMCSA has determined this proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

#### *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 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking would not affect a currently-approved information collection covered by the OMB Control No. 2126-0011 titled, "Commercial Driver Licensing and Test Standards" or create the need for any new information collection.

#### *National Environmental Policy Act*

The Agency analyzed this proposed rulemaking for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, Paragraph 6(s) and (t) of the Order (69 FR 9703) from further environmental documentation. That CE relates to regulations regarding the CDL and related activities to assure CDL information is exchanged between States. In addition, the Agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does

not affect direct or indirect emissions of criteria pollutants.

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

FMCSA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have 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 likely have a significant adverse effect on the supply, distribution, or use of energy.

#### **List of Subjects in 49 CFR Part 384**

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

In consideration of the foregoing, FMCSA proposes to amend part 384 of title 49, Code of Federal Regulations (49 CFR part 384) as follows:

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

1. The authority citation for part 384 continues 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; and 49 CFR 1.73.

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

#### **§ 384.107 Matter incorporated by reference.**

\* \* \* \* \*

(b) *Materials incorporated.* The AAMVA "Commercial Driver License Information System (CDLIS) State Procedures Manual," Release 5.2.0, February 2011, IBR approved for §§ 384.225(f) and 384.231(d).

\* \* \* \* \*

3. Revise § 384.301 to add a new paragraph (e) to read as follows:

#### **§ 384.301 Substantial compliance—general requirements.**

\* \* \* \* \*

(e) A State must come into substantial compliance with the requirements of subpart B of this part, which is effective as of June 6, 2011, as soon as practicable, but not later than January 30, 2012.

Issued on: March 28, 2011.

**Anne S. Ferro,**  
*Administrator.*

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