

Navigation Device to access Navigable Services that are secured by a given Compliant Security System.

■ 3. Revise § 76.1206 to read as follows:

**§ 76.1206. Equipment sale or lease charge subsidy prohibition.**

After January 1, 2017, multichannel video programming distributors shall state the price for Navigation Devices separately on consumer bills.

■ 4. Add § 76.1211 to read as follows:

**§ 76.1211. Information Necessary to Assure a Commercial Market for Navigation Devices.**

(a) Each multichannel video programming distributor shall make available to each Navigation Device that has a Certificate the Service Discovery Data, Entitlement Data, and Content Delivery Data for all Navigable Services in published, transparent formats that conform to specifications set by Open Standards Bodies in a manner that does not restrict competitive user interfaces and features.

(b) If a multichannel video programming distributor makes available an application that allows access to multichannel video programming without the technological need for additional multichannel video programming distributor-specific equipment, then it shall make Service Discovery Data, Entitlement Data, and Content Delivery Data available to competitive Navigation Devices without the need for multichannel video programming distributor-specific equipment.

(c) Each multichannel video programming distributor shall support at least one Compliant Security System.

(1) At least one supported Compliant Security System shall enable access to all resolutions and formats of the multichannel video programming distributor's Navigable Services with the same Entitlement Data to use those Navigable Services as the multichannel video programming distributor affords Navigation Devices that it leases, sells, or otherwise provides to its subscribers.

(2) Entitlement Data shall not discriminate on the basis of the affiliation of the Navigation Device.

(d) On any device on which a multichannel video programming distributor makes available an application to access multichannel video programming, the multichannel video programming distributor must support at least one Compliant Security System that offers access to the same Navigable Services with the same rights to use those Navigable Services as the multichannel video programming

distributor affords to its own application.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 383 and 384**

**[Docket No. FMCSA-2016-0051]**

**RIN 2126-AB68**

**Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act and the Military Commercial Driver's License Act of 2012**

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

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

**SUMMARY:** FMCSA proposes amendments to its Commercial Driver's License (CDL) regulations that would ease the transition of military personnel into civilian careers in the truck and bus industry by simplifying the process of getting a commercial learner's permit (CLP) or CDL. This rulemaking would extend the time period for applying for a skills test waiver from 90 days to 1 year after leaving a military position requiring the operation of a commercial motor vehicle (CMV). This rulemaking also would allow States to accept applications and administer the written and skills tests for a CLP or CDL from active duty military personnel who are stationed in that State. States that choose to accept such applications would be required to transmit the test results electronically to the State of domicile of the military personnel. The State of domicile would be required to issue the CDL or CLP on the basis of those results.

**DATES:** Comments on this notice must be received on or before May 16, 2016.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2016-0051 using any of the following methods:

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

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-

140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* 202-493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

**FOR FURTHER INFORMATION CONTACT:** Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001, by email at [Selden.fritschner@dot.gov](mailto:Selden.fritschner@dot.gov), or by telephone at 202-366-0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

**I. Executive Summary**

Section 32308 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) [Pub. L. 112-141, 126 Stat. 405, July 6, 2012] required FMCSA to undertake a study to assess Federal and State regulatory, economic, and administrative challenges in obtaining CDLs faced by members and former members of the Armed Forces, who operated qualifying motor vehicles during their service. As a result of this study, FMCSA provided a report to Congress titled "Program to Assist Veterans to Acquire Commercial Driver's Licenses" (November 2013) (available in the docket for this rulemaking). The report contained six recommended actions, and elements of this report comprise the main parts of this rulemaking. These actions are:

(1) Revise 49 CFR 383.77(b)(1) governing the Military Skills Test Waiver to extend the time period to apply for a waiver from 90 days to 1 year following separation from military service.

(2) Revise 49 CFR 383.77(b)(3) to add the option to qualify for a CDL based on training and experience in an MOC [Military Occupational Specialty] dedicated to military CMV operation.

(3) Revise the definitions of CDL and CLP in 49 CFR 383.5 and 49 CFR 384.212 and related provisions governing the domicile requirement, in order to implement the statutory waiver enacted by The Military Commercial Driver's License Act of 2012. . . .

This NPRM would ease the current burdens on military personnel applying for CLPs and CDLs issued by a State Driver Licensing Agency (SDLA) in accordance with 49 CFR parts 383 and

384 in two ways. First, it would extend the time in which former military personnel are allowed to apply for a skills test waiver from the 90 days currently allowed by 49 CFR 383.77 to 1 year. On July 8, 2014, FMCSA issued a temporary exemption under 49 CFR part 381 that extended the skills test waiver to 1 year [79 FR 38659].<sup>1</sup> The change proposed by this rulemaking would make the 1-year waiver period permanent. Second, this NPRM would allow States to accept applications and administer all necessary tests for a CLP or CDL from active duty service members stationed in that State who are operating in a Military Occupational Specialty as full-time CMV drivers. States that choose to exercise this option would be required to transmit the application and test results electronically to the service member's State of domicile. This would enable service members to complete their licensing requirements without incurring the time and expense of returning home. The State of domicile would be required to issue the CLP or CDL in accordance with otherwise applicable procedures.

## II. Public Participation and Request for Comments

### A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2016-0051), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2016-0051, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and

electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

### B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2016-0051, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

### C. Privacy Act

All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you provide. Anyone may search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or of the person 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** (FR) notice published on January 17, 2008 (73 FR 3316) or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

## III. Legal Basis

This rulemaking rests on the authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313 and implemented by 49 CFR parts 382, 383, and 384. It responds to section 5104(b) of the Fixing America's Surface Transportation (FAST) Act [Pub. L. 114-94, 129 Stat. 1312, December 4, 2015], which requires FMCSA to implement the recommendations included in the report submitted pursuant to section 32308 of MAP-21, discussed above. Section 5104(c) of the FAST Act also requires FMCSA to implement the Military Commercial Driver's License Act of 2012 [49 U.S.C. 31311(a)(12)(C)]. As explained later in the preamble, this

proposed rule would give military personnel all of the benefits of the Military CDL Act, while avoiding certain adverse implications of that statute.

The CMVSA provides broadly that "[t]he Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle" (49 U.S.C. 31305(a)). Those regulations shall ensure that "(1) an individual issued a commercial driver's license [CDL] [must] pass written and driving tests for the operation of a commercial motor vehicle [CMV] that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title" (49 U.S.C. 31308(1)). To avoid the withholding of certain Federal-aid funds, States must adopt a testing program "consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title" (49 U.S.C. 31311(a)(1)).

Potential CMV drivers often obtain CDL training outside of their State of domicile. Driver training schools typically provide their students with a "representative" vehicle to use for the required skills test (see 49 U.S.C. 31305(a)(2)), as well as a valid CDL holder to accompany the applicant to the test site. Until 2012, however, the CMVSA provided that a CDL could be issued only by the driver's State of domicile (49 U.S.C. 31311(a)(12)(A)). The cost to out-of-State applicants returning to their home State, renting a "representative" vehicle, and finding a CDL holder to accompany the applicant could be substantial in terms of both personal time and financial expense. Therefore, on the basis of the authority cited in the previous paragraph, FMCSA's final rule on "Commercial Driver's License Testing and Commercial Learner's Permit Standards" (76 FR 26854, May 9, 2011) required States where a driver is domiciled to accept the result of skills tests administered by a different State (49 CFR 383.79).

For military personnel, their legal residence or "domicile" is the State they consider their permanent home, where they pay taxes, vote, and get a driver's license. Military personnel are often stationed in a different State. The Military CDL Act allows a State to issue CDLs to certain military personnel not domiciled in the State, if their temporary or permanent duty stations are located in that State (49 U.S.C. 31312(a)(12)(C)). However, this procedure creates problems for service members trying to maintain legal domicile in another State. Because

<sup>1</sup> Available in the docket for this rulemaking.

drivers' licenses are often treated as proof of domicile, obtaining a CDL from the State where they are stationed could result in the loss of domicile and corresponding benefits (e.g., tax breaks) in what they consider their "home" State. FMCSA, therefore, proposes to utilize the CMVSA's broader authority to allow the State where military personnel are stationed to accept CLP or CDL applications and to administer written and skills tests for the CDL. The proposed rule would require a State that adopted this procedure to transmit the application and test results electronically to the State of domicile, which in turn would be required to issue the CLP or CDL. This would maintain the link between the issuing State and the driver's State of domicile which is mandated by the CMVSA [49 U.S.C. 31311(a)(12)] and was observed until the Military CDL Act authorized a different but problematical procedure.

#### IV. Discussion of Proposal

##### A. Section 383.5: New Definition of "Military Services"

FMCSA would amend § 383.5 by adding a definition of "military services" to the list of definitions in that section. A definition for "military services" is needed in order to interpret the new requirements in part 383 in this rulemaking.

##### B. Section 383.77: Allowing States To Extend Their Acceptance of the Skills Test Waiver From 90 days to 1 year For separated Military Personnel

This NPRM would amend § 383.77(b)(1) to allow States to accept Skills Test Waiver applications from military personnel for up to 1 year after they were regularly employed as military CMV drivers. FMCSA believes that this would give former military personnel a better opportunity to obtain a CDL in a way that will not negatively affect safety.

Currently, former military personnel who were regularly employed in the preceding 90 days in a military position requiring the operation of a CMV may apply for a skills test waiver if they meet certain conditions. To date, more than 10,000 separated military personnel have taken advantage of the Skills Test Waiver. In the November 2013 report to Congress, "Program to Assist Veterans to Acquire Commercial Driver's Licenses," FMCSA concluded that lengthening that period would ease the transition of service members and veterans<sup>2</sup> to civilian life. FMCSA

recommended a revision to the Military Skills Test Waiver in 49 CFR 383.77(b)(1) to extend the period of availability from 90 days to 1 year.

The Virginia Department of Motor Vehicles (DMV) subsequently requested an exemption from § 383.77(b)(1) to allow a 1-year waiver period for military personnel (available in docket FMCSA-2014-0096). On April 7, 2014, FMCSA published a **Federal Register** notice announcing the request (79 FR 19170). Five comments were received; all supported the application. In addition, another SDLA, The State of New York, Department of Motor Vehicles, supported "broader application of this exemption to all jurisdictions." All commenters supported the Virginia request, saying that extending the period to apply for a waiver from 90 days to 1 year would enable more military personnel to obtain CDLs. Additionally, in a letter to FMCSA dated April 10, 2014, the America Association of Motor Vehicle Administrators, which represents the State and Provincial officials in the United States and Canada who administer and enforce motor vehicle laws, requested that FMCSA consider a blanket exemption for all U.S. jurisdictions.

In a notice published on July 8, 2014 (79 FR 38645), FMCSA determined that the exemption requested by the Virginia DMV would maintain a level of safety equivalent to, or greater than, the level that would be achieved without the exemption, as required by 49 CFR 381.305(a). The Agency, therefore, approved the exemption and made it available to all SDLAs. However, the exemption did not change the language of § 383.77(b)(1) and the exemption remains effective for only 2 years. The current exemption expires July 7, 2016.

##### C. Section 383.79: Allow the State Where the Person Is Stationed and the State of Domicile To Coordinate CLP/CDL Testing and CDL Issuance

This proposal makes existing paragraphs (a) and (b) into paragraphs (a)(1) and (2) and adds new paragraphs (b)(1) and (2). New paragraphs (a)(1) and (2) re-codify but do not add new material to those sections currently in the CFR. New paragraphs (b)(1) and (2) add new provisions that outline the provisions for active-duty personnel to obtain CLPs and CDLs.

Many active-duty military personnel would like to obtain CDLs while still in the military services, but are often stationed outside their State of domicile.

This NPRM would allow a State to accept applications and administer CDL knowledge and skills tests for military personnel stationed there. That State would then be required to transmit the application and test results to the driver's State of domicile, which would be required to accept these documents and issue the CLP or CDL. For example, an airman might be stationed at Andrews Air Force Base in Maryland and live in Alexandria, Virginia. He currently holds a base driver's license in his home state of record: Kentucky. His application for a CLP would be made through the Maryland Motor Vehicle Administration (Maryland SDLA), because that is the State where he is stationed. Assuming the Maryland SDLA agreed to accept an application from a non-domiciled driver, it would forward the appropriate paperwork and test results to the Kentucky Department of Transportation (Kentucky SDLA), which would issue him a CLP or CDL.

FMCSA believes this NPRM would simplify the task of obtaining a CDL without jeopardizing (1) any benefits associated with a service member's official State of domicile, or (2) the single-domicile/single issuer concept that has been essential to the CDL program since the beginning. Additionally, it would reduce travel time and other costs associated with traveling to the State of domicile for testing. The motor carrier industry would also benefit from a larger supply of licensed CMV drivers.

A recent FMCSA rulemaking required the standardization of CLP and CDL testing and issuance: Commercial Driver's License Testing and Commercial Learner's Permit Standards (May 9, 2011, 76 FR 26854, and amended March 25, 2013, 78 FR 17875). This proposal uses existing procedures to make it easier for active duty military personnel to get both CLPs and CDLs. Military personnel would apply for a CLP in the State where they are stationed. After the driver passes the knowledge test, the local SDLA would electronically transmit the driver's test score to the State of domicile for issuance of a CLP. After the driver passes the skills test where he or she is stationed, the same SDLA would electronically transmit his/her test score to the State of domicile for issuance of a CDL. FMCSA believes this approach is an appropriate alternative to literal application of the Military CDL Act of 2012. That Act allowed a State where military personnel are stationed to issue CDLs, thus creating ambiguity about the driver's actual State of domicile: The State that issued the CDL or the State where the driver wished to maintain

<sup>2</sup> Veteran: A person who served on active duty in the Army, Navy, Air Force, or Coast Guard and who

was discharged or released therefrom under conditions other than dishonorable.

his/her permanent residence. The Military CDL Act was designed to reduce unnecessary bureaucratic burdens on active-duty military personnel and veterans, and this rulemaking addresses that requirement. This NPRM also permits CMV drivers in the armed forces to apply for CLPs and CDLs without running the risk of inadvertently changing their State of domicile—an unavoidable problem with the Military CDL Act.

Because CLP and CDL test requirements are uniform nationally, the State where an applicant is stationed and the State of domicile administer the same knowledge and skills tests. A State of domicile, therefore, can accept knowledge and skills test results from another State and issue the CLP and then the CDL without concern that different States may have different licensing standards.

The procedure for transmitting skills test results among States is already in place as a result of the May 2011 final rule on Commercial Driver's License Testing and Commercial Learner's Permit Standards. This new provision would not require a major technological change for the States to send and receive test result information. Some minor software modifications and updates would be required to allow transmission of the knowledge test results (as only skills test results are presently transmitted via these systems).

FMCSA analyzed this proposal and believes that it is safety-neutral. Because the CDL provisions are now standardized across all SDLAs, all drivers will be subject to the same knowledge and skills tests.

Section 5401(a) of the FAST Act added to 49 U.S.C. 31305 a new paragraph (d), which requires FMCSA to (1) exempt certain ex-military personnel from the CDL skills test if they had military experience driving CMV-like vehicles; (2) extend the skills test waiver to one year; and (3) credit the CMV training military drivers receive in the armed forces toward applicable CDL training and knowledge requirements. This rule would address the first and second of these requirements in considerable detail; the third, however, will require subsequent rulemaking.

Section 5302 of the FAST Act requires FMCSA to give priority to statutorily required rules before beginning other rulemakings, unless it determines that there is a significant need for the other rulemaking and so notifies Congress. This NPRM is required by the provisions of section 5401. Even in the absence of those mandates, however, FMCSA believes the need to improve opportunities for military personnel

returning to civilian life justifies the publication of this NPRM.

*D. Section 384.301: Compliance Date for SDLAs*

FMCSA would amend 49 CFR 384.301 by adding a new paragraph (j), specifying a 3-year compliance date for States. FMCSA has always given the States 3 years after the effective date of any new CDL rule to come into substantial compliance with its requirements. This allows the States time to pass necessary legislation and modify information systems, including the Commercial Driver's License Information System (CDLIS), to comply with the new requirements.

**V. Regulatory Analyses**

*A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993) as supplemented by E.O. 13563 and DOT policies and procedures, FMCSA must determine whether a regulatory action is “significant,” and therefore subject to OMB review and the requirements of the Executive order. The order defines “significant regulatory action” as one likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This rulemaking would not result in an annual effect on the economy of \$100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This NPRM would amend existing procedures and practices governing administrative licensing actions.

**Costs and Benefits**

FMCSA evaluated potential costs and benefits associated with this rulemaking and the Agency does not expect the proposed changes to impose any new or increased costs. However, FMCSA estimates that these changes could result in a cost savings between \$462,000 and \$1,062,600 per year. The following sections provide an overview of this analysis.

**Section 383.77**

The rulemaking would extend the time to apply for a skills test waiver from 90 days to 1 year for former service members. This action would codify an existing exemption published on July 8, 2014 (79 FR 38645). That notice granted immediate relief from 49 CFR 383.77(b)(1) to military service members separating from active duty. The exemption did not change the CFR language and is effective for only 2 years, although it could be extended.

As the rulemaking would codify an existing practice, FMCSA does not expect this revision to have any economic impact. However, the Agency believes that permanently granting military personnel more time to apply for a CDL after separation from service would be beneficial to both service members and prospective employers by creating more employment opportunities.

**Section 383.79(b)**

This proposal would allow States to submit the results of both the skills and knowledge tests of military applicants to the driver's State of domicile for issuance of the CLP and CDL. This information would be transmitted using the same electronic system that was previously established for the skills test. The proposed rule would require all States to use either the CSTIMS—Commercial Skills Test Information Management System—or ROOSTR—Report Out-Of-State Test Results, however, both of these systems are currently managed by the American Association of Motor Vehicle Administrators (AAMVA) at no cost to the States. While some software modifications and updates may be required to allow transmission of the knowledge test results (as only skills test results are presently transmitted via these systems), FMCSA expects that the cost of any updates to allow for the transmission of this additional information would be very minor. In addition, FMCSA has determined that three States are not currently using either one of these systems. However, FMCSA does not expect those States

would incur costs to adopt one of these systems, as the costs for adoption are currently covered under an FMCSA grant program. There may be future costs associated with the management and maintenance of these systems, but FMCSA does not have an estimate of these costs and specifically requests comment on potential costs that may be incurred by the operation or adoption of either of these systems.

FMCSA expects this provision to result in a cost savings for drivers. Specifically, this provision would allow States where active-duty military personnel are stationed to accept CLP or CDL applications and administer knowledge and skills tests for those personnel. The rule would require any such State to transmit electronic copies of the application and test results for military personnel to the driver's State of domicile, which in turn would be required to issue a CLP or CDL on the basis of that information. This would save military personnel the travel costs to return to their State of domicile. For example, if the driver were stationed in Virginia but his/her State of domicile was Texas, the rule would allow Texas to issue the driver a CLP and CDL based on successful testing conducted in Virginia. The driver would be saved the travel costs of returning to Texas, renting or borrowing a CMV for the test drive, and finding CDL holder to accompany the applicant to the testing site.

To estimate how many drivers might take advantage of this provision,

FMCSA started with the number who have used the military skills test waiver. Between May 2011 and February 2015, more than 10,100 skills test waivers were granted for military drivers, or an average of approximately 2,460 per year.<sup>3</sup> For purposes of this analysis, FMCSA assumed that number would remain constant in future years. To estimate the number of drivers who may be stationed in a State other than their State of domicile and who, thus, could potentially take advantage of this provision, FMCSA used an estimate of the number of drivers who attend training outside their State of domicile from the Regulatory Evaluation conducted for the 2011 "Commercial Driver's License Testing and Commercial Learner's Permit Standards" Final Rule.<sup>4</sup> According to this evaluation, approximately 25 percent of drivers obtained training outside their State of domicile. It is likely that more than 25 percent of military personnel are stationed outside their State of domicile. However, for purposes of this analysis FMCSA used the 25 percent estimate to calculate the population of drivers who may take advantage of this provision. Based on these assumptions, this provision affects approximately 660 drivers each year.

FMCSA does not have information on the States where these drivers are domiciled or stationed. To estimate the potential costs savings, FMCSA used the scenario of a driver who is stationed in Virginia but domiciled in Texas. To present a low- and high-end estimate of

the potential cost savings, FMCSA evaluated two scenarios in which the driver travels between Norfolk, Virginia, and Houston, Texas. In the first scenario, the driver takes a commercial flight. FMCSA estimates that a typical roundtrip flight between Norfolk and Houston costs approximately \$700.<sup>5</sup> In the second scenario, the driver drives a private vehicle between these locations. The current private vehicle mileage rate from the General Services Administration (GSA) is \$0.575 per mile<sup>6</sup> and the distance between Norfolk and Houston is approximately 2800 miles, roundtrip. FMCSA estimates that it would cost the driver approximately \$1,610 to drive between Virginia and Texas for CDL testing.

To estimate the potential cost savings, FMCSA multiplied the round trip flight price by the annual affected driver population to calculate the lower-bound estimate, and multiplied the mileage cost by the annual affected driver population to calculate the upper-bound estimate. Table 1 provides an overview of the expected annual cost savings, as well as the discounted total over the next 10 years. Based on the estimated participation rates, the total savings would be between \$462,000 and \$1,062,600 per year. In addition, the driver might incur lodging and rental costs depending on the location of the testing; however, these potential cost savings were not included in this analysis.

TABLE 1—ESTIMATED ANNUAL AND 10-YEAR COST SAVINGS FOR OUT OF STATE DRIVERS

Scenario	Population per year	Cost savings per driver	Total savings per year	10-year total (3% discount rate)	10-year total (7% discount rate)
Lower-Bound (flight) .....	660 drivers	\$700	\$462,000	\$4,059,182	\$3,472,037
Upper-Bound (car travel) .....	660 drivers	1,610	1,062,600	9,336,119	7,985,686

In addition to the cost savings described above, there may be other non-quantified benefits associated with these provisions. For example, this proposal also allows military personnel to enter the job market more quickly and ease the transition after separation from service. This rulemaking may also increase the availability of drivers qualified to work for motor carriers, since military personnel would be able to complete their testing and licensing

during their separation process. Finally, reducing unemployment for former military personnel may also reduce the amount of unemployment compensation paid by the Department of Defense to former service members.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and

other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that

<sup>3</sup> Estimated based on information from an assessment of SDLAs, conducted by FMCSA in February 2015.

<sup>4</sup> Final Rule Regulatory Evaluation, *Commercial Driver's License Testing and Commercial Learner's Permit Standards*. 76 FR 26853. May 9, 2011.

Docket No. FMCSA-2007-27659. <https://www.federalregister.gov/articles/2011/05/09/2011-1051/commercial-drivers-license-testing-and-commercial-learners-permit-standards>.

<sup>5</sup> The flight price \$700 was estimated using the General Service Administration *Airline City Pairs*

*Search Tool* for flights between Norfolk, Virginia and Houston, Texas. <http://cpsearch.fas.gsa.gov/>.

<sup>6</sup> U.S. General Services Administration. Privately Owned Vehicle (POV) Mileage Reimbursement Rates, as of January 1, 2015. <http://www.gsa.gov/portal/content/100715>.

agencies strive to lessen any adverse effects on these businesses.

Under the standards of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 110 Stat. 857) (SBREFA), this proposed rule would not impose a significant economic impact on a substantial number of small entities because the revisions would either codify an existing practice or allow States to provide more flexibility for military personnel seeking to obtain a CDL. FMCSA does not expect the changes to impose any new or increased costs on small entities. Consequently, I certify that this action would not have a significant economic impact on a substantial number of small entities.

*C. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, taken together, or by the private sector of \$155 million (which is the value of \$100 million in 1995 after adjusting for inflation to 2014 dollars) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking would not result in an additional net expenditure by State, local and Tribal governments, in the aggregate or by the private sector, of \$155 million or more in any 1 year, nor would it affect small governments.

*D. Executive Order 12988 (Civil Justice Reform)*

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

*E. Executive Order 13045 (Protection of Children)*

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies, when issuing “economically significant” rules the agency has reason to believe concern an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. As discussed previously, this proposed rule is economically insignificant. Therefore, no analysis of the impacts on children is required.

*F. Executive Order 12630 (Taking of Private Property)*

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

*G. Executive Order 13132 (Federalism)*

This rulemaking does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

*H. Executive Order 12372 (Intergovernmental Review)*

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed rule.

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

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*J. 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. FMCSA determined that this proposed rule would not result in changes to the current information collection requirements.

*K. National Environmental Policy Act and Clean Air Act*

FMCSA analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.b. The Categorical Exclusion (CE) in

paragraph 6.b. covers regulations which are editorial or procedural, such as those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations.

FMCSA also analyzed this proposed 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.

*L. Executive Order 12898 (Environmental Justice)*

Under E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA has determined that this proposed rule would have no environmental justice effects, nor would it have any collective environmental impact.

*M. Executive Order 13211 (Energy Effects)*

FMCSA determined that the proposed rule would not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required. FMCSA analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it would not be a “significant energy action” under that E.O. because this rulemaking is economically insignificant and it is not likely to have an adverse effect on the supply, distribution, or use of energy.

*N. E-Government Act of 2002*

The E-Government Act of 2002, Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. This rulemaking would not collect any personal information.

### O. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies adopting Government technical standards to consider whether voluntary consensus standards are available. This Act also requires Agencies to “use technical standards that are developed or adopted by voluntary consensus standards bodies” to carry out policy objectives determined by the agencies, unless the standards are “inconsistent with applicable law or otherwise impractical.” If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. This proposed rule would not involve the adoption of any technical standards.

### P. 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. In accordance with this Act, a privacy impact analysis is warranted to address any privacy implications contemplated in the rulemaking. The Agency submitted a Privacy Threshold Assessment analyzing the privacy implications to the Department of Transportation, Office of the Secretary’s Privacy Office to determine whether a PIA is required.

The DOT Chief Privacy Officer has evaluated the risks and effects that this rulemaking might have on collecting, storing, and sharing PII and has examined protections and alternative information handling processes in order to mitigate potential privacy risks. There are no privacy risks and effects associated with this proposed rule.

### List of Subjects

#### 49 CFR 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

#### 49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter 3, parts 383 and 384 to read as follows:

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

- 1. The authority citation for part 383 is revised to read as follows:

**Authority:** Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107-56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

- 2. Amend § 383.5 by adding the definition of “Military services” in alphabetical order to read as follows:

### § 383.5 Definitions.

\* \* \* \* \*

*Military services* means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve, National Guard, and Auxiliary units.

\* \* \* \* \*

- 3. Amend § 383.77 by revising paragraph (b)(1) to read as follows:

### § 383.77 Substitute for driving skills tests for drivers with military CMV experience.

\* \* \* \* \*

(b) \* \* \*

(1) Is regularly employed or was regularly employed within the last year in a military position requiring operation of a CMV;

\* \* \* \* \*

- 4. Revise § 383.79 to read as follows:

### § 383.79 Testing of out-of-State applicants and military personnel.

(a) *Applicant.* (1) A State may administer its skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another U.S. jurisdiction (*i.e.*, his/her State of domicile). A State that administers such a test must transmit the test result electronically directly from the testing State to the licensing State in an efficient and secure manner.

(2) The State of domicile of a CDL applicant must accept the results of a skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant’s testing requirements under § 383.71, and the State’s test administration requirements under § 383.73.

(b) *Military personnel.* (1) A State where active duty military personnel who are operating in a Military Occupational Specialty as full-time commercial motor vehicle drivers are stationed, but not domiciled, may accept an application for a CLP or CDL from such personnel and administer to

them its knowledge and skills tests, in accordance with subparts F, G, and H of this part. Such completed application and test results must be transmitted electronically directly from the testing State to the State of domicile of such personnel in an efficient and secure manner.

(2) The State of domicile of a CLP or CDL applicant on active military duty must accept the completed application form and results of knowledge and skills tests administered to the applicant by the State where he or she is currently stationed, as authorized by paragraph (b)(1) of this section, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant’s application and testing requirements under § 383.71, and the State’s test administration requirements under § 383.73, and issue the applicant a CLP or CDL.

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

- 5. 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. 106-59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

- 6. Amend § 384.301 by adding paragraph (j) to read as follows:

### § 384.301 Substantial compliance general requirements.

\* \* \* \* \*

(j) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of [EFFECTIVE DATE OF FINAL RULE] as soon as practical, but, unless otherwise specifically provided in this part, not later than [3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].

Issued under authority delegated in 49 CFR 1.87 on: March 9, 2016.

**T.F. Scott Darling, III,**  
*Acting Administrator.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[4500030115]

### Endangered and Threatened Wildlife and Plants; 90-Day Findings on 29 Petitions

**AGENCY:** Fish and Wildlife Service, Interior.