



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

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 (MAP-21) and the Military Commercial Driver's License Act of 2012

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

ACTION: Final rule.

SUMMARY: FMCSA amends its commercial driver's license (CDL) regulations to ease the transition of military personnel into civilian careers driving commercial motor vehicles (CMVs) by simplifying the process of obtaining a commercial learner's permit (CLP) or CDL. This final rule extends the period of time for applying for a skills test waiver from 90 days to 1 year after leaving a military position requiring the operation of a CMV. This final rule also allows a State to accept applications from active duty military personnel who are stationed in that State as well as administer the written and skills tests for a CLP or CDL. States that choose to accept such applications are required to transmit the test results electronically to the State of domicile of the military personnel. The State of domicile may issue the CLP or CDL on the basis of those results.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Petitions for reconsideration this final rule must be submitted in accordance with 49 CFR 389.35 to: FMCSA Administrator, Federal Motor Carrier Safety Administration, 1200

New Jersey Avenue SE., Washington, DC 20590– 0001 no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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, 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.

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I. RULEMAKING DOCUMENTS

A. Availability of Rulemaking Documents

For access to docket FMCSA-2016-0051 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. EXECUTIVE SUMMARY

Section 32308 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) [Pub. L. 112-141, 126 Stat. 405, 794, July 6, 2012] required FMCSA to undertake a study to assess Federal and State regulatory, economic, and administrative challenges faced by current and former members of the armed forces, who operated qualifying motor vehicles during their service, in obtaining CDLs. 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 two elements of the 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 within which service members were regularly

employed in a position requiring operation of a CMV; and (2) Revise the definitions of CLP and CDL in 49 CFR 383.5 and 384.301 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 (Pub. L. 112-196, 126 Stat. 1459, Oct. 19, 2012).

This rule eases the current burdens on military personnel applying for CLPs and CDLs issued by a State Driver Licensing Agency (SDLA) in two ways. First, it extends the time in which States are allowed (but not required) by 49 CFR 383.77 to waive the skills test for certain military personnel from 90 days 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].¹ On June 29, 2016, FMCSA extended the temporary exemption for another two years, through July 8, 2018 (81 FR 42391). This final rule makes the waiver extension permanent. Second, this rule allows 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 are required to transmit the application and test results electronically to the SDLA in the service member's State of domicile, which would then issue the CLP or CDL. This enables service members to complete their licensing requirements without incurring the time and expense of returning to their State of domicile. FMCSA encourages, but does not require, the State of domicile to issue the CLP or CDL on the basis of this information in accordance with otherwise applicable procedures.

¹ Available in the docket for this rulemaking.

FMCSA evaluated potential costs and benefits associated with this rulemaking and estimates that these changes could result in net benefits between \$3.2 million and \$7.7 million over 10 years, discounted at 7%.

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 5401(b) of the Fixing America's Surface Transportation Act (FAST Act) [Pub. L. 114-94, 129 Stat. 1312, 1547, 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 5401(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 rule will give military personnel all of the benefits of the Military CDL Act, while providing options.

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 [must] pass written and driving tests for the operation of a commercial motor vehicle 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 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 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 applicants trained out-of-State of traveling to their State of domicile to be skills tested can 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 where the driver completed training (49 CFR 383.79).

Legal residence or “domicile” is the State that individuals consider their permanent home, where they pay taxes, vote, and get a driver’s license. Military personnel are frequently stationed outside their State of domicile. 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 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.

This final rule therefore utilizes 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 rule requires a State that utilizes this procedure to transmit the

application and test results electronically to the State of domicile, which is permitted, but is not required, to issue the CLP or CDL. This maintains the link between the issuing State and the driver's State of domicile that was mandated by the CMVSA [49 U.S.C. 31311(a)(12)] until the Military CDL Act authorized an exception (with problematical implications) for military personnel.

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 heavy military 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 addresses 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 rule is required by the provisions of section 5401. Even in the absence of those mandates, however, FMCSA believes the need to improve employment opportunities for military personnel returning to civilian life justifies the publication of this rule.

IV. BACKGROUND

States are allowed to waive the skills test for current or former military personnel who meet certain conditions and are or were regularly employed in the preceding 90 days in a military position requiring the operation of a CMV (49 CFR 383.77(b)(1)). Between May 2011 and February 2015, more than 10,100 separated military personnel took advantage of the skills test waiver. In the November 2013 Report to Congress titled, "Program to Assist Veterans to Acquire

Commercial Driver's Licenses," FMCSA concluded that lengthening that 90-day period would ease the transition of service members and veterans² to civilian life with no impact to safety.

FMCSA recommended an extension of the period of availability 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, agreeing that extending the waiver period to 1 year would enable more military personnel to obtain CDLs. In addition, the New York Department of Motor Vehicles (DMV) suggested "broader application of this exemption to all jurisdictions." The American Association of Motor Vehicle Administrators (AAMVA), which represents State and Provincial officials in the United States and Canada who administer and enforce motor vehicle laws, also requested that FMCSA consider a blanket exemption for all U.S. jurisdictions.

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 (79 FR 38645, July 8, 2014). That nationwide exemption was extended for an additional 2 years by a notice published June 29, 2016 (81 FR 42391). However, neither exemption changed the language of § 383.77(b)(1) and the current exemption remains effective only until July 8, 2018.

V. PROPOSED RULE

² Veteran: A person who served on active duty in the Army, Navy, Air Force, Marine Corps, or Coast Guard and who was discharged or released therefrom under conditions other than dishonorable.

On March 16, 2016, FMCSA published a notice of proposed rulemaking (NPRM) titled “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” (81 FR 14052). The proposed changes in 49 CFR parts 383 and 384 were intended to ease the process of getting a CLP or CDL for both active duty and recently separated military personnel.

VI. DISCUSSION OF COMMENTS AND RESPONSES

General Comments on the Rule.

The NPRM elicited 16 comments, the majority from SDLAs. Several SDLAs and individuals suggested changes to the proposal, but no commenters opposed the rule.

A. Section 383.5: New definition of “military services”

Issue: The NPRM proposed adding a definition in § 383.5 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.

Comments: The Virginia DMV requested guidance on the meaning of the term “auxiliary units,” and suggested mirroring United States Code language.

FMCSA Response: FMCSA has removed the reference to “auxiliary units.” It was used to cover the Coast Guard Auxiliary, but should not have been included because the Auxiliary is a non-military organization [see 14 U.S.C. 821(a)] and its members are civilians. The definition of “military services” proposed in the NPRM follows the relevant definitions in the Armed Forces title of the United States Code (10 U.S.C. 101). Those definitions do not use the term “auxiliary units.”

B. Section 383.77: Allowing States to extend their waiver of the skills test for separated military personnel from 90 days to 1 year

Issue: The NPRM would have amended § 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 in a military position requiring operation of a CMV.

Comments: The Virginia DMV and AAMVA reaffirmed their support for the proposal. The American Bus Association (ABA) stated that the proposal would “ease the administrative burden on state licensing agencies in no longer having to periodically apply for these extensions, but it would have a practical benefit to transitioning military CMV drivers looking for a new civilian CMV driving career.” The New York DMV favored the extension because it would alleviate some of the problems identified by FMCSA in its 2013 Report to Congress. The Montana Department of Justice, Motor Vehicle Division (DOJ/MVD), supported codifying the regulatory exemption. The Minnesota Department of Public Safety, Driver and Vehicles (DPS/DV), favored the extension, as it mirrors Minnesota law. The Michigan Department of State (DOS), the Arizona Department of Transportation (DOT), and the American Trucking Associations (ATA) supported the proposal.

One individual commenter agreed with the concept but suggested an eight month timeframe instead of one year.

FMCSA Response: FMCSA adopts the proposal as drafted. FMCSA will extend the 90-day skills test waiver period to 1 year from the date the driver was last employed in a military position regularly requiring the operation of a CMV. This does not otherwise change the eligibility criteria for the exemption.

Training for military drivers, how the Entry-Level Driver Training rule would affect these drivers (§ 383.77)

Issue: Section 383.77 implies that a military or ex-military applicant would need a certain level of experience, but the proposal did not mandate any training.

Comments: One individual commenter stated that, although she supported the rulemaking and easing the transition for returning veterans, CDL schools have a value. She stated that many veterans currently use the GI Bill to attend a CDL school. She also stated that the CDL curriculum is only 20 days.

The New York DMV asked if proof of CMV driving would replace the Entry-Level Driver Training requirements, and if it could, how much would be required.

ATA favored allowing non-military drivers, in addition to military personnel, to take the written and skills tests outside their State of domicile, and requested that FMCSA issue a supplemental NPRM on that subject.

FMCSA Response: FMCSA agrees that driver training is important, and recently published an NPRM that would require training for entry-level drivers (81 FR 11944, March 7, 2016). Under that proposal, entry-level driver training would not be required for “Veterans with military CMV experience who meet all the requirements and conditions of § 383.77 of this chapter” (49 CFR 380.603(a)(3)). Today’s final rule extends the waiver period allowed by § 383.77, but does not address substantive training issues. Giving non-military drivers the same testing flexibility granted to military personnel is beyond the scope of this rule, and FMCSA declines to consider the ATA request at this time.

C. Section 383.79: Allow the State where the person is stationed and the State of domicile to coordinate CLP and CDL testing and CDL issuance

The NPRM would have allowed a State where active-duty military personnel are stationed to accept applications and administer CLP knowledge and CDL skills tests. That State

would then have been required to transmit the application and test results to the driver's State of domicile, which would have been required to accept these documents and issue the CLP or CDL.

Procedural differences among States issuing CLPs and CDLs (§ 383.79): Licensing variations

Issue: The proposal did not account for licensing variations among the States, relying on the 2011 CDL rulemaking that standardized the elements of a license.

Comments: Several commenters pointed out that States have different procedures for issuing CLPs and CDLs. AAMVA requested a list of data elements that needed to be transferred, as many States have variations. The Missouri Department of Revenue (DOR) asked which SDLA (the State where the driver is stationed or the State of domicile) would handle the verification processes. The California DMV asked how to convert a CLP to a CDL under §§ 383.25 and 383.153, and did not address a non-domiciled variation. ATA supported allowing jurisdictions to test on behalf of each other, and stated that the knowledge and skills test should be standardized, per FMCSA's statements in the NPRM. Because of the standardization, ATA did not believe there would be any change or reduction in safety, and pointed out that costs for service members who want to obtain a CLP or CDL would likely decrease.

FMCSA Response: The 2011 CLP/CDL rule (89 FR 26853) required States to adopt new minimum Federal standards for the CDL knowledge and skills tests and established new minimum procedures for States to issue the CLP. FMCSA has confirmed that all States meet those minimum standards. In addition, some States have adopted more stringent standards. While that is allowed by part 383, it does create variations among States.

As proposed in the NPRM, the State of domicile will issue the CLP or CDL; this has always been a fundamental principle of the program. However, in response to comments, the

NPRM requirement that the State of domicile must accept and act on information transmitted by the State where the driver is stationed has been removed. The final rule is entirely permissive. In other words, the State where the military driver is stationed may (but is not required to) administer the written and skills tests for the CLP and CDL – as proposed in the NPRM – and the State of domicile may (but is not required to) accept the testing information and documentation provided by the State where the driver is stationed and issue the CLP or CDL on that basis. This permissive approach will require coordination between two States, and among many pairs of States. At a minimum, the State where the driver is stationed will have to use administrative procedures, forms, etc., that are acceptable to the State of domicile, since that State would ultimately issue (or refuse to issue) the CLP or CDL. The Agency recognizes that States will have to harmonize different practices. If two SDLAs find that their licensing standards are incompatible, they will not reach agreement and military drivers will not be able to use the application and testing alternatives allowed by this rule. However, we are confident that most States will work out their mutual differences in order to help military personnel transition to civilian careers in the motor carrier industry.

This final rule does not change the requirements for converting a CLP to a CDL. If eligible military CLP holders want to apply for a CDL, they could do so where they are stationed (assuming that State uses the option granted by this rule), but the CDL itself must still be issued by the State of domicile.

Participating States have a 3 year period to adopt the framework of the rule. FMCSA, AAMVA, and the States will work together to reach agreement to implement the procedures after this time.

Procedural Differences among States issuing CLPs and CDLs (§ 383.79): Fees

Issue: The proposal was silent on the topic of fees charged by SDLAs for services rendered under proposed § 383.79.

Comments: The New York DMV asked how the State of domicile will collect fees if the process is entirely electronic. The Oregon DMV voiced concern that drivers might be forced to pay both the State where the driver's application is filed and processed and the State of domicile, and stated that it was required by statute to collect fees before issuing CLPs and CDLs. The Michigan DOS asked for clarify concerning fees, and said there was an assumption of shared cost between the State of domicile and State of station. North Dakota stated that its fee has to be paid in person. The Minnesota DPS/DV wanted the issue of fees to be addressed explicitly. The California DMV stated that fees were not addressed in the proposal.

FMCSA Response: Driver licensing fees are left to the discretion of the States, and FMCSA believes that States are best equipped to determine such fees. Some SDLAs currently waive fees for active-duty military personnel and may well continue to do so while utilizing this rule. On the other hand, it is possible that both States involved in the new testing and licensing procedures allowed by this rule may charge for their services. Even in that worst-case scenario, however, the driver is likely to find the new procedures cheaper than returning to his/her State of domicile to complete the necessary applications and tests. In cases where one State has to transmit all or part of a fee to another State, FMCSA is confident that current financial systems will be able to provide solutions. The reciprocal transfers among States required by the International Registration Plan and the International Fuel Tax Agreement suggest that options may be readily available.

As discussed below in connection with Executive Order 12866, military drivers will retain the options: (1) to return to their State of domicile to apply for a CLP or CDL; and (2) to

change their State of domicile to the State where they are stationed. If the distance between two States is small enough, and cost of returning to the State of domicile is cheaper than the fees charged, then the military driver may wish to apply for the CLP or CDL in person in the State of domicile. This rulemaking does not alter that ability.

FMCSA believes the rule offers significant flexibility that will reduce the cost to most military drivers of obtaining a CDL. Nonetheless, each driver will have to balance application fees versus travel costs, and the advantages of maintaining and switching State of domicile.

Procedural inconsistencies among States issuing CLPs and CDLs (§ 383.79): Forms and applications

Issue: The NPRM was silent on which State (State of domicile or State of station) would supply the application for a CLP or a CDL.

Comments: Several SDLAs had concerns about issuing or processing CLPs and CDLs on behalf of another State. Several mentioned that different States require different information.

The Arizona DOT said that it could not enforce another State's standard. The Oregon DMV stated that CLP and CDL applications are not uniform, and neither are the skills and knowledge tests. The Oregon DMV is prohibited by statute from using another State's application to issue an Oregon license. Oregon also stated that any expectation of enforcing another State's applications and forms is unreasonable. The New York DMV stated that the applications are too varied, and requested guidelines to ensure each State receives the data it needs. The Arizona DOT argued that requiring States to handle other States' applications infringes upon State laws, and it is not realistic for personnel to handle forms from other SDLAs, as they would require different information. Arizona also noted that States might require legislative changes in order to implement the regulatory revisions adopted here. Minnesota

DPS/DV pointed out that each SDLA has a different form; Minnesota does not use an electronic form. The Michigan DOS and Virginia DMV suggested national forms and applications as possible solutions for consistency. The Michigan DOS also asked how the State where the driver is stationed would verify a credential in the State of domicile. Virginia requested AAMVA's involvement in developing a national application, if one were to be developed. AAMVA asked for clarification about which elements needed standardization.

The Nebraska DMV requested clarification of what parts of the application would be mandatory for transmission. North Dakota said that the process in the NPRM did not provide enough information for a State of station to adequately maintain records and process records for the State of domicile. North Dakota said that its own application must be used.

FMCSA Response: The Agency agrees that clarification would be needed if FMCSA were adopting forms, applications, and procedures. However, FMCSA is not adopting national forms that States must use when implementing this final rule. The outlines of a national standard are already specified in considerable detail in §§ 383.25 Commercial learner's permit (CLP) and 383.71 Driver application and certification procedures. As indicated above, the Agency is allowing any two States involved in the issuance of a CLP or CDL to military personnel stationed outside their State of domicile to work out between themselves any remaining differences in their respective procedures and requirements. The most obvious solution would be for the State where the driver is stationed to use the forms and follow the procedures required by the State of domicile. FMCSA will work with the SDLAs and AAMVA during the implementation period to assist in determining common data points that meet the needs of the States that wish to participate.

Some States may decide not to process or accept CLP and/or CDL applications transmitted by another State. The rule does not require any State to enforce another State's standard. The State of station will collect applications on behalf of the State of domicile. It will be the applicant's responsibility to ensure both that the State where he/she is stationed will entertain an application and that his/her State of domicile will accept and process the application and test results provided by the former and issue a CLP or CDL.

Again, the final rule is entirely permissive. Each pair of States potentially involved in the licensing procedures allowed by this rule can opt out if the involved States are unable to reach agreement. The Agency believes that many States will find ways to harmonize their forms, procedures, and other requirements – but we recognize that some States will not be able to do so. FMCSA has expanded the description of the requirements in today's final rule, including making it clear that States have the option – but are not required – to process applications and test results on behalf of other States and to accept those applications and test results collected by other States.

Procedural differences among States issuing CLPs and CDLs (§ 383.79): License used for non-driving purposes

Issue: The NPRM was silent on the topic of licenses being used for purposes other than driving.

Comments: The Montana DOJ/MVD asked how this proposed rule would impact voting. The New York DMV asked if there would be an impact on drivers who no longer have current addresses within the State of domicile. The Oregon DMV stated that each SDLA has its own standards for domicile, and it will be impossible for another State's SDLA to verify them.

FMCSA Response: The Agency notes the concerns about voting rights, as well as the domicile status and addresses of applicants, but believes that most States will be able to resolve such questions in cooperation with other States. Drivers who obtain a CLP or CDL through this process will retain their State of domicile, and will therefore never be entered into the pool of voters in the State where they are stationed, or need to update their addresses. From the perspective of the SDLA in the driver's State of domicile, nothing has changed.

Procedural differences among States issuing CLPs and CDLs (§ 383.79): In-Person requirements

Issue: FMCSA did not address photo or other in-person licensing requirements.

Comments: Several SDLAs pointed to inconsistencies in procedures between States for parts of the license that must be done in person, such as facial recognition and signature.

AAMVA asked for clarification on which jurisdiction would be responsible for the photography element; it also mentioned the REAL ID Act provision that requires digital pictures on a driver's license, as well as tracking of denied REAL ID applications. AAMVA said that all SDLAs are not following the REAL ID requirements, and that if the driver's picture is taken in the State where he/she is stationed, this could have an additional cost. When a license is issued, the Oregon DMV takes a photograph which is digitized and compared to a database with facial recognition software. The New York DMV mentioned other in-person requirements in addition to a photograph, including a Social Security Number and other State-specific identity confirmation.

The Virginia DMV stated its concern about a driver using the new provisions of § 383.79 if he or she did not have an existing license; Virginia mentioned that this might be a concern for issuing a photograph of the driver on the license. The Montana DOJ/MVD mentioned that the

initial issuance of a license can only take place in person; an in-person signature may also be required from those drivers who are domiciled in Montana, but have not provided a digital signature recently, and this would require a data base modification.

North Dakota stated that many of its requirements, like digital photo processing, eye exams, and fees, must be done in person; not allowing the State of domicile to insist on these requirements is “unacceptable.” The Michigan DOS mentioned that facial recognition, fingerprinting, and retinal scanning often occur in the State of domicile when a new CLP or CDL is issued. The California DMV asked whether a State that requires facial recognition would process a CLP or CDL application without the applicant appearing in person. The Arizona DOT listed a number of in-person-only requirements. These included facial recognition, original documents for citizenship verification, and digital signatures.

FMCSA Response: As explained above, this final rule is permissive, not mandatory. If a State of domicile concludes that another SDLA cannot properly administer its processing procedures, it can decline to issue CLPs/CDLs to military personnel stationed in that State. And a State that knows its processing standards are inconsistent with those of another State can decline even to accept CLP/CDL applications from military personnel domiciled in that State.

It is worth noting, however, that there is no Federal requirement on where a photograph is taken. That factor alone should not impede a State of domicile from accepting a CLP/CDL application from a State where a military driver is stationed.

FMCSA disagrees with the Virginia DMV’s comment concerning drivers who do not have existing licenses; only drivers who have an existing license are eligible for relief under § 383.79. As for Montana’s comment, today’s final rule applies only to a driver with an existing

license from his/her State of domicile. An initial license would never be issued by the State where the individual is stationed.

Other in-person procedures would be left to the discretion of the two SDLAs; they could determine whether it would be possible to meet criteria for facial recognition, digital signatures, REAL ID Act requirements, and other processes normally done in-person. The Agency declines to add these provisions to a final rule, as it believes that the best practices will be implemented at the State level. If our assistance is sought, FMCSA will work with AAMVA to create best practices.

Procedural differences among States issuing CLPs and CDLs (§ 383.79): Verification of military station or military status

Issue: The proposed rule did not address how to verify the military station or status of applicants.

Comments: AAMVA pointed out that proof of State of station should be provided, and asked FMCSA to issue guidance on this topic. The New York DMV and the Nebraska DMV asked for clarification on how to prove the State of station.

FMCSA Response: The applicant must provide proof of his or her active duty status in the form of a valid active duty military identification card. In addition, the applicant must show the driver licensing agency either a copy of his or her current orders or a current Military Leave and Earning Statement (Jan 2002) to prove where he or she is stationed.

Procedural differences among States issuing CLPs and CDLs (§ 383.79): Credentialing, license issuance

Issue: Due to the issuance of the 2011 CDL and CLP rule referenced previously, FMCSA believed that all States met the same minimum standard when issuing CLPs and CDLs.

Comments: Several SDLAs mentioned credentialing concerns. The California DMV asked how to destroy another State's license in accordance with § 383.73(c)(6). AAMVA stated that it was concerned there was no mechanism to issue a new CLP or CDL. AAMVA stated that some SDLAs mail licenses to the applicants, but there is no standardized process. AAMVA also expressed concerns about multiple-document retention, and gave an example where an applicant ended up with several licenses at the same time; AAMVA said that the rule should address the surrendering of licenses. The Minnesota DPS/DV wanted a clear explanation of which State should destroy the old credentials. The Arizona DOT pointed to § 384.211 and stated that it requires the destruction of old credentials before the issuance of new credentials; that process would leave drivers not present in that State without a license in the interim.

ATA stated that if there was a lag time in issuing new credentials, the driver should be given an alternate document (coordinated by the two States involved) for proof of licensure during that time. ATA suggested allowing the State where the driver is stationed to issue CLPs and CDLs on behalf of the State of domicile.

FMCSA Response: The application and testing procedures allowed by this rule are available only to military drivers who already have a non-CDL license from their State of domicile. That State is responsible for issuing the new CLP or CDL. Although this rule leaves the repossession of the previous license (usually a standard automobile license) to the discretion of the States involved, there would seem to be two basic alternatives. Either the State of domicile would send the CDL document to the State where the driver is stationed, which in turn would demand and destroy the previous license when it delivered the CDL to the driver; or the State of domicile would require the driver to mail his/her previous license to that SDLA, which would destroy it and then mail the CDL back to the driver. The second procedure would leave the driver

without a driver's license for a few days. FMCSA believes that participating States will be able to utilize these or other agreed-upon procedures without incurring any serious risk that a driver could hold multiple driving credentials or would be without any credentials for an interim period.

Procedural differences among States issuing CLPs and CDLs (§ 383.79): Citizenship

Issue: The proposed rule did not address citizenship.

Comments: The Montana DOJ/MVD and the New York DMV asked which State would verify citizenship or lawful permanent residency, since not all holders of automobile licenses will be United States citizens. New York asked how a processing State would send citizenship information to a domicile State, if that was the procedure chosen. New York DMV pointed out that checking this information is required under §§ 383.71 and 383.73. The Virginia DMV asked for clarification of "legal presence" as well. Referring to § 383.71, the Arizona DOT said that its policy was to require original documents to verify citizenship, and that this could not be done through the mail.

FMCSA Response: Proof of citizenship or lawful permanent residency will necessarily be included in the application process. Ultimately, the responsibility for verifying the driver's status rests with the State of domicile, since it will issue the CLP or CDL, but the State where the applicant is stationed can verify these matters on behalf of the State of domicile. The two States involved will have to work out the necessary administrative steps between themselves. It must be noted that § 383.71(a)(2)(v) and § 383.73(a)(2)(vi) both require proof of citizenship or lawful permanent residency. This rule does not change either of these requirements, and the CLP/CDL remains available only to citizens and lawful permanent residents.

Electronic transfer of the skills test (§ 383.79): Mandatory use of systems

Issue: The results of the completed knowledge and skills test would be transmitted the same way the skills test scores are transmitted today for out of state testers – electronically. Only passing results would be transmitted.

Comments: Several SDLAs voiced concern about variances in data between States and asked the Agency to identify the system to be used for data transfer. The California DMV mentioned that the system used would have to protect personally identifiable information (PII), and should have standardized data elements. AAMVA stated that the systems developed to transmit skills test results pursuant to the 2011 CLP/CDL rule would have to be modified to accommodate the knowledge test results and the application itself. The New York DMV echoed this point and asked what format would be used to transfer applications and test results, as the current systems do not do this. The Virginia DMV stated that transmittal must be done electronically for security, and requested the enhancement and explicit requirement for use of the Commercial Skills Test Information Management System (CSTIMS) and the Report Out-Of-State Test Results (ROOSTR) system. The Nebraska DMV also requested an explicit CSTIMS and ROOSTR transmission requirement.

The Montana DOJ/MVD stated that current information transmission systems were inadequate and that there would be technical, procedural, and legal issues. It referred to several AAMVA-run systems, and stated that digital image access would need to be added, as would a method of transferring knowledge test scores. The Missouri DOR mentioned that it did not use REAL ID, or any of the AAMVA systems. ABA supports the use of data systems to speed up the licensing process, but has concerns about the systems' infrastructure.

FMCSA Response: FMCSA will not require the use of any specific system for transferring licensing information between States. However, the AAMVA-maintained CSTIMS

and ROOSTR systems could be appropriate methods of electronic transfer. FMCSA agrees with the need to protect PII, but does not establish any new procedures for doing so. In any case, no Federal records are created by this rule. The information transferred by the State where the military driver is stationed to his or her State of domicile will be entered into the Commercial Driver's License Information System (CDLIS). That system, however, involves records created and maintained by the States. This rule does not result in a new or revised Privacy Act System of Records for FMCSA.

Electronic transfer of the skills test (§ 383.79): Cost of systems

Issue: The NPRM concluded that there would be a cost for using AAMVA-run systems, but that the cost would be included in the existing arrangements for States to maintain and use these systems.

Comments: Both the Missouri DOR and AAMVA stated that using AAMVA systems to transfer skills tests electronically would involve a cost. AAMVA also mentioned that the CLP/CDL application and the electronic-transfer requirement would have a cost as well. The Missouri DOR stated that several SDLAs have opted not to use an electronic system; reversing that policy would generate costs, including training for the system. The Montana DOJ/MVD mentioned that the cost to upgrade the systems would be substantial.

FMCSA Response: Today's final rule requires electronic transfer of test results, but does not specify the methods of that transfer. There is no requirement to procure and use a data system not already in place. States are currently required to transmit the results of skills test electronically, and FMCSA assumes that the States will use the same method of transfer for the knowledge test results. Forty-seven SDLAs use the AAMVA-owned and -operated CSTIMs and/or ROOSTR systems to transfer skills test results. FMCSA anticipates that AAMVA will

update these systems to allow for transmission of knowledge test results during a routine IT upgrade cycle, with minimal additional cost. In the regulatory analyses section below, FMCSA estimates that drivers affected by this rule will pay a processing fee to their State of station that will cover the costs of information transfer between the State of station and the State of domicile.

Electronic transfer of the skills test (§ 383.79): Fraud

Issue: FMCSA did not discuss fraud in the NPRM, as the proposal relied upon existing systems that have built-in protection against fraud.

Comments: Several SDLAs thought that the proposal did not adequately address concerns over fraud. Oregon took issue with the fact that it would have to rely upon other SDLAs to verify information. The Montana DOJ/MVD thought the NPRM downplayed the risk of fraud, especially due to the photography and documentation requirements, and argued that the rule would need fine-tuning.

FMCSA Response: FMCSA believes that States will take appropriate steps to protect against attempted fraud by applicants. FMCSA takes fraudulent behaviors seriously, has conducted yearly audits of all States for the past three years, and will continue to be vigilant in this regard.

Electronic transfer of the skills test (§ 383.79): Other forms

Issue: The proposal did not address the transfer of additional certifications between States.

Comments: The New York DMV asked how the processing State would collect a driver's medical certification and self-certification and submit it to the State of domicile.

FMCSA Response: FMCSA expects SDLAs to coordinate the transfer of certifications, presumably in the same way that they transfer the CLP/CDL applications and test results.

D. Legal Concerns

Issues: The Oregon DMV suggested that the proposal overstepped the requirements of the Military CDL Act, which should be followed instead. Oregon felt that the NPRM was unnecessarily complex and should more closely track with the statutory language.

The New York DMV believes that the proposal contradicted the recent CDL rulemaking, and undermined the work States have done to meet its requirements.

The Minnesota DPS/DV raised a concern that the requirement to accept applications on behalf of other States violated State laws. The Montana DOJ/MVD referenced a Montana State law that requires “verification through the Federal Systematic Alien Verification for Entitlements program (SAVE).”

FMCSA Response: The Military CDL Act of 2012 does indeed allow States to issue CDLs to military personnel who are stationed, but not domiciled, there. As discussed in this rule, however, obtaining a CDL where he or she is stationed may void the driver’s domicile in his/her “home” State and with it certain benefits, e.g., lower taxes, in-State tuition, etc. The Agency determined in the 2011 final rule that the general CDL statute – the Commercial Motor Vehicle Safety Act of 1986, as amended – is sufficiently broad to authorize a rule requiring States to accept the results of skills tests administered outside the driver’s State of domicile. The NPRM in this rulemaking expanded that analysis and conclusion to require States of domicile to accept the results of CDL written and skills tests administered to military personnel by States where these personnel are stationed but not domiciled. That approach allowed the State of domicile to issue the CLP and CDL, thus eliminating any inadvertent transfer of domicile that might occur if a

military driver received a CDL from the State where he/she was stationed. However, in view of the comments submitted to the docket, the Agency has decided – as described above – not to require the State of domicile to accept the test results recorded by another State, but rather to allow the State of domicile to do so. With this change, the argument that the NPRM requires the violation of certain State laws simply disappears. The success of this final rule will depend on the willingness and ability of the State of domicile and the State where the driver is stationed to work out mutual differences in their forms, procedures, and other requirements. We are confident that most States will manage that task effectively. This final rule provides relief for a very limited population of military service members who want to become commercial drivers. Additionally, the rule relies heavily on the standardization of licensing and other requirements put into place by the 2011 CDL rule.

E. Other

Alternative processes suggested

Issue: FMCSA did not suggest any regulatory alternatives to this proposal.

Comments: The New York DMV suggested an FMCSA-Department of Defense (DOD) partnership using an AAMVA CDL test model, or allowing transfer of current, non-CDL licenses to their State of station as a non-domiciled driver. The second alternative process suggested would allow military drivers to transfer domicile to any State after leaving the service. New York thought that these would provide sufficient relief as well as not impose additional burdens on the SDLAs.

FMCSA Response: New York's suggestions are beyond the scope of the NPRM. The Agency believes the relief provided by this final rule will be substantial. FMCSA, AAMVA, and

the States will work together to reach agreement to implement the procedures during the implementation period.

Military Occupational Codes eligible

Issue: The executive summary in the NPRM included the following proposal: “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.” However, this proposal was not in the regulatory language or discussed at any level in the preamble. Additionally, the MOC was incorrectly referenced in proposed § 383.79.

Comments: ABA requested either guidance or a list of which MOCs would be able to take advantage of relief from the regulation, referring to a proposal in § 383.77(b)(3).

The Virginia DMV asked for clarification on how to confirm the MOC of the applicants under § 383.79. The New York DMV also asked why proof of a military CMV status would be necessary for the provisions of § 383.79. The Michigan DOS/MVD stated that if military testing meets or exceeds CDL requirements, a CDL should be issued without testing. The California DMV understood the § 383.79 proposal to include a requirement that drivers wishing to seek a CDL in their State of domicile via a State where they are stationed would need to be operating in a CMV-driving MOC, and asked for clarification of which MOCs would be included.

FMCSA Response: The § 383.77(b)(3) proposal was inadvertently left in the executive summary for the NPRM; it was not intended to be a part of this rulemaking, was not in the proposed regulatory language, and is not included in today’s final rule. FMCSA will consider this as a potential topic for a future rulemaking.

The provisions under § 383.79 pertain to anyone in the military; they do not waive any of the requirements for obtaining a CLP or CDL. This section simply allows drivers to seek CDLs in the State of station rather than the State of domicile.

Procedural concerns

Comments: The ATA requested an extension of the proposal in § 383.79 to non-military personnel as well, and requested that CDL schools outside the State of licensure be allowed to teach drivers.

The Nebraska DMV asked several questions about service members who pass the knowledge test in their States of station returning to their State of domicile, and about passing the knowledge tests in other States. AAMVA asked a similar question, about applicants who begin the testing process in one State and then are transferred to another State.

FMCSA Response: FMCSA declines ATA's request for a Supplemental NPRM. The comments to this rulemaking docket identified challenges to out-of-State testing which persuaded the Agency to adopt a more modest, permissive approach. ATA's request would significantly exacerbate the difficulties outlined by State commenters. Training schools routinely enroll students from other States, but allowing large numbers of civilian students to be knowledge-tested outside their State of domicile is well beyond the scope of this rulemaking. Military drivers are a special class being accommodated in this rule because of the Military CDL Act of 2012, which was intended to ease their transition to civilian life.

The rulemaking did not discuss the knowledge test requirements. FMCSA's intent was to make the licensing process easier for service members. Ultimately, however, the SDLAs control their own processes. While it is possible, though not likely, that a service member may be transferred from one duty station to another between the time he/she applies for the CLP and

wants to take the skills test, the national uniformity of skills test procedures should make no difference to the acceptability of the results to the State of domicile.

VII. CHANGES FROM THE NRPM

Section 383.5. Definitions. A new definition of “military service member” was added, along with a revised definition of “military services,” where the phrase “auxiliary units” was removed.

Section 383.77 Substitute for driving skills tests for drivers with military CMV experience, is adopted as proposed in the NPRM.

Section 383.79 Skills testing of out-of-State students; Knowledge and skills testing of military personnel. The title of this section has been revised to differentiate the two concepts addressed within it. The discussion of electronic transmission of documents has been somewhat expanded.

Section 384.301 Substantial compliance general requirements. This section is adopted as proposed.

VIII. TODAY’S FINAL RULE

Section 383.77: Extension of the skills test waiver.

Eligible Military Personnel. The first part of the rule addresses military personnel recently separated from active duty. These veterans must have been operating in a position where they regularly drove a military CMV.

Current Procedures. Currently, the standard at § 383.77 authorizes States to allow these drivers up to 90 days following separation from a military position requiring operation of a CMV to apply to waive the skills test. In 2015 the Agency granted relief through an exemption that allowed a 1-year waiver period, without changing the regulation.

Changes today. Today's regulation would codify that extension, meaning that States would be authorized to accept applications for a skills test waiver for up to 1 year rather than 90 days.

Requirements for States. All States currently waive the skills test for this population of applicants; this rule changes neither the eligible population nor State procedures. Only the duration of the allowable waiver period is changed.

Section 383.79: CLP and CDL.

Eligible military personnel. The second part of the rule addresses active duty military service members who are stationed in a State different from the State in which they claim domicile. These members would need to verify with the State of station and the State of domicile that both States plan to participate in the licensing procedures allowed by this rule.

Current procedures. Currently, if active duty service members wish to obtain a CLP or CDL, they must either (1) apply for a CLP or CDL in person in their State of domicile, or (2) transfer their existing license, and thereby State of domicile, to the State where they now live or are stationed.

Changes today. Today's final rule enables States to allow eligible military personnel to apply and be tested for a CLP or CDL in the State where they are stationed, without having to travel to or change their State of domicile.

Requirements for States. Today's final rule is permissive. SDLAs are permitted (but not required) to accept CLP/CDL applications from eligible military personnel stationed there. However, the information, forms, and procedures used by the State where the driver is stationed would have to be acceptable to the State of domicile. If either State in this pair decided not to

cooperate with the other State, the licensing alternative allowed by this rule would not be possible with respect to those two States.

Description of the procedure for exchanging a CLP or CDL. As noted elsewhere in this rule, FMCSA is allowing flexibility for individual States to reach agreements on the most efficient means of allowing a military member stationed outside his or her domicile State to obtain a CDL without physically returning to that State. FMCSA recognizes that States might have unique CDL licensing requirements or processes and is therefore not establishing a single process that all States must follow. One possible scenario for how this could work is presented below, but other alternatives may also work. FMCSA encourages the States to find the most efficient process that minimizes variations in their individual licensing procedures to support the affected military members.

Example: An active duty member of the armed forces is stationed at State 1 (State of station) but domiciled in State 2 (State of domicile or home State). The driver has a current non-CDL driver's license in the State of domicile, and wants to get a CDL while maintaining his or her current State of domicile.

Step One: The service member contacts both State 1 and State 2 SDLAs to determine if State 1 will give the knowledge and skills tests, and if State 2 will accept the results of those tests administered by State 1 and issue a CDL.

If both States do not agree to the process, then the service member cannot use this exemption, and must either change his or her State of domicile, or return to the State of domicile for issuance of a CLP or CDL.

Step Two: If both SDLAs agree to the licensing alternative allowed by this rule, the service member fills out State 2's CLP application which can be on line or hard copy, whichever is State 2's preference.

If State 2 charges a fee, the service member pays State 2.

Step Three: The service member goes to State 1's SDLA with his/her military ID and proof of being stationed in State 1 and shows either his/her paper application from State 2 or proof of filling out State 2's application electronically.

If State 1 charges a fee, the service member pays State 1.

If the service member seeks a CDL, State 1 validates his/her identity at the counter, as well as proof of citizenship or lawful permanent residency; valid CDL medical certification; and expected interstate or intrastate operation.

Step Four: For a CLP, State 1 gives the knowledge test, and transmits passing results to State 2 electronically.

Step Five (a): State 2 sends a CLP document to State 1; or Step Five (b): State 2 sends a CLP document directly to the service member.

Step Six: If following Step Five (a), the service member goes to State 1's SDLA where he or she took the knowledge test and receives the CLP document.

Step Seven: The service member trains and practices driving, and presents himself/herself to State 1 to take the skills test, where his/her identity and citizenship are again verified by the State 1 SDLA. If the driver passes the skills test, the result is transmitted to State 2 electronically.

Step Eight: Either

a. State 2 SDLA sends a CDL to State 1's SDLA. or

b. The service member mails his/her CLP and non-CDL license issued by State 2, to State 2, and State 2 sends the new State 2-issued CDL by mail to the applicant.

Step Nine: If option a. is followed, the service member goes to the State 1 SDLA where he or she took the skills test, and surrenders his/her CLP and non-CDL license issued by State 2 (which State 1 then destroys), and receives the State 2-issued CDL.

IX. INTERNATIONAL IMPACTS

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

X. SECTION-BY-SECTION

Section 383.5 adds definitions of “military service member” and “military services” in alphabetical order.

Section 383.77 extends the period during which States may waive the skills test of certain former military drivers from 90 days to 1 year in § 383.77(b)(1).

Section 383.79 is slightly revised. The title of this section is changed to reflect the expanded content: “Skills testing of out-of-State students; Knowledge and skills testing of military personnel.”

Section 383.79(a)(1) and (2) contain the material previously designated as § 383.79(a) and (b), concerning CDL applicants trained out-of-State.

New § 383.79(b), Military service member applicants for a CLP or CDL, includes the licensing options described above. Paragraph (b)(1), State of duty station, along with its three subparagraphs, authorize (but do not require) States where active-duty military personnel are

stationed, but not domiciled, to accept and process CLP and CDL applications from such personnel, to administer the required tests for these licenses, and to destroy existing licenses. Paragraph (b)(2), Electronic transmission of the application and test results, details the process for the State where these military personnel are stationed to transmit the necessary forms and test results to the applicant's State of domicile. Paragraph (b)(3), State of domicile, along with its two subparagraphs, explains that the State of domicile may (but is not required to) accept such forms and test results; if it does so, it will issue the appropriate CLP or CDL.

Section 384.301 is amended by adding new paragraph (j) to require substantial compliance by States three years from the effective date of the final rule.

XI. REGULATORY ANALYSES

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

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. However, FMCSA did evaluate the costs and benefits of this rulemaking. This rulemaking will 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 rule amends existing procedures and practices governing administrative licensing actions.

Costs and Benefits

FMCSA evaluated potential costs and benefits associated with this rulemaking and estimates that these changes could result in net benefits between \$3.2 million and \$7.7 million over 10 years, discounted at 7%. The following sections provide an overview of this analysis.

Section 383.77

The final rule will extend the time States are allowed to accept applications for a skills test waiver from certain former service members from 90 days to 1 year. This action codifies an existing exemption published on July 8, 2014 (79 FR 38645). That notice granted immediate relief from 49 CFR 383.77(b)(1) to certain 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 final rule will codify an existing practice, FMCSA does not expect this revision to have any significant economic impact. However, the Agency believes that permanently granting military personnel with CMV driving experience more time to apply for a CDL after separation from service will be beneficial to both service members and prospective employers by creating more employment opportunities.

Section 383.79(b)

This rule will allow States to accept CLP and CDL applications from certain military drivers stationed in that State; to test their knowledge and skills; and to submit the results of both tests to the drivers' State of domicile for issuance of the CLP and CDL. This information can be transmitted using the same electronic system that was previously established for the skills test. The rule will not require States to use either the CSTIMS or ROOSTR. Both of these systems are currently managed by AAMVA, and States that are already using them would incur minimal costs to use them to transmit CLP/CDL test results. 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 anticipates that AAMVA will update CSTIMS and ROOSTR to allow for transmission of knowledge test results during a routine IT upgrade cycle, with minimal additional cost. However, the final rule does not require use of either of these systems. States may incur costs for working out the details of application transmission between States. FMCSA expects that States will take advantage of the flexibilities allowed in the final rule, and participate when it is cost effective to do so. Additionally, the State of station can charge a processing fee to recoup the cost of providing this service.

FMCSA expects that this rule will ultimately result in a cost savings for drivers, but some of the cost savings will be offset by the additional processing fee. Based on comments received on the NPRM, FMCSA anticipates that drivers will continue to pay the CDL licensing and application fee to their State of domicile, and will pay an additional processing fee to the State of station. FMCSA estimates that the processing fee will be similar to the State CDL application fee. Many States do not publish their application fee separately, but bundle it with the license fees. The average CDL application and license fee for all 50 States and the District of Columbia is \$50. However, the CDL term for States ranges from 4 to 8 years. On an annual basis, the cost of the average CDL application for all 50 States and the District of Columbia is \$10. Therefore, FMCSA estimates that the one-time processing fee will range from \$10 to \$50 per driver, and conservatively estimates a fee of \$50 for the purposes of this analysis. Both States utilizing the alternative licensing procedures allowed by this rule might charge fees, but some currently waive their normal fees for veterans or active-duty military personnel and may continue to do so. Because FMCSA cannot predict the number of military drivers who would have their additional

processing fee waived by the State of Station, we have based our calculations on each military driver paying an extra fee.

To estimate how many drivers might take advantage of this provision, FMCSA started with the number of drivers 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.³ 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.⁴ 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 apply for a CLP/CDL outside their State of domicile. Based on these assumptions, this provision affects approximately 660 drivers each year.

FMCSA estimated the processing fee by multiplying the 660 drivers by the per-driver processing fee of \$50. The 10-year costs for the additional processing fee total \$330,000 undiscounted, \$290,000 discounted at 3%, and \$248,000 discounted at 7%.

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

⁴ 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/2011/05/09/2011-10510/commercial-drivers-license-testing-and-commercial-learners-permit-standards>

This rule will also result in cost savings, or benefits, for drivers in the form of reduced travel costs. The rule will 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 will allow any such State to transmit copies of the application and test results for military personnel to the driver's State of domicile, which in turn may – but is not required to – issue a CLP or CDL on the basis of that information. Absent this rule, drivers would be required to travel to the State of domicile in order to apply for a CLP or CDL. For example, if the driver is stationed in Virginia but his/her State of domicile is Texas (and both States use the licensing alternative allowed by this rule), Texas will be able to issue the driver a CLP and CDL based on an application and successful testing conducted in Virginia. The driver would be spared the travel costs of returning to Texas in order to file an application for a CLP or CDL.

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 an upper and lower bound 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 \$700.⁵ 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 mile⁶ and the distance between Norfolk and Houston is approximately 2,800

⁵ 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/>.

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

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. Based on the estimated participation rates, the total savings would be between \$4.6 million and \$10.6 million undiscounted, \$4.1 million and \$9.3 million discounted at 3%, \$3.5 million and \$8.0 million discounted at 7%. In addition, the driver might incur lodging costs and other expenses depending on the location of the testing; however, these potential cost savings were not included in this analysis.

FMCSA calculated the net benefits of this rule by subtracting the processing fee cost from the travel cost savings. As shown in Table 1, the per driver benefits range from \$650 to \$1,560. The total 10-year net benefits range from \$3.2 million to \$7.7 million, discounted at 7%.

Table 1 – Estimated Annual and 10-year Net Benefits for Out of State Drivers

Scenario	Drivers per Year	Net Benefits per Driver	Total Net Benefits per Year	10-year Total (3% discount rate)	10-year Total (7% discount rate)
Lower-Bound (flight)	660	\$650	\$429,000	\$3,769,241	\$3,224,035
Upper-Bound (car travel)	660	\$1,560	\$1,029,600	\$9,046,178	\$7,737,683

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 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 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 rule will 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 will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the

FMCSA point of contact, Selden Fritschner, listed in the **For Further Information Contact** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. 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 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

E. Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

F. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has “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.” FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

G. E.O. 12988 (Civil Justice Reform)

This final rule 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.

H. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could present an environmental or safety risk that could disproportionately affect children.

I. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

J. Privacy

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 rule does 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. All records associated with this rulemaking are State, not Federal, records.

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. As a result, FMCSA has not conducted a privacy impact assessment.

K. E.O. 12372 (Intergovernmental Review)

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

L. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it a

significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

M. E.O. 13175 (Indian Tribal Governments)

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

N. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

O. Environment (NEPA, CAA, E.O. 12898 Environmental Justice)

FMCSA analyzed this rule 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.s.(6). The Categorical Exclusion (CE) in paragraph 6.s.(6) covers a requirement for States to give

knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard. The content in this rule is covered by this CE and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Regulations.gov Web site listed under **I. Rulemaking Documents**.

FMCSA 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.

Under E.O. 12898, 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 evaluated the environmental justice effects of this final rule in accordance with the E.O., and has determined that it has no environmental justice implications, nor is there any collective environmental impact that will result from its promulgation.

List of Subjects

49 CFR Part 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 amends 49 CFR chapter III, 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 continues 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; sec. 7208 of Pub. L. 114-94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

2. Amend § 383.5 by adding definitions of “military service member” and “military services” in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Military service member means a member of the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve, and National Guard units.

Military services means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve and National Guard 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 Skills testing of out-of-State students; Knowledge and skills testing of military personnel.

(a) CDL applicants trained out-of-State—(1) State that administers the skills test. 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 United States jurisdiction (i.e., his or her State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in an efficient and secure manner.

(2) The State of domicile. 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 service member applicants for a CLP or CDL —(1) State of duty station. A State where active duty military service members are stationed, but not domiciled, may:

(i) Accept an application for a CLP or CDL from such a military service member who has

(A) A valid driver's license from his or her State of domicile,

(B) A valid active duty military identification card, and

(C) A current copy of either the service member's military leave and earnings statement or his or her orders;

(ii) Administer the knowledge and skills tests to the military service member, as appropriate, in accordance with subparts F, G, and H of this part, or waive the skills test in accordance with § 383.77; and

(iii) Destroy a driver's license on behalf of the State of domicile, unless the latter requires the license to be surrendered to its own driver licensing agency.

(2) Electronic transmission of the application and test results. The State of duty station must transmit the completed application, the results of knowledge and skills tests, and any supporting documents, by a direct, secure, and efficient electronic system.

(3) State of domicile. Upon completion of the applicant's application and testing requirements under § 383.71, and the State's test administration requirements under § 383.73, the State of domicile of the military service member applying for a CLP or CDL may

(i) Accept the completed application; the results of knowledge and skills tests administered to the applicant by the State where he or she is currently stationed, or the notice of the waiver of the skills test, as authorized by paragraph (b)(1)(ii) of this section; and any supporting documents; and

(ii) 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. Add paragraph (j) to § 384.301 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 [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] as soon as practicable, but, unless otherwise specifically provided in this part, not later than December 12, 2019.

Issued under authority delegated in 49 CFR 1.87 on: October 4, 2016

T.F. Scott Darling, III,
Administrator

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