[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 391

[Docket No. FMCSA-2018-0152]

RIN 2126-AC18

Extension of Compliance Dates for Medical Examiner's Certification Integration

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: FMCSA proposes to amend its regulations to extend the compliance date from June 22, 2021, to June 23, 2025, for several provisions of its April 23, 2015, Medical Examiner's Certification Integration final rule. FMCSA issued an interim final rule (IFR) on June 21, 2018, extending the compliance date for these provisions until June 22, 2021. FMCSA proposes to finalize the IFR by further extending the compliance date to June 23, 2025. This action is being taken to provide FMCSA time to complete certain information technology (IT) system development tasks for its National Registry of Certified Medical Examiners (National Registry) and to provide the State Driver's Licensing Agencies (SDLAs) sufficient time to make the necessary IT programming changes after the new National Registry system is available.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2018-0152 using any of the following methods:

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

- Mail: Dockets Operations, 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: Dockets Operations, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, 20590-0001, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Submitting Comments" portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-4001, fmcsamedical@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

FMCSA organizes this supplemental notice of proposed rulemaking (SNPRM) as follows:

I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments

If you submit a comment, please include the docket number for this SNPRM (FMCSA-2018-0152), indicate the specific section of this document to which your 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to https://www.regulations.gov/docket/FMCSA-2018-0152/document, click on this SNPRM, click "Comment," and type your comment into the text box on the following screen.

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.

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the SNPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the SNPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the SNPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington DC 20590-0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to https://www.regulations.gov/docket/FMCSA-2018-0152/document and choose the document to review. To view comments, click this SNPRM, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there

to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

C. Privacy Act

DOT solicits comments from the public to better inform its rulemaking process, in accordance with 5 U.S.C. 553(c). 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 – Federal Docket Management System (FDMS)), which can be reviewed at www.transportation.gov/privacy.

II. EXECUTIVE SUMMARY

FMCSA's proposes an adjustment in the compliance date from June 22, 2021, to June 23, 2025, for several provisions in the Medical Examiner's Certification Integration final rule (80 FR 22790, Apr. 23, 2015). Specifically, the Agency proposes to postpone, to June 23, 2025, the provisions for: (1) FMCSA to electronically transmit, from the National Registry to the SDLAs, driver identification information, examination results, and restriction information from examinations performed for holders of commercial learner's permits (CLPs) or commercial driver's licenses (CDLs) (interstate and intrastate); (2) FMCSA to electronically transmit to the SDLAs medical variance information for all commercial motor vehicle (CMV) drivers; (3) SDLAs to post on the Commercial Driver's License Information System (CDLIS) driver record the driver identification, examination results, and restriction information received electronically from FMCSA; and (4) motor carriers to no longer be required to verify that CLP/CDL drivers were certified by a certified medical examiner (ME) listed on the National Registry.

The compliance date for these provisions was postponed previously from June 22, 2018, to June 22, 2021, by an interim final rule (83 FR 28774). This SNPRM identifies

the regulations adopted in the IFR that FMCSA now proposes to amend to include a compliance date generally of June 23, 2025.

III. LEGAL BASIS FOR THE RULEMAKING

The legal basis of the 2015 final rule, set out at 80 FR 22791-22792, also serves as the legal basis for this rule. Brief summaries of the relevant legal bases for the actions taken in this rulemaking are set out below.

A. Authority over Drivers Affected; Drivers Required to Obtain a Medical Examiners Certificate (MEC)

FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce for non-excepted industries (49 U.S.C. 31136(a)(3) and 31502(b)). Subject to certain limited exceptions,[1] FMCSA has fulfilled the statutory mandate by establishing physical qualification standards for all drivers covered by these provisions (49 CFR 391.11(b)(4)). Such drivers must obtain, from an ME, a certification indicating that the driver is physically qualified to drive a CMV (49 CFR 391.41(a), 391.43(g) and (h)). FMCSA is also required to ensure that the operation of a CMV does not have a deleterious effect on the physical condition of drivers (49 U.S.C. 31136(a)(4)).

Drivers Required to Obtain a CDL

The authority for FMCSA to require an operator of a CMV to obtain a CDL is based on 49 U.S.C. 31302, and the authority to set minimum standards for the testing and fitness of such operators rests on 49 U.S.C. 31305.

B. Authority to Regulate State CDL Programs

Under 49 U.S.C. 31311 and 31314, FMCSA has authority to prescribe procedures and requirements the States must follow when issuing CDLs (see, generally, 49 CFR parts 383 and 384). In particular, under section 31314, in order to avoid loss of certain

[1] See 49 CFR 390.3(f) and 391.2.

Federal-aid highway funds otherwise apportioned under 23 U.S.C. 104(b), each State must comply with the requirement in 49 U.S.C. 31311(a)(1) to adopt and carry out a program for testing and ensuring the fitness of individuals to operate CMVs consistent with the minimum standards prescribed by FMCSA under 49 U.S.C. 31305(a) (see also 49 CFR 384.201).

C. Authority to Require Reporting by MEs

FMCSA has authority under 49 U.S.C. 31133(a)(8) and 31149(c)(1)(E) to require MEs on the National Registry to obtain information from CMV drivers regarding their physical health, to record and retain the results of the physical examinations of CMV drivers, and to require frequent reporting of the information contained on the MECs they issue. Section 31133(a)(8) gives the Agency broad administrative powers (specifically "to prescribe recordkeeping and reporting requirements") to assist in ensuring motor carrier safety and driver health (Sen. Report No. 98-424 at 9 (May 2, 1984)). Section 31149(c)(1)(E) authorizes a requirement for electronic reporting of certain specific information by MEs, including applicant names and numerical identifiers as determined by the FMCSA Administrator. Section 31149(c)(1)(E) sets minimum monthly reporting requirements for MEs and does not preclude the exercise by the Agency of its broad authority under section 31133(a)(8) to require more frequent and more inclusive reports.[2] In addition to the general rulemaking authority in 49 U.S.C. 31136(a), the Secretary of Transportation is specifically authorized by section 31149(e) to "issue such regulations as may be necessary to carry out this section."

Authority to implement these various statutory provisions has been delegated to the Administrator of FMCSA (49 CFR 1.87(f)).

IV. BACKGROUND

[2] The provisions of section 31149(c)(1)(E) have been amended by section 32302(c)(1)(A) of Moving Ahead for Progress in the 21st Century, Pub. L. 112-141, 126 Stat. 405 (July 6, 2012).

The history of the regulations that FMCSA adopted in 2015 and the developments leading to the 2018 interim final rule are set out in the interim final rule, at 83 FR at 28776. The Agency also stated that it might further amend the provisions amended by the interim final rule (83 FR at 28777). Since issuing the 2015 final rule, there have been ongoing challenges associated with launching a new National Registry IT system. Among those challenges was an unsuccessful attempt by an intruder to compromise the National Registry website in December 2017. Although no personal information was exposed, FMCSA took the National Registry system offline until mid-2018 to ensure it was secure. This action and other related actions affected the schedule for implementing the provisions of the 2015 final rule and resulted in the postponement of the compliance date by the 2018 IFR.

Since publication of the 2018 IFR, FMCSA experienced additional setbacks in its efforts to launch the National Registry replacement system that require an additional delay. The Agency attempted to launch the first stage of the replacement system in May 2019, but the system's performance capabilities fell short of what was needed to implement the 2015 final rule. After a detailed analysis of the functional requirements, the Agency issued a request for proposals to obtain the services of a new contractor and selected a vendor in December 2020 to develop the replacement system by early 2022. The work would include delivery of technical specifications to the SDLAs for use in implementing changes to their respective systems.

FMCSA anticipates that the SDLAs will need three years following the completion and release of the new IT system and its technical specifications to develop and implement those changes. This was the same amount of time allowed for this activity in the 2015 final rule and the 2018 IFR. In light of these challenges, FMCSA intends to finalize the extended compliance date for the affected regulations by issuing a final rule before June 22, 2021.

V. DISCUSSION OF PROPOSED RULEMAKING

The proposal to delay the compliance date means that through June 22, 2025:

- Certified MEs would continue issuing MECs to qualified CLP/CDL applicants/holders;
- CLP/CDL applicants/holders would continue to provide the SDLA a copy of their MEC;
- Motor carriers would continue verifying that drivers were certified by an ME listed on the National Registry; and
- SDLAs would continue processing paper copies of MECs they receive from CLP/CDL applicants/holders.

In the 2018 IFR, FMCSA did not delay the requirement for MEs performing physical examinations of CMV drivers to report results of all CMV drivers' physical examinations (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. MEs' submission of reports by midnight (local time) of the next calendar day following the examination also allows FMCSA to begin electronically transmitting this important safety data to each State when that State is ready to receive the information, thereby providing States additional flexibility to implement the provisions of this rulemaking at their own pace. FMCSA believes some States may be prepared to receive this data ahead of the June 23, 2025, date to take advantage of the efficiencies and added security the new process affords.

When FMCSA is ready to begin electronically transmitting MEC information from the National Registry, and an SDLA is ready to begin receiving this information electronically from the National Registry, FMCSA will work with the SDLA involved on the most appropriate means to use such electronic transmissions. FMCSA states that, under such circumstances, electronic transmission of the MEC information may be an acceptable means for CDL and CLP holders to satisfy the requirement of providing the

MEC to the SDLA. In order to avoid any uncertainty, provisions were added by the IFR to the appropriate regulations stating that, in case of a conflict between the medical certification information provided electronically by FMCSA and information on a paper version of the MEC, the electronic record will be controlling. On the other hand, the provisions in the regulations governing the handling of these matters under the current procedures will remain in effect through June 22, 2025, to ensure continued compliance by SDLAs and other affected stakeholders until the electronic transmission of MEC information is operational for all SDLAs.

If some SDLAs begin receiving MEC information from FMCSA prior to June 23, 2025, FMCSA and the SDLAs will make every effort to advise all stakeholders when such transmission begins. MEs listed on the National Registry, employers, and enforcement personnel (both State and Federal) will need to be made fully aware that some SDLAs may be following procedures different from the remaining States.

In 49 CFR parts 383, 384, and 391, FMCSA proposes to change the compliance dates of the rules as shown in the table below.

Table 1—Date Changes

Section to be changed (in Title 49 CFR):	**Current Compliance Dates:**	**New Compliance Dates:**
383.71 (h)(1)(i)	June 22, 2021	June 23, 2025
383.71 (h)(1)(ii)	June 22, 2021	June 23, 2025
383.71(h)(3)(i)	June 22, 2021	June 23, 2025
383.71(h)(3)(ii)	June 22, 2021	June 23, 2025
383.73 (a)(2)(vii)(A)	June 22, 2021	June 23, 2025
383.73 (a)(2)(vii)(B)	June 22, 2021	June 23, 2025
383.73(b)(5)(i)	June 22, 2021	June 23, 2025
383.73(b)(5)(ii)	June 22, 2021	June 23, 2025
383.73(o)(1)(i)	June 22, 2021	June 23, 2025
383.73(o)(1)(ii)	June 22, 2021	June 23, 2025
383.73(o)(2)(i)	June 22, 2021	June 23, 2025
383.73(o)(2)(ii)	June 22, 2021	June 23, 2025
383.73(o)(3)(i)	June 22, 2021	June 23, 2025
383.73(o)(3)(ii)	June 22, 2021	June 23, 2025
383.73(o)(4)(i)(A)(*1)*	June 22, 2021	June 23, 2025
383.73(o)(4)(i)(A)(*2)*	June 22, 2021	June 23, 2025

383.73(o)(4)(ii)(A)	June 22, 2021	June 23, 2025
383.73(o)(4)(ii)(B)	June 22, 2021	June 23, 2025
384.301(i)	June 22, 2021	June 23, 2025
391.23(m)(2)(i)(B)(*1*)	June 21, 2021	June 22, 2025
391.23(m)(2)(i)(C)	June 21, 2021	June 22, 2025
391.23(m)(3)(i)(B)(*1*)	June 21, 2021	June 22, 2025
391.23(m)(3)(i)(C)	June 21, 2021	June 22, 2025
391.41(a)(2)(i)(A)	June 21, 2021	June 22, 2025
391.41(a)(2)(i)(B)	June 22, 2021	June 23, 2025
391.41(a)(2)(ii)	June 21, 2021	June 22, 2025
391.43(g)(2)(i)	June 22, 2021	June 23, 2025
391.43(g)(2)(ii)	June 22, 2021	June 23, 2025
391.43(g)(3)	June 22, 2021	June 23, 2025
391.45(g)	June 22, 2021	June 23, 2025
391.51(b)(7)(ii)	June 21, 2021	June 22, 2025
391.51(b)(9)(ii)	June 21, 2021	June 22, 2025

FMCSA is providing a period of 30 days for public comment regarding its intentions to finalize the compliance dates for the regulations listed above. FMCSA is particularly interested in input on whether the three-year period for SDLA implementation is appropriate, or could even be reduced. At the close of the comment period and after consideration of the comments received, the Agency plans to publish the necessary final rule with the extended compliance dates as soon as feasible.

VI. INTERNATIONAL IMPACTS

Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VII. SECTION-BY-SECTION ANALYSIS

This section-by-section analysis describes the proposed changes in numerical order.

Parts 383, 384, and 391

In parts 383, 384, and 391, FMCSA proposes new dates as stated in Table 1 above. FMCSA does not propose any other changes in today's SNPRM.

VIII. 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 has considered the impact of this SNPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and DOT's regulatory policies and procedures. The Office of Information and Regulatory Affairs (OIRA) determined that this SNPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under these Orders.

The Medical Examiner's Certification Integration Final Rule, published April 23, 2015 (80 FR 22790), amended the FMCSRs to establish a streamlined process for SDLAs to receive CMV driver physical examination results from the MEs, via the National Registry. The 2015 final rule estimated that the National Registry would be able to receive and transmit this information on a daily basis by June 22, 2018, and established compliance dates for MEs, motor carriers, FMCSA, and the States accordingly. This proposed rule would delay until June 23, 2025, the compliance date requiring (1) FMCSA to electronically transmit from the National Registry to the SDLAs driver identification information, examination results, and restriction information from examinations performed for holders of CLPs/CDLs (interstate and intrastate); (2) FMCSA to electronically transmit to the SDLAs medical variance information for all CMV drivers; (3) SDLAs to post driver identification, examination results, and restriction information received electronically from FMCSA; and (4) that motor carriers no longer would need to verify that their drivers holding CLPs or CDLs were certified by an ME listed on the National Registry. This action is being taken to ensure that SDLAs have

sufficient time to make the necessary IT programming changes. Although this rule would impact the responsibilities of MEs, CMV drivers, motor carriers, SDLAs, and FMCSA, it is not expected to generate any economic costs or benefits.

The 2015 final rule accounted for costs associated with system development and implementation, and benefits associated with streamlined processes and reduced paperwork. These costs and benefits (anticipated under the 2018 IFR to be realized on the June 22, 2021, compliance date) would not be realized on June 22, 2021 under this SNPRM. Therefore, the baseline against which to evaluate the impacts of this SNPRM is that the necessary systems will not be ready on June 22, 2021, and will instead be ready on June 23, 2025. This rule aligns the compliance date with the date when the systems will be ready and thus, when the costs and benefits estimated in the 2015 final rule can be realized.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801-808), OIRA designated this rule as not a "major rule."[3]

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[4] 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

[3] A "major rule" means any rule that the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

[4] Pub. L. 104–121, 110 Stat. 857, (Mar. 29, 1996).

independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)). 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.

FMCSA considers all of the 70,803 certified MEs who are certified and listed on the National Registry to be small entities.[5] While this may be a substantial number of small entities, this rule does not impose any new requirements on MEs. MEs are already required, under the 2015 final rule, to report results of all CMV drivers' physical examinations (including the results of examinations where the driver was found not to be qualified) to FMCSA by midnight (local time) of the next calendar day following the examination. In addition, this rule does not result in additional costs or benefits, nor does it inhibit the realization of the cost savings identified in the 2015 final rule. The unanticipated National Registry outage and subsequent IT development issues have led to delays in the development of the process for the electronic transmission of MEC information and medical variances, and the final specifications have not yet been published and released to the SDLAs. This rule aligns the compliance date with the date when the systems will be ready and thus, when the costs and benefits estimated in the 2015 final rule can be realized. As such, this rule will not result in a significant economic impact on the MEs.

CMV drivers are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, CMV drivers are considered neither a small business under Section 601(3) of the RFA, nor are they considered a small organization under Section 601(4) of the RFA.

All motor carriers would likely be impacted by this rule; however, the rule would impose no new obligations. FMCSA does not know how many of these motor carriers

[5] 70,803 certified MEs listed on the National Registry as of May 14, 2020.

would be considered "small." The U.S. Small Business Administration (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the North American Industry Classification System (NAICS).[6] This rule could affect many different industry sectors; for example, the transportation sector (e.g., general freight trucking industry group (4841) and the specialized freight trucking industry group (4842)), the agricultural sector (11), and the construction sector (23). Industry groups within these sectors have size standards based on the number of employees, or on the amount of annual revenue. Regardless of how many small entities are in this population, this rule as proposed is not expected to generate any economic costs or benefits. Therefore, FMCSA estimates that, while this rule as proposed may affect a substantial number of small entities, it would not have a significant impact on those entities.

This rule also directly affects the States through their SDLAs. Under the standards of the RFA, as amended by the SBREFA, the States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in Section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under Section 601(5) of the RFA, both because State government is not included among the various levels of government listed in Section 601(5), and because, even if this were the case, no State, including the District of Columbia, has a population of less than 50,000, which is the criterion for a governmental jurisdiction to be considered small under Section 601(5) of the RFA.

Consequently, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

[6] Executive Office of the President, Office of Management and Budget (OMB). "North American Industry Classification System." 2017. Available at: https://www.census.gov/eos/www/naics/2017NAICS/2017_NAICS_Manual.pdf (accessed March 20, 2018)

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,[7] FMCSA wants to assist small entities in understanding this SNPRM so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the SNPRM would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under FOR FURTHER INFORMATION CONTACT.

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.

E. 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. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $168 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2019 levels) or more in any 1 year. Though this SNPRM would not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

[7] Pub. L. 104–121, 110 Stat. 857, (Mar. 29, 1996).

F. Paperwork Reduction Act

This SNPRM contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

G. 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 SNPRM would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this SNPRM does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

The Consolidated Appropriations Act, 2005,[8] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This SNPRM would not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,[9] requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

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[8] Pub. L. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).
[9] Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

I. 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.

J. National Environmental Policy Act of 1969

FMCSA analyzed this SNPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (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), Appendix 2, paragraph (s)(7) and paragraph (t)(2). The Categorical Exclusion (CE) in paragraph (s)(7) covers requirements for State-issued commercial license documentation and paragraph (t)(2) addresses regulations that ensure States have the appropriate information systems and procedures concerning CDL qualifications. The content in this interim final rule is covered by these CEs and the final action does not have any effect on the quality of the environment.

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

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, parts 383, 384, and 391 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: 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; secs. 5401 and 7208 of Pub. L. 114-94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

2. Amend § 383.71 by revising paragraphs (h)(1) and (3) to read as follows:

§ 383.71 Driver application and certification procedures.

* * * * * *

(h) * * *

(1) *New CLP and CDL applicants.* (i) Before June 23, 2025, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR

390.5, and the State will post a medical qualifications status of "certified" on the CDLIS driver record for the driver;

(ii) On or after June 23, 2025, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must be medically examined and certified in accordance with 49 CFR 391.43 as medically qualified to operate a CMV by a medical examiner, as defined in 49 CFR 390.5. Upon receiving an electronic copy of the medical examiner's certificate from FMCSA, the State will post a medical qualifications status of "certified" on the CDLIS driver record for the driver;

* * * * * *

(3) *Maintaining the medical certification status of "certified."* (i) Before June 23, 2025, in order to maintain a medical certification status of "certified," a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate;

(ii) On or after June 23, 2025, in order to maintain a medical certification status of "certified," a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must continue to be medically examined and certified in accordance with 49 CFR 391.43 as physically qualified to operate a commercial motor vehicle by a medical examiner, as defined in 49 CFR 390.5. FMCSA will provide the State with an electronic copy of the medical examiner's certificate information for all subsequent medical examinations in which the driver has been deemed qualified.

3. Amend § 383.73 by revising paragraphs (a)(2)(vii), (b)(5), (o)(1)(i) introductory text, (o)(1)(ii) introductory text, (o)(2), (o)(3), (o)(4)(i)(A), and (o)(4)(ii) to read as follows:

§ 383.73 State procedures

(a) * * *

(2) * * *

(vii)(A) Before June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if the CLP applicant submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(B) On or after June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if FMCSA provides current medical examiner's certificate information electronically, post all required information matching the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(b) * * *

(5)(i) Before June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if the CDL holder submits a current medical examiner's certificate, date-stamp the medical examiner's certificate and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(ii) On or after June 23, 2025, for drivers who certified their type of driving according to § 383.71(b)(1)(i) (non-excepted interstate) and, if FMCSA provides current medical examiner's certificate information electronically, post all required information matching the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

* * * * *

(o) * * *

(1)(i) *Status of CLP or CDL holder.* Before June 23, 2025, for each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

* * * * *

(ii) *Status of CLP or CDL holder.* On or after June 23, 2025, for each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

* * * * *

(2) *Status update.* (i) Before June 23, 2025, the State must, within 10 calendar days of the driver's medical examiner's certificate or medical variance expiring, the medical variance being rescinded or the medical examiner's certificate being voided by FMCSA, update the medical certification status of that driver as “not certified.”

(ii) On or after June 23, 2025, the State must, within 10 calendar days of the driver's medical examiner's certificate or medical variance expiring, the medical examiner's certificate becoming invalid, the medical variance being rescinded, or the medical examiner's certificate being voided by FMCSA, update the medical certification status of that driver as “not certified.”

(3) *Variance update.* (i) Before June 23, 2025, within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(ii) On or after June 23, 2025, within 1 business day of electronically receiving medical variance information from FMCSA regarding the issuance or renewal of a

medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) * * *

(i) * * *

(A)(1) Before June 23, 2025, notify the CLP or CDL holder of his/her CLP or CDL "not-certified" medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver submits a current medical examiner's certificate and/or medical variance, or changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State);

(2) On or after June 23, 2025, notify the CLP or CDL holder of his/her CLP or CDL "not-certified" medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver has been medically examined and certified in accordance with 49 CFR 391.43 as physically qualified to operate a commercial motor vehicle by a medical examiner, as defined in 49 CFR 390.5, or the driver changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State).

* * * * *

(ii)(A) Before June 23, 2025, if a driver fails to provide the State with the certification contained in § 383.71(b)(1), or a current medical examiner's certificate if the driver self-certifies according to § 383.71(b)(1)(i) that he/she is operating in non-excepted interstate commerce as required by § 383.71(h), the State must mark that CDLIS driver record as "not-certified" and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

(B) On or after June 23, 2025, if a driver fails to provide the State with the certification contained in § 383.71(b)(1), or, if the driver self-certifies according to § 383.71(b)(1)(i) that he/she is operating in non-excepted interstate commerce as required by § 383.71(h) and the information required by paragraph (o)(2)(ii) of this section is not received and posted, the State must mark that CDLIS driver record as "not-certified" and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

* * * * *

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

4. 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; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114-94, 129 Stat. 1312, 1546, 1593 and 49 CFR 1.87.

5. Amend § 384.301 by revising paragraph (i) to read as follows:

§ 384.301 Substantial compliance-general requirements.

* * * * *

(i) 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 June 22, 2015, as soon as practical, but, unless otherwise specifically provided in this part, not later than June 23, 2025.

* * * * *

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

6. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b), Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.87.

7. Amend § 391.23 by revising paragraphs (m)(2)(i)(B)(*1*) and (m)(2)(i)(C), (m)(3)(i)(B)(*1*) and (m)(3)(i)(C), to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B)(*1*) Beginning on May 21, 2014, and through June 22, 2025, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

* * * * *

(C) *Exception*. Beginning on January 30, 2015, and through June 22, 2025, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(b)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

(3) * * *

(i) * * *

(B)(*1*) Through June 22, 2025, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

* * * * *

(C) Through June 22, 2025, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(2)(vii) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

8. Amend § 391.41 by revising paragraphs (a)(2)(i) and (ii), to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) * * *

(2) * * *

(i)(A) Beginning on January 30, 2015 and through June 22, 2025, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with 49 CFR 383.71(h) documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy, for more than 15 days after the date it was issued as valid proof of medical certification.

(B) On or after June 23, 2025, a driver required to have a commercial driver's license or a commercial learner's permit under 49 CFR part 383, and who has a current medical examiner's certificate documenting that he or she meets the physical qualification

requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h).

(ii) Beginning on July 8, 2015, and through June 22, 2025, a driver required to have a commercial learner's permit under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy for more than 15 days after the date it was issued as valid proof of medical certification.

* * * * *

9. Amend § 391.43 by revising paragraphs (g)(2) and (3) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(g) * * *

(2)(i) Before June 23, 2025, if the medical examiner finds that the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it.

(ii) On or after June 23, 2025, if the medical examiner identifies that the person examined will not be operating a commercial motor vehicle that requires a commercial driver's license or a commercial learner's permit and finds that the driver is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or

she must complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner must provide a copy to a prospective or current employing motor carrier who requests it.

(3) On or after June 23, 2025, if the medical examiner finds that the person examined is not physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), he or she must inform the person examined that he or she is not physically qualified, and that this information will be reported to FMCSA. All medical examiner's certificates previously issued to the person are not valid and no longer satisfy the requirements of § 391.41(a).

* * * * *

10. Amend § 391.45 by revising paragraph (g) to read as follows:

§ 391.45 Persons who must be medically examined and certified.

* * * * *

(g) On or after June 23, 2025, any person found by a medical examiner not to be physically qualified to operate a commercial motor vehicle under the provisions of paragraph (g)(3) of § 391.43.

11. Amend § 391.51 by revising paragraphs (b)(7)(ii) and (b)(9)(ii) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(7) * * *

(ii) *Exception*. For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2015, a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated "not-certified" to operate a CMV in interstate commerce. After January 30, 2015, and through June 22, 2025, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.

* * * * *

(9) * * *

(ii) Through June 22, 2025, for drivers required to have a CDL, a note relating to verification of medical examiner listing on the National Registry of Certified Medical Examiners required by § 391.23(m)(2).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

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Meera Joshi,
Acting Administrator.

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