



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 384

[Docket No. FMCSA-2020-0198]

RIN 2126-AC36

Commercial Driver's License Standards, Requirements and Penalties; Exclusively Electronic Exchange of Driver History Record Information

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

ACTION: Final rule.

SUMMARY: FMCSA codifies the statutory requirement that State driver licensing agencies (SDLAs) implement a system and practices for the exclusively electronic exchange of driver history record (DHR) information through the Commercial Driver's License Information System (CDLIS), including the posting of convictions, withdrawals, and disqualifications. The rule aligns FMCSA's regulations with existing statutory requirements set forth in the Moving Ahead for Progress in the 21st Century Act (MAP-21). The rule also establishes a date by which States must be in substantial compliance with this final rule.

DATES: *Effective Date:* This final rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

Compliance Date: Compliance with the final rule is required August 22, 2024.

Petitions for Reconsideration: Petitions for reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [Insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Joshua Jones, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-7332, cdlcompliance@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. AVAILABILITY OF RULEMAKING DOCUMENTS

For access to docket FMCSA-2020-0198 to read background documents, go to <https://www.regulations.gov/docket/FMCSA-2020-0198/document> at any time, or to Dockets Operations at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

II. EXECUTIVE SUMMARY

This rule revises 49 CFR 384.208, Notification of disqualification, and 384.209, Notification of traffic violations, to require that States implement a system and practices for the exclusively electronic exchange of DHR information through CDLIS, including the posting of convictions, withdrawals, and disqualifications. The requirements are mandated by sections 32305(a)(1) and 32305(b)(1)(B) of MAP-21 (Pub. L. 112-141, 126 Stat. 405, 792, codified at 49 U.S.C. sections 31309(e)(4)(A)(ii) and 31311(a)(23)). The purpose of the rule is to align FMCSA's regulations with existing statutory requirements. States must achieve substantial compliance with this requirement as soon as practicable, but not later than 3 years after the effective date of the final rule. "Substantial compliance" means that a State meets this requirement "by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices." 49 CFR 384.301(a).

Because all States currently have the technical capability to send DHR information electronically through CDLIS, including convictions, withdrawals, and disqualifications, the Agency does not expect this rule to result in incremental costs or benefits to the States. Costs and benefits are discussed further below in Section VI.

III. LEGAL BASIS FOR THE RULEMAKING

This final rule is based on the general authority of 49 U.S.C. chapter 313. The provisions in 49 U.S.C. chapter 313, implemented in 49 CFR parts 383 and 384, establish the commercial driver's license (CDL) and commercial learner's permit (CLP) programs, as well as the CDLIS. The CDLIS is a national information technology system facilitating the electronic exchange of driver-specific data among the States, including commercial license status and driving history (49 U.S.C. 31309). The States are required to ensure that CDL and CLP holders convicted of serious traffic violations are prohibited from operating a CMV for the periods prescribed (49 U.S.C. 31310). The Secretary of Transportation (the Secretary) is directed to monitor the States' compliance with the licensing, testing, and qualification standards set forth in the statute (49 U.S.C. 31311). The goal of these provisions is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles, and to remove unqualified drivers from public roads.

As noted above, this final rule derives from the specific authority of sections 32305(a)(1) and 32305(b)(1)(B) of MAP-21. Those provisions require, respectively, that States use CDLIS to receive and submit driver conviction and disqualification data, and that, to avoid having apportionments from the Highway Trust Fund under 23 U.S.C. 104(b)(1) and (b)(2) withheld, States must implement procedures for the exclusively electronic exchange of DHR information on CDLIS, including the posting of convictions, withdrawals, and disqualifications. This final rule incorporates those requirements into the Code of Federal Regulations (CFR).

The Administrative Procedure Act (APA) provides that notice and comment are not required when the agency finds “good cause” to dispense with such procedures, and incorporates the finding, and a brief statement of reasons supporting the finding, in the rule issued. Good cause exists when the agency determines that notice and public comment procedures “are impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. 553(b)(B)). In this case, Congress did not vest any discretion in the Secretary for carrying out the statutory provisions cited above; these requirements are already in effect and enforceable, regardless of whether they are incorporated in the CFR. The Agency therefore finds that notice and public comment are unnecessary because FMCSA is not authorized to make any changes in these requirements in response to public comments. This final rule simply codifies an existing statutory requirement, thereby aligning the statute and CFR.

The requirements pertaining to public participation in rulemaking, as set forth in 49 U.S.C. 31136(g) and 49 CFR 389.13(b), do not apply here because this final rule is not a major rule.¹

Finally, the FMCSA Administrator is delegated authority under 49 CFR 1.87(e)(1) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313, relating to commercial motor vehicle operators.

IV. DISCUSSION OF FINAL RULE

As noted above, MAP-21 amended 49 U.S.C. 31311(a) by adding the requirement that States implement a system and practices for the exclusively electronic exchange of

¹ A “major rule” means any rule that the Administrator of Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) 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, or 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).

driver history record information on the system the Secretary maintains under section 31309 (i.e., CDLIS), including the posting of convictions, withdrawals, and disqualifications. This final rule codifies those requirements.

In March 2020, FMCSA held an information listening session during its regular “Roundtable” discussion with the American Association of Motor Vehicle Administrators (AAMVA), SDLAs, and other stakeholders affected by the electronic exchange requirements. While all States currently have the technical capability to transmit the DHR information through CDLIS, some SDLAs are unable to do so when the driver information (e.g., driver’s CDL number, date of birth, or State of record), required for CDLIS to validate and accept the electronic record, is incorrect or missing. Under those circumstances, States must rely on alternative methods of transmission, such as the U.S. mail. Some States also noted the need for specific authorization by their State legislatures to incorporate the exclusively electronic exchange requirements into State law.

In recognition of these issues, the final rule provides that States should achieve substantial compliance as soon as possible, but not later than 3 years from the effective date of this rule. This period provides sufficient time for those SDLAs required to obtain authorization from their State legislatures to do so. In addition, FMCSA will work closely with AAMVA and the States to address current systemic impediments to transmitting DHR information through CDLIS, and to provide related regulatory guidance responding to SDLAs’ questions and concerns. The Agency acknowledges that some SDLAs believe CDLIS is not the most efficient electronic means of transmitting driver conviction information. As discussed above, however, FMCSA must adhere to the statutory requirements codified by this final rule, which specify that CDLIS be used to transmit the information.

V. SECTION-BY-SECTION ANALYSIS

The words “via CDLIS” are added to the end of paragraph (a) of § 384.208. The phrase “and must be transmitted through CDLIS” is added to the end of paragraph (c) of § 384.209.

This final rule also adds new paragraph (n) to § 384.301, requiring States to come into substantial compliance with the changes made by this final rule within 3 years of its effective date.

VI. 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 final rule 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. OIRA determined that this final rule 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.

This rulemaking codifies a mandate imposed by MAP-21, as set forth in 49 U.S.C. sections 31309(e)(4)(A)(ii) and 31311(a)(23). Those provisions require, respectively, that States use CDLIS to receive and submit driver conviction and disqualification data, and that, to avoid having apportionments from the Highway Trust Fund under 23 U.S.C 104(b)(1) and (b)(2) withheld, States must implement procedures for the exclusively electronic exchange of DHR information on CDLIS, including the posting of convictions, withdrawals, and disqualifications.

While all States currently have the technical capability to comply with the MAP-21 requirements by electronically transmitting DHR information through CDLIS, some

States must rely on non-electronic means (e.g., mail) to transfer the DHR information on those occasions when they do not have sufficient information for CDLIS to validate and accept transmission (e.g., when there is a missing or incorrect date of birth or incorrect CDL number). As discussed above, FMCSA will work with AAMVA and the States to address the CDLIS constraints on submitting electronic DHR information, which should minimize the extent to which the initiating State is unable to complete the transmission due to deficient information, and to streamline further the exchange of DHR information through CDLIS. CDLIS costs may result, however, if AAMVA determines that software updates are necessary at the State level to accomplish this change. At this time, the existence or extent of potential CDLIS update costs is unknown. If such costs are incurred, States are eligible to apply for Commercial Driver License Program Implementation grants.

Further, FMCSA is aware that at least one State believes exclusively electronic exchange of DHR information would result in a cost savings. Some States currently employ people and/or pay overtime to process paper convictions; the more efficient electronic submission of DHR information will allow those resources to be used for other purposes. FMCSA does not know the extent of these cost savings in any given State, or the number of States that would experience a cost savings.

B. Congressional Review Act

This rule is not a major rule as defined under the Congressional Review Act (5 U.S.C. 801, et seq.).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq.) applies to any rule subject to notice and comment rulemaking under section 553(b) of the APA and 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. FMCSA is not

required to complete a regulatory flexibility analysis, because, as discussed earlier in the Legal Basis section, this action is not subject to notice and comment under section 553(b) of the APA.

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,² FMCSA wants to assist small entities in understanding this final rule so 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 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. In particular, 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 \$100,000,000 in 1995, adjusted for inflation to 2019 levels) or

² Pub. L. 104-121, 110 Stat. 857, (Mar. 29, 1996).

more in any one 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.

F. Paperwork Reduction Act

This final rule 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 Executive Order 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.” This rule amends the CDL regulations in 49 CFR part 384 to align regulatory requirements with existing statutory requirements on States. Because this rule makes conforming, and not substantive, changes to requirements already imposed on States in the CDL program, FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy Impact Assessment

The Consolidated Appropriations Act, 2005, (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. Because this rule does not require the collection of personally identifiable information, the Agency is not required to conduct a PIA.

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, Pub. L. 107-347, section 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct 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 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 Environment Policy Act of 1969

FMCSA analyzed this rule pursuant to 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, Mar. 1, 2004), Appendix 2, paragraphs (6)(t)(1). The Categorical Exclusion (CE) in paragraph (6)(t)(1) covers requirements for regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by including the minimum standards for the actions States must take to be in substantial compliance with each of the statutory requirements of 49 U.S.C. 31311(a). 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.

List of Subjects in 49 CFR Part 384

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

Accordingly, FMCSA amends 49 CFR part 384 as follows:

**PART 384 – STATE COMPLIANCE WITH COMMERCIAL DRIVER’S
LICENSE PROGRAM**

1. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; secs. 103 and 215, Pub. L. 106-159, 113 Stat. 1753, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

2. Amend § 384.208 by revising paragraph (a) to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CLP or CDL holder licensed by another State, or disqualifying an out-of-State CLP or CDL holder’s privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification via CDLIS.

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3. Amend § 384.209 by revising paragraph (c) to read as follows:

§ 384.209 Notification of traffic violations.

* * * * *

(c) *Required timing of notification.* Notification of traffic violations must be made within 10 days of the conviction and must be transmitted through CDLIS.

4. Amend § 384.301 by adding paragraph (n) to read as follows:

§ 384.301 Substantial compliance-general requirements.

* * * * *

(n) A State must come into substantial compliance with the requirements of this part in effect as of [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], as soon as practicable, but not later than August 22, 2024.

Issued under authority delegated in 49 CFR 1.87.

Meera Joshi,
Deputy Administrator.

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