



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 383, 384**

**[Docket No. FMCSA-2017-0047]**

**RIN 2126-AB99**

**Military Licensing and State Commercial Driver's License Reciprocity**

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

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** This proposed rule would allow State Driver Licensing Agencies (SDLAs) to waive the requirements for the commercial driver's license (CDL) knowledge tests for certain individuals who are, or were, regularly employed within the last year in a military position that requires/required, the operation of a commercial motor vehicle (CMV).

**DATES:** Comments on this notice must be received on or before [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2017-0047 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays.

- Fax: 202-493-2251.

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

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

**SUPPLEMENTARY INFORMATION:**

This notice of proposed rulemaking (NPRM) is organized as follows:

- I. Public Participation and Request for Comments
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## **I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS**

### **A. Submitting Comments**

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2017-0047), indicate the specific section of this document to which each section 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 e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2017-0047, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

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

**B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2017-0047, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

**C. Privacy Act**

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](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**D. Waiver of Advance Notice of Proposed Rulemaking**

Under section 5202 of the Fixing America's Surface Transportation Act, Public Law 114-94 (FAST Act), if a regulatory proposal is likely to lead to the promulgation of a major rule, agencies are required to start the process with an advance notice of proposed rulemaking (ANPRM) or a negotiated rulemaking, unless the Agency finds good cause that an ANPRM is impracticable, unnecessary, or contrary to the public interest. This NPRM is not subject to these provisions because it is not likely to lead to the promulgation of a major rule.

## **II. EXECUTIVE SUMMARY**

This proposed rule would allow SDLAs to waive the requirements for a knowledge test for certain individuals who are regularly employed, or were regularly employed within the last year, in a military position requiring the operation of a CMV. This rulemaking implements part of section 5401 of the FAST Act.

Today's proposed rule, in combination with a recent rulemaking—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, published on October 13, 2016, (81 FR 70634), hereafter referred to as the Military CDL I Rule—would give States the option to waive both the CDL knowledge and skills tests for certain current and former military service members who received training in the operation of CMVs during active-duty or reserve service in military vehicles that are comparable to CMVs. The combined effect of the Military CDL I Rule and this proposal would allow certain current or former military drivers, domiciled in participating States, to transition more quickly from the armed forces to civilian driving careers.

FMCSA evaluated potential costs and benefits associated with this proposed

rulemaking. The Agency concluded that costs, if any, would be minimal and are not quantifiable, while benefits would accrue primarily to certain current and former military service members transitioning into civilian careers as CMV drivers, and secondarily to their potential employers. Because the proposed rule is voluntary—States are not required to waive the knowledge and/or skills tests—potential variations among States with respect to conditions and limitations imposed beyond those of this proposed rule could be substantial. The Agency is unable to quantify these benefits.

### **III. LEGAL BASIS FOR THE RULEMAKING**

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 49 CFR parts 382, 383, and 384. The NPRM also responds to section 5401(a) of the FAST Act [Pub. L. 114-94, 129 Stat. 1312, 1546, December 4, 2015]. This section requires FMCSA to modify the minimum testing standards of its CDL regulations to credit the training and knowledge that certain current or former military drivers received in the armed forces, including the reserve components and National Guard, in order to drive military vehicles similar to civilian CMVs [49 U.S.C. 31305(d)(1)(C)].

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)]. In general, those regulations must include (1) minimum standards for knowledge and driving (skills) tests, (2) use of a representative vehicle to take the driving test, (3) minimum testing standards, and (4) working knowledge of CMV regulations and vehicle safety systems [49 U.S.C. 31305(a)(1)-(4)].

Section 5401(a) of the FAST Act added 49 U.S.C. 31305(d): “Standards for Training and Testing of Veteran Operators.” Section 31305(d)(1)(A) required the Agency to modify its CDL regulations to “exempt a covered individual from all or a portion of a driving test if the covered individual had experience in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle.” Section 31305(d)(1)(B) required FMCSA to “ensure that a covered individual may apply for an exemption under subparagraph (A) during, at least, the 1-year period beginning on the date on which such individual separates from services in the armed forces or reserve components.” The term “reserve components” includes the Army and Air National Guard. Section 5401(c) also directed the Agency to adopt regulations allowing certain military personnel an exemption from the normal CDL domicile requirement, as authorized by the Military Commercial Driver’s License Act of 2012 [Military CDL Act] and codified at 49 U.S.C. 31311(a)(12)(C). These three provisions were implemented by the Military CDL I Rule.

The last element of section 5401(a), which was not addressed in the Military CDL I Rule, directed the Agency to “credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge” [49 U.S.C. 31305(d)(1)(C)]. That requirement is the subject of this NPRM. It should be noted that section 31305(d)(2)(B) defines a “covered individual” as someone over 21 years of age who is “(i) a former member of the armed forces; or (ii) a former member of the reserve components” [emphasis added]. Limitation of the “credit” to be conferred by section 5401(a) to former members of the active-duty armed forces is at

least understandable, since active-duty service members would presumably not have enough off-duty time to engage in civilian driving requiring a CDL. However, limiting that “credit” to former members of the reserve components would exclude large numbers of current reservist drivers who received the same rigorous military CMV training as active-duty personnel but perform military service only part-time, while holding full-time civilian jobs. Because the clear objective of section 5401(a) is to make it easier for trained military drivers to obtain CDLs and move into civilian driving careers, and because the word “former” in the definition of a “covered individual” largely defeats the purpose of the statute, FMCSA has concluded that it would be appropriate to expand the eligible population. This NPRM would therefore allow SDLAs to waive the knowledge test for both current and former service members who had undergone certain CMV driver training while serving in the military. Using the broad authority of 49 U.S.C. 31315(b), the Agency took the same position (without comment) in granting all SDLAs the temporary option (for a 2-year period) of waiving the CDL knowledge test for current or former members of the military services, including the reserves and National Guard, who had completed certain formal military driver training (81 FR 74861, Oct. 27, 2016).

Federal training standards for CMV drivers were adopted only recently. Section 32304 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) [Pub. L. 112-141, July 6, 2012, 126 Stat. 405, 791] required entry-level driver training (ELDT) of CDL applicants [49 U.S.C. 31305(c)]. That requirement was promulgated on December 8, 2016 [81 FR 88732]. However, the ELDT rule provides that “(3) Veterans with military CMV experience who meet all the requirements and conditions of § 383.77 of this chapter” are not required to complete the new entry-level training program [49 CFR



380.603(a)(3)]. Because § 383.77 authorizes the States to exempt CDL applicants with military CMV experience from the driving skills test, those drivers are also exempt from ELDT.

Under 49 CFR 383.77, as amended by the Military CDL I Rule, the Agency now provides partial credit for military drivers' training and knowledge by allowing States to exempt from the CDL driving skills test those employees who are or were regularly employed within the last year in a military position requiring the operation of a military vehicle that is comparable to a CMV.

This NPRM would implement 49 U.S.C. 31305(d)(1)(C) by giving States the discretion (subject to certain limits) to exempt CDL applicants with military CMV experience from the knowledge test required for a commercial learner's permit (CLP). This NPRM would complete the requirement of section 31305(d)(1)(C) to "credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge."

#### **IV. REGULATORY BACKGROUND**

##### **A. Current Standards**

###### **Knowledge Test**

As specified in 49 CFR 383.71(a)(2)(ii), any individual applying for a CDL or CLP is required to take and pass a general knowledge test. The general knowledge test must meet the Federal standards contained in subparts F, G, and H of part 383 for the commercial vehicle group that person operates or expects to operate.

###### **Skills Test**

A final rule published on May 9, 2011 [“Commercial Driver’s License Testing and Commercial Learner’s Permit Standards” (76 FR 26854)] added new 49 CFR 383.77, which allowed the States to substitute CDL applicants’ eligible military CMV experience for the skills test.

## **B. Recent Activity**

### **Military CDL I Rule**

The Military CDL I Rule addressed the requirements of 49 U.S.C. 31305(d)(1)(A) and (B) (81 FR 70634). That rule allowed States to extend from 90 days to 1 year the period of time for an individual who is regularly employed or was regularly employed in a position requiring operation of a CMV to apply for a skills test waiver after leaving the military.

Additionally, the Military CDL I Rule allowed the SDLA in the State where military personnel are stationed (State of duty station) to coordinate with the State of domicile to expedite the processing of applications and administer the knowledge and skills tests for a CLP or CDL. The SDLA in the State of domicile could then issue the CLP or CDL on the basis of tests performed by the SDLA in the State of duty station.

### **Knowledge Test Exemption Request**

The Missouri Department of Revenue (DOR) submitted a request for an exemption from the FMCSA regulation that requires any driver to pass the general knowledge test before being issued a CLP or CDL. The request is available in docket FMCSA-2016-0130, or at: <https://www.regulations.gov/document?D=FMCSA-2016-0130-0004>. The Missouri DOR asked FMCSA to waive the knowledge test requirement for qualified veterans who participated in dedicated training through approved military

programs. The Missouri DOR contended that qualified personnel who participated in such programs had already received the numerous hours of classroom training, practical skills, and one-on-one road training that are essential for safe driving. Upon reviewing the request, FMCSA agreed with Missouri DOR's reasoning and granted a two-year exemption on October 27, 2016 (81 FR 74861). The Agency extended the exemption to allow all SDLAs, at their discretion, to waive the knowledge test requirements to qualified veterans, reservists, National Guard, and active-duty personnel.

## **V. DISCUSSION OF PROPOSED RULEMAKING**

This NPRM addresses the third requirement of section 5401(a) of the FAST Act [49 U.S.C. 31305(d)(1)(C)] by proposing to allow SDLAs to exempt certain personnel from the CDL knowledge test. Those personnel are drivers who are regularly employed, or were regularly employed within the last year, in a military position requiring operation of a military vehicle comparable to a CMV, and who completed an approved military driver training program. FMCSA believes that this proposal would maintain a level of safety equivalent to, or greater than, the level that would be achieved by requiring military-trained drivers to pass the knowledge test.

### **§ 383.23 Commercial driver's license.**

The reference to "written" tests in § 383.23(a)(1) would be changed to "knowledge" tests to be consistent with terminology used elsewhere in part 383.

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

Section 383.77(a)(1) would be revised to match proposed section 383.79(b)(2)(iii) and to avoid the unintended implication of the reference to "not . . . more than one license." That original language could be misread to disqualify from the skills test

waiver a driver who, in the two years immediately before applying for a CDL, moved from one State to another and held licenses sequentially, but not simultaneously, from both States. The proposed language makes it clear that an applicant cannot simultaneously have held more than one civilian license, in addition to a military license.

#### **§ 383.79 Skills testing of out-of-State students; Knowledge test waivers for military personnel**

The proposal would amend § 383.79(b) to allow States to waive the CLP knowledge test for certain current or former military service members (subject to certain conditions and limitations) who were regularly employed in a military position requiring the operation of a CMV during the year immediately preceding the license application. The conditions imposed on the waiver are essentially those included in § 383.77 when that provision was adopted in 2011.

Like the Military CDL I Rule, this proposed rule would be permissive, i.e., the States would be allowed, but not required, to exercise the waiver option.

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

FMCSA would amend 49 CFR 384.301 by adding paragraph (l), specifying a 3-year compliance date for States. FMCSA has always allowed the States 3 years after the effective date of any new CDL rule to come into substantial compliance with its requirements. This would allow the States time to pass legislation needed to comply with the new provisions.

#### **Justification for Changes: Armed Forces Heavy-Vehicle Driver Training Programs**

Upon reviewing military driver training programs, the Agency has concluded that these programs enable drivers to maintain a level of safety equivalent to, or greater than, the level that would be achieved by requiring them to pass the CDL knowledge test. The

Army, Air Force, Navy, and Marine Corps provide specific training dedicated to operating heavy-duty vehicles.<sup>1</sup>

There are three basic military job training classifications, with additional training for other types of heavy-duty specialty vehicles (e.g., gasoline haulers, construction vehicles, and military equipment transport oversize/overweight [non-track vehicles]).

The four core training programs for heavy vehicle operations, based on the occupational specialty code of the service member, are:

- Army – 88M – Motor Transport Operator.
- Air Force – 2T1 – Vehicle Operations.
- Marine Corps – 3531 – Motor Vehicle Operator.
- Navy – EO – Equipment Operator.

#### Army – 88M Training

The 88M Instructor Training Manual is 142 pages long. The student manual—STP 55-88M14-SM-TG Soldier's Manual and Trainer's Guide 88M, Motor Transport Operator—is 229 pages long and includes four levels of training. The 6-week core curriculum of the Army 88M course contains a total of 221 hours of training, including:

- Lecture – 32 classroom hours.
- Practical application – road driving – 189 hours.

Motor Transport Operators are primarily responsible for operating wheeled vehicles to transport personnel and cargo. Motor Transport Operator duties include:

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<sup>1</sup> Note: Heavy-duty vehicles is a generic description used in the military to describe vehicles that have been determined by FMCSA and the American Association of Motor Vehicle Administrators to have weights equal to or larger than the weights that require a driver to hold a CDL.

interior components/controls and indicators; basic vehicle control; driving vehicles over all types of roads and terrain, traveling alone or in convoys; braking, coupling, backing, and alley docking; adverse/tactical driving operations; pre-trip inspections; reading load plans; checking oil, fuel and other fluid levels, as well as tire pressure; operations in automatic and manual modes; crash prevention; safety check procedures; basic vehicle maintenance and repairs; transporting hazardous materials; and keeping mileage records.

### Air Force – 2T1 – Vehicle Operations

The Air Force Tractor Trailer Plan of Instruction (POI) is 226 pages long. The minimum length of instruction for the basic school is 84 hours, including:

- 22 hours of classroom.
- 62 hours of hands-on activity, both alone on a training pad and on the road with an instructor.

The core curriculum is based on the material in the American Association of Motor Vehicle Administrators (AAMVA) CDL Manual- 2005 edition (2014 revised).

Students participating in the basic 2T1 curriculum learn general principles in the classroom. Specialized training occurs at the installation using the Tractor Trailer Plan of Instruction. A minimum of 40 hours over-the-road time is expected on each vehicle/trailer type.

Topics covered in the Air Force Vehicle Operations course include: overview of training and Federal requirements; Federal motor vehicle safety standards; tractor/trailer design; hazards and human factors relative to the environment where used; safety clothing and equipment; driving safely; pre- and post-trip vehicle inspection; basic

vehicle control; shifting gears; managing space and speed; driving in mountains, fog, winter, very hot weather, and at night; railroad crossings; defensive awareness to avoid hazards and emergencies; skid control and recovery; what to do in case of a crash; fires; staying alert and fit to drive; hazardous materials - rules for all commercial drivers; preparing, inspecting, and transporting cargo safely; inspecting and driving with air brakes; driving combination vehicles safely; and coupling and uncoupling.

### Marine Corps – 3531 – Motor Vehicle Operator

The core curriculum of the Marine Corps 3531 course – TM 11240-15/3G contains three training areas:

- Lecture - 24 classroom hours.
- Demonstration – classroom/training pad – 35 hours.
- Practical application – road driving – 198 hours

Instructional breakout includes:

- Demonstration: 35 hours.
- Guided discussion: 1.5 hours.
- Lecture: 24 hours.
- Performance examination: 62 hours.
- Practical application (individual): 198 hours.
- Knowledge examination: 7 hours.

Classroom instruction includes lectures, demonstration, and practice time for the specific tasks identified. Each classroom session includes knowledge and performance evaluations to ensure students have mastered all of the learning objectives for the

specialty proficiency. Training includes both simulators and actual vehicle operation. Practical training includes on-the-road and skills operations, ground guide procedures, and operating a vehicle with a towed load. Students practice their driving and backing, with and without a trailer. Instructors ride with the students as they operate on approved road routes. Specific training areas (pads) are set aside for the students to practice their backing skills and ground guide procedures safely.

The Marine Corps training curriculum also includes emergency procedures and cargo loading.

#### Navy – EO – Equipment Operator

The core curriculum of the USN Heavy Vehicle Operator (Truck Driver) (EO) course (53-3032.00) is designed to train Navy personnel how to operate passenger and cargo vehicles to rated capacity. They palletize, containerize, load and safely transport various types of cargo and demonstrate knowledge and skills for qualifying as a driver journeyman. The complete program covers topics including:

- Hazardous materials transportation
- Line haul planning
- Manual tractor-truck operations
- Vehicle Recovery Operations

The course is taught over 160 hours including 30 hours classroom and 130 hours lab (behind the wheel). By completing this course, the Navy driver will be able to:

- Perform the duties of normal, non-combat conditions driving in accordance with the local state driver licensing agency's CDL driver handbook;



- Manage hazardous petroleum, oils and lubricants (POL) material required during line haul and worksite activities, to support normal, non-combat operations;
- Perform preventive maintenance on a non- or up-armored manual truck tractor with drop-neck trailer, consisting of pre-start, during-operations, and after-operations equipment checks, to support normal, non-combat operations, in accordance with local State Driver License Agency CDL handbooks;
- Operate vehicle controls of a non- or up-armored manual truck-tractor, to support normal, non-combat operations; and
- Be proficient with the components and controls of a drop-neck trailer relative to a detached/attached gooseneck and a coupled/uncoupled trailer.

Other topics covered within the Navy EO training program include:

- Development and maintenance of operational records
- Operation of high mobility multi-purpose wheeled vehicles
- Weight distribution and load securement
- Loading bulk and container cargo
- Preventive maintenance
- Pre- and post-trip vehicle safety inspections

The military training programs described above are thorough and comprehensive. They incorporate most of the elements recommended by the Professional Truck Driver Institute, which has been the principal standard-setting organization for private-sector

motor carrier training for decades. They are also entirely compatible with the requirements of FMCSA's recently-adopted ELDT rule. Although geared to heavy-duty military vehicles, military training is readily transferrable to a civilian context, since the operational characteristics of large military and civilian vehicles are very similar and, in some cases, identical. The Agency believes that exempting these drivers from the CLP knowledge test, in addition to the skills test, will have no adverse effect on highway safety.

## **VI. REMOVAL OF REGULATORY GUIDANCE**

FMCSA's previous regulatory guidance for § 383.77 was removed when the Agency's guidance for 49 CFR parts 383 and 384 was revised and reissued; see "Commercial Driver's License Standards, Requirements and Penalties; Regulatory Guidance" (DATE XX FR XXXX).

## **VII. 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 in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

## **VIII. SECTION-BY-SECTION**

### **§ 383.23 Commercial driver's license.**

The reference to "written" tests in paragraph (a)(1) would be changed to "knowledge" tests to match the terminology used elsewhere in part 383.

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

Section 383.77(a)(1) would be revised to state that an applicant may not have held two civilian licenses simultaneously, in addition to a military license.

**§ 383.79 Skills testing of out-of-State students; Knowledge test waivers for certain military personnel**

The title of this section would be amended slightly, while paragraph (a), CDL applicants trained out-of-State, would not be modified.

Existing paragraph (b), Military service member applicants for a CLP or CDL, would be removed and replaced by a new paragraph (b), Knowledge test waivers for certain current or former military service members applying for a CLP or CDL.

Existing paragraph (b)(1) would be redesignated as proposed paragraph (c). A new paragraph, In general, would be added as paragraph (b)(1).

Existing paragraph (b)(2) would be redesignated as proposed paragraph (d). A new paragraph, Conditions and limitations, would be added as paragraph (b)(2), outlining the requirements to apply for a waiver of the knowledge test.

Redesignated paragraph (c) would retain the content of current paragraph (b)(1), State of duty station, but with some editorial changes.

New paragraph (d), Electronic transmission, is currently codified as paragraph (b)(2).

New paragraph (e), State of domicile, would be revised to reflect the new waiver options proposed by this NPRM.

**§ 384.301 Substantial compliance general requirements.**

This proposed rule would not alter the existing paragraphs in this section. Paragraph (l) is added.

## **IX. 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**

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

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

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the E.O.

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. However, FMCSA did evaluate the costs and benefits of this proposed rulemaking. This proposed rulemaking would not

result in an annual effect on the economy of \$100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy.

### **Costs and Benefits**

FMCSA evaluated potential costs and benefits associated with this proposed rulemaking. The Agency concludes that costs, if any, would be minimal and are non-quantifiable, while benefits would be realized by certain current and former military service members transitioning into civilian careers driving CMVs, as well as by their potential employers. Due to the voluntary nature of the proposed rule and potential variations across States with respect to conditions and limitations imposed beyond those of § 383.79, the Agency is unable to quantify these benefits.

### **Section 383.79(b)**

The proposed rule would allow States to waive the requirement in § 383.23(a)(1) that an applicant must pass a knowledge test for a CLP, including waiver of the knowledge test for a CLP required by § 383.111, for certain current or former military service members. This proposed rule would allow States to provide waivers of the knowledge test, if the individual can certify and provide evidence that during the 1-year period immediately prior to the application he or she met the criteria outlined in § 383.79.

Under the proposed rule, certain active-duty military service members may submit an application to the SDLA in their State of duty station for a CLP or CDL, including an application for a waiver of the knowledge test, upon prior agreement between respective SDLAs in the State of duty station and State of domicile. This proposed rule is therefore expected to result in time savings to active-duty service

members equivalent to the amount of time that would otherwise be spent preparing for and taking the knowledge test. The Agency cannot quantify the aggregate extent of such time savings, as the proposed rule would not require States to accept applications for waivers of the knowledge test; nor can the Agency know what conditions and limitations States may impose on applicants beyond those of this proposed rule. However, the Agency considers it likely that those States that elect to accept applications for waivers of the driving skills test would also accept applications for waivers of the knowledge test following implementation of the proposed rule, subject to similar conditions and limitations. If the proposed rule encourages additional active-duty military service members to seek civilian employment as drivers following their completion of military service, their potential employers may benefit from an increase in the labor supply; however, the Agency is likewise unable to quantify this benefit due to the reasons cited above.

Certain former military service members seeking to transition into civilian employment as a driver may benefit under the proposed rule by no longer having to possess a CLP for 14 days before either taking the driving skills test or applying for a waiver of the driving skills test. Provided that their State of domicile would accept applications for waivers of both the knowledge test and the skills test, such former military service members may apply simultaneously for both. As noted above, the Agency considers it likely that States that elect to accept applications for waivers of the driving skills test would also accept applications for waivers of the knowledge test following implementation of the proposed rule, subject to similar conditions and limitations. By providing an expedited path to enter the labor market, the rule allows

certain former service members to benefit from faster access to jobs, while their potential employers may benefit from faster access to those individuals' labor hours. As with certain active-duty military service members, certain former military service members who obtain waivers of the knowledge test would also incur time savings equivalent to the time that would otherwise be spent preparing for and taking the knowledge test. Due to the voluntary nature of this proposed rule and uncertainty regarding conditions and limitations States may impose on applicants beyond that of § 383.79, the Agency cannot estimate the aggregate value of these benefits to certain former military service members or their potential employers.

In considering the costs of the proposed rule, the Agency notes that the NPRM would allow the State of duty station (for active service members) to transmit completed applications to the State of domicile by a direct, secure, and efficient electronic system. Completed applications are to include any supporting documents pertinent to the waiver(s) being sought and—if the State of domicile has not exercised its waiver option—the results of any knowledge and skills tests administered. This proposed rule does not require the creation of or significant modification to existing communication methods between SDLAs. At present, transmissions between a State of duty station and State of domicile are already subject to identical requirements with respect to secure electronic transmission of completed applications under § 383.79(c). The Agency expects de minimis modifications may be needed depending on individual State variations (if any) in documentation that would be required for applications for knowledge test waivers. The de minimis expectation is rooted in the assumption that States will take a

pragmatic approach by requiring the same documentation for a knowledge test waiver application as for a skills test waiver application.

**B. Regulatory Flexibility Act (Small Entities)**

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term “small entities” means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.<sup>2</sup> 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 entities.

When an agency issues a rulemaking proposal, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The primary entities affected by this proposed rule would be certain current and former military service members and SDLAs. Under the standards of the RFA, as amended by the SBREFA, none of these are small entities. Therefore, FMCSA has

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<sup>2</sup> Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Available at: <https://www.sba.gov/advocacy/regulatory-flexibility-act> (accessed December 14, 2016).



determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Incidentally, the proposed rule's impacts on current and former military service members would be entirely beneficial by allowing States to provide more flexibility to those seeking to obtain a CDL. With respect to costs, the impacts on SDLAs that choose to exercise the waiver option are estimated to be de minimis.

Accordingly, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact on small entities from this action.

#### **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 proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would 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 proposed 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 State, local, or tribal governments, in the aggregate, or by the private sector, of \$156 million (which is the equivalent of \$100 million in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this proposed rule would not result in such expenditure, the Agency does discuss the effects of the proposed rule elsewhere in this preamble.

**E. Paperwork Reduction Act (Collection Information)**

This proposed rule would call 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 proposed rule would not have substantial direct costs on or for the States, nor will it limit the policymaking discretion of the States. This proposed rule does not preempt any State law or regulation. Therefore, this proposed rule

does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

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

This proposed 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 proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action does not in any respect present an environmental health or safety risk that could disproportionately affect children.

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

FMCSA reviewed this proposed 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**

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 proposed rule does not require the collection of personally identifiable information (PII), the Agency is not required to conduct a PIA.

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. Accordingly, FMCSA has not conducted a PIA.

**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 program.

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

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that the rule 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. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

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

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

**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 proposed rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

**O. Environment (NEPA, CAA, Environmental Justice)**

FMCSA analyzed this NPRM 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, paragraphs 6.s.(6) and 6.t.(2). 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 CE in paragraph 6.t.(2) covers regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by: (2) Having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license. The requirements in this proposed rule are covered by these CEs and the proposed action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: <http://www.regulations.gov>.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

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 proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would 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 is revised 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 § 383.23 by revising paragraph (a)(1) to read as follows:

**§ 383.23 Commercial driver's license.**

(a) General rule.

(1) No person shall operate a commercial motor vehicle unless such person has taken and passed knowledge and driving tests for a CLP or CDL that meet the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

\* \* \* \* \*

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

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

\* \* \* \* \*

(a) \* \* \*

(1) Has not simultaneously held more than one civilian license (in addition to a military license);

\* \* \* \* \*

4. Amend § 383.79 by revising the section heading and paragraph (b) and adding paragraphs (c) through (e) to read as follows:

**§ 383.79 Skills testing of out-of-State students; Knowledge test waivers for certain military personnel.**

\* \* \* \* \*

(b) Knowledge test waivers for certain current or former military service members applying for a CLP or CDL— (1) In general.—For certain current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in paragraph (b)(2) of this section, a State may waive the requirement in § 383.23(a)(1) that a CDL applicant must pass a knowledge test for a CLP or CDL, including waiver of the knowledge required by § 383.111.

(2) Conditions and limitations.—A current or former military service member applying for waiver of the knowledge test described in paragraph (b)(1) of this section must certify and provide evidence that, during the 1-year period immediately prior to the application, he/she:

(i) Is or was regularly employed in a military position requiring operation of a CMV;

(ii) Is operating a vehicle representative of the CMV the driver applicant expects to operate upon separation from the military, or operated such a vehicle immediately



preceding separation from the military;

(iii) Has not simultaneously held more than one civilian license (in addition to a military license);

(iv) Has not had any license suspended, revoked, or cancelled;

(v) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(vi) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in § 383.51(c); and

(vii) Has not had any conviction for a violation of military, State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault.

(c) Role of State of duty station.—A State where active duty military service members are stationed, but not domiciled, may, upon prior agreement with the State of domicile:

(1) Accept an application for a CLP or CDL, including an application for waiver of the knowledge test prescribed in paragraph (b)(1)) of this section, from such a military service member who

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

(ii) Has a valid driver's license from his or her State of domicile;

(iii) Has a valid active duty military identification card; and

(iv) Has a current copy of either the service member's military leave and earnings

statement, or his or her orders.

(2) Either

(i) Administer the knowledge and skills tests to the military service member, as appropriate, in accordance with subparts F, G and H of this part, if the State of domicile requires those tests; or

(ii) Waive the knowledge and skills tests in accordance with § 383.77 and this section, if the State of domicile has exercised the option to waive those tests; and

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

(d) Requirement for electronic transmission.—The State of duty station must transmit to the State of domicile by a direct, secure, and efficient electronic system the completed application, any supporting documents, and – if the State of domicile has not exercised its waiver option – the results of any knowledge and skills administered.

(e) Role of State of domicile.—Upon completion of the applicant's application pursuant to § 383.71 and any testing administered by the State of duty station pursuant to §§ 383.71 and 383.73, the State of domicile of the military service member applying for a CLP or CDL may

(1) Accept the completed application, any supporting documents, and the results of the knowledge and skills tests administered by the State of duty station (unless waived at the discretion of the State of domicile); and

(2) Issue the applicant a CLP or CDL.

**PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S**

## LICENSE PROGRAM

5. The authority citation for part 384 is revised 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; sec. 5401 and 5524 of Pub. L. 114-94, 129 Stat. 1312, 1546, 1560; and 49 CFR 1.87.

6. Add paragraph (l) to § 384.301 to read as follows:

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

\* \* \* \* \*

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

Issued under authority delegated in 49 CFR 1.87 on: June 6, 2017

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Daphne Y. Jefferson

Deputy Administrator

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