



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA-2016-0346]

RIN 2126-AB98

Commercial Learner's Permit Validity

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

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to allow States the option of issuing a commercial learner's permit (CLP) with an expiration date of up to one year from the date of initial issuance. The CLP must be valid for no more than one year from the initial date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided the CLP is not valid for more than one year from the date of initial issuance. This rule does not require a State to revise its current CLP issuance practices, unless it chooses to do so. This rule is a deregulatory action as defined by Executive Order (E.O.) 13771, "Reducing Regulation and Controlling Regulatory Costs."

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

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA-2016-0346 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

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

II. Executive Summary

Purpose and Summary of the Major Provisions

This final rule allows States the option of issuing a CLP valid for up to one year from the date of initial issuance. Within that one year period, the CLP may be renewed at

the State's discretion, but if it is renewed, the CLP may not be valid for more than a total of one year from the date of initial issuance. After one year from the date of initial issuance, a CLP, or renewed CLP, will no longer be valid. Therefore, if an applicant does not obtain a CDL within one year from the date the CLP, he/she must reapply for a CLP by re-taking the applicable knowledge test(s). This approach provides an alternative to the existing requirements in § 383.25(c).

Costs and Benefits

The primary entities affected by this final rule are State Driver Licensing Agencies (SDLAs) and CLP holders. Under the final rule, the decision by an SDLA to issue a CLP that is valid for up to one year is discretionary, and FMCSA is therefore unable to predict how many of the 51 SDLAs may choose to issue a CLP that is valid for up to one year. Accordingly, FMCSA is also unable to estimate the number of CLP holders that will be affected by the final rule. Nonetheless, there are certain types of cost savings, costs, benefits, and transfer payments that may occur as a result of this rule.

FMCSA does not expect there to be any costs imposed upon CLP holders due to this final rule. CLP holders may realize cost savings resulting from reductions in the opportunity cost of time that, in the absence of this final rule, would be spent by CLP holders traveling to and from an SDLA office and at an SDLA office, to renew a CLP that is initially valid for no more than 180 days.

SDLAs that choose to issue a CLP that is valid for up to one year may incur some information technology (IT) system upgrade costs. Such IT system upgrades may include software programming changes necessary to issue a CLP that is valid for up to one year. However, under the final rule, the decision by an SDLA to issue a CLP that is valid for

up to one year is discretionary. Accordingly, the Agency expects that SDLAs will choose to make this change only to the extent that such IT system upgrade costs would be less than the cost reductions associated with no longer having to process renewals of CLPs, thus resulting in a net cost savings to the SDLAs exercising this choice.

In addition to the potential impacts upon cost savings, costs, and benefits discussed above, there are also certain transfer payment effects that may occur as a result of this rule. Transfer payments are monetary payments from one group to another that do not affect total resources available to society, and therefore do not represent actual costs or benefits to society. These potential transfer effects include a transfer of CLP renewal fee amounts from SDLAs to CLP holders, and a transfer of CLP renewal fee amounts from one set of CLP holders to another set of CLP holders.

The FMCSA anticipates no change in safety benefits as a result of this final rule. In the Agency's judgment, this rule will provide SDLAs the choice to implement more efficient licensing operations while maintaining a level of safety equivalent to the level of safety achieved without the rule.

III. Legal Basis for the Rulemaking

This final rule is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313 and implemented by 49 CFR parts 383 and 384. The CMVSA provides that “[a]fter consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers’ licenses and learner’s permits by the States...” (49 U.S.C. 31308).

IV. Background

Regulatory History

On September 1, 2015, the Oregon Department of Transportation (ODOT) applied for an exemption from existing CLP requirements in § 382.25(c) to allow ODOT to initially issue the CLP for one year (with no renewal period).¹ ODOT's application for exemption cited efficiency in CLP processing as the primary basis for the requested regulatory relief, noting that a CLP issued for one year will relieve the CLP holder of the need to visit the DMV in order to renew the CLP for an additional 180 days. Further, ODOT asserted that "a one-year CLP that simply eliminates the one-year renewal would not lessen safety." The Agency published notice of ODOT's application for exemption on November 27, 2015, and requested comment (80 FR 74199). FMCSA granted ODOT's application for exemption for the period April 5, 2016, through April 5, 2018, and also permitted all SDLAs to extend to one year the 180-day timeline (81 FR 19703 (Apr. 5, 2016)). The Agency determined that the exemption would permit ODOT and other SDLAs to implement more efficient operations while maintaining a level of safety equivalent to, or greater than, the level of safety achieved without the exemption.

On June 12, 2017, FMCSA published a notice of proposed rulemaking (NPRM) titled "Commercial Learner's Permit Validity" (82 FR 26888), which proposed to allow States to issue a CLP with an expiration date of up to one year from the date of initial issuance. Under this proposal, CLPs could also be issued for periods shorter than one year and could be renewed, as long as the total period of time between the date of initial issuance and the date of expiration, with or without renewal, does not exceed one year.

V. Discussion of Comments Received on the Proposed Rule

¹ ODOT's application for exemption is available in the docket for this rulemaking.

FMCSA received 13 comments on the NPRM. Four commenters disagreed with the NPRM, including an SDLA (Georgia), two industry trade associations (the Commercial Vehicle Training Association (CVTA) and the Owner-Operator Independent Drivers Association, Inc. (OOIDA)), and one individual. Nine commenters, including one individual, four SDLAs (Arizona, Virginia, Oregon, Michigan), three industry trade associations (the American Trucking Associations (ATA), the National School Transportation Association (NSTA), the American Bus Association (ABA)), and a passenger motor carrier (Burlington Trailways) all supported the NPRM. The comments addressed the NPRM's potential impact on safety, the costs and benefits of the proposal, and related implementation issues.

As discussed below, some of the comments appear to be based on the assumption that the NPRM proposed to replace the existing CLP issuance requirement in § 383.25(c). In fact, FMCSA intended to provide an alternative to that requirement, thereby giving States a choice to continue issuing CLPs in accordance with existing § 383.25(c), or to proceed under the optional procedure outlined in the NPRM. The Agency clarifies this point in the final rule.

A. Safety Impacts

Three commenters believed that the rule would not impact safety. Two commenters believed that this rule could negatively impact safety.

Comments:

ODOT stated that it implemented a streamlined CLP issuance process that improves the customer's experience without impacting highway safety. The NSTA also believed that FMCSA's proposal would save time and money for both States and CLP

applicants, without affecting safety. ATA commented that, for States that do not require drivers to retake the knowledge exam when renewing an initial CLP that is currently issued for no more than 180 days, the requirement that the CLP be renewed only necessitates that drivers spend additional time away from work. ATA further noted that the rule can reduce the burden on SDLAs and the trucking industry without compromising safety.

OOIDA believed that, under the NPRM, carriers would be able to keep drivers with CLPs behind the wheel longer, instead of using drivers with commercial driver's licenses (CDLs), negatively impacting safety. OOIDA provided the example of C.R. England, currently operating under an exemption that allows CLP permit holders to drive commercial motor vehicles (CMVs) without a CDL holder present in the front seat.

The Georgia Department of Driver Services (Georgia DDS) requested that FMCSA consider keeping the current 180 day CLP limit due to highway safety concerns. Georgia DDS stated "(t)his mandated six (6) month term now helps to ensure that the applicants are testing while their knowledge and training are still fresh and they have not developed bad habits."

FMCSA Response:

Although OOIDA and Georgia DDS both cited safety concerns, neither commenter provided any data to support their view that the NPRM would negatively impact highway safety.

OOIDA commented that "(u)nder the NPRM, carriers can use CLP drivers longer and keep them behind the wheel instead of CDL drivers." In response, the Agency understands that, currently, some States issuing a CLP initially valid for 180 days may

provide a grace period of more than five days between the initial CLP issuance period of 180 days and the renewal period allowed under § 383.25(c) thus resulting in a CLP valid for more than one year. Accordingly, the NPRM, by proposing a maximum period of CLP validity of one year, did not represent a significant departure from the current regulations. States choosing the one-year option, as set forth in this final rule, would maintain a *shorter* maximum period of CLP validity than States that may currently allow a grace period of more than five days between the initial validity period of 180-days and the 180-day renewal. Further, FMCSA notes that the exemption granted to C.R. England, referenced by OOIDA, applies to CLP holders who have already passed the CDL skills test after receiving training in a non-domiciled State, and are driving a CMV back to their State of domicile to obtain the CDL. The C.R. England exemption is, therefore, not relevant to this rule.

Georgia DDS did not elaborate on the basis for its highway safety concerns when requesting that FMCSA consider retaining the current 180-day limit, other than to suggest that CLP holders should take the CDL skills test while “their knowledge and training are still fresh and they have not developed bad habits.” In response, the Agency notes that the period of CLP validity is an outer limit, by which the applicant must obtain a CDL without having to retake the knowledge test. However, there is no requirement that applicant wait until the end of the CLP validity period to take their skills test. As discussed further below, the CLP holder may take the skills test any time after 14 days have passed since initial issuance of the CLP. In addition, FMCSA did not propose changing any of the protections already in place to ensure CLP-holders do not decrease safety on the highways, including the requirement, in § 383.25(a)(1), that CLP-holders

may operate a CMV only when accompanied by a CDL holder physically present in the front seat of the vehicle.

Finally, as noted above, ODOT, in its comments to the NPRM, noted that its adoption of the one-year CLP resulted in streamlined processing “without impacting highway safety.” The ODOT also observed that “[t]he logic of this change is supported by current regulation, since a knowledge test is not required to renew a CLP.” In addition, FMCSA recently contacted state licensing officials in Iowa, which, like Oregon, is issuing one-year CLPs under the current exemption. Iowa officials stated that no safety issues have arisen as a result of the one-year CLP. For these reasons, FMCSA believes this rule will not diminish highway safety.

B. Impacts to SDLAs

Allowing States to issue CLPs for a term of up to one year is intended to increase efficiency in the commercial driver licensing system, thereby reducing the administrative burdens on SDLAs while maintaining a level of safety equivalent to the level of safety that would exist in the absence of the final rule. The NPRM requested that States and other interested parties identify potential costs (e.g., necessary changes in CLP-related IT systems), cost savings, process efficiencies, and other benefits that may result from the proposed change, along with any supporting data.

Comments:

Benefits:

Some commenters noted that the rulemaking would reduce the burden on SDLAs. ATA believed the rulemaking would benefit the SDLAs by increasing their flexibility and reducing the burden associated with renewing CLPs. NSTA wrote that the proposed

change provides an improved process for CLP issuance and would save time and money for States. Burlington Trailways wrote that the rule would save time for those issuing the permits. While it opposed the NPRM, OOIDA agreed it would reduce administrative costs for SDLAs.

Some commenters believed that the rule would benefit SDLAs by providing consistency. ABA supported the uniformity among the SDLAs that the rulemaking would ensure, rather than requiring each State to request a similar exemption individually. CVTA agreed that consistency is a benefit, but asked why FMCSA wanted to amend its regulations when only one jurisdiction had applied for an exemption.

FMCSA Response:

FMCSA agrees with commenters noting that the rule could reduce the burden on SDLAs and, as described below, identifies the potential cost savings to SDLAs that could result from this regulatory change. Neither the NPRM, nor this final rule, was intended to ensure consistency among the SDLAs. Today's rule simply provides an option for SDLAs wishing to issue CLPs valid for up to one year, with or without renewal. Thus, the final rule gives States the flexibility to choose which CLP issuance approach is best suited to their particular needs. FMCSA notes that the original exemption granted to ODOT and other SDLAs, originally valid through April 5, 2018, was renewed and is currently valid to April 5, 2019 (83 FR 14545 (April 4, 2018)). The Agency believes that amending the FMCSRs to permit CLP issuance in accordance with the exemption is more efficient than granting extensions of the exemption, and also provides greater regulatory certainty to SDLAs that opt to implement a one-year CLP.

Costs:

A number of commenters indicated that there are costs associated with the NPRM. Four SDLAs, including the Arizona Department of Transportation (Arizona DOT), the Virginia Department of Motor Vehicles (Virginia DMV), the Michigan Department of State (Michigan DOS) and the Georgia DDS, believed the proposed change would require a change in State laws. The SDLAs also commented that other changes associated with the NPRM, including programming and outreach, would create costs for the States. The Michigan DOS commented that this proposal would require a significant amount of programming effort; based on the low number of CLP drivers anticipated to utilize this extended CLP validity period, the efforts for programming and legislation changes would exceed any benefit. The Virginia DMV commented that it will evaluate the impact of returning to a process of issuing CLPs valid for one year to determine if it would create cost savings and reduce administrative burdens on the DMV, but the change would require DMV resources to revert to the previous process. The Georgia DDS commented that, conservatively, it had invested \$300,000 to comply with the existing rule, including providing training for State and third-party examiners, holding a forum for industry stakeholders, and establishing a communications campaign. The Georgia DDS, having also revamped its business process and updated its 2015 CDL Manual, objected to having to re-invest money and resources to make another change in its licensing process.

FMCSA Response:

Today's rule simply provides an additional option for SDLAs wishing to issue CLPs valid for up to one year. Thus, the final rule gives States the flexibility to choose which CLP issuance option is best suited to their needs. The four SDLAs that expressed

concerns over costs need not incur any costs because SDLA adoption of the final rule is discretionary.

C. Costs and Benefits to CLP Holders and Motor Carriers

FMCSA anticipates that this change will reduce costs for CLP holders, including reductions in the opportunity cost of time that, in the absence of this final rule, would be spent traveling to and from an SDLA office, plus time spent at an SDLA to renew a CLP initially valid for no more than 180 days.² FMCSA does not expect there will be any costs imposed upon CLP holders as a result of this final rule. In addition, the Agency does not expect the rule to impose any direct costs on motor carriers.

Comments:

Benefits:

NTSA believed that the proposed rule would save time and money for CLP applicants. ODOT commented that its streamlined CLP issuance process, implemented under the exemption, improved the customer's experience, and believed this proposal would help continue that improvement. The Virginia DMV anticipated that issuing a one-year CLP would positively impact commercial drivers if they are not forced to return to the DMV to renew their CLP. ATA stated that the proposed rule would provide costs savings to new commercial drivers entering the industry.

Burlington Trailways stated that the proposed regulation will save time for prospective driving students and potential employers. The proposed regulation would especially benefit CLP holders thinking about driver training because it would give students more time to be comfortable with classroom work and behind-the-wheel

² Some SDLAs may allow renewal of CLPs via the internet, thus allowing CLP holders to avoid travel costs. The Agency lacks the data necessary to quantify transportation costs CLP holders may incur to renew their CLP.

experience before needing to renew a permit if training is interrupted. ABA believed that the proposed rule would help ease the driver shortage currently facing the industry by providing entry-level commercial drivers additional flexibility in completing driver training programs at a reasonable pace. The Michigan DOS also believed that this rule may benefit CLP holders by reducing repeat trips to the branch offices for renewal of the CLP.

FMCSA Response:

As noted above FMCSA agrees with the commenters noting that, in States choosing to adopt the one-year CLP validity period, the rule would reduce costs for CLP holders.

Comments

Costs:

OOIDA believed that the proposal could limit CLP holders' earnings because it would prevent them from receiving their CDL for up to six additional months, thus, limiting their wages. OOIDA stated that the Agency's analysis of the potential benefits of this proposal did not consider lost wages for drivers who will not be granted a CDL after holding a CLP for 180 days. OOIDA wanted FMCSA to fully examine the "bottom line" costs for drivers rather than just the administrative costs associated with the proposal.

Two commenters believed the rulemaking might increase costs if States did not adequately fund the CDL process. ABA believed the rulemaking had the potential to disincentive States to address resource issues to decrease CDL testing delays, and wanted FMCSA to consider this concern when finalizing the proposal. CVTA noted that, if FMCSA changes the duration of the CLP to up to one year, it would increase costs for

CLP holders who are seeking their CDL and are experiencing skills testing delays. CVTA commented that skills testing delays cost our economy a great deal of money, including the costs to drivers' wages, schools, and employers who are unable to hire employees to move additional freight. CVTA would support granting an exemption from the existing timeframe of 180-days, but only if an SDLA exhibited efficiency in operations.

FMCSA Response:

FMCSA believes some commenters misinterpreted the proposal to provide SDLAs the choice to extend the period of CLP validity from no more than 180 days to up to one year. Under current regulations, a CLP holder is not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP. The driver is not, however, required to hold a CLP for 180 days before taking the skills test. The final rule does not prevent a driver from taking their skills test and obtaining a CDL at any time after 14 days have elapsed since CLP issuance, regardless of whether the SDLA has chosen to issue a CLP that is valid for up to one year, or if the SDLA continues to offer a CLP that is valid for up to 180 days. Issuing a CLP that is valid for up to one year simply provides greater flexibility to CLP holders to train for and schedule the CDL skills test, without having to incur opportunity costs associated with the renewal of the CLP.

OOIDA did not offer any data to support its claim that extending the term of a CLP up to one year will facilitate a carrier's ability to prevent CLP holders from receiving their CDL for six months in order to intentionally limit CLP holders' wages. OOIDA did not explain why CLP holders would continue to accept a lower wage if they have sufficient behind-the wheel training to pass the skills test and seek employment with

a carrier willing to pay a CDL wage. Finally, OOIDA failed to explain why a carrier would commit a CDL holder to accompany a (CDL-capable) CLP holder on a revenue-producing trip for the sole purpose of limiting the wages of a CLP holder.

Neither ABA nor CVTA provided data to suggest that eliminating the need for a CLP holder to drive to an SDLA to renew their CLP would significantly impact the demand for CLPs, the number of skills tests performed annually, or the supply of skills testers. The Agency is not aware of any negative impact on CDL skills testing delays resulting from ODOT's issuance of CLPs that are valid for one year under the exemption. FMCSA recently contacted state licensing officials in Iowa, which is currently operating under the exemption, and Iowa officials stated that no safety issues have arisen as result of the one-year CLP.

D. Other Comments

Comments:

The Agency received several comments not specifically related to the proposal. An individual asked FMCSA to work on the hours-of-service rules, including removing the 14-hour rule. A second individual commented on an NPRM titled, "Military Licensing and State Commercial Driver's License Reciprocity" (FMCSA-2017-0047).

FMCSA Response:

The agency does not address these comments as they are outside the scope of this rulemaking.

VI. Section-by-Section Analysis

FMCSA revises sections 383.25 and 383.73 to allow CLPs to be issued for a period of one year or less from the date of issuance without requiring a CLP holder to

retake the general and endorsement knowledge tests. CLPs issued for periods of less than a year may be renewed, but the CLP can only be valid for no longer than one year from the date of issuance of the original CLP.

VII. Regulatory Analyses

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

FMCSA performed an analysis of the impacts of this final rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034 (February 26, 1979)).

The primary entities that will be affected by this final rule are SDLAs and CLP holders. Due to the voluntary nature of the change proposed by the NPRM, the Agency was not able to quantify costs or benefits and sought information on the effects of the proposed rule. FMCSA did not receive sufficient data to quantify the costs or benefits of this final rule, nor can the Agency predict how many of the 51 SDLAs would choose to issue a CLP valid for up to one year. The Agency is aware that as of December 2017, at least two SDLAs (Oregon and Iowa) have chosen to issue a CLP that is valid for one year without renewal, consistent with the limited exemption granted in response to ODOT's application for exemption.

In the NPRM, the Agency described the methodology it used to estimate that the SDLAs issue approximately 476,000 CLPs per year. The Agency requested commenters to provide their assessment of the accuracy of this estimate along with supporting information on how many CLPs are renewed. CVTA was the only commenter that responded to the Agency's data request. CVTA stated that the Agency's estimate was accurate and consistent with similar numbers reported in other rulemakings for CDLs issued. CVTA further stated that, absent access to all 51 SDLA's data, it was not able to confirm how many CLP renewals are issued. For the same reason, the Agency is unable to quantify the impact of the rule on CLP holders.

Cost Savings and Costs

FMCSA does not expect there to be any costs imposed upon CLP holders because of this final rule. CLP holders may realize cost savings under the final rule, including reductions in the opportunity cost of time that, in the absence of this final rule, would be spent by CLP holders traveling to and from an SDLA office, plus the time at an SDLA office to renew a CLP that is valid for no more than 180 days. As discussed below, if SDLAs increase their fee for the initial issuance of a CLP, there may be minimal transfer payment effects among different types of CLP holders. Also, although the potential elimination of CLP renewal fees might appear to be a cost savings for CLP holders, changes in renewal fees are classified as transfers, as discussed below.

SDLAs that choose to issue a CLP valid for up to one year under this final rule may incur some information technology (IT) system upgrade costs to accommodate the change in the CLP business process from issuing a CLP that is valid for up to 180 days (and may be renewable for an additional 180 days) to the alternative of issuing a CLP that

is valid for up to one year with no renewal. SDLAs that choose to issue a CLP that is valid for up to one year may also realize cost savings associated with no longer having to process CLP renewals. The Agency expects that SDLAs will make this change only if cost savings from the elimination of the renewal process exceed IT system upgrade costs and ongoing operating costs. Lastly, any reduction in CLP renewal fees collected by SDLAs may appear to be a cost. However, any changes in the amount of renewal fees collected is a transfer, as discussed below.

Benefits

The Agency anticipates no change in safety benefits because of this final rule. The discretionary implementation of the final rule will provide SDLAs the choice to implement more efficient operations while maintaining a level of safety equivalent to the level of safety achieved without the rule.

As discussed earlier, although OOIDA and Georgia DDS both expressed concerns in their comments regarding potential impacts to highway safety, neither commenter provided any data to support their view that the rule would negatively impact highway safety. Currently, a CLP may be valid for a total of 360 days, and in States allowing a “grace period” of more than five days between the initial CLP issuance period of 180 days and the renewal period allowed under § 383.25(c), the CLP may be valid for more than one year. Furthermore, the current regulations do not require that the knowledge test be retaken when renewing the initial CLP which is valid for no more than 180 days from the date of issuance. Accordingly, the final rule, by allowing a maximum CLP validity period of one year, does not represent a significant departure from the current regulations. Under this final rule, SDLAs that have concerns regarding potential impacts to highway

safety from issuing a CLP valid for up to one year from the date of initial issuance are free to continue issuing CLPs which are valid for no more than 180 days. Finally, the Agency is not aware of any negative impact on safety resulting from ODOT's issuance of CLPs that are valid for one year under the exemption. FMCSA recently contacted state licensing officials in Iowa, which is currently operating under the exemption, and Iowa officials stated that no safety issues have arisen as result of the one-year CLP.

Transfers

In addition to the potential impacts upon costs and benefits discussed above, there are also certain transfer payment effects that may occur because of this rule. Transfer payments are monetary payments from one group to another that do not affect total resources available to society, and therefore do not represent actual costs or benefits to society. Because of the potential elimination of CLP renewal fees, and the potential for changes to CLP issuance fees, there are transfer effects that may result from this final rule. These potential transfer effects include a transfer of CLP renewal fee amounts from SDLAs to CLP holders, and a transfer of CLP renewal fee amounts from one set of CLP holders to another set of CLP holders. In cases where an SDLA maintains the same fee for issuance of a CLP, a transfer will occur from SDLAs to CLP holders. This transfer represents the total amount of CLP renewal fees that, in the absence of this final rule, CLP holders renewing their CLP would have paid SDLAs.³ Such reductions in CLP renewal fee amounts to SDLAs are properly classified as a transfer, rather than as a cost to SDLAs (in the form of forgone fee revenue) or as a benefit to CLP holders (in the form of CLP renewal fees no longer expended). There is no aggregate change in social welfare

³ In some States, no fee is charged for CLP renewal, and therefore this type of transfer will not occur if CLP renewals were eliminated.

resulting from this impact. It is just a transfer of value from one set of entities to another. Alternatively, in cases where an SDLA were to increase its fee for the issuance of a CLP to offset any reduction in revenue resulting from the elimination of CLP renewals and associated fees, a transfer will occur from those CLP holders who in the baseline would not have renewed their CLP to CLP holders who in the baseline would have renewed their CLP. Here too there is no aggregate change in social welfare resulting from this impact, as again it is a simple transfer of value from one set of entities to another. The extent to which SDLAs that choose under this final rule to issue a CLP that is valid for up to one year may increase their fee for issuance of a CLP is unknown. The incentive for an SDLA to do so, however, is likely low due in part to the fact that CLP renewal fees are expected to be a relatively small proportion of the overall fee revenue collected by any given SDLA.

In summary, overall, the final rule is expected to provide regulatory relief to both SDLAs and CLP holders. Under the final rule, the decision by an SDLA to issue a CLP that is valid for up to one year is discretionary, and the Agency expects that SDLAs will choose to make this change only to the extent that cost savings associated with no longer having to process renewals of CLPs would exceed any IT system upgrade costs, thus resulting in a net cost savings to the SDLA. Furthermore, FMCSA does not expect there to be any costs imposed upon CLP holders because of this final rule. CLP holders domiciled in those States choosing to issue a CLP valid for up to one year may realize cost savings under the final rule, including reductions in the opportunity cost of time that, in the absence of this final rule, would be spent by CLP holders traveling to and from an SDLA office and at an SDLA office, renewing a CLP valid for no more than 180 days.

Finally, any transfer payment effects that may occur because of this rule, as described earlier, are expected to be small, to the extent that they occur at all.

B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)

This final rule is considered an E.O. 13771 deregulatory action. The Agency cannot estimate the cost savings of the final rule; however, the cost savings are discussed qualitatively in the rule's economic analysis.

C. Regulatory Flexibility Act

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) (5 U.S.C. 601 et seq.), requires Federal agencies to consider the effects of their regulatory actions on small businesses and other small entities, and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (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 entities.

In the NPRM (82 FR 26888), in lieu of preparing an Initial Regulatory Flexibility Analysis under section 603(a) of the RFA to assess the impact of the rule, FMCSA performed a certification analysis under section 605(b) of the RFA and certified that the rule will not have a significant economic impact on a substantial number of small entities. The Agency did not receive any comments from the public or from the Small Business Administration regarding impact of the proposed rule on small entities. Moreover, the

factual basis upon which the Agency found the proposed rule would not have a significant economic impact on small entities is unchanged. The primary entities affected by the final rule are SDLAs and CLP holders. Under the standards of the RFA, as amended by the SBREFA, neither SDLAs nor CLP holders are small entities. SDLAs 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 nor the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under Section 601(5) of the RFA. The rule provides SDLAs the flexibility to choose whether to adopt the one-year CLP validity. As described in more detail earlier, because the decision by an SDLA to issue a CLP that is valid for up to one year is discretionary, the Agency expects that SDLAs will choose to make this change only to the extent that there is a net benefit to the SDLA. CLP holders are not considered small entities because they too do not meet the definition of a small entity in Section 601 of the RFA. Specifically, CLP holders 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. Therefore, this rule will not have an impact on a substantial number of small entities. CLP holders will benefit from reductions in the opportunity cost of time that in the absence of this rule would be spent by CLP holders traveling to and from an SDLA office and at an SDLA office renewing a CLP.

No small entities will be affected by this rule. Accordingly, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.⁴

E. Unfunded Mandates Reform Act of 1995

⁴ U.S. Department of Transportation (DOT). "The Rights of Small Entities to Enforcement Fairness and Policy Against Retaliation." Available at: <https://www.transportation.gov/sites/dot.gov/files/docs/SBREFAnotice2.pdf> (accessed April 20, 2018).

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, and tribal governments, in the aggregate, or by the private sector, of \$156 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one year. This final rule is a discretionary regulatory action, and does not result in such an expenditure.

F. Paperwork Reduction Act

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

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

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

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

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

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

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

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

K. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does 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 which 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, § 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 will collect, maintain, or disseminate information as a result of this rule. Therefore, FMCSA has not conducted a PIA.

L. 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.

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

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

N. 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.

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

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

P. Environment (NEPA)

FMCSA analyzed this rule consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.t.(2). The Categorical Exclusion (CE) in paragraph 6.t.(2) includes regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986. The content in this rule is covered by this CE, there are no extraordinary circumstances present, and the final action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Regulations.gov Web site listed under ADDRESSES.

List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety,

Motor Carriers

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, part 383 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; sec. 7208 of Pub. L. 114-94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

2. Amend § 383.25 by revising paragraph (c) to read as follows:

§ 383.25 Commercial learner’s permit (CLP).

* * * * *

(c) The CLP must be valid for no more than one year from the initial date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided the CLP is not valid for no more than one year from the date of initial issuance.

* * * * *

3. Amend § 383.73 by revising paragraph (a)(2)(iii) to read as follows:

§ 383.73 State procedures.

(a) * * *

(2) * * *

(iii) Make the CLP valid for no more than one year from the date of issuance without requiring the CLP holder to retake the general and endorsement knowledge tests. CLPs issued for a period of less than one year may be renewed provided the CLP is not valid for more than one year from the date of initial issuance.

* * * * *

Issued under authority delegated in 49 CFR 1.87 on:

Raymond P. Martinez
Administrator

[FR Doc. 2018-27779 Filed: 12/20/2018 8:45 am; Publication Date: 12/21/2018]