

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Parts 383, 384, 390, and 391**

[Docket No. FMCSA-1997-2210]

RIN 2126-AA10

**Medical Certification Requirements as Part of the CDL****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), USDOT.**ACTION:** Final rule.

**SUMMARY:** FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require interstate commercial driver's license (CDL) holders subject to the physical qualification requirements of the FMCSRs to provide a current original or copy of their medical examiner's certificates to their State Driver Licensing Agency (SDLA). The Agency also requires the SDLA to record on the Commercial Driver License Information System (CDLIS) driver record the self-certification the driver made regarding the applicability of the Federal driver qualification rules and, for drivers subject to those requirements, the medical certification status information specified in this final rule. Other conforming requirements are also implemented. This action is required by section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).

**DATES:** This rule is effective January 30, 2009. The incorporation by reference of the September 2007 version of the publication listed in this rule is approved by the Director of the Office of the **Federal Register** as of December 1, 2008. State compliance is required by January 30, 2012. All CDL holders must comply with the requirement to submit to the SDLA their self-certification on whether they are subject to the physical qualification rules by January 30, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary D. Gunnels, Director, Medical Programs, FMCSA, Room W64-224, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Telephone: (202) 366-4001. E-mail: FMCSAMedical@dot.gov. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****A. Legal Basis**

Section 215 of the MCSIA (Pub. L. 106-159, 113 Stat. 1767 (Dec. 9, 1999)) (set out as a note to 49 U.S.C. 31305) provides that: "The Secretary shall

initiate a rulemaking to provide for a Federal medical qualification certificate to be made a part of commercial driver's licenses." The population of drivers required to obtain a commercial driver's license (CDL) is different from the population of drivers required to obtain a medical certificate. For that reason, in order to implement this congressional mandate, the rule reconciles the differences between the scope of the Agency's authority to regulate the physical qualifications of drivers of commercial motor vehicles (CMVs) and its authority to establish requirements for CDLs.

The rule places the medical certification documentation requirements on only those drivers required to obtain a CDL from a State who are also required to obtain a certificate from a medical examiner indicating that they are physically qualified to operate a commercial motor vehicle in interstate commerce. The rule also establishes requirements to be implemented by States that issue CDLs to such drivers. These requirements will ensure that accurate and up-to-date information about the CDL holder's medical examiner's certificate will be contained in the electronic CDLIS driver record that is maintained by States in compliance with the CDL regulations. Finally, the rule requires States to take certain actions against CDL holders if they do not provide the required and up-to-date medical certification status information in a timely manner.

**1. Authority Over Drivers Affected**

**a. Drivers Required to Obtain a Medical Certificate.** The FMCSA is required by statute to establish standards for the physical qualifications of drivers who operate CMVs in interstate commerce (49 U.S.C. 31136(a)(3) and 31502(b)). For this purpose, CMVs are defined in 49 U.S.C. 31132(1) and 49 CFR 390.5. There are four basic categories of vehicles covered by this definition:

- Those with a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW), whichever is greater, of at least 10,001 pounds;
- Those designed or used to transport for compensation more than 8 passengers, including the driver;
- Those designed or used to transport not for compensation more than 15 passengers, including the driver; or
- Those used to transport hazardous materials that require a placard on the vehicle under 49 CFR subtitle B, chapter I, subchapter C.

In addition, the vehicles in these categories must be "used on the highways in interstate commerce to transport passengers or property." (Id.). Interstate commerce, for purposes of this provision, is based on the definitional provisions of 49 U.S.C. 31132(4) and 31502(a) and long-standing administrative and judicial interpretations of those sections (and their predecessors), and defined in 49 CFR 390.5, as follows:

Interstate commerce means trade, traffic, or transportation in the United States—

- (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
- (2) Between two places in a State through another State or a place outside of the United States; or
- (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

Subject to certain limited exceptions,<sup>1</sup> FMCSA has fulfilled the statutory mandate of 49 U.S.C. 31136(a)(3) by establishing physical qualification standards for all drivers covered by these provisions (49 CFR 391.11(b)(4)). Such drivers must obtain from a medical examiner a certificate indicating that the driver is physically qualified to drive a CMV (49 CFR 391.41(a), 391.43(g) and (h)). This final rule does not make any change in the standards for obtaining a medical certificate; however, on the basis of the Agency's CDL program authority, this rule requires the CDL drivers who are also subject to the medical examiner's certificate requirement to furnish the original or a copy of the certificate to the licensing State. As explained in the Summary Cost Benefit Analysis provided in this preamble, the rule should improve compliance by CMV operators with the physical qualification standards set forth in the FMCSRs. By doing so, the rule would aid the Agency in ensuring that the physical condition of CMV operators is sufficient to enable them to operate safely and that such operation does not have a deleterious effect on their health, as required by section 31136(a)(3) and (4). The other minimum requirements of section 31136, set out in subsections (a)(1) and (2), are not applicable to this rule because it does not involve either the safety of CMV equipment or the operational activities of the operators.

**b. Drivers Required to Obtain a CDL.** The authority for FMCSA to require an operator of a CMV to obtain a CDL rests on different statutory provisions than those authorizing the promulgation of

<sup>1</sup> See 49 CFR 390.3(f) and 391.2.

physical qualifications for such operators; that authority to hold a valid driver's license is found in 49 U.S.C. 31302. The requirement to obtain a CDL is applicable to drivers of specified CMV categories that are different from the categories specified in 49 U.S.C. 31132(1) and the implementing regulations, as discussed in the preceding section. The four categories of CMVs for which an operator is required to have a CDL, as defined in 49 U.S.C. 31301(4) and specified in 49 CFR 383.5, are the following:

- Those with a GVWR or GCW, of at least 26,001 pounds, including towed units with GVWR or GCW of more than 10,000 pounds;
- Those with a GVWR or GCW of at least 26,001 pounds;
- Those designed to transport at least 16 passengers, including the driver; or
- Those of any size used to transport either hazardous materials that require a placard on the vehicle under 49 CFR part 172, subpart F, or any quantity of a material listed as a select agent or toxin under 42 CFR part 73.

In addition, the vehicles involved must be used "in commerce to transport passengers or property" (49 U.S.C. 31301(4)). The term "commerce" is defined for the purpose of the CDL statutes and regulations as follows:

Trade, traffic, and transportation—

(A) In the jurisdiction of the United States between a place in a State and a place outside that State (including a place outside the United States); or

(B) In the United States that affects trade, traffic, and transportation described in subclause (A) of this clause.

(49 U.S.C. 31301(2); *see also* 49 CFR 383.5.).

However, the statutory provisions governing CDLs also contain a limitation on the scope of the authority granted to FMCSA. The provision at 49 U.S.C. 31305(a)(7) states that:

The Secretary of Transportation [Secretary] shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

\* \* \*

(7) Shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, *to the extent the regulations apply to the individual*; [Emphasis added].

The current CDL provisions require each CDL driver to either certify that he or she meets the qualification requirements contained in 49 CFR part 391 or that he or she is not subject to part 391 (49 CFR 383.71(a)(1)). If the driver expects to operate entirely in

intrastate commerce and is not subject to part 391, then the driver is subject to State driver qualification requirements.

Therefore, reading all of these statutory provisions as a whole, FMCSA interprets section 215 of MCSIA to be applicable only to CDL holders or applicants operating or intending to operate in non-excepted, interstate commerce, as defined in 49 CFR 390.5. This rule requires all CDL holders to continue to furnish a self-certification for the type of driving they will perform. Those CDL holders and applicants operating in non-excepted, interstate commerce must furnish an original or copy of their medical examiner's certificate to the State issuing the CDL.

## 2. Authority to Regulate State CDL Programs

FMCSA, in accordance with 49 U.S.C. 31311 and 31314, has authority to prescribe procedures and requirements for the States to observe in order to issue CDLs (*see, generally*, 49 CFR part 384). In particular, under section 31314, in order to avoid loss of funds apportioned from the Highway Trust Fund, each State shall comply with the following requirement:

(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by [FMCSA] under section 31305(a) of [Title 49 U.S.C.]. (49 U.S.C. 31311(a)(1); *see also* 49 CFR 384.201).

On the basis of this authority, the rule requires States issuing CDLs to drivers operating or intending to operate in non-excepted, interstate commerce, to obtain specified information on the required medical examiner's certificate for posting into the CDLIS driver record. The rule also requires States to take certain specified actions to downgrade the CDL if required information is not provided by the CDL applicant or holder.

## B. Background

### 1. Notice of Proposed Rulemaking

On November 16, 2006, FMCSA published a notice of proposed rulemaking (NPRM) (71 FR 66723) titled, "Medical Certification Requirements as Part of the CDL." The Agency proposed to add a requirement for CDL holders subject to part 391 of title 49, Code of Federal Regulations, to provide an original or copy (at the option of the SDLA) of the federally mandated medical examiner's certificate to the SDLA. The SDLA would record medical certificate status information on the CDLIS driver record. Each State would be provided the flexibility of

establishing its own processes for receiving this information from drivers. SDLAs would also be required to update the medical certification status of a driver to "not-certified" within 2 days of the expiration of the certificate, and subsequently downgrade the CDL within 60 days, if the SDLA did not receive a new medical certificate for that driver.

### 2. Summary of the Final Rule

After considering the public comments to the NPRM, FMCSA adopts a final rule consistent with the NPRM.<sup>2</sup>

a. *SDLAs*. This rule requires the States to modify their CDL procedures to: (1) Record a CDL driver's self-certification regarding type of driving (*e.g.*, interstate (non-excepted or excepted) and intrastate (non-excepted or excepted) on the CDLIS driver record); (2) require submission of the medical examiner's certificates (or a copy) from those drivers operating in non-excepted, interstate commerce who are required by part 391 to be medically certified; (3) date stamp the medical examiner's certificate (or a copy); (4) provide the stamped medical examiner's certificate or a copy as a receipt to the driver; (5) retain the certificate or a copy for 3 years from the date of issuance; (6) post the required information from the certificate or a copy onto the CDLIS driver record within 10 days; and (7) update the medical certification status of the CDLIS driver record to show the driver as "not-certified" if the certification expires; and then downgrade the CDL within 60 days of the expiration of the driver certification.

If the driver certifies that he or she expects to drive in interstate commerce and is not driving exclusively for one of the industries excepted from the requirements of part 391, this rule requires the State to post on the CDLIS driver record the following information from that driver's medical examiner's certificate: (1) Medical examiner's (ME) name; (2) ME's license or certificate number and the State that issued it; (3) expiration date of ME's certificate; (4) ME's telephone number; (5) date of physical examination/issuance of the

<sup>2</sup> In this final rule, the Agency will refer to several terms for reports of driver history information that the SDLA provides to the driver or motor carrier employer from the State's official CDLIS driver record. The terms are as follows: (1) "CDLIS driver record" for CDL drivers and "driver record" for non-CDL drivers, to refer to the electronic record stored by the SDLA and containing a CDL driver's status and history located in the database of the driver's State-of-Record; and (2) "CDLIS motor vehicle record (CDLIS MVR)" for CDL drivers and "motor vehicle record (MVR)" for non-CDL drivers, to describe the driver history information provided by the SDLA from the CDLIS driver record to the driver or employer.

ME's certificate to the driver; (6) National Registry<sup>3</sup> identification number, if required by future rules; (7) medical certification status determination (i.e., "certified" or "not-certified"); (8) information from FMCSA if a medical variance was issued to the driver; (9) any driver restrictions; and (10) the date the information is entered on the CDLIS driver record.

In addition to the recordkeeping functions, the SDLA must make the driver's medical certification status information electronically accessible to authorized State and Federal enforcement officials via CDLIS and the National Law Enforcement Telecommunication System (NLETS), and to drivers and employers via the CDLIS motor vehicle records (MVRs).

b. *Motor carriers.* Under this rule, motor carriers who employ a CDL driver to operate in non-excepted, interstate commerce must place his or her current CDLIS MVR documenting the driver's medical certification status in the driver's qualification (DQ) file before allowing the driver to operate a CMV. The receipt issued the driver when the certificate is presented to the SDLA may be used for this purpose for up to 15 days from the date of the receipt or date stamp. The motor carrier must obtain the CDLIS MVR to verify: (1) The driver's self-certification to operate in non-excepted, interstate commerce; (2) that a non-excepted, interstate driver has a medical certification status of "certified;" and/or (3) whether the driver was issued a medical variance by FMCSA.

Motor carriers may no longer use a copy of the medical examiner's certificate to document physical qualification in the DQ file, except for up to 15 days from the date stamp on the receipt given to the driver by the SDLA. After the 15th day, the carrier must have obtained a copy of the CDLIS MVR as documentation that the driver is medically "certified" and placed it in the DQ file.

c. *Drivers.* Currently, interstate CDL drivers subject to part 391 are responsible for providing a copy of the medical examiner's certificate to the motor carrier and for carrying a copy of the certificate when operating. Under this final rule, drivers must provide the

medical examiner's certificate to the SDLA. A driver's date-stamped medical examiner's certificate (or a copy) serves as a receipt from the SDLA and may be used as proof of medical certification for 15 days. Except for using the receipt for the first 15 days, the driver is no longer allowed to use the medical examiner's certificate as proof of his or her certification to enforcement personnel or employers. Such drivers no longer have to carry the actual medical examiner's certificate, but must continue to carry any skill performance evaluation (SPE) certificate or medical exemption document while on duty.

### 3. *Safety Need for the Rule*

This rulemaking action will help to prevent medically unqualified drivers from operating on the Nation's highways by providing State licensing agencies a means of identifying interstate CDL holders who are unable to obtain a medical certificate and taking action to downgrade their CDLs accordingly. The final rule will also serve as a deterrent to drivers submitting falsified medical certificates because FMCSA and State enforcement personnel will now have access, via CDLIS, to information about the medical certificate and the identity of the medical examiner who performed the examination. Electronic access will enable FMCSA and the States to detect certain patterns or anomalies concerning the source of medical certificates through queries of the licensing databases at any time rather than being limited to checking for such issues during roadside inspections and compliance reviews.

While there are no studies to provide data on the number of medically unqualified drivers that may be currently operating CMVs in interstate commerce, roadside inspection and compliance review data for calendar year 2007 indicate there remains a need to improve oversight of the medical certification process for CMV drivers. For calendar year 2007, FMCSA and its State partners conducted more than 3.4 million roadside inspections. There were 145,219 violations cited for drivers failing to have a medical examination certificate in their possession while operating a CMV, 42,171 violations cited for drivers operating with an expired medical examination certificate, 4,387 violations for drivers in possession of an improper medical examination certificate, and 6,105 violations for physically unqualified drivers.

During calendar year 2007 FMCSA and its State partners conducted 17,453 compliance reviews of motor carriers. A

compliance review is an on-site examination of a motor carrier's operations, such as drivers' hours of service, maintenance and inspection, driver qualifications, CDL requirements, financial responsibility, crash involvement, hazardous materials, and other safety and transportation records to determine whether the carrier meets FMCSA's safety fitness standard under 49 CFR part 385. There were 43 acute violations cited for motor carriers using a physically unqualified driver. Acute regulations are those identified as such where noncompliance is so severe as to require immediate corrective action by a motor carrier regardless of the overall safety posture of the carrier.

With regard to crash data, FMCSA estimates that based on the results of its Large Truck Crash Causation Study (see "Report to Congress on the Large Truck Crash Causation Study," March 2006) that there are 3,000 trucks per year involved in crashes where there was either a fatality or serious injury, and the "critical reason" for the crash was the truck driver having a heart attack or other physical impairment. The critical reason is the immediate reason for the critical event, which is the action or event which put the vehicle(s) on a course that made the crash unavoidable, given reasonable driving skills and vehicle handling.

While the enforcement data does not provide any insights into crash causation and the LTCCS estimates have certain limitations, that information is nonetheless disconcerting and suggests the need for action to improve the oversight of the documentation of the medical examination.

### C. *Discussion of Public Comments*

The FMCSA received 83 comments in response to the NPRM. The commenters included: 24 State agencies and the American Association of Motor Vehicle Administrators (AAMVA); 22 individuals, many of whom identified themselves as drivers; 18 motor carriers, including owner-operators; 8 trucking industry consultants and associations, including the American Trucking Associations (ATA) and the Owner-Operator Independent Driver Association (OOIDA); 4 commercial passenger carrier industry representatives; 2 safety advocacy groups and the National Transportation Safety Board (NTSB); 4 insurance and medical community representatives; and the Commercial Vehicle Safety Alliance (CVSA).

Ten commenters, including three State agencies, expressed support for the concept of linking medical certification status to obtaining and maintaining a

<sup>3</sup> Although FMCSA plans to issue a separate rule establishing the National Registry of Medical Examiners in the future (see 49 U.S.C. 31149 as added by section 4116(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (Pub. L. 109-59, 119 Stat 114, August 10, 2005)) (SAFETEA-LU), to minimize the number of times States have to upgrade their licensing systems, States may want to make provisions in the CDLIS driver record to accept this information, should it be required.

CDL; however eight of these commenters expressed concerns regarding the specifics of how FMCSA proposed to accomplish this.

Twenty-six commenters, 12 of whom were individuals, opposed the proposed amendments to the FMCSRs. Among other things, they believed the regulations would lead to increased costs and paperwork burdens on motor carriers, drivers, and States. They further maintained that this regulation does nothing to address driver fraud and abuse of the medical certification process. While the remaining 47 commenters did not explicitly support or oppose the NPRM, they offered specific comments about the proposal. The following sections provide details regarding the comments submitted to this docket.

#### 1. Information on the CDLIS Driver Record

##### a. Medical Examiner Information.

Both the Oregon DOT and Maryland State Highway Administration commented on inclusion of various elements of information from the medical examiner's certificate into an SDLA's CDLIS driver record. Oregon agreed on the importance of entering the driver certification information and medical certification status, but did not understand why the State has to enter information identifying the medical examiner as well. Oregon suggests that FMCSA only add the expiration date of the medical examiner's certificate, medical certification status, a "W" restriction code to indicate that the driver is not medically qualified to operate CMVs in Canada because of a medical variance (e.g., an exemption or SPE certificate to enable drivers who do not meet certain physical qualifications requirements to operate CMVs), and a record of any restrictions to the CDLIS driver record.

*FMCSA Response:* The Agency chose to require the SDLA to post on the CDLIS driver record the contact information for the ME who conducts the examination. This will help deter driver fraud by enabling FMCSA and the SDLA to contact the ME directly to verify the identity of the ME and details of the ME's certificate if the Agency or the SDLA suspects there is a problem, or to obtain a copy of the supporting Medical Examination Report.

b. *Medical Variance Indicator.* In the NPRM, the FMCSA proposed adding a new restriction code to § 383.95 indicating a medical variance. The Agency recommended using a code of "W" to be placed both on the CDLIS driver record and on the CDL document to identify CDL holders subject to part

391 who have obtained an ME's certificate only because they previously obtained a medical variance in order to operate CMVs in the U.S. The Kentucky Division of Driver Licensing stated that the "W" restriction should be displayed on the CDLIS driver record, but not on the CDL document. Nebraska DMV recommended that a different code should be selected.

*FMCSA Response:* Displaying a restriction code (not necessarily a "W") on the CDL document, as well as on the CDLIS driver record, will enable U.S. enforcement personnel to identify drivers who are required to carry documentation of an SPE certificate or medical exemption when they are on-duty. It will also enable Canadian authorities to identify U.S. CDL holders who are prohibited by reciprocal agreement with Canada from operating a CMV in Canada. Implementation of a similar restriction code on Canadian licenses will enable U.S. enforcement personnel to identify Canadian drivers who do not meet U.S. physical qualification standards.

The FMCSA has selected the letter "V" as the code for identifying drivers with a medical variance because the letter "W" is currently used by a number of States for other purposes. To reduce the burden on the States, FMCSA selects a code (the letter "V") that could be adopted without redefining existing letter designations. The Agency will work with AAMVA to include the "V" code in the CDLIS State Procedures Manual. Section 383.95(b) is revised to require that the code published in that manual must be put on the CDL document and the CDLIS driver record.

c. *Medical Variances.* CVSA agreed that it is important that any medical variance granted to a driver should be part of the driver's record, including any SPE or exemption. If FMCSA grants an SPE certificate to a driver, the Maryland State Highway Administration believes that the Agency should be required to submit evidence of this to the SDLA. Maryland also questions FMCSA's logic for continuing the requirement that motor carriers maintain evidence of the SPE certificate in their driver files. They believe including the CDLIS MVR in the file should satisfy the requirement.

*FMCSA Response:* The final rule requires that the SDLA post on the CDLIS driver record whether a variance is noted on the medical certificate. The Agency continues the requirement for motor carriers to maintain evidence of the SPE certificate in driver qualification files because the driver licensing information system will not include details about the specific

variance. The FMCSA will continue to notify States about drivers who no longer meet the applicable criteria for a variance to enable States to identify drivers that should no longer be considered medically qualified based on the loss of the variance.

Because FMCSA's knowledge of the SDLA contacts is essential to the information flow from FMCSA to the SDLAs, it is important to establish a requirement that States maintain accurate contact information with FMCSA. Therefore, FMCSA adds a new requirement at § 383.73(j)(5) designating the FMCSA Medical Program as the contact with whom the SDLAs are responsible for maintaining their up-to-date State contact information for receiving medical variance information from FMCSA.

The final rule at § 383.73(j)(3) increases the time allowed for the SDLA to record the medical variance information from the proposed 2 days to 10 days, which makes this rule consistent with the posting requirements in § 384.225(c).

The terms of a medical variance are spelled out on either the SPE certificate or on the medical exemption document, which is issued to the driver by FMCSA. In order for an enforcement officer to verify whether the driver is in compliance with the medical variance document, the driver must maintain a copy with him or her when on-duty.

Currently, section 391.49(j)(1) requires drivers (both CDL and non-CDL) who are granted an SPE to carry the SPE certificate while on-duty, in addition to the medical examiner's certificate. It also requires motor carriers to maintain a copy of the SPE certificate in the DQ file. There is a similar provision on the medical examiner's certificate requiring a driver with an exemption to have a copy of the applicable exemption in his or her possession when on-duty. The medical examiner's certificate by itself has never been valid unless the driver also presents the exemption document or SPE certificate with the medical examiner's certificate. This final rule adds clarifying statements of this existing requirement at §§ 391.23(m)(1), 391.41(a)(1)(ii) and (a)(2)(ii).

#### 2. Definitions and Clarification of Terms

a. *New Definitions.* The FMCSRs have used several different terms when referring to the electronic record containing a CDL driver's status and full history maintained by the driver's State-

of-Record.<sup>4</sup> In the NPRM, the Agency proposed specific definitions for each of these terms.

(1). “*CDLIS driver record*,” “*CDLIS MVR*,” and “*MVR*.” First Advantage believes that attempting to define the terms “*CDLIS driver record*” (§ 383.5), “*CDLIS MVR*” (§ 384.105), and “*MVR*” (§ 390.5) may create confusion within the States that have adopted the FMCSRs. It suggests that the States should be made cognizant of this change in terminology when developing their SDLA computer systems. The Minnesota Department of Public Safety suggests using the term “*CDLIS Driver History*” to replace *CDLIS MVR*.

*FMCSA Response:* FMCSA retains the proposed definitions it set forth in the NPRM. The Agency points out that the definition for “*motor vehicle record*” was established by the Driver Privacy Protection Act (DPPA) of 1994 (18 U.S.C. 2721 *et seq.*) that, as amended, adopted the term “*Motor Vehicle Record*” for the report generated from the driver record and provided by SDLAs to various parties. The DPPA established what information SDLAs can and cannot include on the MVR and to whom they may provide it. Therefore, FMCSA’s use of the term “*CDLIS MVR*” in part 384 is intended to be consistent with the 1994 statute, and provides a complete driver history for CDL holders.

(2). *The Terms “Certified” and “Not-Certified.”* Some commenters were concerned that linking medical certification information to the CDL raises issues concerning the privacy of driver information. For example, several drivers and other individuals opposed linking personal medical information to the CDL because they believed that such information should not be available without the driver’s permission.

*FMCSA Response:* These comments made it clear that the proposed term of “*not-qualified*” is confusing to some readers. Some commenters equate it with indicating that a driver is medically “*unqualified*.” For example, the driver could be physically qualified, but because the driver failed to obtain a current medical certification he or she is “*not-certified*.” Therefore, to eliminate confusion, the final rule uses the terms “*certified*” and “*not-certified*” to make the point that the status indicator on the CDL is not an indicator of any particular medical information about the driver.

A medical certification status of “*not-certified*” should not be construed as an adverse action taken against a CDL holder’s driving privileges. The term “*not-certified*” is intended to specifically avoid any implication of an adverse licensing action against the driver. For example, the driver may not meet the requirements to hold a non-excepted, interstate CDL, but not because of any adverse actions taken against the driver or because the driver is medically unqualified to drive a CMV in interstate commerce.

### 3. *Medical Examiner’s Certificate and Form Issues*

a. *Proof of Submission to the SDLA.* A number of commenters were concerned about the reliability of the medical certificate SDLA submission process. OOIDA, Schneider National, Gabbard Consulting, and the Oregon DOT believe there is a need to establish a mechanism by which drivers could demonstrate proof of submission of the medical examiner’s certificate so that the driver will be protected if the SDLA later claims that it did not receive it in a timely manner. The International Brotherhood of Teamsters (Teamsters) and the National Propane Gas Association suggest that the SDLA should be required to provide the driver with a receipt and an acknowledgement that the *CDLIS driver record* has been updated. Schneider National points out that some States, such as California and Indiana, currently provide a receipt to the driver.

UniGroup, Inc. states that the rule should provide the driver with an “*electronic*” means of submission (*i.e.*, fax or email). ACOEM states that a mechanism is needed for drivers to present a copy of their medical certification to the SDLA if the ME delays submitting the medical examiner’s certificate.

Commenters also want to know how enforcement officials will handle drivers who provide their new medical examiner’s certificate to the SDLA at the last moment and continue to drive CMVs prior to the SDLA updating the *CDLIS driver record*. An electronic check of the medical certification status could indicate the driver is *not-certified*. The California Highway Patrol and Oregon DOT recommend adding an exception that would allow a driver to obtain and carry a written medical examiner’s certificate for cases when providing the certificate to the home State cannot be practically accomplished while the driver is on the road.

*FMCSA Response:* FMCSA emphasizes that it is the driver’s

responsibility to ensure the timely submission of the medical examiner’s certificate to the SDLA and the State’s responsibility to enter the information from the certificate to the *CDLIS driver record* in a timely manner after it has been received. This rule does not impose on the State a requirement to establish a mechanism to accommodate last-minute submissions of medical certificates. Therefore, drivers should ensure the submission of their new medical certificates far enough in advance of the expiration date to provide the SDLA with sufficient time to process the information. FMCSA agrees that it is important, in order to standardize this process, to require SDLAs to provide a receipt to a driver when the driver submits the required medical examiner’s certificate to the State.

FMCSA revised § 383.73(a)(5) and § 383.73(j) to require all SDLAs to provide drivers with a date stamped original (or copy) of the submitted medical examiner’s certificate as the driver’s receipt. For 15 days, the receipt can provide proof for law enforcement officials and a motor carrier that a driver has submitted a current medical examiner’s certificate to the SDLA, bridging a possible gap between submission and the posting of the information on the *CDLIS driver record*. The availability of the receipt also lowers employers’ costs because they will not need to pay additional funds to obtain a copy of a driver’s MVR during this 15-day period. Because of this receipt requirement, SDLAs are allowed additional time to post the medical certification status information to *CDLIS driver record*, which will lower the costs for all States.

b. *Notice of Pending Expiration of the Medical Certificate.* The Texas Department of Public Safety believes that some drivers might be charged or cited for operating a CMV without a CDL if they do not receive timely notification of the pending expiration of their medical certification from the State. Two States (Wisconsin DOT and New York DMV), UniGroup, an individual ME, AMSA, Advocates for Highway and Auto Safety (Advocates), and the Commercial Vehicle Safety Alliance believe that drivers should be notified by SDLAs in advance that their ME’s certifications are due to expire. The Teamsters emphasize the importance of notifying drivers well in advance of any punitive actions being implemented by the SDLA.

J.B. Hunt states that motor carriers should be notified when a medical certification is going to expire so that drivers can be contacted more

<sup>4</sup> The “*State of Record*” is the jurisdiction that maintains the *CDLIS driver record* for every CDL driver licensed by that jurisdiction. See 49 CFR 384.109 and the AAMVA’s “*Commercial Driver License Information System (DCLIS) State Procedures Manual*.”

expeditiously. Gabbard Consulting notes that a problem exists in carriers not notifying their drivers within a reasonable time frame prior to the driver's medical certification expiration date.

*FMCSA Response:* The FMCSA emphasizes that it is a driver's responsibility to maintain a current medical certification and to renew it before it expires. The final rule does not require the SDLA to notify the driver of a pending expiration of his/her medical certification. However, the final rule requires the SDLA to notify the driver of a pending "downgrade" of the CDL.

The medical certification status on the CDLIS driver record includes the expiration date of the medical examiner's certificate; thus, the carrier and driver will continue to have access, via the CDLIS MVR, to any pending expiration date of the driver's medical examiner's certificate. An additional clarification is added to § 391.51(b)(7) setting forth the details on how motor carriers must maintain a driver's medical certification during the 2-year transition following the States' implementation of the requirements, which will occur no later than 3 years after the effective date of this final rule.

*c. Retention of Medical Forms by MEs.* In the NPRM, the FMCSA proposed that MEs should retain the medical examiner's certificate (Short Form) for the duration of the certification period. The NTSB and ACOEM voiced concern that the NPRM did not explicitly require MEs to retain the Medical Examination Report. ACOEM notes that because there is no requirement in the existing rule that specifies the length of time that the ME should retain the Medical Examination Report, the ME should retain the report for at least 10 years in the event there is ever a need to review previous certifications and medical history.

*FMCSA Response:* In order to provide clear direction to MEs, FMCSA revises its original proposal in § 391.43(g)(2) so that medical examiners must retain the medical examiner's certificate for at least 3 years after the certificate was issued; and adds a comparable recommendation for the retention period for the Medical Examination Report for at least 3 years after the examination. The existing 3-year minimum retention period for the medical examiner's certificate that applies to employing motor carriers found at § 391.51(d)(4) is the basis for this provision.

*d. Retention of Medical Examiner's Certificate Documentation by SDLAs.* In the NPRM, the Agency proposed that States would be required to keep for 6

months either the original or copy, including the date stamp, of the medical examiner's certificate. The majority of commenters who addressed this issue (13 of 18), including the Minnesota Department of Public Safety, stated that the retention period for SDLAs to keep the medical examiner's certificate should be longer than 6 months. CVSA believes that States should retain both a hard copy and an electronic image of the medical examiner's certificate for as long as the certificate is valid.

Most of the other commenters who addressed the proposed retention period of 6 months (UniGroup; North Dakota DOT, an individual ME, J.B. Hunt, Schneider National, ATA, New York DMV) recommend that the retention period should be at least as long as the period of validity of the certification or the potentially longer "licensing cycle" of the current CDL document. This would allow any error to be corrected quickly and would allow carriers access to information about the medical certifications of their drivers. The Delaware DOT recommends a retention period of 5 years in case there are challenges in court. The NTSB recommends that the certificate should be retained indefinitely because it may be the only historical record available to verify a driver's medical status.

Although the Wisconsin DOT believes that retention of the ME's certificate should be for the duration of the certification period, it contends that the employer or driver should have the responsibility to retain it, not the SDLA.

The Michigan Department of State and AAMVA point out that individual States might currently have different requirements. They recommend that the rule should not set a specific standard but should provide flexibility. The Pennsylvania DOT believes that a retention period of 6 months for the SDLAs to keep the certificate would be acceptable. AMSA did not think that SDLAs should be required to retain the certificate at all. It believes that the driver or ME should be responsible for retaining the certificate. The State of Vermont said it had no comment on this issue, but notes that it makes electronic images of all documents presented at the time of issuance.

*FMCSA Response:* FMCSA agrees with the commenters that there is a need to retain the medical examiner's certificate of all CDL holders subject to part 391, whether the original or a copy, for a sufficient amount of time in order to enforce the fraud penalty specified at § 383.73(g). In the interest of minimizing any possible additional burden on States that this increased retention requirement might impose, and to be

consistent with other retention criteria FMCSA has already established for medical examiner's certificates, this final rule adopts a three-year period for SDLAs to retain the medical certificate.

*e. Data Quality Control.* A number of commenters expressed concern about the accuracy of the medical certification status data that will be posted and updated on CDLIS driver records. Based on its experience, Trailways National Bus System (Trailways) claims that there are chronic problems with medical certifications and errors on the ME forms. Trailways expressed concerns about obtaining corrections to information posted on the CDLIS driver record. The Teamsters, ATA, the New York DMV, CVSA, and the National Propane Gas Association favor an expedited process to correct errors and omissions, such as an on-line system that drivers or employers could access.

Trailways also expressed concern about the impact of data errors, particularly those that would cause delays to the driver, and questioned what remedy would be available to the driver. The Minnesota Trucking Association recommends developing a mechanism for rapid processing to correct errors that would be available continuously at all hours.

CVSA suggests that such a data correction capability could be implemented into their proposed Employer Notification System or into existing State systems. The Wisconsin DOT believes the Federal government should have the responsibility to develop a program to enable employers to access the CDLIS driver record for their employees.

The Delaware DOT suggests that MEs could be electronically linked to the SDLAs, which would provide a way to quickly correct data errors.

*FMCSA Response:* FMCSA emphasizes that this rulemaking does not affect the duties and responsibilities of MEs to accurately complete the medical examination form and accompanying medical certificate. There is no reason to believe that MEs will be more prone to incorrectly certify drivers than is currently the case. SDLAs are responsible for accurately posting information from the ME's certificate submitted to them by the driver. If a data entry error is made, it is SDLAs that are responsible for making prompt corrections, not the Federal government. If the information on the certificate is illegible or incomplete, the SDLA may refuse to accept the certificate.

#### 4. Privacy of Information

*a. Data on the CDLIS Driver Record.* Some commenters believe the proposed

rule raises issues concerning the privacy of driver information. Other commenters, including the Teamsters, Minnesota Department of Public Safety, New York DMV, OOIDA, and the Delaware DOT, contend that using the medical examiner's certification alone does not raise privacy concerns.

The Delaware DOT notes that drivers might be subject to hiring discrimination from employers because certain types of medical information displayed on CDLIS MVRs might affect an employer's insurance costs. Delaware was concerned that providing medical variance information above and beyond the basic medical certification status information (i.e., valid or not valid) could create privacy problems. It suggests that ME offices could add information to the SDLA system electronically to help maintain privacy. The Minnesota Department of Public Safety warns that the possible applicability of privacy laws might force drivers to appear at an SDLA office in person.

The California DMV and National Propane Gas Association warn of the possibility of computer hackers or of a lost or stolen computer. The National Propane Gas Association expresses concerns over the security of the proposed information stored on the CDLIS driver record and requests that FMCSA take the necessary precautions to safeguard the information.

OOIDA comments that States should not be allowed to require the Medical Examination Reports and that MEs should be prohibited from providing the Medical Examination Reports to motor carriers. It also believes that safety auditors (investigators) performing a carrier compliance review (CR) should not ask motor carriers for the driver's Medical Examination Report. OOIDA further comments that FMCSA must instruct its authorized safety auditors not to compel motor carriers to provide more information than motor carriers are required to retain under the rules.

*FMCSA Response:* The final rule requires SDLAs to post on the CDLIS driver record only that information that is found on the current medical certificate. This is the same information that is available on drivers subject to the physical qualification standards and that drivers are currently required to provide to motor carrier employers prior to their drivers operating CMVs in interstate commerce. Therefore, this rulemaking will not result in the mandatory disclosure of sensitive medical information to current employers or prospective future employers.

OOIDA's recommendation that employers be prohibited from obtaining the Medical Examination Report is not necessary to prevent infringing upon the employee's privacy rights. Employers may, as a condition of employment, require drivers to provide the medical examination report. Additionally, FMCSA has the authority to investigate whether or not a driver is medically qualified to operate a commercial motor vehicle in interstate commerce. If the Medical Examination Report is included in the DQ file, safety investigators may ask the motor carrier for a copy of it as part of a motor carrier CR.

In response to OOIDA's recommendation that States should not be allowed to require the Medical Examination Reports, States may impose physical qualification requirements that are more stringent than those provided in this final rule. The provisions of 49 CFR parts 383 and 384 are considered minimum standards (49 U.S.C. 31305(a)).

b. *Health Insurance Portability and Accountability Act of 1996 (HIPAA).*<sup>5</sup> One individual and the AAMVA request that FMCSA evaluate the security standards under HIPAA (42 U.S.C. 1320d-6) as they may pertain to availability of medical information on the CDLIS driver record. AAMVA is concerned that SDLAs would have to comply with HIPAA regulations.

*FMCSA Response:* This rulemaking concerns the posting to the CDLIS driver record by SDLAs of information from the medical certificate which is limited to whether the driver is medically certified, and whether the driver needs a medical variance. With the exception of the SPE certificates, FMCSA may only grant medical variances through a notice-and-comment proceeding in the **Federal Register**. Therefore, the information about such variances is already publicly available and the States should not consider HIPAA as a legal barrier to implementing this rule.

c. *Applicability of the Privacy Act.* The Pennsylvania DOT contends that the effect of the 1974 Privacy Act (5 U.S.C. 552a) is unclear to them, particularly with respect to whether States must provide a copy of the submitted medical information to the driver. The Pennsylvania DOT argues that this rule seems to require the provision of a copy. However, their

<sup>5</sup> Since the passage of the HIPAA in 1996, health care providers must be able to provide assurances that the integrity and confidentiality of the electronic protected health information that they collect, maintain, use or transmit is protected—and not just against the risk of improper access, but also against the risk of interception during electronic transmission.

existing State law prohibits release of medical information provided by others for the purpose of evaluating the medical condition of the driver. They suggest that the issue regarding applicability of the Privacy Act to States should be resolved before a final rule is issued.

OOIDA said that FMCSA should institute a Federal System of Records for CDLIS, which they believe is required by the Privacy Act.

*FMCSA Response:* The Privacy Act of 1974 (5 U.S.C. 552a), was created in response to concerns about how the creation and use of computerized databases might impact individuals' privacy rights. It safeguards privacy through creating four procedural and substantive rights in personal data. First, it requires government agencies to show an individual any records kept on him or her. Second, it requires agencies to follow certain principles, called "fair information practices," when gathering and handling personal data. Third, it places restrictions on how agencies can share an individual's data with other people and agencies. Fourth and finally, it lets individuals sue the government for violating its provisions. There are, however, several exceptions to the Privacy Act. In particular, the Privacy Act applies to Federal systems of records. The Office of Management and Budget (OMB) has determined that CDLIS is not a Federal System of Records subject to the Privacy Act. Because CDLIS is not a Federal system of records, the Privacy Act does not apply to this database containing driver history and status information.

#### 5. Authorized Users and Information Access Issues

a. *Authorized Users.* Under 49 CFR 384.225, access to CDLIS driver records is limited to "the following users or their authorized agents:" States, the Secretary of Transportation, the affected driver, and the employing motor carrier or prospective employing motor carrier. The Maryland State Highway Administration notes that § 384.225(e) failed to include enforcement agencies as an authorized agent to access CDLIS information.

Three commenters, including an anonymous person, Advocates, and the Maryland State Highway Administration, raise questions regarding who will be authorized to access the driver medical certification status information on the CDLIS driver record. Advocates request that FMCSA provide a comprehensive list of the users who will be permitted to access CDLIS for a driver's MVR.

*FMCSA Response:* In response to concerns about CDLIS access, each group of authorized users has access to certain defined information on CDLIS, as set out in § 384.225(e). States and the Secretary can obtain all information on all driver records. However, drivers can only obtain their own CDLIS driver record. Employers can only obtain records for drivers employed or being evaluated for employment who have therefore given their permission to the motor carrier to obtain/access the record. Drivers and motor carriers must obtain the CDLIS MVR from the SDLA; they are not permitted electronic access to CDLIS nor is the CDLIS MVR available via a CDLIS query.

b. *Motor Carrier Must Obtain CDLIS MVR.* Before allowing a driver to operate a CMV in non-excepted, interstate commerce, this rule requires a motor carrier to obtain the driver's CDLIS MVR to verify a driver's or prospective driver's medical certification status. However, for up to 15 days from the date on the SDLA's date stamped receipt, the motor carrier is allowed to instead use the receipt as proof that the driver is "certified" to operate a CMV in interstate commerce. The current rule requiring employers to check the driving record of new employees gives the motor carrier 30 days to obtain the CDLIS MVR. Advocates strongly support the change to require the MVR sooner, because Advocates think that a driver who is required to be medically certified, but is not, should not be allowed to operate a CMV for up to 30 days. ATA was unsure what the effect of the proposed change would be on smaller motor carriers and believes that FMCSA should conduct an additional evaluation. The National Propane Gas Association opposed the change and urged FMCSA to retain the 30-day period. The Minnesota Department of Public Safety believes that small business concerns were sufficiently covered by the analysis presented. The American Bus Association/Bus Industry Safety Council (ABA/BISC) and OOIDA believe that this provision for carriers to obtain the CDLIS MVR would have adverse impacts on small business truckers and bus companies.

An individual ME suggests that the rule should require States to make the proposed CDLIS MVR information available more readily, so that the carrier can make timely hiring decisions. Schneider National suggests that the rule should assure carrier access to the CDLIS MVR data through third parties.

*FMCSA Response:* The current motor carrier requirements for documenting

driver medical certification, found at § 391.41(a) and § 391.51(a)(7), are that the medical examiner's certificate must be placed in the DQ file before the driver is allowed to operate a CMV in interstate commerce. Thus, only the method of documentation for this requirement is modified by this rule. The basic requirements remain the same—the employer may not allow a driver to operate a CMV without proof that he or she is physically qualified to do so.

It is FMCSA's opinion that allowing 30 days to obtain a CDLIS MVR is a remnant of the time when requests for, and provisions of, MVRs were processed by paper. Electronic access, however, is now common-place, so the carrier should receive the MVR sooner than 30 days from the SDLA's receipt of the driver's medical certification. On average, FMCSA estimates that it now takes approximately 4 days to obtain those results. FMCSA concludes that it is possible to obtain a CDLIS MVR within that same 4-day period, so our implementation of a 30-day time frame to meet this requirement should be sufficient.

There are various third party commercial services available to motor carriers that obtain MVRs electronically from the SDLAs. For small carriers that make the business decision not to use one of these commercial services, it is possible that it may be more difficult to obtain a CDLIS MVR from an out-of-state SDLA within 4 days. However, it is likely the majority of drivers hired by such small motor carriers are going to be licensed in-State, so this requirement is unlikely to be a major impediment to the normal operations of these small entities.

#### 6. Impacts

a. *Impacts on the States.* As set forth in the NPRM, FMCSA originally estimated that the requirements of the rule would cost the States \$18.3 million over the first 3 years of implementation and \$4.0 million per year every year thereafter. Several commenters expressed concern about the financial burden the rule would impose on the States. Individual State driver licensing agencies, including Virginia, Pennsylvania, Wisconsin, New York, California, and Delaware, provided a range of estimates for associated costs pertaining to this rule.

The Alabama Department of Public Safety, Missouri Department of Revenue, Nebraska DMV, Kentucky Division of Driver Licensing, Texas Department of Public Safety, and the National Propane Gas Association did not provide specific estimates; rather

they described the types of costs that States would incur, including hiring and training additional staff for reviewing submissions, entering data into the CDLIS driver record, obtaining office space and equipment, mailing multiple notifications, retaining certifications, and making CDLIS changes. These commenters agree that these expenses would constitute a large ongoing operational burden. The Alabama Department of Public Safety, Virginia DMV, Nebraska DMV, Oregon DOT, Michigan Department of State, Texas Department of Public Safety, and CVSA all believe the Federal government should bear the cost of this rule, including the ongoing operations costs. The Indiana Department of Revenue believes, however, that it would have no difficulties implementing the proposed changes, as their system exceeds what is proposed by the FMCSA.

Some commenters specifically request that FMCSA revisit its cost estimates based on the comments to the docket, including the Oregon DOT, which states the actual implementation costs will be significantly higher than the amounts estimated by FMCSA. Delaware recommends sending out surveys to ascertain the expected cost impact for staff and resources. Schneider National similarly asked for the cost analysis to be revisited.

The California DMV, Minnesota Department of Public Safety, Oregon DOT, National Propane Gas Association, and Virginia DMV point out that estimates are difficult to develop because the exact requirements of the proposal have not been finalized. They believe FMCSA's calculation was especially low regarding its estimate of new ongoing operating costs, for which the Agency will not be able to provide any financial assistance to the States.

The Delaware DOT comments that applicants who physically drop off their certifications would put an undue strain on State staff and resources. The Alabama Department of Public Safety said the additional burden of a paper-based system is cost prohibitive and labor intensive. The Minnesota Department of Public Safety said that the State comments on impacts contained in the FMCSA report<sup>6</sup> on concept models accurately expressed the impacts that States would have to address.

*FMCSA Response:* In response to these State comments, FMCSA conducted a survey among several

<sup>6</sup> "Medical Certification Requirements as Part of the CDL," October 2007, prepared for FMCSA by the North American Driver Safety Foundation.

States in an effort to re-evaluate the costs of its original proposal to determine if the Agency's calculation was especially low (73 FR 36489; June 27, 2008). The explanation of the methodology used for gathering data from the States and its analysis are in the docket. Based on its new analysis, FMCSA agrees that the Agency underestimated the costs to the States. The revised estimates for State costs are explained in the Regulatory Analysis section contained later in the preamble to this final rule. A complete final regulatory analysis is located in the docket.

*b. Impact on Licensing Renewal Procedures.* The Alabama Department of Public Safety notes that the only CDL holders who return to the SDLA for renewals are those CDL holders who carry a Hazardous Material (HM) endorsement; all other CDL drivers renew their CDLs at the Office of the Probate Judge. Alabama subsequently asked which organization would be responsible for checking the validity of the medical certification status upon renewal.

*FMCSA Response:* In the final rule, the State must verify that the medical certification status is "certified" on the CDLIS driver record before renewing the CDL. It does not matter whether the SDLA or another designated agency or agent (e.g., Office of the Probate Judge) performs the renewal, the CDL compliance requirements remain the same. In the regulatory text of this rule, FMCSA will use the more generic term "State," rather than SDLA, to encompass all State entities and/or State licensing agencies that are responsible for the CDL issuance, renewal, transfer or update.

*c. Impacts on Drivers.* In the NPRM, the FMCSA estimated that the medical and CDL rulemaking requirements would cost drivers a total of \$3.22 million per year once the rule is implemented. A number of commenters believe the rule has additional impacts on drivers that have been underestimated by FMCSA. Several individuals, employers, and others, including the Virginia DMV, Texas Department of Public Safety, and the National Propane Gas Association, express their concern about the burden for drivers to travel to the SDLA and the extra costs for drivers to obtain new CDLs or medical certifications. The National Propane Gas Association believes that there will be an increased burden on drivers who must correspond with the SDLA more frequently than in the past. The Teamsters allege that drivers will have to take time off work and will be charged fees to obtain a

copy of their CDLIS MVR. Therefore, at a minimum, the Teamsters contend that a copy of the driver's updated CDLIS driver record should be provided at no cost to the driver.

One individual driver points out that the proposed rule did not consider the fact that many drivers often take time off from driving as a CDL driver. They will now be forced to maintain medical certificates to keep their CDL active, even when they are not driving CMVs for a living. Gabbard Consulting believes that some drivers do not obtain physical examinations for reasons other than those involving some unqualifying condition.

The National Propane Gas Association claims that SDLAs are likely to add a new fee to pay for receiving and posting the medical certification information, on top of the fee drivers already have to pay to obtain an HM background check. The Association believes the rule would also contribute to further delays for their drivers who are being approved to operate CMVs with an HM endorsement. Such delays, they contend, are particularly troublesome during the winter months. The Minnesota Trucking Association questions whether drivers would have to pay renewal fees each time the medical certification is updated.

*FMCSA Response:* The final rule does not increase the frequency with which drivers must renew their medical certificates or place restrictions on the States that would preclude the use of mail, fax, or electronic submission of medical certificates. Therefore, drivers would only be forced to go to the SDLA office if the State requires the medical certificate to be hand-carried to the licensing agency. Furthermore, the rule does not prevent drivers from requesting a copy of their medical certificates from the ME at the time of the exam and prior to submission of the certificate to the SDLA.

With regard to fees that the SDLAs may charge drivers for processing the medical certificates, FMCSA does not require or prohibit the States from passing the costs of implementing this rule on to interstate CDL holders. Each State has discretion to determine the most appropriate means of obtaining funds to cover the implementation costs of this rule, based upon its particular circumstances. FMCSA does not expect that any additional fee charged drivers as part of providing their medical examiner's certificate would be large or likely to significantly impact the availability of drivers on our nation's highways.

The requirement for non-excepted, interstate drivers to maintain their

medical certification if they have a CDL is not new. For interstate driving, the current provisions of § 383.71(a)(1) state that an applicant: " \* \* \* shall certify that he/she meets the qualification requirements contained in part 391 of this title. A person who operates or expects to operate entirely in intrastate commerce \* \* \* is subject to State driver qualification requirements. \* \* \*" Thus, drivers who self-certify to driving in non-excepted, interstate commerce and, for whatever reason, fail to maintain a current medical certificate on file with the SDLA, are not eligible to hold an interstate CDL.

Also, a non-excepted, interstate CDL holder is currently required to maintain his or her medical certification. This is a requirement whether or not the individual is working as a driver requiring a CDL. This rulemaking is merely putting into place recordkeeping procedures so that licensing and enforcement personnel can detect drivers who are operating CMV in interstate commerce without the proper medical certification; and, who are required to have it.

The background check for drivers seeking an HM endorsement takes up to 60 days. Posting the medical examiner's certificate information should easily be accomplished during the time the background clearance for an HM endorsement is being processed and would not cause any delay in issuance of the HM endorsement or the CDL.

*d. Cost Impacts on Carriers.* Greyhound, ABA/BISC, and Peter Pan Bus Lines point out that, although employers currently receive medical certificates from MEs without charge, under the new rule, employers would have to request the certification status from the State and would be charged for this service. ABA/BISC adds that the carrier would now need to query the SDLA for these drivers' records. Under the current standard, the driver is required to provide the ME certificate to the motor carrier, which incurs no additional cost. The commenters contend that the additional costs across the entire driver population could be well above those estimated by FMCSA in the NPRM; therefore they must be factored into any final cost/benefit analysis. The Minnesota Trucking Association believes that license fees and transportation taxes would increase the burden on consumers.

Motor carriers also note that FMCSA's cost estimates did not include the implications of liability and insurer rate changes based on a changing operating climate, where carriers have less management oversight and control.

*FMCSA Response:* Motor carriers are currently required to obtain the CDLIS MVR for all interstate drivers as part of the hiring process and annually thereafter. Motor carriers could continue to use their existing processes for keeping track of their drivers' medical certificate expiration dates. FMCSA does not believe motor carriers would rely solely on periodic driver record checks to determine when individual drivers' medical certificates expire. Such an approach would be no more efficient or effective than manually reviewing individual driver qualification files to locate such information, which would leave open the possibility that the employer may not be aware of a soon-to-be expired medical certificate until it is too late to prevent a violation of the safety regulations. The revision to § 391.23 requires motor carriers either to perform the existing initial check with the SDLA and receive the CDLIS MVR, or have the driver obtain a new medical examiner's certificate, provide it to the SDLA, and receive a date-stamped receipt that is good for a 15-day period of documentation of certification, before allowing the driver to operate a CMV.

If a motor carrier uses the driver's receipt to fulfill the DQ file requirement during the 15 days allowed, a small possibility exists that the motor carrier might have to obtain a second MVR. This would happen if the SDLA had not yet posted the medical status information when the carrier obtained the first one. However, motor carriers could simply delay obtaining the CDLIS MVR until close to the 15-day maximum. Therefore, only a very small percentage of carriers would actually have to obtain a second CDLIS MVR. FMCSA has added this small increase in motor carrier cost to its evaluation.

If the certificate expires during the year, between required annual checks, and the employer is not participating in a subscription service that provides driver record update information for that driver, then the employing motor carrier would have to make an additional request for a CDLIS MVR and pay for it to document in the DQ file that the medical certification status was renewed. This circumstance results in an increased cost and FMCSA has added it to its regulatory evaluation.

FMCSA points out that § 390.3(d) makes clear that motor carriers continue to have the same authority to require and enforce more stringent conditions of employment on potential CDL drivers. The medical certification status information on the CDLIS MVR does not prevent the motor carrier from applying a more strict standard regarding whether

that employee is allowed to operate a CMV for that motor carrier. Therefore, this rule should not change the liability of the motor carrier or result in increased insurance rates.

*e. Medical Examiner Provides Certificate to Carriers; and Employer Oversight.* A significant issue for motor carrier commenters' was their objection to the removal of the regulatory language that allows the medical examiner to provide to the motor carrier a copy of the medical examiner's certificate. Advocates contend that deleting this regulatory text will create a hiatus of widely varying length between the time a medical certificate is issued and the time when an employing motor carrier receives the CDLIS information indicating whether the driver in question is certified.

Trailways, the NTSB, J.B. Hunt, Lancer Insurance, AMSA, and ATA were concerned that the rule would shift responsibility for documentation of driver medical eligibility from the motor carrier to the SDLAs. They believe that motor carriers need to have the continued capability of ensuring that their drivers have valid medical examiner's certifications. Peter Pan Bus Lines was also concerned over their perception that the NPRM would require motor carriers to entrust a major component of their driver safety programs to the States.

Greyhound Lines, Inc. states that the proposed rule should not be a substitute for employer control. It claims that removing the recommendation for MEs to provide certificates to employers will inevitably weaken the employer's and the State's ability to keep unqualified drivers off the road.

Trailways claims that administration of the ME certifications requirement by the motor carrier would be far more likely to assure safe, qualified drivers than administration by a State agency. Trailways urged that carriers should be able to continue to provide oversight of driver qualifications.

The ABA/BISC requests that FMCSA make it clear that motor carriers are allowed to continue to manage their drivers' medical qualification programs and obtain ME certification documents from the medical provider. An individual ME stated that motor carriers should continue to be involved in the review of the ME's certificates to monitor for errors.

*FMCSA Response:* In response to the comments, and for purposes of clarity, the final rule revises the proposed rule and reinstates § 391.43(g)(1), which explicitly allows the medical examiner to provide to the motor carrier a copy of the certificate, upon request. Any

agreement between the ME and the employing motor carrier to provide medical certification data to the employer is based strictly on a business arrangement between the two parties and may continue under this rule.

If the motor carrier obtains medical examiner's certificates from MEs, the motor carrier can compare the certificate received from the ME with the date stamped receipt the driver obtained from the SDLA. In this manner, the carrier can verify that the receipts obtained from their drivers are not fraudulent.

The final rule does not relieve motor carriers of their responsibility for ensuring that their drivers are medically certified. The FMCSRs continue to require that a motor carrier must ensure each driver subject to part 391 is medically certified. The integration of medical certification status as part of the CDL application process is intended to ensure that individuals cannot obtain or renew a CDL for non-excepted, interstate operations unless the State has been provided with proof of the driver's medical certification.

*f. Appearance of the FMCSA Proposal.* The Minnesota Trucking Association, UniGroup, Greyhound, J.B. Hunt, Peter Pan Bus Lines, and Landstar Systems were concerned that the rule would give SDLAs new authority; and that it would cause carriers to incur liability for accidents caused by drivers who are not medically certified, even if the State had not yet downgraded the CDL.

*FMCSA Response:* Today's final rule does not alter carriers' liability for crashes involving their drivers—it only changes the procedures for obtaining the required documentation to ensure current medical certification of non-excepted, interstate CDL holders. The rule at 49 CFR 391.51(b)(7) continues to require the motor carrier to obtain and place medical certification information in the DQ file before allowing the driver to operate a CMV in interstate commerce. Except for the first 15 days, when a motor carrier may use the driver's date-stamped receipt, under this rule, the documentation needed is the already required CDLIS MVR placed in the DQ file.

#### 7. Posting, Updating, and Downgrading Information

*a. SDLA Posting of the Medical Certificate.* When the SDLA receives the medical examiner's certificate, the State will date stamp the certificate and post the required information onto the CDLIS driver record. Many State agencies—including the Alabama Department of Public Safety (DPS), California DMV,

Missouri Department of Revenue, North Dakota DOT, Minnesota DPS, Pennsylvania DOT, Missouri DOT, Wisconsin DOT, Oregon DOT, New York DMV, Texas DPS, Vermont DMV, and Delaware DOT; plus AAMVA; an individual ME; and CVSA—argued that the proposed period of 2 business days is insufficient due to the time needed to sort and route the mail, review the information submitted, and obtain additional information if the certificate were incomplete or illegible. These commenters believe that up to 10 days is needed and that funding should be provided for State staffing and programming.

On the other hand, several commenters, such as the Teamsters, note that the number of days for posting the information should be kept to a minimum, but that States should have adequate time to ensure that the data are accurate. OOIDA believes that 2 business days should not be a problem if States are diligent to post the information. First Advantage argues that no more than 2 business days should be allowed for posting because drivers should not be penalized for administrative delays.

*FMCSA Response:* Under item 3a, Proof of Submission to SDLA, above, the Agency describes its decision to require the SDLA to give the driver a date stamped receipt as proof of his or her submission of the medical examiner's certificate to the State. FMCSA believes that the receipt serves as the interim method for verifying the driver's medical certification status information that is available to users, such as, enforcement personnel and employers, during the time the information is being posted to the CDLIS driver record. In view of the Agency's decision to allow the receipt to serve for 15 days as verification of the driver's medical certification, including the concerns expressed by commenters of possible administrative delays, FMCSA will increase the time period for SDLAs to post this information on the CDLIS driver record. Therefore, FMCSA is extending the maximum time allowed for the SDLA to post the medical certification status data on the CDLIS driver record from 2 business days to 10 business days to allow States sufficient time to make the CDLIS MVR available to users.

b. *Updating the Driver Record to "Not-Certified."* If the medical certification expires, the States will be required within 2 business days to update the certification status on the CDLIS driver record to show the driver as "not-certified." Five State agencies (Minnesota Department of Public Safety,

Virginia DMV, Pennsylvania DOT, Michigan Department of State, and Vermont DMV) and AAMVA commented that 2 business days is an unreasonably short period for updating the status. Some of them recommended a longer period, up to 10 days.

AMSA was concerned that 2 business days might be insufficient time for a carrier to contact a driver about an expired medical certificate to determine whether new medical information had been submitted but not reflected in the State's system. UniGroup and an individual ME, however, believe that a 2-day period for SDLAs to update a driver's status to "not certified" is acceptable.

*FMCSA Response:* FMCSA is aware that some SDLAs still use scheduled runs of batch programs to periodically process their entire driver database. The batch program periodically performs the maintenance function to detect and update expired medical certifications to a status of "not-certified." After considering these comments to the docket, and taking notice of a comparable updating provision found at 49 CFR 384.225(c) for recording conviction information within 10 days, FMCSA increases the time for accomplishing the update of expired medical certification to a status of "not-certified" to the CDLIS driver record from 2 business days to 10 business days.

c. *Downgrading the CDL by the SDLA.* Upon expiration of a driver's medical certification, if the driver's self-certification of driving type remains non-excepted, interstate, the State must initiate a downgrade of the CDL to be completed within 60 days of the driver becoming and remaining "not-certified." Six State agencies (North Dakota DOT, Minnesota Department of Public Safety, Virginia DMV, Oregon DOT, Vermont DMV, and Delaware DOT) agree that 60 days is a reasonable period of time to downgrade the CDL. The Missouri Department of Revenue does not think that drivers should be downgraded automatically, because they might be downgraded prior to receiving notification. The Delaware DOT warned, however, that 60 days might not be sufficient if the driver challenges the action. Other commenters, including the Alabama Department of Public Safety, UniGroup, an individual ME, ACOEM, the NTSB, Advocates, Schneider National, the New York DMV, and First Advantage, argue that 60 days is too long a period to allow CDL holders to drive if they are not medically certified. Instead, an individual ME, Advocates, and First

Advantage suggest a shorter 30-day period to downgrade the CDL.

The Missouri Department of Revenue suggests a timeframe, such as 15 or 30 days following the expiration of the medical certification, to notify the driver of a pending downgrade of status. ATA believes that a disqualification [downgrade] provision "should only be implemented if there is a way to remind drivers and carriers in advance of the driver becoming" not-certified. The Louisiana Department of Public Safety (DPS), ATA, and the Texas DPS said that SDLAs should be responsible for immediately notifying drivers of any change in their status to "not-certified" based on their medical examiner's certificate expiring, as well as adequate and timely notification to drivers "out on the road."

The Delaware DOT is concerned about suspending a driver's non-commercial license privilege for failure to have a valid medical certificate, since the license is a necessity in today's society. The Maryland State Highway Administration notes that FMCSA's "Diagram 2: Proposed System," as contained in the NPRM, fails to accurately reflect the flow of the processes involved—CDLIS does not know if the driver has applied for a CDL, nor does it issue a CDL. The Maryland State Highway Administration requests that FMCSA develop a procedure for downgrading a CDL and posting the updated status on the State's CDLIS driver record.

*FMCSA Response:* The FMCSA continues to believe that giving the SDLA a period of up to 60 days for downgrading allows time for whatever State processes are required to meet this requirement, including time for the driver to obtain a new certificate if he or she desires to do so. To make the process easier for both SDLAs and drivers, and given the requirements set forth in this final rule, FMCSA revises the definition for downgrade under section 383.5. The CDL privilege must now be removed due to the driver's failure to update his or her medical certification, not because the driver has been disqualified for traffic convictions.

States will need to develop procedures both to update the CDLIS driver record to reflect that the driver is "not-certified" within 10 days and downgrade the license within 60 days.

In response to Missouri's concerns, this rule does not create a requirement for an *automatic* downgrade for CDL drivers. The 60-day period for the State to downgrade a CDL is implemented to allow the State to use whatever process it prefers to accomplish the downgrade.

Delaware's concern about this rule requiring suspension of a non-commercial license is unwarranted. This rule does not apply to non-CDL driving privileges.

In the NPRM, the Agency did not propose that SDLAs notify drivers about the pending expiration of medical examiners' certificates. The rule only requires notification for a pending downgrade of the driver's CDL.

#### 8. Driver Penalty for Presenting a Fraudulent Certificate

The Missouri Department of Revenue and Texas Department of Public Safety note that the NPRM does not define penalties for the driver presenting a fraudulent certification.

*FMCSA Response:* Section 383.73(g) currently provides a minimum penalty for drivers for submitting a fraudulent medical examiner's certificate. If at any time a State determines the driver has falsified information required under § 383.71(a), the State must suspend, cancel, revoke or otherwise disqualify the driver's CDL for at least 60 days. Knowingly presenting a fraudulent certificate would be falsification of physical qualification. This is why the State is required to keep a copy of the certificate for 3 years after its issuance as proof of the driver's medical certification to enforce imposing such a penalty.

#### 9. Intrastate CDL Drivers

Some commenters believe that the medical certification information requirements for the CDLIS driver record being established by this rule for non-excepted, interstate CDL holders should also apply to CDL holders operating in intrastate commerce. Because some crashes involve State-certified CDL holders who operate solely in intrastate commerce, the Minnesota Trucking Association contends that the final rule should apply to CDL holders conducting intrastate operations.

Maryland commented that FMCSA has failed to capture all of the drivers subject to its jurisdiction. It argues that 49 CFR 390.3(b) is applicable to all individuals operating a CMV in interstate or intrastate commerce. Maryland further believes that use of the term "downgrade" and its application in the NPRM indicate that FMCSA is only concerned with interstate CDL drivers and is failing to address intrastate CDL drivers. It points to the use in the NPRM of the term "tolerance guidelines" found at § 350.341, relative to Motor Carrier Safety Assistance Program (MCSAP) funding, as adding more uncertainty to the issue of

intrastate drivers' physical qualification requirements. Maryland requests that FMCSA clarify its position in this matter.

*FMCSA Response:* In the legal basis section of the NPRM and this final rule, the Agency explained that the medical certification requirements found in part 391 may only be applied to CDL holders who both: (1) Operate CMVs as defined in 49 CFR 383.5, and (2) are subject to the physical qualification requirements under 49 CFR part 391. The Agency further stated that FMCSA's statutory authority to require medical certification documentation that the driver is physically qualified only extends to non-excepted, interstate drivers. Therefore, only if a CDL driver is required under part 391 to obtain a medical certificate does FMCSA have the authority to require that driver to provide the medical certificate to the SDLA as documentation of his or her physical qualifications.

With regard to Maryland's comment that the NPRM did not fully explain the State's obligations under the MCSAP grant program, the FMCSA takes this opportunity to clarify that issue.

Currently, all 50 States and the District of Columbia participate in MCSAP and receive Federal grants to support the adoption and enforcement of compatible motor carrier safety regulations.<sup>7</sup> As a condition of receiving the Federal grants, States must adopt and enforce compatible State regulations applicable to certain intrastate drivers (see 49 U.S.C. 31102(a) and 49 CFR part 350). Section 350.339 concerning tolerance guidelines allows limited deviations for such State regulations to be considered compatible. Essentially, the State regulations must be identical to, or have the same effect as, the FMCSRs. Additionally, variances are allowed for the physical qualification standards, as specified at § 350.341(h). Section 350.201(a) indicates that the requirement for compatibility includes the provisions in parts 390 through 397. Therefore, States will be expected, as a condition of receiving MCSAP grant funds, to revise their medical certification rules applicable to their intrastate CDL drivers to be compatible with FMCSA changes made to those provisions by this rule. There is no requirement under MCSAP for States to similarly adopt State laws or regulations for intrastate drivers compatible with parts 383 and

384. FMCSA does not have the authority to require that intrastate medical certification status information required by States be placed on the CDLIS driver record. However, the States are certainly free to do so.

#### 10. Excepted Drivers

A number of commenters were concerned that the NPRM did not adequately address how the State enforcement officials would identify "excepted" drivers. Some commenters suggest that the information be available on the driver's record. The Alabama Department of Public Safety and the Minnesota Trucking Association express concern that the NPRM did not explicitly and clearly address documentation requirements for these excepted drivers. For example, Alabama asked how law enforcement would know if a driver (who self-certified to operating in excepted commerce) got a CDL, and then drove for a private carrier (who is not in an excepted industry) without obtaining required medical certification. For excepted drivers, as well as for those drivers who self-certify they operate only intrastate, the Missouri Department of Revenue suggests that the rule be modified to include specific procedures for SDLAs to determine and record the driver self-certification. Missouri further asks whether such drivers are completely free to self-certify that they are excepted, or whether the SDLAs must retain some type of verification of the exception.

To aid law enforcement, the Missouri DOT believes that the driver's SDLA should include the medical certification status information "excepted" as part of each CDL driver's record. CVSA suggests that the driver's self-certification of exception should be made part of both the license document and the CDLIS MVR.

CVSA states that it is critical that all SDLAs, as well as law enforcement agents, be made fully knowledgeable about the applicability provisions and industry exceptions that are part of the FMCSRs and have the capacity to accurately evaluate them. ATA expressed concern that SDLAs would take many years to come into compliance with this proposed "national standard." It doubts that there would be a uniform and high degree of licensing and enforcement conformance to the part 391 applicability requirements.

*FMCSA Response:* FMCSA emphasizes that this rulemaking does not change the application of the medical standards. Nothing in this rulemaking would increase the burden

<sup>7</sup> While all 50 States and the District of Columbia participate in MCSAP, 2 States get only 50 percent of their grant funds because they have not adopted nor enforce State rules that are completely compatible with FMCSA regulations and allow variances for intrastate commerce.

on enforcement officials to determine the applicable rules during an inspection. Regardless of what type of operation the driver may have claimed at the time the CDL was issued, enforcement personnel would make a determination based on what the driver is actually doing at the time of inspection.

However, the FMCSA acknowledges the commenters' concerns and revises proposed § 383.71(a) to add additional categories, intrastate drivers (both excepted and non-excepted), listing all four self-certification possibilities:

- Interstate and subject to 49 CFR part 391;
- Interstate, but operating exclusively in transportation or operations excepted from part 391 under 49 CFR 390.3(f), 391.2, 391.68, or 398.3;
- Intrastate and subject to State driver qualification requirements; or,
- Intrastate, but operating exclusively in transportation or operations excepted from all or part of the State driver qualification requirements.

As noted above in the Legal Basis section of the preamble, this rule only applies to non-excepted, interstate CDL drivers who operate CMVs in interstate commerce. The self-certification that drivers make at the State level, either when applying for, renewing, transferring or upgrading their CDL, or as otherwise required by this final rule, will determine whether they are required to comply with the medical certification provisions set forth in this rule.

#### 11. CDL Advisory Committee (Task Force)

Section 4135 of Safe, Accountable, Flexible, Efficient Transportation Equity Act A Legacy for Users (SAFETEA-LU) mandates that FMCSA convene a Task Force to review the CDL program and provide recommendations for its improvement. The Task Force examined many aspects of the CDL program. The members discussed this rule in their meetings, and made certain recommendations on the Agency's proposal.

Initially, some members of the Task Force thought the National Registry for Certified Medical Examiners (NRCME) (see 49 U.S.C. 31149(d)) should be implemented before this rule becomes final. However, based on advice from the designated Federal official for the Task Force that the medical program is outside the charter of the Task Force, they confined their recommendations on this rule to an alternative approach within the CDL program for dealing with the requirements of section 215 of MCSIA.

Task Force members recommended that, as part of CDLIS Modernization, FMCSA should implement a central Web-based application for electronically receiving, screening, and forwarding medical examination reports to the licensing State. This application would be used by MEs who choose to be included on an FMCSA-established List of Medical Examiners (List). The only requirements for an ME to be added to the List would be that the ME must: (1) Document that he or she meets the definition of medical examiner found at § 390.5; (2) agree to abide by the requirements of the List, including the requirement that the ME may be removed from the List by FMCSA (e.g., for consistently submitting faulty medical examination reports); and (3) submit electronic reports of all medical examinations (pass and fail) to the CDLIS Web application. The CDLIS application would then electronically send the medical certification status information to the licensing State as a CDLIS transaction. Such an electronic system would help achieve more uniform compliance among the States, and would reduce State operating costs by virtually eliminating the staffing impact on States. It would address the driver fraud problem by removing the opportunity for drivers to commit fraud by creating false ME certificates.

Additionally, such an approach could capture information about failed physical examinations that occur before the expiration date of the current certification and highlight "medical examiner shopping," when multiple electronic certificate reports for a driver are received from different medical examiners. Establishment of the authorized list of MEs, Task Force members believe, together with the CDLIS Web application for ME submission of medical examination reports, would help prevent virtually all driver fraud and abuse, including fraudulently creating and submitting ME certificates, shopping for a favorable ME, and identifying MEs with patterns of problem certifications. The Task Force members also believe that the FMCSA list should be a precursor, or perhaps Phase I, of the SAFETEA-LU required NRCME. The medical program requirement regarding the qualification of medical examiners would be left to the forthcoming NRCME required by 49 U.S.C. 31149(d).

*FMCSA Response:* Both policy recommendations—that the Agency develop a CDLIS Web application for MEs to electronically submit medical examination reports as part of CDLIS modernization and that FMCSA

establish a list of MEs—are outside the scope of this rulemaking. However, these concepts recommended by the Task Force may be considered within other rulemaking initiatives.

b. *Access to Electronic Communication in the Field.* Several commenters express their concern that all enforcement officers do not have access to the necessary equipment to make electronic inquiries to verify a driver's medical certification status. Pennsylvania DOT states that it is improbable that all levels of enforcement are capable of performing electronic verifications in the field. Because of the cost and time involved, Pennsylvania DOT believes it is not feasible to provide all enforcement personnel with the necessary equipment and telecommunications capabilities required to make electronic inquiries. The Alabama Department of Public Safety states that a large number of field officers do not have access to CDLIS or NLETS. Similarly, an individual ME observed that electronic verification might be unrealistic for local, regional, and municipal officers who do not have access to the equipment due to budget constraints. Additionally, the ME urged that training should be provided to those individuals authorized to access the driver medical information from CDLIS.

*FMCSA Response:* All States are required to certify, as part of MCSAP, that they are checking CDLs. Generally, CMV enforcement is not performed by all enforcement personnel. The vast majority of CMV enforcement efforts—even at the regional, local, and municipal levels—are performed by persons on designated, trained teams. FMCSA believes it is fairly common that members of such teams have access to electronic communications, through either NLETS or some version of FMCSA's CDLIS-Access software provided to MCSAP enforcement personnel.

With FMCSA's October 26, 2006, MCSAP policy memorandum encouraging traffic enforcement without a vehicle inspection, some CDL checks via NLETS will be made via radio connection to a dispatcher, rather than via a terminal in the patrol car. Despite this, FMCSA is aware that enforcement personnel who do not have certain specific equipment can still make a CDL check using their police radio dispatcher services.

c. *Out-of-Service Violation.* J.B. Hunt and ATA generally believe that for non-excepted, interstate drivers, some type of penalty for driving without a current medical certification is necessary and should be severe enough to discourage

unsafe behavior. CVSA expressed concern that a driver might attempt to circumvent providing a medical examiner's certificate by self-certifying to operate only in excepted or intrastate commerce. It then asks how enforcement personnel will know what actions to take. CVSA argues that such drivers could circumvent the medical certification requirement and continue to operate CMVs without meeting the qualifications standards of the FMCSRs.

At a minimum, CVSA recommends that CDL drivers found operating in non-excepted, interstate commerce with a medical certification status of "not-certified" should be placed out-of-service. J.B. Hunt also advocates that operating a CMV with a "not-certified" status should be made an out-of-service violation, noting that placing a driver out-of-service creates a significant incentive for the motor carrier not to allow the driver to operate a CMV when not medically certified. It comments further that making a medical certification status of "not-certified" an out-of-service violation would positively influence safety, since carriers have a vested interest in reducing out-of-service violations. J.B. Hunt points out that management's time is consumed by performing an investigation and corrective action—when a load is delivered late, the carrier's profitability is affected.

*FMCSA Response:* FMCSA agrees with CVSA and J.B. Hunt that CDL drivers and motor carriers need some type of deterrent from attempting to circumvent either the medical certification requirement for non-excepted, interstate drivers, or the restrictions of excepted and intrastate self-certification. In response to the comments to the docket, including those from CVSA and J.B. Hunt, FMCSA notes that the final rule adds explicit requirements at § 391.41(a)(3)(i) and (ii), specifying the medical certification requirements for non-excepted, interstate CDL drivers. There are already civil and criminal sanctions applicable to a driver operating a CMV without a required medical certificate. See 49 CFR 390.37. Where there is a substantial likelihood of serious injury or death, such a driver can be ordered out-of-service as an imminent hazard. See also 49 CFR 386.72(b).

d. *Disqualification Offense.* Many commenters on the issue of drivers operating without the required medical certification favored implementing a disqualifying offense under § 383.51. The California DMV, Maryland State Highway Administration, Minnesota Department of Public Safety, Wisconsin DOT, Oregon DOT, Advocates, New

York DMV, First Advantage, CVSA, Vermont DMV, and an individual medical examiner agree that this offense should be included under the disqualification rules. Other commenters, such as J.B. Hunt and ATA, believe that there should be a penalty severe enough to discourage unsafe behavior, but do not specifically suggest making the offense a disqualification violation in the FMCSRs. The Teamsters, the Michigan Department of State, Delaware DOT, and Landstar Systems do not support adding a new disqualifying offense under 49 CFR 383.51.

*FMCSA Response:* FMCSA agrees with ATA, J.B. Hunt, and Maryland that the enforcement action against an uncertified driver should be sufficiently severe to discourage the behavior. The Agency also agrees with the commenters that such driver behavior exists. However, upon careful legal review, the FMCSA determined it does not have the statutory authority to include such conduct as a new serious traffic offense in § 383.51(c).

e. *Intrastate and Excepted Service Restrictions.* The New York DMV suggests that the final rule should require a restriction for drivers who are claiming the "excepted" status for any reason and who are not limited to intrastate operation. Because the Agency proposed in the NPRM that drivers could self-certify to operating CMVs only in intrastate commerce, the Oregon DOT recommends using a "K" restriction to identify drivers licensed for "intrastate" driving only.

*FMCSA Response:* FMCSA does not agree with New York and Oregon's proposal that drivers who, in accordance with § 383.71(a)(1), self-certify to operate only in either excepted or intrastate commerce should be restricted. The regulations are clear about the type of operations that drivers may perform; thus the recommended restriction will not be imposed. There is no requirement for the SDLA to verify the driver's self-certification. The driver's self-certification required by § 383.71(a)(1) establishes procedures that enable enforcement personnel to detect whether the driver correctly self-certified and to cite the driver for corrective enforcement action, if necessary. If a driver who self-certified to operate only in "excepted" commerce is stopped at the roadside and determined to be operating in other than excepted commerce, the driver could be cited and placed out-of-service.

### 13. Implementation Schedule

A number of State agencies and organizations commented on the timing

of the compliance date of this rule and CDLIS modernization efforts required by SAFETEA-LU.

a. *Compliance Date Sooner than 3 years.* Advocates suggest implementing a shorter time frame for compliance with these requirements than the Agency proposed in the NPRM. They describe a need for reforms and improvements in CDLIS and note that uncorrected problems adversely impact the benefits of the proposal. Nevertheless, Advocates believe that the proposed integration should not be delayed until CDLIS is upgraded via CDLIS modernization because some part of the safety benefits could be achieved if the Agency acts quickly to issue a final rule.

*FMCSA Response:* It is FMCSA's established practice to allow States 3 years to come into compliance with new regulatory requirements in both the CDL and MCSAP programs. Generally, that time period allows for any needed legislative changes, CDLIS software changes, and training of State employees for new procedures.

After States are in compliance with the technical requirements of the rule and are ready to begin receiving the medical examiner's certificates from the drivers, they will need all CDL drivers to provide their self-certification of driving type, and will need to collect and post the medical certificates drivers are required to provide them. This rule establishes a timeframe for CDL drivers to make the self-certification of driving type no later than two additional years after the State comes into compliance with the rule. These compliance dates are intended to provide States sufficient time to incrementally add all CDL drivers' required status information. To fully implement the rule any faster would create a significant burden on SDLAs, enforcement personnel, and drivers.

b. *Compliance Date Later than 3 Years.* State agencies in Minnesota and Wisconsin do not believe legislation would be required to implement these requirements and think that the 3-year period would be sufficient, particularly if adequate funding is received from FMCSA. Vermont also thought the 3-year implementation window for States to achieve compliance would be acceptable.

State agencies in California, Delaware, Louisiana, Michigan, Nebraska, New York, Oregon, Pennsylvania, Texas, Vermont, and Virginia indicate that new legislation might be required for them to implement the new requirements. Delaware, Michigan, Oregon, Texas, and Virginia think that the 3-year implementation timeframe would be

difficult to meet, in part because of other Federal program requirements that will soon be imposed on them (e.g., CDLIS modernization and the REAL ID Act of 2005, (Pub. L. 109–13, Div. B. Title II, sections 201–207, 119 Stat. 311–316 (May 11, 2005) (set out as a note to 49 U.S.C. 30301))).

The Minnesota Department of Public Safety, Wisconsin DOT, Maryland State Highway Administration, Vermont DMV, and AAMVA either support having the compliance dates coincide or think that it is essential for the CDLIS modernization to be completed first. The California DMV suggests FMCSA should not start the clock for the States' 3-year compliance from the effective date of the rule, but instead from the time that the final CDLIS technical specifications are released by AAMVA as part of CDLIS modernization. The Pennsylvania DOT notes that it is essential that all detailed technical specifications be provided at least 2 years prior to when the State must be in compliance to allow sufficient time for technical programming. Based on the experience implementing the MCSIA requirements in CDLIS, AAMVA urged FMCSA to allow States a compliance period longer than 3 years.

*FMCSA Response:* FMCSA acknowledges States' concerns about implementing the other Federal program requirements for CDLIS modernization and the Real ID Act at the same time as the requirements of this rule. The Agency will monitor the progress of State implementation of this rulemaking and how it will impact States' implementation of these two other Federal programs.

California and Pennsylvania's point is well taken regarding the time required for AAMVA to develop the CDLIS modernization technical specifications and release them to the States. Section 4123 of SAFETEA-LU requires the development of the CDLIS design specifications necessary for implementing this rule to be part of developing the specifications for CDLIS Modernization. FMCSA consulted with AAMVA on when they projected they could issue the necessary CDLIS technical specifications for implementation of this rule. Their estimate is close to the expected date the rule will be published. Therefore, the Agency retained the 3-year provision to implement the section 215 of MCSIA requirement to merge the medical requirements with the CDL.

*c. No Cut-Off Date for Driver Submission.* The Michigan Department of State comments that there is no need for the cut-off (mandatory downgrade) at 5 years for drivers who have not

provided the SDLA with a current medical examiner's certificate, as the driver's license renewal cycles would eventually address this need.

*FMCSA Response:* The average national CDL licensing cycle is approximately 5 years, with some States having longer cycles. If FMCSA were to provide States the opportunity to implement fully the rule within a period that exceeds 5 years, an unknown number of drivers would not have to self-certify their driving type or provide a medical examiner's certificate for, at least, an average of 3 additional years. This period for drivers to self-certify and provide a medical examiner's certificate would be longer in States with CDL renewal cycles longer than 5 years.

#### 14. Outreach

*a. Quality and Timeliness of NLETS Data.* A number of commenters express concern about the ability of enforcement personnel to: (1) Always obtain an electronic response during nights and weekends, through either CDLIS access software or NLETS; and (2) obtain CDLIS quality responses via NLETS.

*FMCSA Response:* FMCSA is aware of both these issues. The Agency is continuously studying these issues to identify the cost that would be incurred if the existing level of NLETS CDL inquiries are submitted to CDLIS. The Agency is considering demonstration projects to gather information on what it would cost to have electronic responses at night and on the weekends from States that have not yet implemented such capabilities.

*1. Nights and Weekends.* The ability to get an electronic response during the night and on the weekends is predominantly an hours-of-operation issue (i.e., for the responding computer). Historically, this was a common issue for SDLA computers with restricted hours of operation. Nonetheless, online access by SDLAs at all times continues to expand. FMCSA continues to investigate options to further improve the availability of electronic driver license information during nights and weekends, and plans to analyze the cost implications of solving this issue.

*2. CDLIS Quality Responses via NLETS.* In States that use a copy of the CDLIS driver records to respond to NLETS inquiries, depending on how frequently that copy is updated, it is possible that the NLETS responses could be out-of-date and show the driver as not-certified when CDLIS has been updated to show the driver is certified.

*b. Notification of Rule Requirements.* A number of commenters express

concern that, depending on when a State begins notifying drivers of this new requirement, it is possible that a driver might not receive notification that he or she must provide the SDLA with an updated driving type self-certification, and for those operating in non-excepted, interstate commerce, a copy of the medical examiner's certificate. As a result, the SDLA might initiate a downgrade of the driver's CDL. Schneider National states that it is troubled by the lack of performance standards and uniformity among the States for handling the submission of the medical examiner's certificate. The Wisconsin DOT estimates that they would have to notify over 185,000 drivers.

*FMCSA Response:* In the NPRM, the Agency proposed that States must be in compliance with these provisions 3 years after the effective date of a rule. It also proposed two additional years for all drivers to provide their SDLAs with the driving type status concerning whether they are subject to Federal or State driver qualifications rules. In the final rule, FMCSA retains the State compliance date of 3 years after the effective date, and the driver compliance date of 5 years after the effective date.

FMCSA encourages SDLAs to begin including information about this new CDL requirement as soon as is practical. Except for those few States with license renewal cycles of six or more years, it is possible for all CDL drivers to be notified as part of their normal CDL renewal notice from their SDLA.

It is important to note that FMCSA is currently working with various partners in developing a package of materials to be made available to SDLAs, driver and carrier organizations, and trade publications as outreach initiatives for the industry.

#### 15. Comments Outside the Scope of This Rulemaking

A number of respondents submitted comments on topics that were either outside the scope of what was proposed in the NPRM or were based on a misunderstanding of what the Agency proposed in that rulemaking. Many of these issues concern the rulemaking for the NRCME, how FMCSA could regulate MEs or establish specific medical examination requirements, or discuss alternative approaches to the Agency's initial rulemaking proposal to specifically deal with issues of driver fraud.

*FMCSA Response:* FMCSA acknowledges the policy concerns of the commenters. However, as stated in the NPRM, the policy direction of this

rulemaking is limited to the creation of a method for CDLIS capability to ensure current and accurate driver medical certification status for use in CDL driver licensing and enforcement decisions. FMCSA continues to believe this rulemaking represents a step in improving the oversight capabilities of medical certification status information for non-excepted, interstate CDL drivers.

Neither this rule nor the forthcoming NRCME rulemaking proposal are intended to address fraud perpetrated by drivers regarding their medical certification. While we acknowledge that driver fraud is an important issue, these comments are outside the scope of this notice.

Although FMCSA could eventually require MEs to transmit data to SDLAs, this rule did not propose to include such provisions because the Agency does not have the statutory authority to regulate MEs. Rather, this rule establishes a system for drivers to provide medical certification status information to the licensing SDLA by using the medical examiner's certificates. It also requires the SDLA to post that medical certification status information into the CDLIS driver record for licensing, enforcement, and employment decisions. This rule complements the medical examiner qualification issues that will be addressed later by the NRCME rulemaking.

#### D. Section-by-Section Explanation of Changes From NPRM

*Conforming amendments.* Throughout parts 383, 384, 390, and 391, the terms used by the Agency to refer to a driver record or driver history have been revised for uniformity. The term "CDLIS driver record" refers to the electronic record of a CDL driver's license status and history stored by the State-of-Record as part of CDLIS. The term "driver record" refers to the electronic record of a non-CDL driver's license status and history that is stored by the SDLA. The Agency's use of the term "motor vehicle record (MVR)" refers to the information provided to a driver or employer about the status and history of a non-CDL CMV driver. The term "CDLIS MVR" refers to the information provided to a driver or employer about the status and history of a driver that holds a CDL. In the NPRM, the Agency proposed adding a new term of "medical certification status information" with values of either "qualified" or "not-qualified." The final rule changes the status values to "certified" or "not-certified."

#### Part 383

*Section 383.5.* In the NPRM, the Agency proposed to add a definition for the term "CDLIS driver record." FMCSA also proposed to add a definition for the term "CDL downgrade" that included the following two options: (1) restrict an otherwise unrestricted CDL to intrastate transportation, or interstate transportation excepted from part 391 as provided in 49 CFR 390.3(f) or 391.2; or (2) have the State remove the CDL privilege entirely from the driver license.

The final rule adopts the definition for CDLIS driver record as proposed. The final rule modifies the definition of "CDL downgrade" found at § 383.5. It simplifies the required State action to notify the driver that the SDLA will remove the CDL privilege from the license, unless the driver elects to change his or her self-certification and restrict driving to either transportation excepted from the requirements of part 391, intrastate commerce and subject to State driver qualification requirements, or intrastate excepted if allowed by the State. A State can also remove the CDL privilege from the driver's license if the driver has not complied with the FMCSRs.

*Section 383.71(a).* FMCSA proposed to revise the self-certification requirement in the CDL application process to clarify how applicants should self-certify if they operate in interstate commerce, but are excepted from part 391, and now includes such clarification for other self-certification categories as well. In the final rule, FMCSA revises the paragraph to provide four categories for the self certification:

- Interstate and subject to 49 CFR part 391;
- Interstate, but operating exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68, or 398.3;
- Intrastate and subject to State driver qualification requirements; or,
- Intrastate, but operating exclusively in transportation or operations excepted from all or part of the State driver qualification requirements.

*Section 383.71(g) and (h).* In the NPRM, FMCSA proposed a new requirement that, beginning on the SDLA's compliance date of 3 years after the effective date of the new rule, applicants for any CDL licensing action who are operating in non-excepted, interstate commerce must provide their SDLA with an original or a copy (at the State's option) of a current medical examiner's certificate. In the final rule, paragraph (g) clarifies that all CDL holders must provide SDLAs the self-

certification in 383.71(a)(1)(ii) between years 3 and 5 (the two-year phase-in period) after the effective date of this rule. Paragraph (h) of the final rule requires new and existing non-excepted, interstate CDL holders to provide the SDLA with a current medical examiner's certificate between years 3 and 5, respectively, after the effective date of this rule. States must post the medical certification status and medical examination certification information in the CDLIS driver record.

*Section 383.73(a)(3)(v).* The final rule adds a new requirement that for non-excepted, interstate CDL drivers, the SDLA must verify that the medical certification status of the driver is "certified" before taking any licensing action to issue, renew, transfer, or upgrade the CDL.

*Section 383.73(a)(5).* FMCSA proposed that the SDLA enter on the CDLIS driver record the type of driving self-certification made by the driver according to § 383.71(a)(1). For all non-excepted, interstate CDL drivers, the SDLA must record the information from the physical qualification documentation (medical examiner's certificate) on the CDLIS driver record. In the final rule, FMCSA will also require all SDLAs to provide drivers with a date-stamped original or copy of the submitted medical examiner's certificate as their receipt.

*Section 383.73(b)(6).* When a driver applies for a CDL transfer from another State, FMCSA proposed to add a requirement for the SDLA to ask the driver to self-certify whether the driver will operate in non-excepted, interstate commerce, and, if so, verify whether the medical certification status on the CDLIS driver record is "qualified" before taking any licensing action.

The final rule requires the SDLA to conduct a check on non-excepted, interstate CDL drivers to verify whether the medical certification status is designated as "certified." If the driver self-certifies that he or she will operate solely in excepted, interstate commerce, no verification of medical certification status is required.

To accommodate drivers and SDLA's during the transition period for implementing the requirements set forth in this rule, drivers who need to transfer their CDL are not required to obtain an early medical examination during the 2-year phase-in period of time between the State compliance date (3 years after the effective date) and the date all drivers are required to have submitted medical certification information to the SDLA (5 years after the effective date). During the 2-year phase-in period, all CDL drivers must self-certify to the

SDLA as to the type of operation in which they will engage. There will be instances where non-expected, interstate drivers will provide SDLAs with their medical examiner's certificate as documentation of current medical certification during this 2-year phase-in period, but only if, and when, it replaces a prior certificate.

*Section 383.73(c)(5).* FMCSA adds the same requirement as § 383.73(b)(6) for the license renewal process.

*Section 383.73(d)(3).* FMCSA adds the same requirement as § 383.73(b)(6) to the license upgrade process.

*Section 383.73(j).* FMCSA proposed to add a new CDLIS recordkeeping requirement for medical certification status information. A number of items displayed on the medical examiner's certificate would be recorded on the CDLIS driver record, including a recommendation for States to upgrade their licensing systems to make provisions in the CDLIS driver record to accept National Registry information (see 49 U.S.C. 31149(d) as added by section 4116(a) of SAFETEA-LU), should it be required. The medical certification status information would need to be posted by the SDLA within 2 business days of receiving a new medical examiner's certificate from a driver. Similarly the medical certification status of the driver would need to be updated within 2 business days of a current certification expiring. Additionally, if a driver's medical certification expires, the SDLA was to initiate a downgrade of the CDL. The SDLA would then need to accept and record within 2 business days on the CDLIS driver record any medical variance issued by FMCSA to a driver.

In the final rule, FMCSA subdivides the different actions included in § 383.73(j)(2) of the NPRM into three more easily referenced paragraphs, (j)(2), (3), and (4). It extends the time allowed for the SDLA to post medical certification or medical variance status data or update the information from 2 business days to 10 business days. The SDLA also must provide drivers with a date stamped original or copy of the submitted medical examiner's certificate as their receipt. The time during which the SDLA must retain the certificate is extended from 6 months to 3 years from the issuance date. The downgrade provision is simplified to require the removal of the CDL privilege unless the driver changes his or her self-certification to either excepted or intrastate, if allowed by the State. A new paragraph is added as (j)(5) designating FMCSA Medical Programs as the keeper of the official list of State contacts for receiving medical variance information

from FMCSA, and States are responsible for ensuring their medical variance contact information is up-to-date with FMCSA Medical Programs.

*Section 383.95.* FMCSA proposed to add a medical variance restriction to the existing air brake restriction provision and rename the section. The Agency indicated that the new medical variance restriction would require an indicator on both the CDL and the CDLIS driver record if the driver has received a medical variance. FMCSA has selected the letter "V" as the code for identifying drivers with a medical variance. The Agency will work with AAMVA to include that code in the CDLIS State Procedures and other appropriate CDLIS technical documentation.

#### Part 384

*Section 384.105.* FMCSA proposed to add a definition for CDLIS Motor Vehicle Record. The final rule adopts the proposed language.

*Section 384.107.* The Agency proposed to revise paragraph (b) to incorporate by reference the then most recent version of the CDLIS State Procedures Manual. The final rule revises the reference to the most recent version of the AAMVA's CDLIS State Procedures Manual, the September 2007 edition.

*Section 384.206(a).* FMCSA proposed conforming amendments to its rules concerning State record checks. The final rule adopts the proposed changes based on the application procedures in this final rule.

*Section 384.206(b)(3).* The Agency proposed revising § 384.206(b) to require States to verify the driver's medical certification status. The final rule revises the paragraph to also require the State to deny the CDL and initiate a downgrade action if a driver's self-certification for driving categories is still missing 5 years after the effective date of this rule.

*Section 384.208.* FMCSA adopts its original proposal, with a revision of § 384.208 to include the new terms it implements in this final rule, such as, "CDLIS driver record."

*Section 384.225.* FMCSA proposed to revise paragraph (a) by dividing it into 2 paragraphs and adding paragraph (a)(2) to specify inclusion of the medical certification status information that must be posted by the SDLA. The Agency proposed to revise paragraph (e) to refer to the CDLIS driver record and to clarify in paragraphs (e)(3) and (4) that drivers and motor carriers obtain this information according to State procedures on the CDLIS MVR. The Agency also proposed to add a new paragraph (f) to require States to provide

the medical certification status information on the CDLIS, CDLIS MVR and CDL NLETS status and history responses. In the NPRM, the Agency proposed to change the title of the section from "Record of violations" to "CDLIS driver recordkeeping" to more accurately describe its contents.

The final rule revises paragraph (a)(2) to specify what information must be included in the medical certification status inquiry by the State. The final rule revises paragraph (e) concerning authorized CDLIS users and agents, consistent with the proposal. The Agency modifies paragraph (f) by adding a reference to (a)(2) to show what medical certification status information must appear on the report to authorized users.

*Section 384.226.* In the final rule, FMCSA removes the phrase "driver's record" and replace it with the phrase "CDLIS driver record."

*Section 384.231.* Similar to § 384.107, the Agency proposed to update the reference to the CDLIS State Procedures Manual to be the most recent version incorporated by reference into § 384.107(b). The final rule revises the reference to cite the September 2007 version.

*Section 384.234.* The Agency proposed to add a new section concerning the requirement for States to maintain copies of drivers' medical certificates. The final rule adopts the proposed language and adds a reference to the provisions specified at § 383.73(a)(5) and (j).

*Section 384.301.* The final rule adds, as a conforming amendment to the changes in 49 CFR part 383, a new paragraph (d) specifying that the State must comply with requirements of this rule within 3 years of the effective date.

#### Part 390

*Section 390.5.* FMCSA proposed to add a new definition for the term "medical variance" as an inclusive term for all Federal programs dealing with physical qualification, including exemptions and skill performance evaluation certificates. This definition does not cover waivers issued under subpart B of part 381. This is because waivers are issued for short periods of time and any waivers will be addressed through program documentation and not the driver's licensing systems. FMCSA also proposed to add a new definition for "motor vehicle record."

The final rule adopts the proposed definitional revisions and further modifies the definition for the term "medical variance" by adding the word "letter" after the word "exemption." The definition for the term "motor

vehicle record” is changed by adding a reference to the Driver Privacy Protection Act.

#### Part 391

*Section 391.2.* In § 391.2, FMCSA proposed to change the section title from “General exemptions” to “General exceptions.” This change establishes consistency with the term “exception” as used in § 390.3(f) and removes confusion with the different meaning of the word “exemption” as used in 49 CFR part 381, subpart C, and 49 CFR 391.62. The final rule adopts the proposed language.

*Section 391.23(a)(1) and (b).* The final rule revises paragraphs (a)(1) and (b) to use the terms “State driver license agency” and “motor vehicle record” to conform the language to the rule changes noted above.

*Section 391.23(m).* FMCSA proposed to add a new paragraph (m) that specified employers must meet the § 391.51(b)(7) requirement to place the medical certification in the DQ file as part of the hiring process. It also specified the exception for how the employer must document medical certification for CDL drivers subject to part 391 to comply with the long-existing requirement in § 391.51(b)(7), and that the employer must do this before allowing the driver to operate a CMV.

This paragraph makes it explicit that, in addition to substituting the driver’s CDLIS MVR for the medical examiner’s certificate, FMCSA will also change the timing of when the motor carrier must obtain and place the MVR in the DQ file as part of the hiring process. All non-CDL drivers will continue to be required to provide an original or copy of the medical examiner’s certificate to their employing motor carrier.

The final rule adopts § 391.23(m)(1) as proposed. It modifies (m)(2) to clarify: (a) that the exception only applies to drivers required to have a CDL under part 383; (b) that the medical examiner’s certificate receipt from the SDLA can be used by the employing carrier for up to 15 days from the date stamp on the receipt; and (c) that if the CDLIS MVR shows that the driver operates exclusively in excepted commerce, no medical certification documentation is required.

*Section 391.25.* The final rule adopts changes to: (1) Remove the phrase “into the driving record” and add in its place a phrase “to obtain the motor vehicle record;” (2) remove the phrase “driving record” and add in its place the phrase “motor vehicle record;” and (3) remove the phrase “response from each State agency to the inquiry” and add in its

place the phrase “motor vehicle record.”

*Section 391.41(a).* The Agency proposed to amend § 391.41(a) to delete the exception reference to § 391.67, and add an exception that CDL drivers subject to part 391 will be excluded from the requirement to carry the medical examiner’s certificate because their current medical certification status information will be on the electronic CDLIS driver record, and can be verified via CDLIS or NLETS inquiries, and via the CDLIS MVR for drivers and employers. All non-CDL drivers will continue to be required to provide an original or copy of the medical examiner’s certificate to their employing motor carrier who must place it in the DQ file.

In the final rule, FMCSA divides § 391.41(a)(1) into paragraphs (i) and (ii). The provision for non-CDL drivers to carry the medical examiner’s certificate becomes paragraph (a)(1)(i). Paragraph (a)(1)(ii) cross-references the existing requirement on the medical examiner’s certificate that drivers with an exemption letter or SPE certificate must also have in their possession the medical exemption letter or the SPE certificate while on duty. Because this rule removes the requirement for non-excepted, interstate CDL drivers to carry the medical examiner’s certificate, the final rule adds clarifying language to § 391.41(a)(2)(ii) to conform with the existing requirement for such drivers to continue to be required to carry the medical exemption letter or SPE certificate while on duty. For purposes of enforcement, FMCSA establishes that the “receipt” (the date-stamped copy of the medical examiner’s certificate) is valid documentation of medical certification as set forth in § 391.43 for 15 days from the date stamped on the receipt. Thus, if the CDLIS driver record has not yet been updated to show the new medical certification, an enforcement officer may accept the receipt as valid proof of certification for up to 15 days from the date stamped on the receipt.

*Section 391.43(g).* The Agency proposed to amend § 391.43(g) to remove the language that the medical examiner may provide a copy of the medical examiner’s certificate to the employing motor carrier, and to add a requirement that the examiner should retain a copy of all certificates for the duration of the certificate.

In the final rule, FMCSA divided § 391.43(g) into two paragraphs. The first paragraph, (g)(1), provides a recommendation that the medical examiner should provide drivers found to be physically qualified with a

medical examiner’s certificate, and retains the current regulatory language permitting medical examiners to also provide a copy of the certificate to the employing motor carrier.

The second paragraph, (g)(2), retains the Agency’s NPRM recommended retention period of 3 years for the medical examiner to keep the certificate, and adds a new recommendation that medical examiners should also retain the Medical Examination Report (Long Form) for at least 3 years from the date of the driver’s examination.

*Section 391.51.* FMCSA proposed to update the requirements for what must be contained in the DQ file regarding medical certification for CDL drivers subject to part 391. For non-excepted, interstate CDL drivers, FMCSA would no longer require them to carry a medical examiner’s certificate because the current status of their certification would be electronically available to enforcement personnel. Employers would fulfill the medical certificate documentation requirement by using the driver’s CDLIS MVR they are already required to obtain from the SDLA and placing it in the DQ file.

All CDL drivers may continue to provide the employing motor carrier with a medical examiner’s certificate until 5 years after the effective date of this rule. After that date, a driver required to be medically certified who does not have current medical certification status information on the CDLIS MVR is not certified as physically qualified under part 391. Section 391.51(b)(7) of the final rule allows employers to use the date-stamped original or copy of the medical examiner’s certificate (i.e., the receipt given to the driver) up to 15 days from the date of the receipt as proof of the driver’s current medical certification.

## E. Summary Cost Benefit Analysis

### Costs

The regulatory evaluation describes and evaluates the requirements contained in this final rule. This final rule does not change the physical qualification standards of the FMCSRs or the medical advisory criteria for determining whether a driver may be certified as physically qualified to operate a CMV in interstate commerce. A number of provisions modify the existing CDL procedures used to document the driver’s current medical certification status as a condition for him or her obtaining or retaining a CDL. This documentation will also enable motor carriers and enforcement personnel to verify the driver’s medical certification status.

Under the final rule, before an SDLA issues, renews, updates, or transfers a CDL for a driver who is not excepted from the part 391 physical qualification requirements, it must verify that the driver is currently medically certified. The SDLA must post the driver's self-certification and specified medical certificate information on the CDLIS driver record. The SDLA must also include the medical certification status information on all reports provided to persons authorized to access information from the CDLIS driver record. This includes those individuals using CDLIS and NLETS to make the inquiries, as well as drivers and employing motor carriers requesting a CDLIS MVR. Implementing this change will enable enforcement personnel to gain electronic access to verify whether non-excepted, interstate CDL drivers possess a medical certification status of "certified" during roadside inspections or traffic stops. The SDLA is also required to update the driver's medical certification status to "not-certified" if it expires. Finally, the SDLA must downgrade the CDL within 60 days of the expiration of the medical certification.

The changes promulgated in this final rule ensure that all CDL drivers who are not excepted from the Federal physical qualification requirements of part 391 and operate CMVs in interstate commerce will have a medical certification status of "certified" prior to the State issuing, renewing, upgrading, or transferring their CDL. It also allows employers to verify the current medical certification status and expiration date for covered CDL drivers they employ.

It is anticipated that States will prefer mail or electronic delivery of certifications from drivers rather than in-person delivery, because these alternatives are expected to be less costly to both States and drivers. However, nothing in this rule precludes each State from developing more advanced ways of dealing with the requirements of this rule. For example, SDLAs could establish an internet portal or other IT solution to accomplish the submission of medical certification forms. Each State is given the flexibility to develop its own method to accept medical certifications that is easiest or least expensive for that State.

The regulatory evaluation for the NPRM described and evaluated three possible alternatives to implement this rule. Alternative 1 would require current medical certification status information to be listed on the driver's license document for any driver holding a CDL who intends to operate a CMV in non-excepted, interstate commerce.

Thus, the license document would have to be replaced every time a new medical examiner's certificate was issued.

Alternative 2 the preferred alternative (embodied in this rule), would require States to be responsible for receiving, posting, updating, and providing data from a medical examiner's certificate that is received from an individual before the State issues, renews, updates, or transfers a CDL for a driver who operates in non-excepted, interstate commerce. Under this alternative, the current medical certification status of "certified" or "not-certified" of the CDL driver would be maintained on the CDLIS driver record, including other information required by this rule, such as, whether a medical variance was issued to the driver.

Alternative 3 is similar to Alternative 2, except that, rather than having drivers submit the certificate to their licensing State, FMCSA would receive the medical examiner's certificate centrally through the mail or via facsimile from drivers. The FMCSA would enter the data and electronically transmit it to the licensing SDLA as a CDLIS transaction.

With regard to commenters reactions to the alternatives considered, none of the commenters favored Alternative 1.

The Illinois Secretary of State and the Michigan Department of State supported Alternative 2. Michigan supports the State's handling of data entry and the Agency's proposal that allows Michigan to retain its 4-year license renewal cycle. Indiana agreed that they could go along with this rule as proposed, but only as the first step toward requiring nationwide implementation of an electronic audit program, similar to one described in Indiana's September 2006 report to FMCSA. A copy of the report is in the docket referenced at the beginning of this notice. However, the Oregon DOT said that Alternative 2's process would result in duplication across 51 locations using 51 different methods that would add to the confusion of CMV operators. It believes that processing all reports at a single point (Alternative 3's option) would be more efficient and that FMCSA could establish an electronic means for MEs to transmit reports and a system to process and verify ME information.

Five States (Ohio Bureau of Motor Vehicles, Virginia DMV, Pennsylvania DOT, Oregon DOT, and New York DMV) supported Alternative 3. Support was largely based on the perception that Alternative 3 would have less impact on the States and result in a more uniform and efficient system.

FMCSA agrees that Alternative 3 would have less impact on the States. Efficiency might be improved by

centralizing the collection of the original medical examiner's certificate or hard copy, although the Agency's analysis of processing costs for Alternative 3 indicate that it may be somewhat more costly than having the States process these forms.<sup>8</sup> Assuming the two alternatives were cost-neutral. The costs associated with processing the paper medical certificates would only be transferred from the States to another entity. In general, the States have systems in place to handle and process large volumes of paper for such transactions, and should, therefore, already be realizing substantial economies of scale in processing paper.

In commenting on the NPRM, several States believe the Agency had underestimated their cost of complying with this rule. Motor carriers also note that the rule entails unforeseen costs to industry, which were not dealt with in the Agency's NPRM Regulatory Evaluation. To address State comments, the Agency hired a contractor, with an intimate knowledge of State SDLA processes, to survey a sample of nine States to verify the cost impact of this rule. Results from this survey are presented below in Tables 1 and 2. Table 1 presents the one-time costs associated with development of the medical certification program. Table 2 presents the ongoing costs that States would incur in administering the program. The one-time costs are spread over the States' 3-year implementation phase of the program. Ongoing costs recur on an annual basis.

TABLE 1—ONE-TIME COSTS

	Estimated costs
Operational:	
Enabling Legislation .....	\$326,608
Storage of medical examiner's certificates ...	3,883,371
Office Space and Equipment .....	6,607,101
Personnel Acquisition ....	32,266
Develop Training Materials/Conduct Initial Training .....	514,338
Information Technology:	
Input and Inquiry	
Screens .....	6,146,560
Expanded Database .....	1,563,932
Expanded Inquiries—CDLIS, NLETS, MVR	5,820,137
Expanded Reports .....	3,750,755
Expirations and Downgrades .....	5,517,259
Systems and User Acceptance Testing .....	1,664,850

<sup>8</sup> See the full regulatory evaluation, pages 21–23, for an explanation of how costs for Alternative 3 were estimated.

TABLE 1—ONE-TIME COSTS—  
Continued

	Estimated costs
AAMVA Testing .....	589,821
Total One-Time Costs .....	36,416,999

TABLE 2—ONGOING COSTS

	All 51 state average
Operational:	
Medical Examiner's Certificates Storage Equipment Maintenance .....	\$1,425,739
Office Space and Equipment Maintenance .....	350,619
Processing and Entry of Medical Examiner's Certificates .....	12,901,409
Exception Handling .....	1,882,922
Training .....	1,164,836
Letter Preparation and Mailing .....	3,959,555
Information Technology:	
Data Storage and Computer Processing .....	1,111,420
Total Ongoing Costs .....	22,796,502

Motor carriers also identified cost issues which were not considered by the Agency in its original proposal. These costs involve the requirement that motor carriers use the CDLIS MVR to verify driver medical certification status.

Motor carriers are required by current regulations to obtain medical examiners' certificates for all non-excepted, interstate drivers in their employ. Motor carriers must place this documentation of driver medical certification in the DQ file and retain it for 3 years from the date of issuance. Motor carriers may currently obtain the medical certifications directly from drivers or medical examiners.

For CDL drivers under part 391, this rule will change how motor carriers must obtain this documentation of medical certification. Now, the motor carrier must obtain the medical certification status from the SDLA on the driver's CDLIS MVR. In the NPRM, the Agency anticipated that this process would not result in an extra cost to carriers because they must already obtain an MVR for each driver they hire and annually thereafter. However, motor carriers point out that the date of expiration for a medical certification would not necessarily correspond with the date of these record checks.

For a CDL driver whose medical certification expiration date does not correspond to the date of the carrier's MVR checks, the annual MVR record check, required by § 391.25, may have to be conducted earlier. In this case, the motor carrier would incur approximately a \$6 fee at an earlier point than would otherwise be the case. (The \$6 fee represents a weighted national average to obtain this document; see below.) Assuming the driver must obtain either an annual or biennial medical certification, once this

earlier record check is completed, the next record check would be required in 1 year.

Driver turnover would be the biggest determining factor of any extra costs to motor carriers. If the driver left the job after the additional earlier record check, but before the first anniversary of hiring the driver, the motor carrier would incur an additional fee that would have otherwise been avoided.

*National Average Cost of MVR.* FMCSA obtained MVR record charges for each State as of 2005. These were combined with the number of CDL pointers as of August 2007, for each of the 51 licensing jurisdictions in the U.S., to calculate a weighted, national, average State MVR charge. This weighted average is estimated at \$6 per MVR. Given the volume of these additional record checks, which are required by this final rule and driver turnover, the new total cost to carriers is estimated at \$3 million annually.

Table 3 below presents the revised costs associated with this medical certification program. The 10-year costs of this alternative are \$154.4 million when discounted at 7 percent. These costs have also been adjusted for inflation to 2005 dollars. The row indicating industry costs includes both the cost to motor carriers, described above, and the cost to drivers associated with mailing or faxing medical certification forms to SDLAs. The State cost estimates reflect the results of FMCSA's survey mentioned previously in this document.

TABLE 3—TOTAL COST  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Years 7–10	Total
State One-Time Costs .....	\$11,411	\$11,411	\$11,411	\$0	\$0	\$0	\$0	\$34,233
State Ongoing Costs .....	0	0	0	21,429	21,429	21,429	85,716	150,003
Industry Costs .....	0	0	0	2,500	5,000	5,000	20,000	32,500
Total Costs .....	11,411	11,411	11,411	23,929	26,429	26,429	105,716	216,736
Total Costs (7 percent discount rate) .....	11,411	10,664	9,967	19,533	20,162	18,843	63,827	154,407
Total Costs (3 percent discount rate) .....	11,411	11,078	10,756	21,898	23,482	22,798	84,742	186,165

*Benefits*

Agency research suggests that many medical conditions, if left untreated, can result in driver impairment, and as a result, increase the probability that a driver will be involved in a crash. The purpose of the medical certification requirement is to ensure that drivers who have medical conditions that may impair their ability to operate CMVs

safely are prevented from working in the truck driving occupation. According to the Large Truck Crash Causation Study data, heart attack or other physical impairment of the ability to respond was cited as the critical reason for 2.2 percent of trucks involved in crashes where a fatality or serious injury occurred. This corresponds to 4 percent of involved trucks where the truck was at fault, or 3,000 crashes over the 33

month study period. This crash rate corresponds to a total of 1,090 crashes per year where a serious injury or fatality occurred. If this percentage is extrapolated to crashes with less serious injuries or where no injury occurred (property damage only), they produce an estimated 8,138 crashes per year that are due to a medical problem causing the driver to crash.

Medical certification violations are found in between 7 and 8 percent of driver roadside inspections, making them one of the most commonly cited driver violations. Data from industry indicate that approximately 7 percent of drivers fail the medical examination. This violation is cited in approximately 6 percent of post crash inspections, and evaluation of this post-crash inspection data indicates that drivers with medical certification violations may pose an increased crash risk when compared with drivers not cited with this violation.

In the Regulatory Evaluation that accompanied the NPRM for this rule, the Agency presented one scenario under which these rule changes could result in the prevention of 0.08 percent of crashes. These benefits were expected to stem from a deterrent effect. Because the drivers will be providing their medical examiners' certificates to a State government official, rather than a motor carrier, they may be less likely to engage in forgery. In addition, having electronic access to identification information from the driver's medical examiner's certificate should facilitate any investigations of fraud in the medical certification system or process at both the State and Federal level. The medical certification requirement is more likely to assist in exposing drivers who engage in untruthful statements about their medical certification status. Thus, certain types of fraud might be deterred.

This final rule also provides safety benefits by providing drivers with a greater incentive to renew their medical certifications on time. In the past, there was limited incentive for drivers or motor carriers not to put off renewing medical certifications until well after the old ones had expired. There were only minor penalties for driving with an expired medical certification and it was probable that a driver could escape detection. This violation of the FMCSRs was only detected if the CMV was targeted for a roadside inspection or stopped for the driver's violation of traffic laws and subjected to at least a Level III driver inspection.

Because of the SDLA's automated detection of expired medical certificates, this rule will increase the possibility of a penalty for the driver's failure to renew his or her medical certification on time. As a result, it is expected that fewer drivers will let their medical certifications lapse; and it should result in more timely renewal of medical certifications. Consequently, more drivers who have medical problems will be diagnosed and treated

sooner than is the case under current rules.

FMCSA expects that an increased rate of timely renewal by CDL drivers of medical certifications is likely to provide enhanced safety benefits for the entire motor carrier industry. During the 2-year renewal period between medical examinations (and, in some instances, shorter renewal periods), some percentage of drivers will develop medical conditions that make them physically unqualified to drive. For instance, a driver may experience a decline in eyesight, or develop high blood pressure, kidney problems, or heart problems. If these drivers put off obtaining a new medical examination, they would remain an increased safety risk for the public. However, if they are medically examined on schedule, the medical conditions that have developed in the interim can be discovered and treated effectively. Effective treatment of the medical conditions would reduce the potential safety risk the driver poses, and will yield safety benefits to the public in the form of fewer crashes involving physically unqualified drivers operating CMVs on our nation's highways. The Agency acknowledges that the level of the safety benefits that would accrue from the changes in this rulemaking is uncertain.

The average crash involving a truck with a Gross Vehicle Weight Rating (GVWR) of 26,000 pounds or more (the threshold weight rating for a CDL) has been estimated to have a total societal cost of \$165,350 (2005 dollars). This cost reflects the average value of damaged property, medical care, injuries, and fatalities, and other costs associated with the "average" large truck crash. Preventing a crash thus yields \$165,350 in benefits to the economy. Fatal crashes involving trucks with a GVWR of 26,000 pounds or more have been estimated to cost, on average, \$7,377,417 per crash.

Given these crash values, we can calculate the number of either the average or fatal crashes that would have to be prevented for this rule to break even. In order for this rule to break even after 10 years, approximately 218 average crashes would need to be prevented in each year beginning in year 4, assuming a discount rate of 7 percent. The prevention of only 5 fatal crashes per year would also yield total net benefits after 10 years. It is estimated that approximately 320,000 crashes involving CDL drivers occur per year, and that 4,800 of these crashes are fatal crashes. The crash reduction benefits required for this rule to be cost beneficial after 10 years correspond to a crash reduction of 0.1 percent of average

crashes per year and 0.2 percent of fatal crashes per year.

If the time horizon is extended to 20 years, and assuming a discount rate of 7 percent, the crash benefit break even threshold would be lower—only 191 average crashes or 5 fatal crashes would need to be prevented each year. Extending the time horizon lowers the number of crashes that would need to be prevented in later years because benefits from this final rule would not begin accruing until year 4, whereas costs accrue starting in year 1. A longer time horizon enables a longer time for the later year benefits to make up for the costs incurred in the planning and implementation phases for this rule.

The latest research the Agency has conducted on the safety risk posed by drivers operating in interstate commerce with medical certification violations indicates that these drivers have an elevated risk for a crash when compared with other drivers, and that the size of this relative risk is 1.12. Approximately 7.8 percent of drivers have medical certification violations at any one time. Evaluating costs and benefits assuming this risk ratio, and a reduction in medical certification violations of only 10 percent as a result of this rule, yields a total annual benefit of 288 crashes avoided and annual monetary benefits of \$42.6 million. Over 10 years, this rule would have discounted net benefits of approximately \$28.7 million. Over 20 years, net benefits would be approximately \$90.4 million.

## F. Rulemaking Analyses

### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

FMCSA determined this rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures. The final rule is significant because of the level of congressional and public interest in the rule. The final rule has been reviewed by the Office of the Secretary and the Office of Management and Budget (OMB).

This rulemaking requires States to obtain a self-certification from the driver about which of the four (4) categories of driving the driver will engage in: interstate; interstate, but excepted from the certain Federal driver qualification requirements; intrastate; and, intrastate, but excepted from State driver qualification requirements. It further requires States to obtain documentation from all non-excepted, interstate CDL drivers regarding their physical

qualification status and to provide the driver with a date-stamped receipt for that documentation, indicating that the driver is "certified" before operating a CMV in interstate commerce. The States are required to enter the driver's self-certification and the medical certificate information onto the CDLIS driver record to be available to Federal and State enforcement agencies via CDLIS or NLETS inquiries and to drivers and employers via the CDLIS MVR.

To implement this final rule, the States will incur development costs. These include the cost to modify each State's information systems to enable it to record the CDL driver's: (1) Self-Certification he or she makes to the SDLA, and (2) information from the driver's medical examiner's certificate. Operational costs to States include: (1) Hiring and maintaining sufficient staff to receive these certificates from all non-excepted, interstate CDL drivers, at least every 2 years (in 31 percent of cases more often), and (2) performing data entry functions to post specified information from the paper medical examiner's certificates. State costs also include a requirement to update the medical certification status to "not-certified" if it expires, to notify the driver of a pending downgrade and to downgrade the driver's CDL. There are also State costs to update the programs that provide the following responses: CDLIS, CDLIS equivalent for NLETS, and CDLIS MVR status and history to users authorized in 49 CFR 384.225(e). More details about these requirements are discussed under the section titled, "Executive Order 13132 (Federalism)," below.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires Federal agencies to take small businesses' particular concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations. To achieve this goal, the Act requires that agencies explain how they have met these concerns, by including a Regulatory Flexibility Analysis (RFA). An RFA includes the following five elements:

(1) A description of the reasons why action by the Agency is being taken.

The Agency has identified numerous instances in which drivers who are physically unqualified or have failed to be medically examined have obtained CDLs and operated CMVs in interstate commerce in violation of Federal regulations. The Agency believes, and research suggests,<sup>9</sup> that some physically

unqualified drivers are significantly more likely to be involved in motor vehicle crashes nationwide. The continued operation of CMVs by physically unqualified drivers, therefore, poses a significant risk to the health and safety of the general public. FMCSA believes that the changes being implemented here would reduce the number of large truck crashes that occur and the losses in property, health, and lives that are associated with them.

(2) A succinct statement of the objectives of, and legal basis for, the final rule.

The objective of the final rule is to require interstate CDL holders subject to the physical qualifications requirements of the FMCSRS to provide a current original or a copy of their medical examiner's certificate to their SDLA, and to require the SDLA to record on the CDLIS driver record the driver's medical certification status. To accomplish this, it is necessary to create the systems infrastructure for States to electronically store and for Federal and State enforcement personnel to retrieve medical certification status information as part of the CDLIS driver record. This will enable the status information to become part of the process of determining whether to issue, renew, upgrade, transfer, or downgrade a CDL privilege. It will also enable roadside and traffic enforcement personnel to easily determine whether to place a driver out-of-service. This brings the CDL process into compliance with both the authorization of Commercial Motor Vehicle Safety Act (CMVSA) of 1986 and the requirements of section 215 of MCSIA, which requires FMCSA to initiate a rulemaking to provide for a Federal medical qualification certificate to be made part of the CDL.

(3) A description of and, where feasible, an estimate of the number of small entities to which the final rule applies.

The latest estimates from the Agency's Motor Carrier Management Information System (MCMIS) database (February 2006) indicate that there are a total of approximately 685,000 interstate motor carriers. However, FMCSA analysts believe the number of truly "active" motor carriers (i.e., those currently moving freight or passengers, operating under their own authority, and with required filings on record with FMCSA)

Performance." *Traffic Injury Prevention*. 5:185-198, 2004.

Terran-Santos, J., M.D., A. Jimenez-Gomez, M.D., J. Cordero-Guevara, M.D., and the Cooperative Group Burgos-Santander, 1999. "The Association Between Sleep Apnea and the Risk of Traffic Accidents." *New England Journal of Medicine*. 340:11. pp. 847-851.

is probably less than 500,000.

Approximately 356,625 of them are considered small entities and this rule applies to all that use CDL drivers to operate CMVs in interstate commerce.

The changes being implemented here will slightly reduce the paperwork and documentation requirements on employing motor carriers. This rule change enables motor carriers to obtain the driver's self-certification for driving type, medical certification status and CDLIS MVR from the licensing SDLA with one transaction and therefore reduces the current reporting and recordkeeping requirements and burdens for all motor carriers.

However, States charge a fee for an MVR check. Although most motor carriers would not have to conduct an extra record check for the majority of drivers, in some circumstances, FMCSA agrees with them that an extra record check would be necessary. We have calculated a weighted average of State MVR check charges based on State charges as of 2005 and the total number of CDLIS records held by each State. On average, an MVR record check costs a motor carrier \$6. We calculate the cost of the additional record checks that would result from this rule to be \$3 million per year for the whole industry. Since smaller motor carriers employ approximately 30 percent of drivers, we estimate that 30 percent of these costs would fall on them. This amounts to approximately \$930,000 per year spread over the small entities in the industry, for an average of \$2.60 per small entity.

(4) A description of the reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements and the type of professional skills necessary for preparation of the report or record.

This rule changes the source from which motor carriers gather medical certification status for CDL drivers operating in commerce. Motor carriers will obtain driver medical certification status information for non-excepted, interstate CDL drivers from the driver's SDLA, as part of the driver's CDLIS MVR that the motor carrier must already collect when hiring a new driver. This rule also reduces recordkeeping requirements for those drivers who must comply with the requirements because they are no longer required to carry a copy of their medical examiner's certificate with them while driving a CMV. However, driver reporting requirements are increasing. Other than excepted drivers, all other interstate CDL drivers who are subject to part 391 will need to deliver a copy of their

<sup>9</sup> See for instance: Ogden, E.J.D., and Moskowitz, H., "Effects of Alcohol and Other Drugs on Driver

mandated medical certification status documentation to their SDLA each time they receive a new certificate, rather than provide their current employing motor carrier with a copy of the medical certificate.

(5) An identification, to the extent practicable, of all Federal rules that may duplicate, overlap, or conflict with the final rule.

This rule makes medical certification status information a part of the commercial driver's license process. FMCSA is not aware of any other regulations that duplicate, overlap, or conflict with the rule.

The entire Regulatory Flexibility analysis is available in the docket for this rule. FMCSA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13045 (Protection of Children)*

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA determined that this rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

This rulemaking does not involve taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Executive Order 13132 (Federalism)*

This action was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (64 FR 43255, August 10, 1999). In compliance with Executive Order 13132, FMCSA provides to OMB in a separately identified section of the preamble to the rulemaking a "Federalism Summary Impact Statement (FSIS)." The FSIS includes: (1) A description of the extent of FMCSA's prior consultation with State and local government officials; (2) a summary of the nature of their concerns; (3) the Agency's position supporting the

need to issue the regulation; and (4) a statement of the extent to which the concerns of State and local government officials have been met. Also, when FMCSA transmits a draft final rule with Federalism implications to OMB for review pursuant to Executive Order 12866, FMCSA includes a certification from the Agency's Federalism official stating that FMCSA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Nothing in this rule directly preempts any State law or regulation. However, FMCSA believes this action has Federalism implications. For States that choose to participate in the CDL program, this rule imposes new and ongoing CDL program operational costs, beyond the development and implementation phase, for which grant funds are not likely to be available from FMCSA. The totally unfunded costs begin when States are required to be in compliance with this rule's new requirements—3 years after the effective date. The rule also limits State policymaking discretion if the State chooses to issue CDLs in compliance with the rule.

FMCSA has consulted with States and local government officials on these issues for many years, as described below. Thus, the requirements of section 6 of the Executive Order regarding consultation have been met for this rule.

*Federalism Summary Impact Statement (FSIS)*

Over the years, State officials have been consulted on a variety of possible approaches for addressing the issue of including the medical certification information as part of the issuance and retention of CDLs. An ANPRM on this subject was published July 15, 1994 (59 FR 36338). Comments to the ANPRM are in the docket, as is a summary of the comments prepared by FMCSA. An Advisory Committee was convened for a negotiated rulemaking. No rule resulted from those negotiations, but materials from that Committee are included in the docket which demonstrate the Agency's consultation efforts in this regard.

Alternative models for implementing the 1999 congressional mandate of section 215 of MCSIA were prepared by FMCSA and discussed with AAMVA. AAMVA sought additional feedback from some of its members regarding the models and provided their comments, which are included in the docket. FMCSA funded a grant to the State of Indiana to conduct a feasibility analysis of alternative approaches for meeting the requirement of section 215. Their

report from that feasibility analysis is in the docket. FMCSA sent a letter to the States through the National Governors Association advising them that an NPRM would be published. In order to implement the proposed mandate, the States would need to make changes to their CDL process and CDLIS implementations. A copy of that letter is included in the docket for this rulemaking.

In addition to consultation, State and local officials had an opportunity to provide official comments on the NPRM, which was published on November 16, 2006 (71 FR 66723). Because States believed that FMCSA had underestimated the costs of its proposal, they requested FMCSA to conduct a survey of States to collect additional information on what costs the States would incur to implement and operate the capabilities contained in the NPRM. In keeping within OMB guidelines for information collections, FMCSA responded to the States' request by conducting an information collection from a representative sample of nine States to obtain that information. The report from that information collection is in the docket.

*Summary of the Nature of State and Local Government Officials' Concerns*

States have consistently expressed concern about the level of resources that would be necessary to achieve compliance with whatever alternative would be adopted as a CDL regulation. In their specific comments to the docket, they stated their belief that their ongoing operating costs for the proposed alternative are substantially higher than estimated in the NPRM.

An alternative that FMCSA discussed with the States as part of the negotiated rulemaking would require States to obtain, review, and approve the medical examination report (Long Form) as part of the CDL program. That alternative would more explicitly address whether or not a driver is physically qualified. Most State representatives in the negotiated rulemaking opposed that proposal when it was discussed.

Another alternative, examined in the Regulatory Impact Analysis for this rule, was to make the medical examiner's certificate and the CDL the same document. This alternative would require the driver to obtain a new CDL each time the driver is reexamined by a medical examiner. FMCSA determined that the costs of that approach would be very much higher than the preferred alternative, because the medical examination schedule (maximum duration of 2 years) is dramatically shorter than the current CDL renewal

cycle (on average, approximately 5 years). The approximate 5-year CDL renewal cycle would need to be shortened to require drivers to renew their CDL, on average, much more often than every 5 years.

Currently, 49 CFR 391.45 requires that all drivers not excepted from the requirements of part 391 who operate CMVs in interstate commerce must be medically examined and certified as physically qualified at least once every 2 years. Section 391.45(c) essentially requires an employer to have a driver medically reexamined at any time the employer is concerned that the driver's ability to perform his or her usual duties may be impaired. FMCSA guidance to medical examiners says that drivers should be given less than a 2-year certification if they have medical conditions that need more frequent monitoring. The medical exemptions for vision and diabetes granted by FMCSA under 49 CFR part 381 require annual reexamination and recertification. A report available from the American Trucking Research Institute documents that there is a large turnover in employment among drivers.<sup>10</sup> Each time a driver changes his or her employer, the new employer has the opportunity, as a condition of employment, to require a new medical examination, and a number of larger carriers do so. Because of these reasons, FMCSA estimates that at least 31 percent of the drivers granted a 2-year medical examiner's certificate are required to obtain at least one additional certificate during that 2-year period. This estimate is higher than the 20 percent used in the NPRM, making the number of drivers who must submit medical examiner's certificates to the SDLAs even larger.

During the negotiated rulemaking, the States suggested another alternative. As part of the requirement for each driver to submit documentation of his or her physical qualification status in the form of a medical examiner's certificate to the State, the State would only record specified information from the medical examiner's certificate on the CDLIS driver record, and would make no other changes to the existing licensing processes. This alternative is far less intrusive on existing CDL procedures

used by the States than requiring the medical certificate and the CDL license to be combined, and is the one FMCSA will promulgate in this final rule.

This final rule requires the driver to maintain a valid medical certification status on his or her CDLIS driver record. All non-excepted, interstate CDL drivers will accomplish this requirement by providing their SDLA with a current federally required medical examiner's certificate documenting their current medical certification status, before the SDLA can issue, renew, upgrade, or transfer a CDL, and every time the certificate expires.

The SDLA must provide the driver with a date-stamped receipt for the medical examiner's certificate and post the driver's self-certification for driving type and the medical certification status information on the CDLIS driver record within 10 business days of receiving it. If the medical certification expires, the State is required to update the medical certification status to "not-certified" within 10 business days of expiration and downgrade the driver's CDL within 60 days. This rule also revises procedures for how employers and enforcement personnel verify a driver's current medical certification status as part of their responsibilities.

States are required to notify the driver of the impending CDL downgrade as part of the process. This notification requirement is an incremental addition to existing driver notification systems operated by all States, but will increase the number of notifications they will send out. However, because interstate CDL drivers are only a small percentage of the total number of motor vehicle drivers that SDLAs serve, the notification requirement imposed by this rule represents a relatively small increase in the volume of driver notifications required of States.

#### *FMCSA Position Supporting Need To Issue This Regulation*

This new CDL requirement is congressionally authorized by the CMVSA of 1986, and mandated by section 215 of MCSIA, which requires FMCSA to initiate rulemaking to provide for a Federal medical qualification certificate to be made a part of the commercial driver's license program. This requirement is national in scope, directing regulation of an aspect of safety for all CDL drivers who operate CMVs in non-excepted, interstate commerce. This final rule establishes a requirement for States to: (1) Obtain a

medical examiner's certificate from these non-excepted, interstate CDL drivers, (2) give the driver a date stamped receipt, and (3) record specified medical certification status information from the certificate within 10 business days, documenting the driver's certification of physical qualification to drive a CMV in interstate commerce. States are also required to downgrade the CDL if the driver receives a medical certification of "not-certified" or fails to update his or her certification in a timely manner.

In developing this final rule, FMCSA intends for States to have the maximum discretion to adjust their administrative processes and determine how they choose to have the driver satisfy the minimum medical certification documentation and CDL regulatory requirements set forth in this rule. Through AAMVA, FMCSA works to develop and oversee the technical details necessary for CDLIS to successfully operate in compliance with the Agency's regulations. There is no preemption of State law.

To allow for development and implementation of the new CDLIS capabilities, FMCSA will begin monitoring State compliance with the new parts 383 and 384 requirements 3 years after the effective date of this rule, as part of the standard State CDL compliance review process. If a State is determined not to have implemented the minimum changes required by this rule, the normal process will apply, as specified in the CDL compliance regulations for notifying the State about potential withholding of Federal-aid highway funds (49 CFR part 384).

Similarly, States participating in MCSAP grants are already required to have intrastate physical qualification programs compatible with those specified in part 391. The ongoing State MCSAP compliance reviews will verify whether the States have implemented intrastate physical qualification programs in compliance with this rule as required by the MCSAP grants. The normal process, specified in the MCSAP compliance regulations for notifying the State about potential withholding of MCSAP funds (49 CFR part 350, subpart B), will apply.

FMCSA estimates the States will incur approximately the following costs to implement, and then operate, the new procedures and CDLIS capabilities required in this rule.

<sup>10</sup> "Empty Seats and Musical Chairs: Critical Success Factors in Truck Driver Retention", Chapter III, prepared by the Gallup Organization for the American Trucking Associations (ATA) Foundation, October 1997. A copy of this report is available online at [http://www.atri-online.org/research/safety/images/Musical\\_Chairs.pdf](http://www.atri-online.org/research/safety/images/Musical_Chairs.pdf)

TABLE 4—SUMMARY STATE COSTS

Year	Total national cost	Average cost/ State
Year 1 .....	\$11,411,000	\$224,000
Year 2 .....	11,411,000	224,000
Year 3 .....	11,411,000	224,000
Continuing Years .....	21,429,000	420,000

FMCSA anticipates Federal funds will be available to assist only with development and implementation of the mandated merger of the medical certification and CDL processes, i.e., to assist in paying the direct costs incurred by the States and local governments in developing and implementing capabilities to comply with the regulation by the compliance date (3 years after the effective date of this rule). No grant funds are available to assist with ongoing operations.

SAFETEA-LU provides two grant programs to assist the States in the following: (1) Improving the CDL program, and (2) modernizing CDLIS as required by 49 U.S.C. 31309(e)(1)(D). FMCSA will consult with AAMVA and the States to include the CDLIS changes required by this rule as part of the CDLIS modernization specifications. An additional possible source of limited grant funds is the State MCSAP grant funds. (see 49 U.S.C. 31102). Expenses are allowable as part of these grant programs for the implementation of these requirements to reach compliance by the required effective date of the final rule. These are 80 percent Federal grant funds, and 20 percent State matching funds that cannot come from any other FMCSA grant.

*State Operating Costs After Implementation*

Currently, FMCSA's CDL grant funds may not be used to support day-to-day operating expenses of State licensing agencies. Therefore, CDL grant funds are not authorized for assisting States with the ongoing operating costs they will incur to comply with the requirements set forth in this final rule. Beyond the

compliance date, the Agency assumes that States would adjust either their driver fees or their authorized budgets to cover the new additional costs to remain in compliance with these medical certification and CDL requirements. Whether any such CDL State grant funds would be included in the FMCSA reauthorization is unknown.

*Statement of Extent to Which FMCSA Has Addressed the Concerns of State and Local Government Officials*

The Agency is required to implement regulations to merge the medical certification and CDL issuance and renewal processes in order to meet the requirement of section 215 of MCSIA. FMCSA believes, that within its funding limitations, the alternative selected for implementing the congressional mandate of section 215 of MCSIA responds to the concerns raised by State and local officials prior to and during the Agency's development of this final rule to minimize unfunded impacts on the States. During the rulemaking process, FMCSA provided all affected State and local officials with notice and an opportunity for appropriate participation in the proceedings. Based on the States' requests to revisit the costs of this rule, the Agency initiated a process to gather additional cost information from a group of selected representative States to re-evaluate the economic burdens imposed on them by the requirements. While the revised 10-year costs associated with this medical certification program are estimated at \$154.4 million when discounted at 7 percent; FMCSA estimates that this rule will result in the avoidance of 0.09

percent of the crashes involving trucks with a GVWR of greater than 26,000 pounds, or approximately 288 crashes per year, for a total of approximately \$42.6 million in annual undiscounted crash avoidance benefits, and a total 10 year benefit of \$183 million when discounted at 7 percent. The net benefit over 10 years is estimated at \$28.7 million using a 7 percent discount rate.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare analyses of rules that would result in the expenditure by State, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Department of Transportation guidance requires the use of a revised threshold figure of \$136.1 million, which is the value of \$100 million in 2008 after adjusting for inflation. FMCSA has determined that the impact of this rulemaking will not be that large in any projected year.

The estimated costs of this final rule are presented in the table below. The estimated costs to States of this rule will not exceed \$22 million in any 1 year. This figure is well below the \$136.1 million threshold used by the Department in making an unfunded mandate determination.<sup>11</sup> Total 5-year costs are estimated at \$ 77 million, so costs average nearly \$15.4 million per year. This final rule will not impose a Federal mandate resulting in the net expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$136.1 million or more (adjusted annually for inflation) in any 1 year (2 U.S.C. 1531, *et seq.*).

TABLE 5—STATE COSTS OF FINAL RULE  
[Thousands of dollars]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
State One-Time Costs .....	\$11,411	\$11,411	\$11,411	\$0	\$0	\$34,233
State Ongoing Costs .....	0	0	0	21,429	21,429	42,858
5 Year Total .....						77,091

<sup>11</sup> Memorandum titled: *Departmental Guidance: Threshold of Significant Regulatory Actions Under*

the Unfunded Mandates Reform Act of 1995, From

Assistant Secretary for Transportation Policy, April 5, 2004.

*Executive Order 12372  
(Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal Agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA analyzed this rule and determined that its implementation will increase the currently approved information

collection burdens covered by OMB Control No. 2126–0006, titled “Medical Qualification Requirements,” and OMB Control No. 2126–0011, titled “Commercial Driver Licensing and Test Standards.” Table 6 below captures the current and future paperwork burden hours associated with the two approved Medical and CDL information collections.

TABLE 6—CURRENT AND FUTURE INFORMATION COLLECTION BURDENS

OMB Approvals Number	Annual burden hours currently approved	Future change burden hours	Future annual burden hours
2126–0006 .....	1,541,534	141,167	1,682,701
2126–0011 .....	1,391,456	0*	1,391,456
Totals .....	2,932,990	141,167	3,074,157

\* This future burden hour estimate for the CDL IC covers only years 1–3. Table 7 below covers the burden hour estimates for the CDL IC during years 1–3 and subsequent years.

Below is an explanation of how each of the two information collections shown above will be impacted by this rule.

*2126–0006 Medical Qualification Requirement.* This rulemaking will increase slightly the information collection burden associated with the medical qualification requirement. The increase noted is attributed to FMCSA’s adjustment of its estimate of the total number of medical examinations and the associated burden hours from 1,541,534 to 1,682,701 hours, and the new requirement for motor carriers to maintain a copy of the vision or diabetes exemption in the driver qualification file. Currently, FMCSA manages vision and diabetes exemption programs under its authority provided at 49 U.S.C. 31136(e) and 31315. Drivers who are granted an exemption are required under the terms and conditions of the exemption programs to carry on their person a copy of the exemption when on duty. Motor carriers are also required to maintain a copy of the exemption that may be granted from the physical qualifications standards in the driver’s DQ file.

FMCSA notes that the final rule revises the method by which motor carriers maintain a copy of the medical examiner’s certificate in the CDL driver’s DQ file by substituting use of the CDLIS MVR they already must obtain. Although the final rule increases the time the SDLA must maintain a copy of the CDL driver’s medical examiner’s certificate from 6 months to three years from the date of issuance, the information collection burden reductions for motor carriers are offset by the information collection burden

increases for the SDLAs. The Agency will retain the requirement for a carrier to place a copy of the non-CDL driver’s medical certificate in the DQ file so that portion of the information collection burden remains unchanged.

*2126–0011, Commercial Driver Licensing and Test Standards.* This information collection supports the DOT Strategic Goal of Safety by requiring that CDL drivers of CMVs subject to part 391 are properly licensed according to all applicable Federal requirements. The information being collected ensures that CDL drivers are qualified to hold a CDL and operate CMVs, and that States are administering their CDL programs in compliance with the Federal requirements.

For non-excepted CDL drivers, there is a new requirement that SDLAs must collect documentation and post the current medical certification information on the CDLIS driver record.

A non-excepted, interstate driver applicant, applying for a CDL for the first time, is required to provide an original or a copy of the medical examiner’s certificate to the SDLA before it issues the CDL. The SDLA then posts the information from the medical examiner’s certificate to the driver’s CDLIS driver record for electronic access by authorized State and Federal personnel via CDLIS and NLETS; and for drivers and employing motor carriers via the CDLIS MVR. When the driver renews, updates, or transfers the CDL, the SDLA must verify the driver’s self-certification for the type of driving operations he or she intends to conduct. If the driver specified non-excepted, interstate driving, then he or she must obtain a medical certification status of

“certified,” before the SDLA can honor the driver’s requested CDL licensing action.

In addition to providing the documentation of physical qualification status to the SDLA for the initial application for a CDL, whenever a non-excepted, interstate CDL driver renews his or her medical certification (because it is about to expire, or there is a change in the driver’s medical condition, or because a new medical examination is requested by his or her employer) the driver must provide an original or copy of the new medical examiner’s certificate to the SDLA. It is expected that the driver will mail or perhaps fax the certificate to the SDLA, if this latter option is determined to be a viable alternative by the State. The SDLA must then post the new medical examiner’s certificate information to the electronic CDLIS driver record within 10 business days of receipt of the certificate.

If a non-excepted, interstate CDL driver is no longer medically certified, the SDLA will be required to notify the driver that the SDLA is initiating a downgrade proceeding. In this instance, the SDLA must update the driver’s medical certification status on the CDLIS driver record within 10 business days from “certified” to “not-certified.” The SDLA will proceed with established State procedures for downgrading the CDL privilege. The process must be completed and recorded on the CDLIS driver record by the State within 60 days of the driver’s medical certification expiration date.

The States must be in compliance with this rule by 3 years after the effective date. Thus, for the first 3 years after the rule takes effect there will be

no required change in the total annual burden hours due to this new medical certification/CDL program change. During these 3 years, the SDLAs will, however, incur a combined one-time estimated cost of \$36,416,999 to develop legislation and make systems revisions in order to accommodate the recordkeeping requirements of this new rule. This includes development of capabilities to record information from the medical examiner's certificate onto the CDLIS driver record. It also includes updating all necessary systems to provide medical certification status information as part of the responses to inquiries by all users authorized under 49 CFR 394.225(e).

Starting in the 4th and subsequent years, there is an increase in total

annual burden hours due largely to the CDL holders having to provide the State with their driver qualification certification, interstate CDL holders providing their medical examiner certificate to the State and the State recording this information on CDLIS.

The major assumptions used for calculating the information collection annual burden hours include the following: (1) Currently, approximately 10 percent of the 12.8 million (or 1.28 million) CDLIS driver records concern inactive driver records; (2) it will take 3 years for States to pass legislation and make the necessary system revisions before the first medical certificate would be posted to the CDLIS driver record; and (3) there are approximately 8.52 million interstate CDL holders.

The following table 7 summarizes the annual burden hours for current and future information collection activities for the first 3 years and the 4th and subsequent years. The currently-approved total annual burden of 1,391,456 hours for the first 3 years remains unchanged. The increase in the future total annual burden of 211,910 hours in subsequent years is due to the program changes implementing the new requirements as described above. A detailed analysis of the annual burden hour changes for each information collection activity can be found in the Supporting Statement of OMB Control Number 2126-0011.

TABLE 7—CURRENT AND FUTURE INFORMATION COLLECTION BURDENS

Current and future information collection activities for states and CDL drivers	Currently approved annual burden hours	Future annual burden hours for first 3 years (program adjustment)	Future annual burden hours for subsequent years (program change)
State to obtain and record the medical certificate information .....	0	0	205,333
State recording of medical certification status .....	0	0	3,984
State to verify the medical certification status of all interstate CDL drivers .....	0	0	2,593
Driver to notify employer of convictions/disqualifications .....	640,000	640,000	640,000
Driver to complete previous employment paperwork .....	403,200	403,200	403,200
States to complete compliance certification documents .....	1,632	1,632	1,632
State to complete compliance review documents .....	2,400	2,400	2,400
CDLIS recordkeeping .....	212,224	212,224	212,224
Drivers to complete the CDL application .....	48,000	48,000	46,000
CDL Tests Recordkeeping .....	84,000	84,000	84,000
<b>Total Current Burden .....</b>	<b>1,391,456</b>	<b>1,391,456</b>	<b>1,603,366</b>

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action is covered by a Categorical Exclusion (CE) under Appendix 2, paragraph 6(t) in the Order from further environmental documentation. The CE relates to regulations that ensure States comply with the provisions of the CMVSA of 1986 by having appropriate laws, regulations, programs, policies, procedures, and information systems concerning the qualification and licensing of persons who apply for, and are issued, a commercial driver's license. In addition, the Agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, FMCSA determines that the action does not require an

environmental assessment or an environmental impact statement.

The Agency analyzed this rule under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. This action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance. (Refer to 40 CFR 93.153(c)(2).) It will not result in any emissions increase, nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonable that the rule will not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet mix of motor carriers. Interstate drivers who are not operating CMVs in excepted service are currently required to obtain and maintain medical certification as proof they meet the physical qualification standards of 49 CFR part 391. This

rulemaking establishes a requirement for States to record documentation of that physical qualification on the CDLIS driver record, which is accessible to FMCSA and State licensing and enforcement agencies through CDLIS, the CDLIS equivalent for NLETS, and to drivers and employers on the CDLIS MVR.

Executive Order 12898 (Environmental Justice)

FMCSA considered the environmental effects of this final rule in accordance with Executive Order 12898 and DOT Order 5610.2 on addressing Environmental Justice for Minority Populations and Low-Income Populations, published April 15, 1997 (62 FR 18377) and determined that there are no environmental justice issues associated with this rule nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were "disproportionate" and "high and adverse impact" on

minority or low-income populations. None of the regulatory alternatives considered in this rulemaking will result in high and adverse environmental impacts.

*Executive Order 13211 (Energy Effects)*

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency determined that implementation of this rule will not result in a "significant energy action" under that executive order because it will not be economically significant and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

*Privacy Impact Assessment*

FMCSA conducted a privacy impact assessment of this final rule as required by section 522(a)(5) of division H of the Fiscal Year 2005 Omnibus Appropriations Act, Public Law 108-447, 118 Stat. 3268 (December 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the final rule on the privacy of information in an identifiable form and related matters. FMCSA determined that this initiative will not create any impacts on privacy of information associated with implementation of this rule. The entire privacy impact assessment is available in the docket for this final rule.

**List of Subjects**

*49 CFR Part 383*

Administrative practice and procedure, Highway safety, and Motor carriers.

*49 CFR Part 384*

Administrative practice and procedure, Highway safety, Incorporation by reference, and Motor carriers.

*49 CFR Part 390*

Motor carriers, Reporting and recordkeeping requirements, Safety.

*49 CFR Part 391*

Motor carriers, Reporting and recordkeeping requirements, Safety.

■ In consideration of the foregoing, FMCSA amends parts 383, 384, 390 and 391 of title 49, Code of Federal Regulations, as follows:

**PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES**

■ 1. Revise the authority citation for part 383 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. 1766, 1767; sec. 1012(b) of Pub. L. 107-56; 115 Stat. 397; sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

■ 2. Amend § 383.5 by adding definitions for "CDL Downgrade" and "CDLIS driver record" in alphabetical order to read as follows:

**§ 383.5 Definitions.**

\* \* \* \* \*

*CDL downgrade* means either:

(1) A State allows the driver to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from part 391, as provided in § 390.3(f), 391.2, 391.68 or 398.3 of this chapter;

(2) A State allows the driver to change his or her self-certification to intrastate only, if the driver qualifies under that State's physical qualification requirements for intrastate only;

(3) A State allows the driver to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the State driver qualification requirements, or

(4) A State removes the CDL privilege from the driver license.

*CDLIS driver record* means the electronic record of the individual CDL driver's status and history stored by the State-of-Record as part of the Commercial Driver's License Information System (CDLIS) established under 49 U.S.C. 31309.

\* \* \* \* \*

■ 3. Amend § 383.71 by revising paragraph (a) and adding paragraphs (g) and (h) to read as follows:

**§ 383.71 Driver application and certification procedures.**

(a) *Initial Commercial Driver's License.* Prior to obtaining a CDL, a person must meet the following requirements:

(1)(i) *Initial Commercial Driver's License Applications Submitted Prior to January 30, 2012.* Any person applying for a CDL prior to January 30, 2012 must meet the requirements set forth in paragraphs (a)(2) through (a)(9) of this section, and make the following applicable certification in paragraph (a)(1)(i)(A) or (B) of this section:

(A) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR part 391, must certify that he/she meets the qualification requirements contained in part 391 of this title; or

(B) A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391,

is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(ii) *Initial Commercial Driver's License Applications Submitted On or After January 30, 2012.* Any person applying for a CDL on or after January 30, 2012 must meet the requirements set forth in paragraphs (a)(2) through (a)(9), and (h) of this section, and make one of the following applicable certifications in paragraph (a)(ii)(A) or (B) of this section:

(A) *Non-excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to obtain a medical examiner's certificate by § 391.45 of this chapter;

(B) *Excepted interstate.* A person must certify that he or she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68 or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is therefore not required to obtain a medical examiner's certificate by 49 CFR 391.45 of this chapter;

(C) *Non-excepted intrastate.* A person must certify that he or she operates only in intrastate commerce and therefore is subject to State driver qualification requirements; or

(D) *Excepted intrastate.* A person must certify that he or she operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification requirements.

\* \* \* \* \*

(g) *Existing CDL Holder's Self-Certification.* Every person who holds a CDL must provide to the State on or after January 30, 2012, but not later than January 30, 2014 the certification contained in § 383.71(a)(1)(ii).

(h) *Medical Certification Documentation Required by the State.*

An applicant or CDL holder who certifies to non-excepted, interstate driving operations according to § 383.71(a)(1)(ii)(A) must comply with applicable requirements in paragraphs (h)(1) through (3) of this section:

(1) *New CDL applicants.* After January 30, 2012, a new CDL applicant who certifies that he or she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in § 390.5 of this chapter, and

the State will post a certification status of "certified" on the Commercial Driver's License Information System (CDLIS) driver record for the driver;

(2) *Existing CDL holders.* By January 30, 2014, provide the State with an original or copy (as required by the State) of a current medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR 390.5, and the State will post a certification status of "certified" on CDLIS driver record for the driver. If the non-excepted, interstate CDL holder fails to provide the State with a current medical examiner's certificate, the State will post a certification status of "not-certified" in the CDLIS driver record for the driver, and initiate a CDL downgrade following State procedures in accordance with section 383.73(j)(4); and

(3) *Maintaining the medical certification status of "certified."* In order to maintain a medical certification status of "certified," after January 30, 2012, a CDL holder who certifies that he or she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate.

■ 5. Amend § 383.73 by:

- a. Adding paragraph (a)(3)(v);
- b. Redesignating existing paragraph (a)(5) as (a)(6);
- c. Adding a new paragraph (a)(5);
- d. Removing the "and" from the end of paragraph (b)(4)(ii);
- e. Removing the period and adding "and" at the end of paragraph (b)(5);
- f. Adding paragraph (b)(6);
- g. Removing "and" at the end of paragraph (c)(3);
- h. Removing the period and adding "and" at the end of paragraph (c)(4);
- i. Adding paragraph (c)(5);
- j. Removing "and" at the end of paragraph (d)(1);
- k. Removing the period and adding "and" at the end of paragraph (d)(2); and
- l. Adding paragraphs (d)(3) and (j).

The additions read as follows:

**§ 383.73 State procedures.**

(a) \* \* \*

(3) \* \* \*

(v) Beginning January 30, 2012, a check that the medical certification status of a driver that self-certified according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) is "certified;"

\* \* \* \* \*

(5) Beginning January 30, 2012, for drivers who certified their type of driving according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) and, if the CDL

driver submits a current medical examiner's certificate, provide the driver with a receipt, which is a date-stamped original or copy of the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (j) of this section.

\* \* \* \* \*

(b) \* \* \*

(6)(i) Beginning January 30, 2012, verify from the CDLIS driver record that that the medical certification status of driver is "certified" for those who certified according to § 383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to § 383.71(a)(1)(ii)(A) that he or she plans to operate in non-excepted interstate commerce may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(c) \* \* \*

(5)(i) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to § 383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to § 383.71(a)(1)(ii)(A) may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

(d) \* \* \*

(3)(i) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to § 383.71(a)(1)(ii)(A).

(ii) *Exception.* A driver who certified according to § 383.71(a)(1)(ii)(A) may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (j) of this section.

\* \* \* \* \*

(j) *Medical recordkeeping.* (1) Status of *CDL Holder.* Beginning January 30, 2012, for each operator of a commercial motor vehicle required to have a commercial driver's license, the current licensing State must:

- (i) Post the driver's self-certification of type of driving under § 383.71(a)(1)(ii),
- (ii) Retain the original or a copy of the medical certificate of any driver

required to provide documentation of physical qualification for 3 years beyond the date the certificate was issued, and

(iii) Post the information from the medical examiner's certificate within 10 business days to the CDLIS driver record, including:

(A) Medical examiner's name;

(B) Medical examiner's telephone number;

(C) Date of medical examiner's certificate issuance;

(D) Medical examiner's license or certificate number and the State that issued it;

(E) Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(F) The indicator of medical certification status, i.e., "certified" or "not-certified";

(G) Expiration date of the medical examiner's certificate;

(H) Existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(I) Any restrictions (e.g., corrective lenses, hearing aid, required to have possession of an exemption letter or SPE certificate while on-duty, etc.); and

(J) Date the medical examiner's certificate information was posted to the CDLIS driver record.

(2) *Status update.* Beginning January 30, 2012, the State must, within 10 calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as "not-certified."

(3) *Variance update.* Beginning January 30, 2012, within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) *Downgrade.* (i) Beginning January 30, 2012, if a driver's medical certification or medical variance expires, or FMCSA notifies the State that a medical variance was removed or rescinded, the State must:

- (A) Notify the CDL holder of his or her CDL "not-certified" medical certification status and that the CDL privilege will be removed from the driver license unless the driver submits a current medical certificate and/or medical variance, or changes his or her self-certification to driving only in excepted or intrastate commerce (if permitted by the State);

(B) Initiate established State procedures for downgrading the license. The CDL downgrade must be completed and recorded within 60 days of the driver's medical certification status becoming "not-certified" to operate a CMV.

(ii) Beginning January 30, 2014, if a driver fails to provide the State with the certification contained in § 383.71(a)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to 383.71(a)(1)(ii)(A) that he or she is operating in non-excepted interstate commerce as required by § 383.71(h), the State must mark that CDLIS driver record as "not-certified" and initiate a CDL downgrade following State procedures in accordance with paragraph (j)(4)(i)(B) of this section.

(5) FMCSA Medical Programs is designated as the keeper of the list of State contacts for receiving medical variance information from FMCSA. Beginning January 30, 2012, States are responsible for insuring their medical variance contact information is always up-to-date with FMCSA's Medical Programs.

■ 6. Revise § 383.95 to read as follows:

**§ 383.95 Restrictions.**

(a) *Air Brake Restrictions.* (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(2) For the purposes of the skills test and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

(b) *Medical Variance Restrictions.* If the State is notified according to § 383.73(j)(3) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDLIS driver record and the CDL document, if issued, using the restriction code "V" indicating there is information about a medical variance on the CDLIS driver record. NOTE: In accordance with the agreement between Canada and the United States (see footnote to § 391.41), drivers with a medical variance restriction code on their commercial driver license are restricted from operating a CMV in the other country.

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

■ 7. Revise the authority citation for 49 CFR part 384 to read as follows:

**Authority:** 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106-159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

■ 8. Amend § 384.105(b) by adding in alphabetical order the definition for "CDLIS motor vehicle record" to read as follows:

**§ 384.105 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*CDLIS motor vehicle record (CDLIS MVR)* means a report generated from the CDLIS driver record meeting the requirements for access to CDLIS information and provided by States to users authorized in § 384.225(e)(3) and (4), subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721-2725.

\* \* \* \* \*

■ 9. Revise § 384.107(b) and (c) to read as follows:

**§ 384.107 Matter incorporated by reference.**

\* \* \* \* \*

(b) *Materials incorporated.* The AAMVA, Inc.'s "Commercial Driver License Information System (CDLIS) State Procedures Manual," Version 4.1.0, September 2007 ("CDLIS State Procedures Manual"), IBR approved for §§ 384.225(f) and 384.231(d).

(c) *Addresses.* (1) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 1200 New Jersey Ave., SE., Washington, DC 20590-0001; telephone is (202) 366-0746. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

(2) Information and copies of all of the materials incorporated by reference may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd, Suite 400, Arlington, VA 22203; Web site is <http://www.aamva.org>.

■ 10. Amend § 384.206 by:

■ a. Removing the phrase "driving record" and adding in its place "driver record" wherever it occurs in paragraphs (a)(2)(ii) and (iii); and

■ b. Revising paragraphs (a)(1) and (b) to read follows:

**§ 384.206 State record checks.**

(a) *Required checks—(1) Issuing State's records.* Before issuing, renewing, upgrading, or transferring a CDL to any person, the driver's State of record must, within the period of time specified in § 384.232, check its own records as follows:

(i) The driver record of the person in accordance with § 383.73(a)(3)(i) of this chapter; and

(ii) For a driver who certifies that his or her type of driving is not-excepted, interstate commerce according to § 383.71(a)(1)(ii)(A) of this chapter, the medical certification status information on the person's CDLIS driver record.

\* \* \* \* \*

(b) *Required action.* Based on the findings of the State record checks prescribed in this section, the State of record must do one of the following as appropriate:

(1) Issue, renew, upgrade or transfer the applicant's CDL;

(2) In the event a State obtains adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials, or penalties that are called for in any applicable sections of this subpart; or

(3) In the event there is no information regarding the driver's self-certification for driving type that is required by § 383.71(a)(1)(ii), or for a driver who is required by § 383.71(h) to be "certified," if the medical certification status of the individual is "not-certified," the State must deny the CDL action requested by the applicant and initiate a downgrade of the CDL, if required by § 383.73(j)(4) of this chapter.

**§ 384.208 [Amended]**

■ 11. Amend § 384.208(b) by removing the phrase "driver's record" and adding in its place the phrase "CDLIS driver record".

■ 12. Amend § 384.225 by:

■ a. Revising the heading of the section to read as set forth below;

■ b. Removing the term "driver history" wherever it occurs and adding in its place the term "CDLIS driver record"; and

■ c. Revising paragraphs (a) and (e) and adding a new paragraph (f) to read as follows:

**§ 384.225 CDLIS driver recordkeeping.**

\* \* \* \* \*

(a) *CDL holder.* Post and maintain as part of the CDLIS driver record:

(1) All convictions, disqualifications and other licensing actions for

violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(2) Medical certification status information.

(i) Driver self-certification for the type of driving operations provided in accordance with § 383.71(a)(1)(ii) of this chapter, and

(ii) Information from medical certification recordkeeping in accordance with § 383.73(j) of this chapter.

\* \* \* \* \*

(e) Only the following users or their authorized agents may receive the designated information:

(1) States—All information on all CDLIS driver records.

(2) Secretary of Transportation—All information on all CDLIS driver records.

(3) Driver—All information on that driver's CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(4) Motor Carrier or Prospective Motor Carrier—After notification to a driver, all information on that driver's, or prospective driver's, CDLIS driver record obtained on the CDLIS Motor Vehicle Record from the State according to its procedures.

(f) The content of the report provided a user authorized by paragraph (e) of this section from the CDLIS driver record, or from a copy of this record maintained for use by the National Law Enforcement Telecommunications System, must be comparable to the report that would be generated by a CDLIS State-to-State request for a CDLIS driver history, as defined in the "CDLIS State Procedures Manual" (incorporated by reference, see § 384.107(b)), and must include the medical certification status information of the driver in paragraph (a)(2) of this section. This does not preclude authorized users from requesting a CDLIS driver status.

**§ 384.226 [Amended]**

■ 13. Amend § 384.226 by removing the phrase "driver's record" and adding in its place the phrase "CDLIS driver record".

**§ 384.231 [Amended]**

■ 14. Amend § 384.231(d) by removing the phrase "October 1998 edition of the AAMVAnet, Inc.'s 'Commercial Driver License Information System (CDLIS) State Procedures,' Version 2.0 (Incorporated by reference, see § 384.107)" and adding in its place the phrase "CDLIS State Procedures Manual (incorporated by reference in § 384.107(b))."

■ 15. Add new § 384.234 to read as follows:

**§ 384.234 Driver medical certification recordkeeping.**

The State must meet the medical certification recordkeeping requirements of §§ 383.73(a)(5) and (j) of this chapter.

■ 16. Amend § 384.301 by adding a new paragraph (d) to read as follows:

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

\* \* \* \* \*

(d) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of January 30, 2009, as soon as practical, but not later than January 30, 2012.

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL**

■ 17. The authority citation for part 390 continues to read as follows:

**Authority:** 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, 229, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 18. Amend § 390.5 by adding in alphabetical order the definitions for "medical variance" and "motor vehicle record" as follows:

**§ 390.5 Definitions.**

\* \* \* \* \*

*Medical variance* means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

(1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter or § 391.64 of this chapter;

(2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to § 391.49 of this chapter.

\* \* \* \* \*

*Motor vehicle record* means the report of the driving status and history of a driver generated from the driver record, provided to users, such as, drivers or employers, and subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. 2721–2725.

\* \* \* \* \*

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

■ 19. Revise the authority citation for part 391 to read as follows:

**Authority:** 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

■ 20. Amend § 391.2 by revising the heading of the section to read as follows:

**§ 391.2 General exceptions.**

■ 21. Amend § 391.23 by:

■ a. Revising paragraphs (a)(1) and (b); and

■ b. Adding paragraph (m) to read as follows:

**§ 391.23 Investigation and inquiries.**

(a) \* \* \*

(1) An inquiry to each State where the driver held or holds a motor vehicle operator's license or permit during the preceding 3 years to obtain that driver's motor vehicle record.

\* \* \* \* \*

(b) A copy of the motor vehicle record(s) obtained in response to the inquiry or inquiries to each State required by paragraph (a)(1) of this section must be placed in the driver qualification file within 30 days of the date the driver's employment begins and be retained in compliance with § 391.51. If no motor vehicle record is received from the State or States required to submit this response, the motor carrier must document a good faith effort to obtain such information, and certify that no record exists for that driver in that State or States. The inquiry to the State driver licensing agency or agencies must be made in the form and manner each agency prescribes.

\* \* \* \* \*

(m)(1) The motor carrier must obtain an original or copy of the medical examiner's certificate issued in accordance with § 391.43, and any medical variance on which the certification is based, and place the records in the driver qualification file, before allowing the driver to operate a CMV.

(2) *Exception.* For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning January 30, 2012, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(A) The type of operation the driver self-certified that he or she will perform in accordance with §§ 383.71(a)(1)(ii) and 383.71(g) of this chapter, or

(B) *Exception.* If the driver has provided the motor carrier with a date-stamped receipt from the State driver licensing agency for the medical examiner's certificate given to the driver in accordance with § 383.73(a)(5) of this chapter, the motor carrier may use that receipt as proof of the driver's medical certification for up to 15 days after the date stamped on the receipt.

(ii) Until January 30, 2014, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver prior to January 30, 2012, and place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

#### § 391.25 [Amended]

■ 22. Amend § 391.25 by:

■ a. Removing the phrase "into the driving record" and adding in its place the phrase "to obtain the motor vehicle record" in paragraph (a);

■ b. Removing the phrase "driving record" and adding in its place the phrase "motor vehicle record" in paragraph (b) introductory text; and

■ c. Removing the phrase "response from each State agency to the inquiry" and adding in its place the phrase "motor vehicle record" in paragraph (c)(1).

■ 23. Amend § 391.41 by revising paragraph (a) to read as follows:

#### § 391.41 Physical qualifications for drivers.

(a) (1) (i) A person subject to this part must not operate a commercial motor vehicle unless he or she is medically certified as physically qualified to do so, and, except as provided in paragraph (a)(2) of this section, when on-duty has on his or her person the original, or a copy, of a current medical examiner's certificate that he or she is physically qualified to drive a commercial motor vehicle. NOTE: Effective December 29, 1991, the FMCSA Administrator determined that the new Licencia Federal de Conductor issued by the United Mexican States is recognized as proof of medical fitness to drive a CMV. The United States and Canada entered into a Reciprocity Agreement, effective March 30, 1999, recognizing that a Canadian commercial driver's license is proof of medical fitness to drive a CMV. Therefore, Canadian and Mexican CMV drivers are not required to have in their possession a medical examiner's certificate if the driver has been issued, and possesses, a valid commercial

driver license issued by the United Mexican States, or a Canadian Province or Territory and whose license and medical status, including any waiver or exemption, can be electronically verified. Drivers from any of the countries who have received a medical authorization that deviates from the mutually accepted compatible medical standards of the resident country are not qualified to drive a CMV in the other countries. For example, Canadian drivers who do not meet the medical fitness provisions of the Canadian National Safety Code for Motor Carriers, but are issued a waiver by one of the Canadian Provinces or Territories, are not qualified to drive a CMV in the United States. In addition, U.S. drivers who received a medical variance from FMCSA are not qualified to drive a CMV in Canada.

(ii) A person who qualifies for the medical examiner's certificate by virtue of having obtained a medical variance from FMCSA, in the form of an exemption letter or a skill performance evaluation certificate, must have on his or her person a copy of the variance documentation when on-duty.

(2) *CDL exception.* (i) Beginning January 30, 2012, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy. If there is no medical certification information on that driver's CDLIS motor vehicle record defined at 49 CFR 384.105, a current medical examiner's certificate issued prior to January 30, 2012, will be accepted until January 30, 2014. After January 30, 2014, a driver may use the date-stamped receipt (given to the driver by the State driver licensing agency) for up to 15 days after the date stamped on that receipt as proof of medical certification.

(ii) A CDL driver required by § 383.71(h) to obtain a medical examiner's certificate who obtained such by virtue of having obtained a medical variance from FMCSA must continue to have in his or her possession the original or copy of that medical variance documentation at all times when on-duty.

(3) A person is physically qualified to drive a commercial motor vehicle if:

(i) That person meets the physical qualification standards in paragraph (b) of this section and has complied with

the medical examination requirements in § 391.43; or

(ii) That person obtained from FMCSA a medical variance from the physical qualification standards in paragraph (b) of this section and has complied with the medical examination requirement in § 391.43.

\* \* \* \* \*

■ 24. Amend § 391.43 by revising paragraph (g) to read as follows:

#### § 391.43 Medical examination; certificate of physical qualification.

\* \* \* \* \*

(g)(1) If the medical examiner finds that the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b), the medical examiner should complete a certificate in the form prescribed in paragraph (h) of this section and furnish the original to the person who was examined. The examiner may provide a copy to a prospective or current employing motor carrier who requests it.

(2) For all drivers examined, the medical examiner should retain a copy of the Medical Examination Report at least 3 years from the date of the examination. If the driver was certified as physically qualified, then the medical examiner should also retain the medical certificate as well for at least 3-years from the date the certificate was issued.

\* \* \* \* \*

■ 25. Amend § 391.51 by:

■ a. Removing the phrase "response by each State agency concerning a driver's driving record" and adding in its place the phrase "motor vehicle record received from each State" in paragraph (b)(2).

■ b. Removing the phrase "response of each State agency" and adding in its place the phrase "motor vehicle record received from each State driver licensing agency" in paragraph (b)(4).

■ c. Removing the phrase "response of each State agency" and adding in its place the phrase "motor vehicle record received from each State driver licensing agency" in paragraph (d)(1); and

■ d. Revising paragraphs (b)(7), (b)(8), (d)(4) and (d)(5) to read as follows:

#### § 391.51 General requirements for driver qualification files.

\* \* \* \* \*

(b) \* \* \*

(7) (i) The medical examiner's certificate as required by § 391.43(g) or a legible copy of the certificate.

(ii) *Exception.* For CDL drivers beginning January 30, 2012, if the CDLIS motor vehicle record contains medical

certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2014, a non-excepted, interstate CDL driver without medical certification status information on the CDLIS motor vehicle record is designated “not-certified” to operate a CMV in interstate commerce. For up to 15 days from the date stamped on the receipt of the medical examiner’s certificate, provided to the driver by the State driver licensing agency, a motor carrier may

use that receipt as proof of the driver’s medical certification.

(iii) If that driver obtained the medical certification based on having obtained a medical variance from FMCSA, the motor carrier must also include a copy of the medical variance documentation in the driver qualification file in accordance with § 391.51(b)(8); and

(8) A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or State Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter.

\* \* \* \* \*

(d) \* \* \*

(4) The medical examiner’s certificate required by § 391.43(g), a legible copy of the certificate, or for CDL drivers any CDLIS MVR obtained as required by § 391.51(b)(7)(ii); and

(5) Any medical variance issued by FMCSA, including a Skill Performance Evaluation Certificate issued in accordance with § 391.49; or the Medical Exemption letter issued by a Federal medical program in accordance with part 381 of this chapter.

Issued on: November 20, 2008.

**John H. Hill,**

*Administrator.*

[FR Doc. E8–28173 Filed 11–28–08; 8:45 am]

**BILLING CODE 4910–EX–P**