D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments, because this action does not impose any regulatory requirements.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government, since this action imposes no regulatory requirements.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175, because this action imposes no regulatory requirements. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, since this action imposes no regulatory requirements.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy, since this action imposes no regulatory requirements.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action is not subject to Executive Order 12898 because it does not establish an environmental health or safety standard, since this action imposes no regulatory requirements.

List of Subjects in 40 CFR Part 320

Environmental protection, Electric power, Financial responsibility, Hazardous substances.

Dated: July 2, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–15094 Filed 7–26–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2018–0332]

RIN 2126–AC23

Commercial Driver's License Out-of-State Knowledge Test

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The FMCSA proposes to allow driver applicants to take the commercial driver's license (CDL) general and specialized knowledge tests in a State (the testing State) other than the applicant's State of domicile. Under this proposed rule, a State would not be required to offer the knowledge tests to out-of-State applicants. However, if the testing State elects to offer the knowledge tests to these applicants, it would transmit the results to the State of domicile, which would be required to accept the results. Because this proposal would not change the existing standards for administration of the knowledge tests, the Agency concludes it would have no detrimental impact on safety.

DATES: Comments on this notice must be received on or before September 27, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2018–0332 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

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

FOR FURTHER INFORMATION CONTACT: Nikki McDavid, Chief, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 by telephone at 202–366–0831 or by email, *nikki.mcdavid@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2018–0332), indicate the specific section of this document to which each section applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2018–0332, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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

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

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

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is exempt from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as ''confidential'' or ''CBI.'' Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0332, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

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

D. Waiver of Advance Notice of Proposed Rulemaking

Under the Fixing America's Surface Transportation Act, Public Law, 114–94 (FAST Act), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or conduct a negotiated rulemaking ''if a proposed rule is likely to lead to the promulgation of a major rule'' (49 U.S.C. 31136(g)(1)). As this proposed rule is not likely to lead to the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. Executive Summary

Purpose of the Regulatory Action

To promote further flexibility in the CDL issuance processes, FMCSA proposes to allow driver applicants to take the CDL knowledge tests required by 49 CFR 383.25(a)(3), 383.25(a)(5), and 383.95(c)(1) and (4), in any State (the testing State), when that State is other than the applicant's State of domicile. Under this proposed rule, the testing State would transmit the driver applicant's knowledge testing results to the State of domicile. The NPRM applies to the general knowledge test for the CLP, as well as specialized knowledge tests for the passenger (P), school bus (S), tank vehicle (N), double/triple trailer (T), and hazardous materials (H) endorsements, therefore the testing state may be transmitting more than one test result. The State of domicile would be required to accept the results of the knowledge test(s) in fulfillment of the applicant's testing requirements, as long as all other requirements under 49 CFR 383.71 have been met. The purpose of the proposal is to facilitate a driver applicant's ability to take the knowledge test(s) outside the State of domicile, while maintaining the ''one driver/one license/one record'' requirement described below. It would also make the knowledge testing process more consistent with the skills testing process, which may already be conducted outside the State of domicile, with the test results required to be sent back to the domicile State (49 CFR 383.79(a)) and the license issued by the domicile State. Because this proposal would not change the standards for administration of the knowledge tests, the Agency concludes it would have no detrimental impact on safety.

Costs and Benefits

FMCSA evaluated the potential for the proposed rule to result in incremental costs and benefits. The Agency determined that the proposed rule is not a significant regulatory action as defined in Executive Order (E.O.) 12866 or within the meaning of DOT regulatory policies and procedures. The proposed rule may result in costs for States to adapt procedures or information systems to accept out-of-State knowledge test results. Increasing the flexibility of driver applicants to take a knowledge test in any State may reduce driver costs in terms of time and travel expenditures associated with returning to their State of domicile. Improving access to training programs that best suit drivers' needs may also increase the number of driver applicants and positively impact both the supply and skill level of CDL holders. However, the Agency is unable to quantify these potential impacts, for reasons which are discussed further below in section IX.

III. Legal Basis for the Rulemaking

This proposed rule is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986, as amended (CMVSA) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313); the Motor Carrier Safety Act of 1984, as amended (MCSA) (Pub. L. 98–554, Title II, 98 Stat. 2832, 49 U.S.C. 31136); and the Motor Carrier Act of 1935, as amended (MCA) (chapter 498, 49 Stat. 543, 49 U.S.C. 31502).

The CMVSA, implemented in 49 CFR parts 383 and 384, provides that ''[a]fter consultation with the States, the Secretary of Transportation shall prescribe regulations on minimum uniform standards for the issuance of commercial drivers' licenses and learner's permits by the States . . .'' (49 U.S.C. 31308). More specifically, the statute requires that: An individual may have only one CLP at a time; applicants must first pass a knowledge test that complies with minimum standards prescribed by the Secretary; and the CLP document must have the same information and security features as the CDL (49 U.S.C. 31302, 31308(2)–(4)). Additionally, 49 U.S.C. 31309(b) requires that a driver's record must be created for each CLP holder in the Commercial Driver's License Information System (CDLIS). Section 31311(a)(12)(A) requires that the State issue a CDL only to drivers domiciled in that State. This NPRM proposes to establish procedures for the issuance of CLPs by the State of domicile when the applicant takes and passes the knowledge test required by 49 CFR 383.25(a)(3) in a State other than the applicant's State of domicile.

The MCSA, which confers authority to the Secretary of Transportation to

regulate drivers, motor carriers, and commercial motor vehicles (CMVs), requires the Secretary to ''prescribe regulations on commercial motor vehicle safety.'' (49 U.S.C. 31136(a)). At a minimum, the regulations shall ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators; and (5) CMV drivers are not coerced to operate a CMV in violation of a regulation promulgated under 49 U.S.C. 31136(a) or chapters 51 and 313 of title 49. This proposed rule, like all of the Agency's CDL regulations, is based in part on the requirements of 49 U.S.C. 31136(a)(1) and (2) that CMVs be ''operated safely'' and that ''the responsibilities imposed on [CMV drivers] do not impair their ability to operate the vehicles safely.'' The changes to 49 CFR part 383 proposed in this rule are intended to facilitate drivers' ability to choose CMV training that best suits their needs. This NPRM does not directly address medical standards for drivers (49 U.S.C. 31136(a)(3)) or possible physical effects caused by operating a CMV (49 U.S.C. 31136(a)(4)). The Agency does not anticipate that this proposal would result in the coercion of CMV drivers (49 U.S.C. 31136(a)(5)).

The MCA authorized the Secretary of Transportation (Secretary) to prescribe requirements for the ''qualifications . . . of employees'' of for-hire and private motor carriers (49 U.S.C. 31502(b)). This rule, like all the Agency's CDL regulations, is based in part on that authority and is intended to ensure the qualifications of individuals who obtain a CLP.

Additionally, FMCSA is required to consider ''costs and benefits'' of any regulations prescribed under the authority of the MCSA or the MCA (49 U.S.C. 31136(c)(2)(A), 31502(d)). Those factors are addressed below.

Finally, the Administrator of FMCSA is delegated authority under 49 CFR 1.87(e)(1), (f) and (i) to carry out the functions vested in the Secretary by 49 U.S.C. chapters 313, 311, and 315, respectively, as they relate to CMV operators, programs, and safety.

IV. Background

The purpose of the CMVSA was twofold: (1) To improve highway safety by ensuring that drivers of large trucks and buses were qualified to operate those vehicles, and (2) to remove unsafe, unqualified drivers from our Nation's highways. As noted above, the CMVSA furthered these goals by imposing minimum CDL licensing standards and requiring States to comply with them in order to avoid the withholding of certain Federal funds (49 U.S.C. 31314). Central to this legal framework was the ''domicile requirement,'' which mandated that ''the State may issue commercial drivers' licenses only to those persons who operate or will operate commercial motor vehicles and *are domiciled in the State*'' [emphasis added] (49 U.S.C. 31311(a)(12)(A)). The implementing regulation provides that ''no person may legally operate a CMV unless such person possesses a CDL . . . issued by his/her State of jurisdiction or domicile.'' (49 CFR 383.23(a)(2)). Congress enacted the domicile requirement, referred to here as the ''one driver/one license/one record'' principle, as a means of preventing drivers from masking traffic violations or other disqualifying offenses in one State by applying for and receiving a ''new'' commercial license in another State.

Following Congress's enactment of amendments to 49 U.S.C. chapter 313, FMCSA published a final rule to implement those changes, ''Commercial Driver's License Testing and Commercial Learner's Permit Standards,'' on May 9, 2011 (2011 Final Rule) (76 FR 26854). The 2011 Final Rule added 49 CFR 383.79 to the Federal Motor Carrier Safety Regulations (FMCSRs), which, as noted above, provides that a person who holds a CLP would be able to take the CDL skills test outside of his/her State of domicile. The testing State would then send the skills test results to the State of domicile, which would be required to accept the results. The issue of knowledge testing outside the State of domicile was not raised during the 2011 rulemaking.

On October 13, 2016, FMCSA published ''Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Military Commercial Driver's License Act of 2012'' (2016 Final Rule) (81 FR 70634). The 2016 Final Rule allows, but does not require, a State to accept applications from active duty military personnel who are stationed in that State, as well as administer the knowledge and skills tests for a CLP or CDL, including, as applicable, specialized knowledge tests for endorsements. States that choose to accept such applications are required to transmit the test results electronically to the State of domicile of the individual. The State of domicile may then issue the CLP or CDL on the basis of those test results.

In January 2017, the American Trucking Associations (ATA) requested regulatory guidance clarifying that State Driver Licensing Agencies (SDLAs) may accept the results of knowledge tests taken in another State to ease the travel burden on driver applicants attending a truck driver training school outside their State of domicile. The Agency responded to ATA's request by publishing ''Commercial Driver's License Standards: Regulatory Guidance Concerning the Issuance of Commercial Learner's Permits'' on August 3, 2017 (August 2017 Guidance) (82 FR 36101).

The August 2017 Guidance, which is consistent with the 2016 Final Rule, is predicated on the existence of an agreement between the testing State and State of domicile prior to the general knowledge test being administered by the testing State. It also emphasizes that the responsibility for compliance with all requirements of 49 CFR 383.71 and 383.73 remains with the State of domicile. FMCSA also stated that the guidance should not be construed to allow a State to issue a CLP or CDL to an individual who is not domiciled in that State. If this NPRM results in the publication of a final rule, the August 2017 Guidance would be obsolete at that point and would be rescinded.

The procedure for transmitting skills test results between States is already in place as a result of the 2011 Final Rule. To facilitate States' compliance with the 2011 Final Rule, the American Association of Motor Vehicle Administrators (AAMVA) developed two web-based systems for the electronic transmission of skills test results: The Commercial Skills Test Information Management System (CSTIMS) and the Report Out-of-State Test Results (ROOSTR). AAMVA continues to manage these systems and makes them available to the States at no charge. All States currently use one of these two systems to transmit or receive skills test results. After the publication of the August 2017 Guidance, AAMVA modified each of these systems to also allow transmission of the knowledge test results.

FMCSA's informal dialogue with SDLA personnel in early 2018 revealed that no State has yet opted to act pursuant to the August 2017 Guidance. Primary reasons cited were the need for enabling legislation by the individual State legislatures and the fact that such legislation was not likely to be forthcoming without definitive Federal regulatory requirements. Additionally, some States indicated they were

focusing their limited resources on implementing other Federal requirements.

In July 2018, Secretary of Transportation Elaine L. Chao received a letter from 19 members of Congress requesting that FMCSA enact regulations requiring a State of domicile to accept the results of a knowledge test administered by another State in which the applicant received training. The letter, which is available in the docket of this rulemaking, cited a growing trend within the motor carrier industry to develop in-house central training sites to recruit and train new drivers from across the country. The letter further explained that these applicants are often unable to afford the financial burden associated with the travel requirement back to the State of domicile, from the State in which training takes place, in order to take the knowledge test and obtain the CLP. Finally, the letter emphasized that such a rule would not undermine the ''one driver/one license/one record'' principle, as the State of domicile would still be required to issue the credential. This NPRM responds to the concerns raised in the July 2018 Congressional correspondence.

V. Discussion of Proposed Rulemaking

This proposal would modify 49 CFR 383.79(a)(1) and (2) by permitting a State to administer the knowledge test(s) to an out-of-State applicant, and by requiring the State of domicile to accept those knowledge testing results. Under the proposed rule, a State would not be required to offer knowledge testing to out-of-State applicants. This approach is consistent with the current language of 49 CFR 383.79(a)(1), which permits, but does not require, a State to administer the skills test to out-of-State driver applicants who obtain training in that State. The NPRM provides that, where a State does elect to administer a knowledge test to out-of-State applicants, the State must administer that test in accordance with the current standards set forth in subparts F, G, and H of 49 CFR part 383. These include: Testing requirements for specific vehicle groups and endorsements, general and specialized areas of knowledge that must be tested, and testing manuals and methods. However, under the proposal, out-of-State applicants would not be required to obtain knowledge training in the testing State.

The Agency proposes to include all required knowledge testing within the scope of this proposal, in order to avoid a situation in which a driver applicant may take the general knowledge test out of State, but must return to their State of domicile to take a specialized knowledge test for one or more endorsements. For example, an individual who wants to become a commercial bus driver must take the general knowledge test for the CLP, as well as the knowledge test for the P endorsement. Under the NPRM, the testing State could permit the driver applicant to take both knowledge tests. Additionally, current CDL holders may wish to upgrade their license by adding an endorsement; under this proposal, they could also take the applicable knowledge test(s) outside their Sate of domicile, if the testing State offers that option. When a driver applicant passes the knowledge test(s), the testing State would transmit the results to the State of domicile through a secure, safe, electronic means, which would be required to accept those results in fulfillment of the applicant's testing requirements.

FMCSA intends to simplify the task of obtaining a CLP or endorsement for applicants wishing to take the knowledge test(s) outside their State of domicile, while maintaining the ''one driver/one license/one record'' requirement. In the Agency's judgment, the NPRM would not adversely impact safety because the current standards for administering the knowledge test(s) would not change. All driver applicants are subject to the same pool of test questions, regardless of the State in which testing occurs. ''States must use the FMCSA pre-approved pool of test questions to develop knowledge tests for each vehicle group and endorsement'' (49 CFR 383.133(b)(1)). The pool of questions comes from AAMVA's ''2005 CDL Test System (July 2010 or newer Version) 2005 Test Item Summary Forms.'' Each test administered must have a set number of questions overall, with a prescribed number of questions from each of the knowledge topic areas described in 49 CFR 383.111. Under § 383.135(a), driver applicants must correctly answer at least 80 percent of knowledge test questions to achieve a passing score. A State of domicile, therefore, may accept knowledge test results from a testing State and issue the CLP without concern that different States may have different testing standards.

Additionally, this proposal would reduce travel time and other associated costs for applicants who choose to obtain CMV driver training outside their State of domicile and would otherwise have to return to their State of domicile for knowledge testing and issuance of the physical CLP or upgraded CDL. To the extent that reducing travel costs associated with out-of-State training increases the number of applicants or applicant access to high-quality training programs, there could be positive impacts on driver safety. However, the Agency does not have data indicating such an effect. FMCSA invites qualitative or quantitative information addressing the potential benefits of the NPRM.

FMCSA anticipates that this proposal would require States to modify their current CLP and CDL upgrade issuance processes to some extent. For example, because the State of domicile would remain responsible for ensuring compliance with 49 CFR 383.71 and 383.73, the SDLA would need to permit the driver applicant to apply for a CLP before completing the knowledge test in the testing State.

After accepting knowledge test results from the testing State, the State of domicile would issue the CLP or endorsement to the applicant in accordance with current requirements set forth in 49 CFR part 383. Under the ''one driver/one license/one record'' requirement, a State could not issue a CLP or endorsement to an individual who is not domiciled in that State; only the State of domicile may create the Commercial Driver's License Information System (CDLIS) driver record and issue the physical CLP (with a P, S, or N endorsement, if applicable [1]), or add an endorsement to a driver's existing CDL. The State of domicile would need to establish a process for delivering the physical CLP, or upgraded CDL, to the driver applicant in other than the State of domicile. It would be up to the State of domicile to determine method(s) of delivery that would allow the applicant to receive the CLP or upgraded CDL.

As noted above, the process for transmitting knowledge test results between States, through either CSTIMS or ROOSTR, is already in place. States will need to integrate this capability into their own systems and procedures. The Agency notes, however, that transmission of test results through either CSTIMS or ROOSTR does not require any changes to CDLIS.

Finally, the Agency typically allows three years for the States to come into compliance with regulatory changes. Would a three-year compliance date allow sufficient time for States to accomplish changes in their laws and procedures necessary to implement the proposed requirements? Given that the

[1] Under 49 CFR 383.25(a)(5)(iv), the P, S, and N endorsements are the only endorsements permitted on a CLP. Note that a CLP does not require an endorsement.

functionality to transmit knowledge test results currently exists in CSTIMS and ROOSTR, could the proposed requirements be implemented within two years? FMCSA seeks comment and supporting data addressing the length of time States would need to comply with the changes proposed in the NPRM.

VI. Questions

The Agency requests that commenters address the questions below, but also welcomes comments or questions on any other issues related to this proposal.

1. To what extent will SDLAs need to adapt existing procedures and processes to receive out-of-State knowledge testing results and remotely deliver the physical CLP or upgraded CDL? What are the costs associated with making these changes?
2. What additional State implementation concerns are raised by today's proposal?
3. Would two years, or three years, allow SDLAs sufficient time to achieve compliance with the proposed requirement to accept any out-of-State knowledge test results? Please explain the basis for your preferred compliance date.
4. If this proposal is finalized, would your SDLA offer knowledge testing to out-of-State CLP applicants or CDL holders wishing to add an endorsement to their license? Why or why not?
5. Would the proposed changes allow applicants who take driver training outside their State of domicile to obtain a CLP or upgraded CDL more efficiently? If so, please provide specific examples of time or cost savings that may accrue if the proposed changes were adopted.

VII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VIII. Section-by-Section Analysis

The text of 49 CFR 383.79 would be revised by adding new paragraph (a)(1) permitting a State to administer the general knowledge test, and/or specialized knowledge tests, to a CLP or endorsement applicant who is to be licensed in his or her State of domicile and requiring the testing State to transmit the knowledge testing results to the applicant's State of domicile. New paragraph (a)(2) would require the CLP applicant's State of domicile to accept knowledge testing results from the testing State in fulfillment of the applicant's testing requirements under § 383.71 and the State's test administration requirements under § 383.73. Current paragraph (a) would be re-designated as new paragraph (b); current paragraph (b) would be re-designated as new paragraph (c). Section 383.79 would be re-titled ''Knowledge and driving skills testing of out-of-State applicants; knowledge and driving skills testing of military personnel'' to reflect the proposed revisions to the current regulatory text, as summarized above.

IX. Regulatory Analyses

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

FMCSA evaluated the potential impacts of the proposed rule and determined that it is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). Accordingly, the Office of Management and Budget has not reviewed it under that Order. The proposed rule also is not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.6 dated December 20, 2018). The Agency's analysis follows.

Baseline

The Agency's previous regulatory guidance on 49 CFR part 383—Commercial Driver's License Standards Section 383.73 State Procedures (82 FR 36101 (Aug. 3, 2017)) clarifies that Section 383.73 does not prohibit States from accepting and processing CLP applications from out-of-State applicants (*e.g.,* individuals who are not domiciled in the State but who receive training there) and administering the general knowledge test to such applicants, provided there is agreement between the testing State and the applicant's State of domicile. In September 2018, AAMVA made available to States the capability to receive knowledge test results from other States within CSTIMS and ROOSTR. As noted above, to date, no States are using the capability to transmit out-of-State knowledge test results under the existing guidance.

The new capability allows the testing State to enter knowledge testing results in the web-based system. States that opt to receive email notifications will receive notification that an applicant in their State has taken a knowledge test. The State of domicile is then responsible for posting the results to the driver record.

States currently access CSTIMS and ROOSTR through different platforms and use different procedures to receive the results of skills tests taken out of State. These existing systems and procedures will impact the manner in which States comply with the proposed rule and receive out-of-State knowledge test results.

Impact of the Proposed Rule

If this proposed rule results in a final rule, FMCSA would rescind the current guidance, which otherwise expires on August 3, 2022. The proposed rule would allow, but not require, States to administer general and specialized knowledge tests to out-of-State drivers applying for a CLP, and specialized knowledge tests to CDL holders wishing to upgrade their license by adding an endorsement. However, the proposed rule would require the State of domicile to accept results from the testing State. Therefore, all States would have to be capable of accepting knowledge testing results transmitted from the testing State. FMCSA also notes that, as explained above, the proposed rule would permit out-of-State knowledge testing for all endorsements, in contrast to the current guidance, which addresses only the general knowledge test required under 49 CFR 383.25(a)(3). That guidance was issued in response to stakeholders' request for clarification that the general CLP knowledge test could be taken out of State.

The State of domicile would need to allow the individual to apply for a CLP or endorsement prior to taking the applicable knowledge test(s) in the testing State. States also may have to develop procedures for receiving results of the knowledge test(s) from out of State. The extent of changes needed will depend on the existing platform and current processes for accepting the skills test results. For example, States that implemented a manual process for receiving skills test results may use a similar process to receive knowledge test results. On the other hand, States that currently receive skills test results automatically may need only minor incremental programming changes to add the ability to receive knowledge test results in the same manner.

Costs

Costs to implement changes to State licensing procedures and information technology (IT) systems may include upfront (onetime) and ongoing costs (or

cost savings) for each entity. Onetime costs may involve State personnel time to plan, develop practices, implement system changes, revise outreach materials, and train staff. Associated onetime IT system changes may involve programming, testing, and training costs which may include State or contractor personnel time. The extent to which these activities would be incremental costs attributable to the rule will depend in part on the ability of States to coordinate changes with other needed maintenance and revisions.

Once able to receive results of out-of-State knowledge testing States may also incur ongoing incremental costs (or cost savings) associated with the new procedures, depending on the specific changes. For example, a manual procedure would impact State personnel time in the State of domicile each time a testing State transmits test results. There may also be some transfer of costs from one State to another depending on the specific procedures that States adopt for remote delivery of the physical CLP or upgraded CDL. These effects would depend on the extent to which States elect to administer knowledge tests to out-of-State drivers, thus necessitating that the State of domicile receive the test results and issue a CLP or upgraded CDL.

Given the interest from members of Congress and the ATA, the Agency expects that at least some States would allow out-of-State drivers to take the knowledge test(s) to better accommodate truck and bus driver schools operating a centralized training model within their boundaries. In comments submitted on the Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act and the Military Commercial Driver's License Act of 2012 (Docket number: FMCSA–2016–0051), ATA discussed training schools that use a centralized training model. According to ATA, under this model, these schools incentivize students through discounted tuition and potential employment to travel to another State for CDL training. The July 2018 Congressional letter to Secretary Chao, discussed above, also noted a trend toward central training sites to recruit and train new drivers from across the country.

For the 34 States that have fully adopted CSTIMS, FMCSA estimates that on average approximately 22,000 applicants take the skills test out of State annually (out of an approximate 205,000 who take the test and pass in these States). The number of skills tests taken in States that use limited CSTIMS functions or that use ROOSTR are not tabulated or reported. Some States may also elect to offer out-of-State knowledge testing to these applicants. However, since ongoing costs are likely to be highly State-specific and the Agency has no basis to estimate how many States would allow out-of-State drivers to take the knowledge test(s), the Agency is unable to quantify these costs. The Agency invites comments on the level of interest among the States in permitting out-of-State drivers to take the knowledge test(s) and anticipated State-level costs.

Finally, potential driver applicants may experience minor cost savings (*e.g.,* opportunity costs of time and travel) depending on how they would obtain knowledge training, take the knowledge test, and obtain a CLP in the absence of the proposed rule. For example, the ATA comments and the 2018 Congressional letter note that centralized training schools recruit candidates from all over the nation who then must incur the time and expense of returning to their State of domicile to take the knowledge test and obtain their CLP. However, the Agency does not have data on the amount and value (opportunity cost) of that time and travel expense in comparison to the baseline level of expenditures.

Benefits

As noted above, all States must use the FMCSA preapproved pool of test questions to develop knowledge tests for each vehicle group and endorsement. Because the State in which a driver takes the knowledge test does not change the potential content covered, the Agency does not anticipate that this NPRM would adversely impact safety. The Agency does not have data on the impact the flexibility to take the knowledge test(s) out of State will have on the pool or skill level of CDL holders. In their 2016 comments, ATA touts the success of the centralized training model in terms of favorable knowledge and skills test pass rates. To the extent this proposal would further accommodate the centralized training model, the Agency invites comment and supporting data addressing the safety impact of the NPRM.

Uncertainties

There are a number of uncertainties associated with the Agency's regulatory evaluation, primarily related to data limitations. Due to the variety of State-based CDL IT systems and procedures, the extent to which these would need to be modified to comply with the proposed rule will vary by State. The Agency does not have data on either the approach each State will take to interface with the CSTIMS/ROOSTR capability to receive knowledge test results or their intent to offer knowledge tests to out-of-State applicants. In addition, the number of applicants who will take knowledge tests out of State, and the costs saved from reducing travel time and cost under the proposed rule, is not known.

In considering these data limitations, the Agency determined that more or better information to quantify costs and benefits would not likely change its selection of the regulatory alternative (compared to the ''no action'' alternative). Also, the proposed rule represents a logical extension to the existing requirement to accept skills test results administered out of State and, given the capabilities already in place, only relatively minor changes may be needed for compliance. Therefore, in the interest of providing flexibility to the CDL program in a relatively short timeframe, the Agency has not pursued a data collection effort to obtain estimates from the States to fill in these data gaps.

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

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

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 (5 U.S.C. 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

As described above, this proposal, if issued as a final rule, may result in necessary expenditures by States to receive knowledge testing results from applicants who take the knowledge test(s) outside their State of domicile. Neither States nor applicants are small entities. In addition, the CDL Program Implementation (CDLPI) grant program

provides financial assistance to States to achieve compliance with the requirements of 49 CFR parts 383 and 384. Allowable costs under the CDLPI grant awards include, but are not limited to, expenses for computer hardware and software, publications, testing, personnel, training, and quality control.

As discussed above, FMCSA has considered whether the proposed rule would have a significant economic impact on a substantial number of small entities. Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

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

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

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $161 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any one year. Though this proposed rule would not result in such an expenditure, the Agency does discuss the effects of this rule in this preamble.

F. Paperwork Reduction Act

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposal would amend the requirements in 49 CFR part 383 for the issuance of CLPs under specified circumstances. The Agency's commercial licensing regulations and requirements for State compliance, set forth in parts 383 and 384, do not have preemptive effect. States' participation in the CDL program is voluntary; States may withdraw at any time, although doing so will result in the loss of certain Federal aid highway funds pursuant to 49 U.S.C. 31314. Because this proposal would not significantly amend requirements already in effect for participating States, FMCSA has determined that it would not have a substantial direct effect on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

However, the Agency recognizes that, as a practical matter, this NPRM could have some impact on the States' current processes for issuing CLPs. Accordingly, by letters sent on January 8, 2019, FMCSA offered officials of the National Governors Association (NGA), the National Conference of State Legislatures (NCSL), and AAMVA the opportunity to meet with FMCSA to discuss any questions or concerns about the impact of the proposal on current SDLA processes. Copies of those letters are available in the docket of this rulemaking. None of the groups requested a meeting in response to the Agency's invitation.

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

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

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

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the effect of the regulation on the environmental health and safety of children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

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

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

K. Privacy

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. The Agency completed a Privacy Threshold Assessment (PTA) to assist in analyzing the new rulemaking to determine if it creates privacy risk for individuals that could require other entities to collect, use, store or share personally identifiable information (PII), or deploy technologies as a result of this rulemaking implementation. The PTA is also used to identify programs and systems that are privacy sensitive and help determine whether additional privacy compliance, such a PIA or System of Records Notice (SORN), is required for a particular rulemaking or system. Based on the preliminary adjudication of the PTA by the FMCSA Privacy Officer, this rule does not require the collection of PII and the Agency is not required to conduct a PIA. The PTA will be submitted to the Department of Transportation's Privacy Officer for review and final adjudication.

L. E.O. 12372 (Intergovernmental Review)

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

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

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

N. E.O. 13175 (Indian Tribal Governments)

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

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

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

P. Environment

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph (s)(6) and paragraph (t)(2). The Categorical Exclusion (CE) in paragraph (s)(6) covers regulations concerning the requirement for States to give knowledge and skills tests to all qualified applicants for a CDL; the CE in paragraph (t)(2) covers regulations concerning State policies and procedures and information systems concerning the qualification and licensing of persons who apply for a CDL. The proposed requirements in this rule are covered by these CEs and the NPRM does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the *regulations.gov* website listed under **ADDRESSES**.

List of Subjects in 49 CFR 383

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

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter 3, part 383 to read as follows:

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

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 2. Amend § 383.79 by:
■ a. Revising the section heading;
■ b. Redesignating paragraphs (a) and (b) as paragraphs (b) and (c); and
■ c. Adding new paragraph (a).

The addition and revision to read as follows:

§ 383.79 Knowledge and driving skills testing of out-of-State applicants; knowledge and driving skills testing of military personnel.

(a) *CLP applicants tested out-of-State*—(1) *State that administers knowledge testing.* A State may administer general and specialized knowledge tests, in accordance with subparts F, G, and H of this part, to a person who is to be licensed in another United States jurisdiction (*i.e.,* his or her State of domicile). Such test results must be transmitted electronically directly from the testing State to the State of domicile in a direct, efficient and secure manner.

(2) *The State of domicile.* The State of domicile of a CLP applicant, or CDL holder, must accept the results of knowledge tests administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73, if the applicant has satisfied all other requirements of § 383.71.

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Dated: July 23, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–15963 Filed 7–26–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket No. FMCSA–2018–0348]

RIN 2126–AC24

Hours of Service of Drivers; Definition of Agricultural Commodity

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

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FMCSA seeks public comment to assist in determining whether, and if so to what extent, the Agency should revise or otherwise clarify the definitions of ''agricultural commodity'' or ''livestock'' in the ''Hours of Service (HOS) of Drivers'' regulations. Currently, during harvesting and planting seasons as determined by each State, drivers transporting agricultural commodities, including livestock, are exempt from the HOS requirements from the source of the commodities to a location within a 150-air-mile radius from the source. This ANPRM is prompted by indications that the current definition of these terms may not be understood or enforced consistently when determining whether the HOS exemption applies.

DATES: Comments on this notice must be received on or before September 27, 2019.

ADDRESSES: You may submit comments bearing the Federal Docket Management System Docket ID (FMCSA–2018–0348) using any of the following methods: