

**Authority:** 47 U.S.C. 151–155, 301–609, unless otherwise noted.  
 [FR Doc. 2018–21198 Filed 9–27–18; 8:45 am]  
**BILLING CODE** 6712–01–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 383 and 384**

[Docket No. FMCSA–2017–0047]

RIN 2126–AB99

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule allows, but does not require, State Driver Licensing Agencies (SDLAs) to waive requirements for the commercial learner’s permit (CLP) knowledge test for certain individuals who are, or were, regularly employed within the last year in a military position that requires, or required, the operation of a commercial motor vehicle (CMV). This rule includes the option for an SDLA to waive the tests required for a passenger carrier (P) endorsement, tank vehicle (N) endorsement, or hazardous material (H) endorsement, with proof of training and experience.

**DATES:** This final rule is effective November 27, 2018.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than October 29, 2018.

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

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**I. Rulemaking Documents**

**A. Availability of Rulemaking Documents**

For access to docket FMCSA–2017–0047 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**B. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments without edit including any personal information the

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

**II. Executive Summary**

This rule allows, but does not require, SDLAs to waive the knowledge test requirements and tests required for some endorsements with proof of experience for certain individuals who are regularly employed, or were regularly employed within the last year, in a military position requiring the operation of a vehicle that would be classified as a CMV pursuant to 49 CFR 383.5, if operated in a civilian context. This rulemaking implements part of section 5401 of the Fixing America’s Surface Transportation (FAST) Act (Pub. L. 114–94).

In combination with a recent rulemaking—Commercial Driver’s License Requirements of the Moving Ahead for Progress in the 21st Century Act (MAP–21) and the Military Commercial Driver’s License Act of 2012 (2012 Act), published on October 13, 2016 (81 FR 70634), hereafter referred to as the Military CDL I Rule—this rule gives States the option to waive both the CDL knowledge and driving skills tests for certain current and former military service members who received training to operate CMVs during active-duty, National Guard or reserve service in military vehicles that are comparable to CMVs. The combined effect of the Military CDL I Rule and this rule will allow certain current or former military drivers, domiciled in participating States, to transition to a civilian CDL more quickly due to their armed forces training and experience.

FMCSA evaluated potential costs and benefits associated with this rulemaking. The Agency concluded that the final rule would result in a 10-year cost savings of \$16.66 million undiscounted, \$14.21 million discounted at 3 percent, \$11.70 million discounted at 7 percent, and \$1.67 million on an annualized basis at both 7 percent and 3 percent discount rates. FMCSA has determined that this final rule is a deregulatory action under Executive Order (E.O.) 13771.

**III. Abbreviations and Acronyms**

- AAMVA American Association of Motor Vehicle Administrators
- ABA American Bus Association
- ATA American Trucking Associations
- BLS Bureau of Labor Statistics
- CDL Commercial Driver’s License
- CE Categorical Exclusion
- CLP Commercial Learner’s Permit
- CMV Commercial Motor Vehicle

CMVSA Commercial Motor Vehicle Safety Act of 1986

CVTA Commercial Vehicle Training Association

DMV Department of Motor Vehicles

DOL Department of Labor

DOR Department of Revenue

DOT Department of Transportation

E.O. Executive Order

ECEC Employer Costs for Employee Compensation

ELDT Entry-Level Driver Training

FAST Act Fixing America's Surface Transportation Act

FMCSA Federal Motor Carrier Safety Administration

H Hazardous Material Endorsement

IFDA International Foodservice Distributors Association IFDA

MAP-21 Moving Ahead for Progress in the 21st Century Act

Michigan Bureau of Driver and Vehicle Programs for the Michigan Department of State

MOS Military Occupational Specialties

NEPA National Environmental Policy Act of 1969

N Tank Vehicle Endorsement

NGPA National Propane Gas Association

NSTA National School Transportation Association

NTTAA National Technology Transfer and Advancement Act

OES Occupational Employment Statistics

OMB Office of Management and Budget

OOIDA Owner-Operator Independent Drivers Association

Oregon Oregon Driver and Motor Vehicle Service

PGANE Propane Gas Association of New England

P Passenger Carrier Endorsement

RFA Regulatory Flexibility Act of 1980

RIA Regulatory Impact Analysis

SBREFA Small Business Regulatory Enforcement Fairness Act of 1996

SDLAs State Driver Licensing Agencies

TSA Transportation Security Administration

#### IV. Legal Basis for the Rulemaking

This final rule rests on the authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313 and 49 CFR parts 382, 383, and 384. The rule also responds to section 5401(a) of the FAST Act [Pub. L. 114–94, 129 Stat. 1312, 1546, December 4, 2015]. This section requires FMCSA to modify the minimum testing standards of its CDL regulations to credit the training and knowledge received by certain current or former military drivers in the armed forces, including the reserve components and National Guard, to drive military vehicles similar to civilian CMVs [49 U.S.C. 31305(d)(1)(C)].

The CMVSA provides broadly that “[t]he Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a

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

Section 5401(a) of the FAST Act, as amended by section (3)(1) of the Jobs for Our Heroes Act (Pub. L. 115–105, 131 Stat. 2263, January 8, 2018) added 49 U.S.C. 31305(d): “Standards for Training and Testing of Operators Who Are Members of the Armed Forces, Reservists, or Veterans.” Section 31305(d)(1)(A) requires the Agency to modify its CDL regulations to “exempt a covered individual from all or a portion of a driving test if the covered individual had experience in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle.” Section 31305(d)(1)(B), as also amended by the Jobs for Our Heroes Act, requires FMCSA to “ensure that a covered individual may apply for an exemption under subparagraph (A)—(i) while serving in the armed forces or reserve components; and (ii) during, at least, the 1-year period beginning on the date on which such individual separates from services in the armed forces or reserve components.” The term “reserve components” includes the Army and Air National Guard, as well as the normal reserve units of all branches of the military service. Section 5401(c) of the FAST Act also directed the Agency to adopt regulations allowing certain military personnel an exemption from the normal CDL domicile requirement, as authorized by the 2012 Act and codified at 49 U.S.C. 31311(a)(12)(C). These three provisions were implemented by the Military CDL I Rule.

The last element of section 5401(a), which was not addressed in the Military CDL I Rule, directed the Agency to “credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge” [49 U.S.C. 31305(d)(1)(C)]. That requirement is the subject of this final rule. It should be noted that section 31305(d)(2)(B) originally defined a “covered individual” as someone over 21 years of age who is “(i) a former member of the armed forces; or (ii) a former member of the reserve components.” However, section 3(3) of the Jobs for Our Heroes Act amended section 31305(d)(2)(B) to define a

“covered individual” as someone over 21 years of age who is “(i) a current or former member of the armed forces; or (ii) a current or former member of one of the reserve components.” Using the broad authority of 49 U.S.C. 31315(b), the Agency implicitly took the same position in granting all SDLAs the temporary option (for a 2-year period) of waiving the CLP knowledge test for current or former members of the military services, including the reserves and National Guard, who had completed certain formal military driver training (81 FR 74861, Oct. 27, 2016). [See “Knowledge Test Exemption Request” discussion below.]

Federal training standards for CDL drivers were adopted only recently. Section 32304 of MAP-21 [Pub. L. 112–141, July 6, 2012, 126 Stat. 405, 791] required entry-level driver training (ELDT) of CDL applicants [49 U.S.C. 31305(c)]. That requirement was promulgated on December 8, 2016 [81 FR 88732]. However, the ELDT rule provides that “[v]eterans with military CMV experience who meet all the requirements and conditions of § 383.77” are not required to complete the new entry-level training program [49 CFR 380.603(a)(3)]. Because § 383.77 authorizes the States to exempt CDL applicants with military CMV experience from the driving skills test, those drivers are also exempt from ELDT.

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

This rule implements 49 U.S.C. 31305(d)(1)(C) by giving States limited discretion, to exempt CDL applicants with military CMV experience from the knowledge test required for a CLP. This final rule completes the requirement of section 31305(d)(1)(C) to “credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge.”

#### V. Regulatory Background

##### A. Current Standards

##### Knowledge Test

As specified in 49 CFR 383.71(a)(2)(ii), any individual applying for a CDL is first required to take and pass a general knowledge test, which

authorizes the issuance of a CLP. The general knowledge test must meet the Federal standards contained in subparts F, G, and H of part 383 for the commercial vehicle group that person operates or expects to operate.

#### Skills Test

Any individual applying for a CDL is required to take and pass a general skills test, but only after passing the knowledge test and obtaining a CLP. A final rule published on May 9, 2011 ["Commercial Driver's License Testing and Commercial Learner's Permit Standards" (76 FR 26854)] added a new 49 CFR 383.77, which allows the States to substitute CDL applicants' eligible military CMV experience for the skills test.

#### B. Recent Activity

##### Military CDL I Rule

The Military CDL I Rule addressed the requirements of 49 U.S.C. 31305(d)(1)(A) and (B) (81 FR 70634, Oct. 13, 2016) and allows States to extend the period to apply for a skills test waiver after leaving the military from 90 days to 1 year for an individual who is regularly employed or was regularly employed in a military position requiring operation of a CMV.

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

##### Knowledge Test Exemption Request

The Missouri Department of Revenue (DOR) submitted a request for an exemption from the FMCSA regulation that requires any driver to pass the general knowledge test before being issued a CLP or CDL. The exemption request is available in docket FMCSA-2016-0130, at: <https://www.regulations.gov/document?D=FMCSA-2016-0130-0004>. The Missouri DOR asked FMCSA to waive the knowledge test requirement for qualified veterans who participated in dedicated training through approved military programs. The Missouri DOR contended that qualified personnel who participated in such programs had already received the numerous hours of classroom training, practical skills, and one-on-one road training that are essential for safe driving. FMCSA agrees with Missouri DOR's reasoning and

granted a 2-year exemption on October 27, 2016 (81 FR 74861), which the Agency extended to allow all SDLAs, at their discretion, to waive the knowledge test requirements to qualified veterans, reservists, National Guard, and active-duty personnel. FMCSA does not have data from all of the States utilizing this exemption. However, since January 1, 2018, Illinois has granted more than 75 exemptions through this program. There have been no reports of serious incidents about any of these drivers.

#### C. Notice of Proposed Rulemaking

On June 12, 2017, FMCSA published an NPRM (82 FR 26894) that proposed allowing SDLAs to waive the requirements for the CLP knowledge tests for certain individuals who are, or were, regularly employed within the last year in a military position that requires, or required, the operation of a CMV.

#### VI. Discussion of Comments and Responses

FMCSA received 17 comments on the NPRM. Of these, 15 supported the proposal, though some requested alterations. The rule was supported by the American Trucking Associations (ATA), the Owner-Operator Independent Drivers Association (OOIDA), the American Bus Association (ABA), the International Foodservice Distributors Association (IFDA), the Propane Gas Association of New England (PGANE), the National Propane Gas Association (NPGA), the Commercial Vehicle Training Association (CVTA), the Oregon Driver and Motor Vehicle Service (Oregon), the Virginia Department of Motor Vehicles (Virginia DMV), the National School Transportation Association (NSTA), a motor carrier, and several individuals. Commenters in favor of the NPRM argued that it would: Build on the success of past waiver programs and recent complementary regulations; reduce the burden to enter the industry for qualified military and veterans; remove duplicative requirements and reduce the time to get licensed; reduce problems in recruiting qualified employees; establish a standard of safety equivalent to that of the CLP knowledge test requirement of the CDL exam; and codify already existing practices by individual SDLAs. Several commenters lauded the Agency, saying the provisions of the proposed rule ensured that individuals receiving a waiver would be well-qualified.

One commenter, the Bureau of Driver and Vehicle Programs for the Michigan Department of State (Michigan), agreed with the need to help veterans, but not with a waiver of the knowledge test.

One commenter opposed the NPRM, claiming that there is no way to know if someone meets the knowledge test requirements unless that individual takes the test.

Several individuals commented on the licensing process, medical standards, and other issues outside the scope of the NPRM.

#### A. Endorsements, License Classes, and License Restrictions

The NPRM did not address the question of waiving the knowledge tests for endorsements, nor did it discuss license classes or license restrictions for current service personnel or veterans.

The ABA requested clarification on whether the proposed testing waiver would apply to endorsements as well, and stated that it did not support exemptions from the knowledge tests for endorsements.

Citing an inconsistency between §§ 383.79(c)(1) and 383.111, Oregon asked whether the Agency intended to allow waivers for all knowledge tests or just the general CDL knowledge test. Oregon pointed out that allowing a waiver only of the general knowledge test would limit the type of license that could be issued and acknowledged the concern about waiving other knowledge tests.

The NPGA and PGANE asked that the proposal be amended to allow SDLAs to waive the knowledge test for the H endorsement for veterans and military service members with applicable experience. They argued that this change would not reduce safety and would increase opportunities for service men and women. One commenter pointed out that military training and experience would likely exceed civilian training and experience, due to military concerns over the transportation of hazardous materials. CVTA stated that many military drivers haul materials that would be considered hazardous in a non-military setting, and that they should have access to the H endorsement via a testing waiver, though only for a Class A license.

The NSTA asked that the passenger and school bus endorsements be waived only for drivers with applicable experience. CVTA stated that FMCSA should consider a restricted license for a military driver who operated only an automatic, not a manual, transmission.

**FMCSA Response:** FMCSA believes that a waiver of certain endorsement tests is appropriate, given that many service members operate vehicles and transport loads using an equivalent endorsement on a civilian CDL.

In response to these comments, this final rule explicitly allows SDLAs to

waive the knowledge tests for H and N endorsements, and the knowledge and driving skills tests for the P endorsement. Several Military Occupational Specialties (MOS) include training that corresponds to the knowledge tests for H, N, and P endorsements. If applicants can demonstrate that they have received such training, SDLAs may waive one or more of these knowledge tests. FMCSA provides regulatory language with which SDLAs must comply to waive the testing requirements for these three endorsements.

As the D.C. Circuit said in *National Mining Ass'n v. Mine Safety and Health Admin.*, 116 F.3d 520 (1997), “[a]gencies are not limited to adopting final rules identical to proposed rules. No further notice and comment is required if a regulation is a ‘logical outgrowth’ of the proposed rule . . . . Our cases offer no precise definition of what counts as a ‘logical outgrowth.’ We ask ‘whether ‘the purposes of notice and comment have been adequately served.’” . . . . Notice was inadequate when ‘the interested parties could not reasonably have ‘‘anticipated the final rulemaking from the draft [rule] (internal citations omitted).’’” Id. at 531. In this case, the purposes of the NPRM were more than adequately served. Many commenters not only anticipated the possibility that the final rule might waive the knowledge tests for certain endorsements, some argued that the Agency had overlooked that obvious implication of the proposed rule while others, although accepting that implication, argued that such knowledge tests should not be waived, at least in certain cases. The inclusion of three endorsement waivers in this final rule is therefore a logical outgrowth of the purpose and structure of the NPRM.

No waivers of endorsements are allowed beyond the three discussed above because the various military services provide training equivalent to that required to pass the written endorsement tests *only* for H, N, and P. Additionally, because this rule is voluntary, SDLAs may decide not to adopt it at all, or may adopt it but decline to offer waivers for the H or N knowledge tests, or P knowledge or driving skills tests. FMCSA believes that allowing waivers for endorsement knowledge testing will resolve nearly all concerns expressed by commenters about the class of licensure, as SDLAs will be able to issue CDLs with certain endorsements.

There is no need to require restricted licenses based upon the type of transmission installed on military

vehicles, because FMCSA recognizes that many military vehicles are fitted with automatic transmissions. However, all service branches have vehicles with manual transmissions in their fleet inventory. Each service branch has documentation of drivers’ training, experience, and certification in vehicles with manual transmissions that can be provided to the SDLA when the driver applies for a CDL. The same proof of experience with different braking systems exists, including air brakes and air over hydraulics. As this rule is voluntary, SDLAs are still allowed to test these drivers’ brake and manual transmission abilities, if they wish, and to impose a license restriction.

#### *B. Military Occupational Specialties, Military Occupational Codes*

The NPRM provided examples of training and certification for four MOS: Army—88M—Motor Transport Operator; Air Force—2T1—Vehicle Operations; Marine Corps—3531—Motor Vehicle Operator; and Navy—EO—Equipment Operator. The NPRM proposed allowing SDLAs to waive the knowledge test for current service members or veterans who are or were regularly employed in a military position requiring operation of a CMV, and are or were operating a vehicle representative of the CMV the driver applicant expects to operate after receiving a CDL, or who operated such a vehicle immediately preceding separation from the military, regardless of MOS.

The ABA requested that a list of MOS be put into regulatory language or the driver’s SDLA record, and suggested that it would be appropriate to add such a list to an appendix to the final rule, a website, or a new ELDT rule. The ABA stated that a driver’s use of the waiver and potentially his or her MOS should be included in the driver’s record for prospective employers to review and evaluate during pre-employment screening.

Oregon asked for a list of specific MOS to which the knowledge test waivers would apply and provided a list it said should be used. Oregon stated that the list could be expanded in the future, but was necessary for SDLAs’ use.

Virginia DMV asked if the Agency’s intent was to allow test waivers only for the MOS listed in the NPRM; if so the regulatory language should be amended to refer to “a military position occupation specialty requiring completion of a military driver training program that has been approved by FMCSA and operation of a CMV.”

*FMCSA Response:* FMCSA agrees with the commenters and has included in the regulatory language a full list of MOS that are eligible for a waiver of the general knowledge test.

The list of MOS in this final rule has been expanded to include the following:

- 88M (Army), motor transport operator.
- 14T (Army), PATRIOT launching station operator.
- 92F (Army), fueler.
- 2T1 (Air Force), vehicle operator.
- 2F0 (Air Force), fueler.
- 3E2 (Air Force), pavement and construction equipment operator.
- 3531 (Marine Corps), motor vehicle operator.
- EO (Navy), equipment operator.

The Agency has concluded that these programs enable drivers likely to achieve a level of safety equivalent to, or greater than, the level that would be achieved by requiring them to pass the CLP knowledge test. The Army, Air Force, Marine Corps, and Navy provide specific training dedicated to operating heavy-duty vehicles.<sup>1</sup>

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

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

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

#### *Army—88M Training*

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

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

Motor Transport Operators are responsible primarily for operating wheeled vehicles to transport personnel

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

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

A fueler for the Army, a driver with an Army classification of 92F, has completed the Army 88M course and additional training specific to the job of a fueler.

A PATRIOT Launching Station Operator, a driver with an Army classification of 14T, has completed the Army 88M course and additional training specific to the both the vehicle and systems the vehicle transports. Total training for this MOS exceeds 264 hours.

#### Air Force—2T1—Vehicle Operations

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

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

The core curriculum is based on the material in the *American Association of Motor Vehicle Administrators (AAMVA) CDL Manual—2005 edition (2014 revised)*. Students participating in the basic 2T1 curriculum learn general principles in the classroom. Specialized training occurs at the installation using the *Tractor Trailer Plan of Instruction*. A minimum of 40 hours over-the-road time is expected on each vehicle/trailer type.

Topics covered in the Air Force Vehicle Operations course include: Overview of training and Federal requirements; Federal motor vehicle safety standards; tractor/trailer design; hazards and human factors relative to the environment where used; safety clothing and equipment; driving safely; pre- and post-trip vehicle inspection; basic vehicle control; shifting gears; managing space and speed; driving in mountains, fog, winter, very hot weather, and at night; railroad crossings; defensive awareness to avoid hazards and emergencies; skid control and recovery; what to do in case of a crash; fires; staying alert and fit to drive; hazardous materials—rules for all

commercial drivers; preparing, inspecting, and transporting cargo safely; inspecting and driving with air brakes; driving combination vehicles safely; and coupling and uncoupling.

Air Force fuelers holding 2F0, and Air Force pavement and construction equipment operators holding 3E2, must first complete training for 2T1, before completing additional training specific to the roles of 2F0 and 3E2.

#### Marine Corps—3531—Motor Vehicle Operator

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

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

Instructional breakout includes:

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

Knowledge examination: 7 hours. Classroom instruction includes lectures, demonstration, and practice time for the specific tasks identified. Each classroom session includes knowledge and performance evaluations to ensure students have mastered all learning objectives for the specialty proficiency. Training includes simulators and actual vehicle operation. Practical training includes on-the-road and skills operations, ground guide procedures, and operating a vehicle with a towed load. Students practice their driving and backing, with and without a trailer. Instructors ride with the students as they operate on approved road routes. Specific training areas (pads) are provided for the students to practice their backing skills and ground guide procedures safely.

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

#### Navy—EO—Equipment Operator

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

- Hazardous materials transportation.
- Line haul planning.
- Manual tractor-truck operations.

- Vehicle Recovery Operations.

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

- Perform the duties of normal, non-combat conditions driving in accordance with the local State driver licensing agency's CDL driver handbook;
- Manage hazardous petroleum, oils and lubricants (POL) material required during line haul and worksite activities, to support normal, non-combat operations;
- Perform preventive maintenance on a non- or up-armored manual truck tractor with drop-neck trailer, consisting of pre-start, during-operations, and after-operations equipment checks, to support normal, non-combat operations, in accordance with local State Driver License Agency CDL handbooks;
- Operate vehicle controls of a non- or up-armored manual truck-tractor, to support normal, non-combat operations; and

- Be proficient with the components and controls of a drop-neck trailer relative to a detached/attached gooseneck and a coupled/uncoupled trailer.

Other topics covered within the Navy EO training program include:

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

The military training programs described above are thorough and comprehensive, incorporating most of the elements recommended by the Professional Truck Driver Institute, which has been the principal standard-setting organization for private-sector motor carrier training for decades. They are entirely compatible with the requirements of FMCSA's ELDT rule. Although geared to heavy-duty military vehicles, military training is readily transferrable to a civilian context, as the operational characteristics of large military and civilian vehicles are very similar and, in some cases, identical. The Agency believes that exempting these drivers from the CLP knowledge test, in addition to the skills test, will have no adverse effect on highway safety.

This final rule also provides for waivers involving H, N, and P endorsements of drivers who hold an

MOS listed above. Though military service members are not required to comply with 49 CFR, including hazardous materials training (part 172, subpart H), several service branches offer a training curriculum that meets or exceeds FMCSA testing requirements for endorsements. Proof of such training can be confirmed at the SDLA, for example by providing a copy of the U.S. Air Force motor vehicle identification card (AF 2293) which includes an identification of the class of vehicle operated, any endorsement held by the operator, and any restrictions to which he or she are subject. The identification card also includes a list of the vehicles the person is authorized to operate. Similar cards are authorized by the Navy and Marine Corps (both designated as OF 346), and Army (DA 5984). This rule is not applicable to school bus endorsement but, as noted above, is acceptable for the P endorsement if the service member verifies his/her military Passenger credential.

FMCSA recognizes that military vehicles can carry a variety of hazardous materials. Military personnel who carry fuel and other types of hazardous materials, including powder, weapons, and ammunition, are trained and certified to transport these materials. FMCSA clarifies that service members applying for waivers from the H endorsement knowledge test must still undergo the Hazardous Materials Endorsement Threat Assessment Program through the Transportation Security Administration (TSA) (49 CFR part 1572). SDLAs may not issue the H endorsement until TSA has completed its background check and approved the driver.

The Agency's ELDT final rule has a compliance date of February 7, 2020. Under 49 CFR 383.603(a)(3) of that rule, "[v]eterans with military CMV experience who meet all the requirements and conditions of § 383.77" are exempt from the rule's training requirements [81 FR 88732, 88790, December 8, 2016]. Section 383.77 allows States to waive the skills test for certain drivers with military CMV experience. This final rule allows a comparable waiver of the knowledge test. However, this rule does not affect 49 CFR 391.31, under which motor carriers must require their drivers to complete a road test before operating a CMV, unless the carrier chooses to accept a valid CDL in lieu of the road test (though it may not waive the road test if the driver has an N endorsement) [49 CFR 391.33]. In short, employers may still require drivers with military CMV experience who obtain a CDL

without completing either the skills test or the knowledge test to complete a road test.

#### C. Time Period for Waiver

FMCSA proposed to allow States to exempt from the knowledge test for a CLP or CDL certain current or former military service members who were regularly employed in a military position requiring the operation of a CMV during a 1-year period immediately prior to the application. There would be no time limit for military personnel while on active duty or serving actively within a reserve component or the National Guard to apply for the waiver.

The NPGA and the PGANE asked that the proposal's 1-year waiver period be extended to 5 years. These commenters argued that the nature of CMV driving does not change so rapidly that a 5-year period would make training obsolete, even if the applicant had not driven in the past year.

Oregon thought that the time limits for the knowledge and skills test waivers should be identical. Oregon stated that, as proposed, the NPRM did not match the length of the skills test waiver.

*FMCSA Response:* FMCSA declines to extend the 1-year waiver period. This rule's intended effect is to allow qualified veterans and service members to waive the knowledge and skills tests simultaneously to obtain licensure. The Military CDL I rule used a 1-year period; FMCSA believes that is appropriate here as well, as the two are now synchronized.

#### D. Extension of the Proposal

One commenter requested that the proposal be extended to non-military personnel. Another stated that veterans should have licenses granted automatically, as they are driving on behalf of the U.S. Military.

*FMCSA Response:* The application process for what might be called an "even exchange" of a military truck or bus license for a civilian CDL was directed by the 2012 Act and section 5401 of the FAST Act. That process is limited explicitly to military service members with appropriate experience. As amended by section 5401(a), 49 U.S.C. 31305(d)(1)(C) requires FMCSA to "credit the training and knowledge a covered individual received in the armed forces or reserve components driving vehicles similar to a commercial motor vehicle for purposes of satisfying minimum standards for training and knowledge." Only individuals currently serving on active duty, including the National Guard and reserve

components, or recently separated service men and women with comparable training and experience, will be eligible for a waiver of the knowledge test. There is no equivalent requirement to waive knowledge tests for non-military personnel. In any case, that step would take this rule far beyond its original purpose and scope.

Federal regulations already exempt active duty military personnel from the need to hold a CDL when driving while on duty in a military vehicle on official military orders (49 CFR 383.3(c)). This final rule, in combination with the Military CDL I final rule, will allow States to make the licensing of current or former military personnel as close to automatic as possible. Other Federal requirements for licensure, like a medical examiner's certification, must be met and cannot be waived. However, qualified current and separated service members will now have significantly reduced obstacles to earning non-military licenses.

#### E. SDLA Compliance

The Agency's June 12, 2017, NPRM proposed that SDLAs may waive the knowledge test; it would be entirely voluntary.

The CVTA asked FMCSA to consider setting guidelines for the process to increase consistency between SDLAs. ABA asked how the driver's SDLA record will reflect whether certain tests were waived.

Several commenters, including the two propane gas organizations, supported a voluntary waiver program and stated that a 3-year compliance date for States was appropriate.

ATA suggested that FMCSA work with AAMVA to develop a required form to verify that a driver has been trained in the ELDT elements to a level at least equivalent to that reflected by passage of the knowledge exam. Oregon asked several questions regarding coordination between the State of duty station and the State of domicile. Oregon asked if it was the Agency's intention to allow a State to administer all knowledge tests for certain military service members not domiciled there, but to limit that provision to just the general knowledge test for all other non-domiciled applicants.

The Virginia DMV stated that the process outlined in the proposed rule regarding testing for and obtaining a civilian CDL seems unnecessary and burdensome to the applicant because the 2012 Act already allows a State to issue a CDL to military personnel stationed but not domiciled there. The commenter called attention to the CDL rule prohibiting a driver from holding

more than one license, noting that issuance of a CDL by the State of domicile would invalidate any other license held by the driver, making it illegal for him or her to drive for a period of several days until the newly-issued CDL arrived. Moreover, the commenter added that the proposed rule did not require States that decide to participate in the program to change their laws, if necessary, and invalidate or destroy the non-CDL, even before the CDL document is delivered to the applicant.

Another concern of the Virginia DMV was the requirement of 49 CFR 383.71(b)(9) for applicants to provide a proof of citizenship or lawful residency in a State of domicile in cases where they do not have such identification. Moreover, the commenter believed that FMCSA should provide an exception for applicants who do not have an active residential or mailing address in the State of domicile and allow such applicants' CDL or CLP to show an address located in the State of duty station.

The Virginia DMV was concerned with the provision that permits the State of duty station to accept an application for a CLP or CDL, including an application for waiver of the knowledge test or skills test, only if the State of duty station obtains prior approval from the State of domicile. The commenter wrote that "this creates an excessive burden on States to go state by state in obtaining prior approval agreements with other States. DMV is also concerned that if a duty station State does not obtain prior approval from a State of domicile before proceeding or the duty station State misunderstands what is approved[,] this will result in an undue hardship on military service members who must rely on the duty station State to follow regulations. Therefore, the Virginia DMV recommends that it should be the applicant's responsibility to obtain written approval from the State of domicile prior to beginning any exams in the duty station State since some applicants may be ineligible for domicile accommodation, due to outstanding administrative requirements in the State of domicile (e.g. photograph, compliance, lawful presence, State residency)." Furthermore, given that the NPRM would allow, but not require, States to waive the knowledge test, this commenter stated that permitting States to impose additional conditions and limitations on applicants, beyond those included in the proposed rule, would result in a lack of uniformity from State

to State, creating a confusing process for service members to navigate.

Lastly, Virginia DMV noted that the cost associated with complying with the proposed rule is neither minimal, given the need for changes to State law, nor would the required re-programming of information technology systems would be minor, as the NPRM indicated. FMCSA needs to address these administrative and other costs. Moreover, Virginia DMV said that, if it participates in the waiver program, it would not do so until AAMVA had developed a secure system to transmit knowledge test results and other documentation.

*FMCSA Response:* As stated previously, States waiving knowledge tests under this rule are not required to coordinate their programs between States, although all States granting waivers must verify the qualifications of applicants based on various military documents, as specified in this rule. With respect to the CVTA comment, § 383.135(c) currently requires recording of the application for waiver in the driver's file. As for the comments of the propane gas organizations, FMCSA believes this rule should be available to States as soon as possible. The Agency is therefore making this final rule effective 60 days after publication.

Responding to the ATA's request that FMCSA specify a form demonstrating the equivalence of military training with the standards required for ELDT, the Agency has concluded, after consultation with AAMVA and close examination of the military training and testing manuals and procedures, that training to the prescribed MOS standards meets or exceeds that required by the ELDT rule. The form requested by ATA is therefore unnecessary.

This final rule makes no changes to the existing domicile requirements or any other provision of part 383. While the 2012 Act does allow States to issue CDLs to military personnel stationed there, no States have done so. The NPRM and this final rule avoid the possibility that CDL applicants could inadvertently lose their "home" State of domicile by accepting a CDL from the State of duty station.

The requirement and documents needed to provide proof of citizenship or lawful permanent residency in § 383.71(b)(9) are the same, whether the application is being made in the State of domicile or some other State. Without that proof, a CLP or CDL may not be issued. As for Virginia DMV's concern about the possible inability of an applicant to show an active mailing address in his or her "home" State to

prove domicile, § 383.71(b)(10) allows the use of a "government issued tax form" to serve as proof. Without such a tax record, there is no good reason to believe an applicant's assertion of domicile in a State.

#### F. Driver Training

The NPRM described the various military training programs and explained that they are thorough and comprehensive. These programs incorporate most of the elements recommended by the Professional Truck Driver Institute. Military training is entirely compatible with the requirements of FMCSA's ELDT rule (81 FR 88732, December 8, 2016, also available in docket FMCSA-2007-27748).

ATA stated that FMCSA should verify that all military training programs thoroughly cover all elements required by the ELDT rule, and, if they do not, should work with the military branches to secure comparable training.

CVTA stated that the training manuals from the Army, Navy, Air Force, and Marines all covered, in "considerable detail," the skills needed under the ELDT rule.

*FMCSA Response:* As stated previously, the training and testing by the military meet or exceed FMCSA's various training standards listed in appendices A through E to 49 CFR part 380 (compliance required by February 7, 2020) and the AAMVA testing standard specified in 49 CFR 383.131.

#### G. Proof of Training and Experience

NSTA stated that individuals seeking a waiver should "certify and provide evidence" of their training and experience, specifically for passenger carrier and school bus endorsements. ATA asked the Agency for "explicit acknowledgement" that a driver using the waiver has the knowledge necessary to pass the test. ATA also said that employers may view the waiver as a lesser standard, and that FMCSA should provide the same process for checking the driver's record, experience, restrictions, equipment, etc., as States allow for other drivers. ATA expressed concern that veterans utilizing this program might be perceived as holding a lesser license.

ABA requested guidance on how an employer could confirm a driver's service and MOS. Oregon asked how to confirm that a driver attempting to use this waiver had proper training and experience. Oregon also asked if certain MOS should be considered proof of appropriate training, and requested a formal definition of "approved training."

*FMCSA Response:* Under this rule, drivers who hold or held such designations have completed “approved training” comparable to that required to pass the general knowledge test. SDLAs will be able to verify a driver’s MOS status. As indicated above, the SDLA will be able to check military documents, such as AF 2293, etc. The Agency will also provide SDLAs with guidance and sample documents that can be used to verify an applicant’s required training and testing in the appropriate vehicle. A document summarizing that guidance is currently under development, and will be available to SDLAs. Certification to an employer that a driver is qualified is not part of this rulemaking. Individuals who are waived from the tests will receive standard CDLs and be treated the same as all other CDL holders.

#### H. CDL Waiting Period

ATA asked if FMCSA planned to require the usual 14-day waiting period between issuing these two licenses (49 CFR 383.25(e)).

*FMCSA Response:* Under this rule, a State may treat military personnel with the appropriate MOS as though they had completed the knowledge test for a CLP. However, because recipients of such waivers are eligible immediately for a CDL, they are not issued a CLP. The 14-day waiting period was adopted to ensure that drivers had time to obtain behind-the-wheel training before attempting to pass the skills test. However, § 383.77 requires applicants with military experience seeking a waiver of the driving skills test to certify certain experience over a 2-year period prior to the application. The MOSs listed in this final rule demonstrate that the applicant has received training equivalent to that required by the ELDT rule, which is also sufficient to pass the general and endorsement knowledge tests. Under these circumstances, a 14-day waiting period would serve no purpose. This rule does not waive other requirements for the issuance of a CDL, including the medical card required of all CDL holders and the TSA background check for applicants for H endorsement.

#### I. Other Comments

FMCSA revised 49 CFR 383.77, *Substitute for driving skills tests for drivers with military CMV experience*, and 49 CFR 383.79, *Skills testing of out-of-State students; Knowledge and skills testing of military personnel*, in the 2016 Military CDL I final rule. In the NPRM, FMCSA proposed edits to these two sections to accommodate the provisions related to the knowledge test.

Virginia DMV submitted multiple comments and questions about parts of the FMCSRs that were not substantively modified by this rulemaking, reflecting misunderstandings about the NPRM. Modifications to the final rule in response to other comments have resolved and clarified the issues raised by Virginia DMV.

#### 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

##### A. Section 383.23 Commercial Driver’s License

The reference to “written” tests in paragraph (a)(1) is changed to “knowledge” tests and the term “commercial motor vehicle” is abbreviated as “CMV” to match the terminology used elsewhere in 49 CFR part 383. The word “skills” is added after “driving” to clarify the type of test. No changes are made to other paragraphs in this section.

##### B. Section 383.77 Substitute for Knowledge and Driving Skills Tests for Drivers With Military CMV Experience

This section is retitled as *Substitute for knowledge and driving skills tests for drivers with military CMV experience* to include knowledge test waivers. The existing introductory paragraph is now contained in new paragraph (b)(1) and the introductory text of paragraph (b)(2).

FMCSA adds new paragraph (a), titled *Knowledge test waivers for certain current or former military service members applying for a CLP or CDL*, to outline the requirements for eligibility for knowledge test waivers, including paragraphs (a)(2)(i)(A) through (H) that list specific MOS eligible for knowledge test waivers. Existing paragraph (a) is now contained in new paragraph (b)(2)(ii). The language has been slightly modified to make it consistent with new paragraph (a).

New paragraph (b) is titled *Driving skills test waivers for certain current or former military service members applying for a CDL*. Existing paragraph (b) is now contained in new paragraph (b)(2)(i).

New paragraph (c) is titled *Endorsement waivers for certain current or former military service members*

*applying for a CLP or a CDL*. Paragraphs (c)(1) through (3) contain the requirements certain applicants must meet for SDLAs to grant them relief from the knowledge and skills tests for P, and the knowledge tests for N and H. New paragraph (c)(4) provides the conditions and limitations that are placed on a waiver of the tests required for a P, N, or H endorsement.

##### C. Section 383.79 Driving Skills Testing of Out-of-State Students; Knowledge and Driving Skills Testing of Military Personnel

The title of this section and paragraph (a) are modified to include the term “driving” before the terms “skills.” Other editorial changes are made to paragraph (a). Existing paragraph (b), *Military service member applicants for a CLP or CDL*, is removed and replaced by a new paragraph (b), *Active duty military service members*. New paragraphs (b)(1) and (2) discuss the responsibilities of the State of duty station and the State of domicile, respectively.

##### D. Section 384.301 Substantial Compliance General Requirements

New paragraph (l) is added to provide a compliance date for this rule.

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

This rule will allow, but not require, States to waive the requirements for the CDL knowledge tests for certain current or former military service members who can certify and provide evidence that they were regularly employed within the last year in a military position that requires/required the operation of a CMV. This rule will provide an expedited path for certain military service members to enter the labor market by eliminating the usual 14-day waiting period after passing the knowledge test for the CLP and either

taking the driving skills test or applying for a skills test waiver.

FMCSA evaluated potential costs and benefits that could result from this rulemaking. The Agency estimates that an annual average of 2,460 military service members will be affected by the rule, with each experiencing a reduction in costs related to elimination of the CDL knowledge test and the 14-day waiting period. As presented in Table 1, the final rule will result in a 10-year cost savings of \$16.66 million undiscounted, \$14.21 million discounted at 3 percent, \$11.70 million discounted at 7 percent, and \$1.67 million on an annualized basis at 7 percent or 3 percent discount rates.

Scope and Key Inputs to the Analysis

The Agency does not know how many military service members will receive CDL knowledge test waivers and uses the number of CDL skills test waivers issued as a proxy for the number of military service members who will be most likely to use the relief provided in this rule. In the Military CDL I final rule, FMCSA estimated that an annual average of 2,460 military service members were granted skills test waivers, and thus estimates that the same number will be granted knowledge test waivers as a result of this final rule. For purposes of this analysis, FMCSA assumed that number would remain constant in future years.

The Agency evaluated changes in the opportunity cost of time for military service members, or drivers, using the driver wage rate to represent the value of the drivers' time. In the absence of the rule, that time would have been spent taking the CDL knowledge tests and waiting to procure employment as CMV drivers, time that will now be available to drivers for other uses, such as productive employment. The source for driver wages is the median hourly wage data (May 2016) from the U.S. Department of Labor (DOL), Bureau of

Labor Statistics (BLS), Occupational Employment Statistics (OES).<sup>2</sup> The BLS does not publish data on fringe benefits for specific occupations, but it does for the broad industry groups in its Employer Costs for Employee Compensation (ECEC) release. For drivers, this analysis uses an average hourly wage of \$25.75 and average hourly benefits of \$14.49 for private industry workers in "transportation and warehousing"<sup>3</sup> to estimate that fringe benefits are equal to 56 percent ( $\$14.49 \div \$25.75$ ) of wages.

FMCSA assumes that military service members are employed while they are waiting to obtain a CDL and uses the light truck or delivery service driver wage rate (industry code 53-3033) as a proxy for the employment opportunities available to non-CDL drivers. Per the BLS definition, drivers in the light truck or delivery service industry drive a truck or van with a capacity of less than 26,000 pounds gross vehicle weight and, as such, do not require a Class A or a Class B CDL. FMCSA uses a driver wage rate of 23 to account for non-CDL driving opportunities available to military service members, which is the base median hourly wage of \$14.70 adjusted to account for fringe benefits ( $\$23 = \$14.70 \times 1.56$ ).

FMCSA uses the heavy tractor-trailer wage rate (industry code 53-3032) of \$31 to represent the employment opportunities available to military service members after they obtain their CDL. This value is the base median wage of \$19.87, adjusted to account for fringe benefits ( $\$31 = \$19.87 \times 1.56$ ).

Costs

This rule will reduce driver opportunity cost by creating an expedited path for certain military service members to obtain their CDL and begin working for a motor carrier. First, the affected military service members will receive a waiver for the CDL knowledge tests and will

experience a reduction in opportunity cost equal to the length of time they would have spent taking the CDL knowledge tests. FMCSA estimates that each of the 2,460 affected military service members will save approximately 60 minutes, or one hour, and values this time at the wage the driver will be earning in the absence of the CDL knowledge test requirement, \$31. As displayed in Table 1, FMCSA estimates that the annual undiscounted cost savings of allowing a CDL knowledge test waiver are approximately \$76,000 ( $\$76,000 = 2,460 \text{ drivers} \times 1 \text{ hour} \times \$31$ ), and the total 10-year undiscounted cost savings are approximately \$760,000.

Second, because of the waiver, certain military service members will no longer be required to wait 14 days before obtaining their CDL and beginning employment for a motor carrier. Eliminating the waiting period could result in up to 80 hours of increased wages (two 40-hour work weeks). Because the military service members are estimated to be working and earning a wage during the waiting period, the impact of removing the waiting period is the difference between what they are earning under the baseline (estimated at \$23), and what they will earn under the rule (estimated at \$31). Thus, FMCSA quantified the impact of removing the waiting period at 8 per hour ( $\$8 = \$31 - \$23$ ). The analysis similarly estimated that this will impact 2,460 service members. As presented in Table 1, FMCSA estimates that the annual undiscounted cost savings are \$1.59 million ( $\$8 \times 80 \times 2,460$ ), and the 10-year total undiscounted cost savings are \$15.90 million.

As presented in Table 1, the total cost savings of the final rule are \$16.66 million undiscounted, \$14.21 million discounted at 3 percent, \$11.70 million discounted at 7 percent, and \$1.67 million annualized at both a 3 percent and 7 percent discount rate.

TABLE 1—SUMMARY OF THE TOTAL COSTS OF THE FINAL RULE  
[In millions of 2016 \$]

Year	Undiscounted			Discounted	
	Reduced test time	Earlier employment	Total costs <sup>a</sup>	Discounted at 3 percent	Discounted at 7 percent
	A = 2,460 drivers × 31 × -1 hour	B = 2,460 drivers × 8 × -80 hours	C = A + B		
2018 .....	(\$0.08)	(\$1.59)	(\$1.67)	(\$1.62)	(\$1.56)

<sup>2</sup> U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). *Occupational Employment Statistics (OES). National. May 2016.* Available at: <http://www.bls.gov/oes/special.requests/oesm16nat.zip> (accessed January 16, 2018).

<sup>3</sup> U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). *Table 10: Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by industry group, September 2017.*

Available at: <https://www.bls.gov/news.release/pdf/ecec.pdf> (accessed January 16, 2018).

TABLE 1—SUMMARY OF THE TOTAL COSTS OF THE FINAL RULE—Continued  
[In millions of 2016 \$]

Year	Undiscounted			Discounted	
	Reduced test time	Earlier employment	Total costs <sup>a</sup>	Discounted at 3 percent	Discounted at 7 percent
	A = 2,460 drivers × 31 × -1 hour	B = 2,460 drivers × 8 × -80 hours	C = A + B		
2019 .....	(0.08)	(1.59)	(1.67)	(1.57)	(1.46)
2020 .....	(0.08)	(1.59)	(1.67)	(1.52)	(1.36)
2021 .....	(0.08)	(1.59)	(1.67)	(1.48)	(1.27)
2022 .....	(0.08)	(1.59)	(1.67)	(1.44)	(1.19)
2023 .....	(0.08)	(1.59)	(1.67)	(1.40)	(1.11)
2024 .....	(0.08)	(1.59)	(1.67)	(1.35)	(1.04)
2025 .....	(0.08)	(1.59)	(1.67)	(1.32)	(0.97)
2026 .....	(0.08)	(1.59)	(1.67)	(1.28)	(0.91)
2027 .....	(0.08)	(1.59)	(1.67)	(1.24)	(0.85)
Total .....	(0.76)	(15.90)	(16.66)	(14.21)	(11.70)
Annualized .....			(1.67)	(1.67)	(1.67)

**Notes:**

<sup>a</sup> Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

<sup>b</sup> Values shown in parentheses are negative values (*i.e.*, less than zero), and represent a decrease in cost or a cost savings.

**Benefits**

In considering the potential impacts on safety from this rule, the Agency notes that affected military service members have previous training or experience operating a CMV, which serves as an adequate substitute for taking the knowledge test and holding a CLP for a minimum of 14 days. Therefore, the Agency anticipates that there will be no change in potential safety benefits associated with this rule.

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

This final rule is expected to be an E.O. 13771 deregulatory action. <sup>4</sup> The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, are approximately \$20.8 million. Expressed on an annualized basis, the cost savings are \$1.5 million. These values are expressed in 2016 dollars.

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

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their

analyses available for public comment. The term “small entities” means small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.<sup>5</sup> Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these entities.

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

FMCSA provided a factual basis and certified in the proposal that the rule would not have a significant impact on a substantial number of small entities. FMCSA did not receive comments on the factual basis or the proposal, and has not changed the determination in this final rule.

**D. Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Selden Fritschner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

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

**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

<sup>4</sup> Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs*. 82 FR 9339–9341. Feb. 3, 2017.

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

that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$156 million (which is the equivalent of \$100 million in 1995, adjusted for inflation to 2015 levels) or more in any one year. Though this final rule will not result in such expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

*F. Paperwork Reduction Act (Collection Information)*

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

*G. E.O. 13132 (Federalism)*

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

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

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

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, 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, requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

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

FMCSA reviewed this final rule in accordance with E.O. 12630,

Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

*K. Privacy*

The Consolidated Appropriations Act, 2005, (5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. Because this final rule does not require the collection of personally identifiable information (PII), the Agency is not required to conduct a PIA.

Section 208 of the E-Government Act of 2002 (44 U.S.C. 3501 note) requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

*L. E.O. 12372 (Intergovernmental Review)*

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

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

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

*N. E.O. 13783 (Promoting Energy Independence and Economic Growth)*

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that

burden domestic energy production. This final rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

*O. 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*P. 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.

*Q. Environment (NEPA)*

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraphs 6.s.(6) and 6.t.(2). The Categorical Exclusion (CE) in paragraph 6.s.(6) covers a requirement for States to give knowledge and skills tests to all qualified applicants for commercial drivers’ licenses which meet the Federal standard. The CE in paragraph 6.t.(2) covers regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986, by: (2) Having the appropriate laws, regulations, programs, policies, procedures and information systems concerning the qualification and

licensing of persons who apply for a commercial driver's license, and persons who are issued a commercial driver's license. The requirements in this rule are covered by these CEs and the proposed action does not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: <http://www.regulations.gov>.

#### List of Subjects

##### 49 CFR Part 383

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

##### 49 CFR Part 384

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

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, parts 383 and 384, to read as follows:

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

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

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

■ 2. Amend § 383.23 by revising paragraph (a)(1) to read as follows:

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

(a) \* \* \*

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

\* \* \* \* \*

■ 3. Revise § 383.77 to read as follows:

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

(a) *Knowledge test waivers for certain current or former military service members applying for a CLP or CDL—*

(1) *In general.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in paragraph (a)(2) of this section, a State may waive the requirements in §§ 383.23(a)(1) and

383.25(a)(3) that a person must pass a knowledge test for a CLP or CDL.

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

(i) Is or was regularly employed and designated as a:

(A) Motor Transport Operator—88M (Army);

(B) PATRIOT Launching Station Operator—14T (Army);

(C) Fueler—92F (Army);

(D) Vehicle Operator—2T1 (Air Force);

(E) Fueler—2F0 (Air Force);

(F) Pavement and Construction

Equipment Operator—3E2 (Air Force);

(G) Motor Vehicle Operator—3531 (Marine Corps); or

(H) Equipment Operator—E.O. (Navy).

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

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

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

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

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

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

(b) *Driving skills test waivers for certain current or former military service members applying for a CDL—*

(1) *In general.* At the discretion of a State, the driving skills test required by § 383.23(a)(1), and as specified in § 383.113, may be waived for a CMV driver with military CMV experience who is currently licensed at the time of his/her application for a CDL and substituted with an applicant's driving record in combination with certain driving experience.

(2) *Conditions and limitations.* The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the driving

skills test described in § 383.113. Such conditions must require at least the following:

(i) An applicant must provide evidence and certify that he/she:

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

(B) Was exempted from the CDL requirements in § 383.3(c); and

(C) Was operating a vehicle representative of the CMV type the driver applicant operates or expects to operate, for at least the 2 years immediately preceding separation from the military.

(ii) An applicant must certify that, during the 2-year period immediately prior to applying for a CDL, he/she:

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

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

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

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

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

(c) *Endorsement waivers for certain current or former military service members applying for a CLP or a CDL—*

(1) *Passenger.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in paragraph (c)(4) of this section, a State may waive the requirements in § 383.25(a)(5)(i), § 383.93(a) and (c)(2) that an applicant must pass a driving skills test and a specialized knowledge test, described in § 383.117, for a passenger (P) endorsement.

(2) *Tank vehicle.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in paragraph (c)(4) of this section, a State may waive the requirements in §§ 383.25(a)(5)(iii) and 383.93(a) and (c)(3) that an applicant must pass a specialized knowledge test, described in § 383.119, for a tank vehicle (N) endorsement.

(3) *Hazardous materials.* For current or former military service members, as defined in § 383.5, who meet the conditions and limitations set forth in

paragraph (c)(4) of this section, a State may waive the requirements in § 383.93(a)(1) and (c)(4) that an applicant must pass a specialized knowledge test, described in § 383.121, for a hazardous materials (H) endorsement. States must continue to meet the requirements for a hazardous materials endorsement in subpart I of this part.

(4) *Conditions and limitations.* A current or former military service member applying for waiver of the driving skills test or the specialized knowledge test for a passenger carrier endorsement, the knowledge test for the tank vehicle endorsement, or the knowledge test for the hazardous materials endorsement, must certify and provide evidence that, during the 1-year period immediately prior to the application, he/she:

(i) Is or was regularly employed in a military position requiring operation of a passenger CMV, if the applicant is requesting a waiver of the knowledge and driving skills test for a passenger endorsement; operation of a tank vehicle, if the applicant is requesting a waiver of the knowledge test for a tank vehicle endorsement; or transportation of hazardous materials, if the applicant is requesting a waiver of the knowledge test for a hazardous materials endorsement;

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

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

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

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

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

■ 4. Revise § 383.79 to read as follows:

**§ 383.79 Driving skills testing of out-of-State students; knowledge and driving skills testing of military personnel.**

(a) *CDL applicants trained out-of-State*—(1) *State that administers the driving skills test.* A State may administer its driving skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and 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 licensing State in a direct, efficient and secure manner.

(2) *The State of domicile.* The State of domicile of a CDL applicant must accept the results of a driving skills test 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.

(b) *Active duty military service members.* An active-duty military service member may apply for a CLP or a CDL in the State where the individual is stationed but not domiciled if the requirements of this section are met.

(1) *Role of State of duty station.* (i) Upon prior agreement with the State of domicile, a State where active-duty military service members are stationed, but not domiciled, may accept an application for a CLP or CDL, including an application for waiver of the knowledge test or driving skills test prescribed in §§ 383.23(a)(1) and 383.25(a)(3), from such a military service member who:

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

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

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

(D) Has a current copy of either the service member's military leave and earnings statement, or his or her orders.

(ii) A State where active-duty military service members are stationed, but not domiciled, may:

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

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

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

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

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

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

(ii) Issue the applicant a CLP or CDL.

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

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

**Authority:** 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 6. Amend § 384.301 by adding paragraph (l) to read as follows:

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

\* \* \* \* \*

(l) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of November 27, 2018 as soon as practicable, but, unless otherwise specifically provided in this part, not later than November 27, 2021.

Issued under authority delegated in 49 CFR 1.87. September 25, 2018.

**Raymond P. Martinez,**  
*Administrator.*

[FR Doc. 2018–21289 Filed 9–27–18; 8:45 am]

**BILLING CODE 4910–EX–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 223**

[Docket No. 160614518–8790–03]

**RIN 0648–XE685**

**Endangered and Threatened Wildlife and Plants; Final Rule To List the Chambered Nautilus as Threatened Under the Endangered Species Act**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.