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Docket Operations  
U.S. Department of Transportation  
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Washington, DC 20590-0001

**RE: Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial Driver's License [Docket No. FMCSA-2017-0330]**

The American Association of Motor Vehicle Administrators (AAMVA) welcomes the opportunity to comment on the Federal Motor Carrier Safety Administration's Notice of Proposed Rulemaking (NPRM) regarding state agency licensing actions in response to controlled substance and alcohol program violations. Maintaining a safe driving environment for all lies at the core of both AAMVA and FMCSA's mission and AAMVA members are proud to help administer the commercial driving program on behalf of the federal government.

AAMVA offers the following as technical comment, understanding the full safety implications of its shared safety mission and its organizational obligation to national safety. We understand the intent of the rule, and recognize that in order to achieve higher levels of safety we must extend our capacity to serve the public interest. While the rule is compelling, AAMVA believes it can be constructed in such a way that furthers public safety without compromising the role of the states. This includes emphasis on the following areas of focus:

- 1) FMCSA must make a determination on whether the driver is disqualified and notify the licensing authority accordingly. FMCSA must clarify what is to appear on the driver record and how that translates to a clear qualified or not qualified designation on the license. States should not be left to interpret what the designation means in terms of eligibility.
- 2) State action should be limited to non-issuance or denial of licensing transactions. However, if the rule mandates license downgrade, FMCSA should not obligate a state to take action nor push DACH messages to SDLAs until the conclusion of 30 days - allowing sufficient time for drivers to address RTD requirements.
- 3) Reevaluate the cost designations as applicable to the rule. The magnitude of the administrative considerations in the rule should serve as an indicator of the associated cost. AAMVA provides additional comment on this, but significant cost impacts are not represented.

**Congressional Intent**

AAMVA maintains Congressional intent around the requirements included in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21) are less clear than FMCSA concludes. For one, the actions

prescribed to state authorities under *this* NPRM represent the first indication *states* would be required to change a driver's license status as a result of drug or alcohol testing failures or refusals.

Contrary to FMCSA's proposal in this NPRM, there is no legal basis for a state to downgrade, not issue, or otherwise take a state licensing action for a driver refusal or failure of a drug or alcohol test. Current law requires, employers, not the states, to use information on drug and alcohol testing information to make informed decisions regarding employment. The transition of a requirement to query the Clearinghouse to the additional mandate that states downgrade a license on a "prohibition" are two very different requirements.

Finally, the language used by Congress lends itself to be interpreted directly. The exact language used under section 32305(b)(23) of MAP-21 mandates, "before renewing or issuing a commercial driver's license to an individual, the State shall request information pertaining to the individual from the drug and alcohol clearinghouse maintained under section 31306(a)." This language clearly describes the *time* at which a query is required by stating "*before renewing and issuing.*"

### **Integration of DACH with Medical Fitness**

FMCSA states:

"Under the Agency's preferred alternative, States would remove the CLP or CDL privilege from the driver's licenses of individuals who violate the Agency's drug and alcohol program requirements until those drivers complete the RTD requirements established by 49 CFR part 40, subpart O. In order to avoid having Federal highway funds withheld under 49 U.S.C. 31314, section 31311(a)(1) requires States to adopt and carry out a program for testing and ensuring the fitness of individuals to operate CMVs consistent with the minimum standards imposed by the Secretary under 49 U.S.C. 31305(a)."

This implies that Drug and Alcohol Clearinghouse (DACH) program requirements are directly linked to medical fitness requirements rather than any new or additional requirements. But the NPRM's new "prohibition against driving" fails to provide states with the security of the prohibition being considered as comparative to a "violation" or "disqualification."

Again, to place authority where it exists, AAMVA recommends FMCSA make a determination of whether the driver is disqualified and notify the licensing authority accordingly.

### **Actual Knowledge Violations Reported to the Clearinghouse – Issuance of Citation for DUI in a CMV**

This section details that information contained in the Clearinghouse includes an employer report. FMCSA states that "the employer's report would remain in the Clearinghouse, regardless of whether the driver is ultimately convicted of the offense." It goes on to state, "a driver violates part 382, subpart B, when he or she receives a citation for DUI in a CMV, a subsequent conviction carries separate consequences under part 383. Second, drivers who are not convicted of the offense of DUI in a CMV could petition FMCSA to add documentary evidence of that fact to their Clearinghouse record. As described later, the states would not be privy to any communications beyond license eligibility." Any additional reporting functions of the Clearinghouse would have to be maintained solely by FMCSA and

should not impact a state's ability to make clear licensing status determinations or impact national system functionality (CDLIS).

AAMVA also recommends that any notice provided to drivers as a result of drug or alcohol testing include clear language that the state of record is unable to correct or modify DACH records. This notification should also supply sufficient instructions on how to engage FMCSA for records clarification and indicate whether the driver has the right to appeal the information contained in their record. Where possible, FMCSA should ensure all users understand that FMCSA alone has access to changing DACH records, and should alleviate state issues by establishing appropriate due process at the federal level.

### **Costs and Benefits**

Under this section, FMCSA states that

“Alternative #1 would require the States to rely on their own established procedures to accomplish the downgrade and any subsequent reinstatement. The loss of productive driving hours and the associated costs would be the result of the proposed rule. Under Alternative #2, in addition to determining when and how an SDLA would use Clearinghouse information, the States could establish reinstatement procedures that would follow drivers' completion of the RTD process. Were State to establish reinstatement procedures, any opportunity costs or reinstatement costs that drivers would incur to comply with such procedures would be the result of a State action, not the proposed rule. Any associated motor carrier opportunity costs would also be the result of a State action, not the proposed rule.”

Under Alternative 1, states would have to rely on their own procedures to accomplish downgrade and reinstatement. Even with reliance on existing downgrade procedures, the cost associated with ongoing record maintenance and fulfilling the additional volume of data transactions on the record represent additional labor hours, IT resources, and systems testing.

Under Alternative #2, it is assumed that the states would not only have to perform operations and maintenance associated with the record, but would also have to establish a process for establishing communication exchanges with numerous external entities in order to facilitate the RTD process and validate that the conditions of reinstatement have been fulfilled. FMCSA describes costs associated with Alternative #2, including reinstatement costs that drivers would incur to comply with procedures as the “result of State law or policy, not the proposed rule.” AAMVA contends that the state actions are the result of compliance with a federal rule, and the costs for compliance should not be excluded from cost considerations of the proposed rule. Providing state discretion in how to utilize Clearinghouse records should not shift all costs to the states in order to comply, but should instead be captured in regulatory cost to incentivize participation.

As FMCSA correctly notes, “the States have established a broad spectrum of procedures for reinstatement of the CLP/CDL privilege to the driver's license following a downgrade due to invalid medical certification. Thus, the Agency expects that the States will rely on existing procedures established for downgrading CLP/CDL for invalid medical certification, as required by 383.73(o)(4).” The variance in state procedures necessitates flexibility in processing the same downgrade for

purposes of complying with the rule. While the downgrade process may be similar, interaction with an additional system, with additional data points, with varying state requirements does not equate to no additional costs. It may require the states to develop a new data exchange with DACH, modify the national and state systems to accommodate an additional data field, and comprehensively test system functionality in all jurisdictions.

Further, the correlations FMCSA cites between the medical certification process as an example, and the DACH also begs the question of why DACH testing and results are not more closely integrated into the medical certification requirements already operated by FMCSA. AAMVA understands that the timing of license “downgrades” may happen more frequently, but from a policy standpoint, if drug and alcohol testing failures are to be comprehensively considered a part of “medical fitness” it seems those programs should also be contracted as a single, comprehensive source for making medical fitness determinations by external entities (including SDLAs).

FMCSA states that “Given the short duration of these programs, the Agency expects that drivers would complete the RTD process before a downgrade would be recorded on their CDLIS record (the NPRM proposes that the downgrade be recorded within 30 days of the SDLA’s receiving notification of the driver’s prohibited status through the Clearinghouse). Thus they would incur neither opportunity costs nor reinstatement costs.” Even if there is no additional reinstatement costs associated with the driver, it would be problematic to assume that SDLAs would not have to assume costs of record changes within the 30 days. While the 30 days may be discretionary in terms of the maximum length of time a state has to process the change, the more likely scenario is that complying states may actualize the change well before those 30 days have expired, and therefore assume the costs of maintaining accurate records. States would also assume the additional costs associated with notification requirements as mandated by state law. And in some cases, should the state require retesting before their RTD status, the cost associated with administering those tests should also be a consideration. As would the additional pressure placed on a commercial testing pipeline already working beyond capacity.

AAMVA provides additional cost considerations below.

### **Impact of the NPRM on SDLAs**

In this section, FMCSA states “The Clearinghouse final rule did not require that States request information from the Clearinghouse for CLP applicants. The NPRM addresses this apparent oversight by proposing that SDLAs must check the Clearinghouse prior to issuing, renewing or upgrading a CLP.” AAMVA clarifies that until an applicant is issued a CLP, they would not have a corresponding record in DACH, making this process irrelevant in some cases. For instance, CLP holders are not automatically assigned to an employment category, so they would not be included in the drug testing roll. While a training school may require drug testing as a requirement for class instruction, and those trainees are tested at the same facilities as CDL holders, they may not be subject to the federal drug testing requirements because the testing requirements are only applicable for school attendance. Only after attaining the CLP are applicants entered into the drug testing pool, and therefore potentially subject to DACH record capture.

FMCSA goes on to state “Under the Agency’s preferred alternative, FMCSA proposes that, in addition to non-issuance, SDLAs also would be required to downgrade the driver’s license of CLP and CDL holders who violate FMCSA’s drug and alcohol program rules.” AAMVA asks clarification pertaining to what a downgrade of the CLP would entail. Does that mean the surrender of the CLP is required, and that the CLP holder is “downgraded” to base license? Close collaboration with stakeholders will also be needed to clarify how the record should be properly modified on interactions with DACH. This should include clarification on how to technically modify the record for ineligible CDL and CLP holders and whether this process parallels that being utilized under similar medical certification circumstances.

This section also states that, “The SDLAs would rely on their respective State laws and processes to downgrade the license and to reinstate the CLP or CDL privilege to the license following “push” notification of the driver’s completion of RTD requirements.” AAMVA emphasizes that changes to state laws take time. And that not all state legislative sessions meet annually. Consideration of, and accounting for, appropriate time to make legislative changes should be a part of both the effective date, and the mandatory compliance date of the final rule. This is of particular importance given FMCSA’s determination to make MCSAP funding dependent on compliance with the rule. The time incorporated towards compliance must also take into account the fact that program implementation cannot begin until the appropriate state laws have been modified in accordance with the final rule, and the states have been granted the authority by their legislatures to make those changes.

### **Reinstatement of the CLP/CDL Following RTD Completion**

“FMCSA will push notice to SDLAs when a driver’s negative RTD test result is reported to the Clearinghouse, thereby informing them that the driver is no longer prohibited from operating a CMV.” AAMVA notes that the states may have additional RTD requirements beyond the push notification of the negative test result. Given the state requirements may exceed FMCSA notification, the reinstatement process may not be as clean as simply changing status upon notification from FMCSA.

### **Notice to Drivers of Downgrade/Reinstatement**

“The NPRM does not require that States notify the CLP or CDL holder that the downgrade process, proposed under the preferred alternative is underway. (Such notice is currently required prior to the downgrade of a driver’s license due to change in medical certification status (§383.73(o)(4)(i)(A)). The Agency, by implementing its own notification procedures required by the Clearinghouse regulations would like to relieve SDLAs of the administrative burden of directly notifying a CLP or CDL holder of the licensing action. (i.e. downgrade or reinstatement).”

While AAMVA approves of direct FMCSA notice on any information or status changes to the Clearinghouse, we note that some states require additional notification of license status change by state statute. AAMVA further approves of the FMCSA notification to the driver that the SDLA *must* perform the downgrade of the driver’s license within 30 days as a requirement of FMCSA regulation. AAMVA approves of FMCSA handling backend notification of receipt of negative test to the driver, and Agency plans of notifying the SDLA that the driver is no longer subject to the driving prohibition. However, AAMVA also references its earlier comments on providing the driver with a statement affirming that FMCSA alone has access to the DACH results and is also the sole agency able to answer

questions related to driver status as a result of the test. Further, AAMVA also requests that FMCSA provide drivers with information on the data correction process and what, if any, due process will be made available to the driver for appeals or hearings as part of the notification process.

### **Alternative #2 – Optional Notice of Prohibited Status**

AAMVA and its members would prefer the flexibility to choose to receive notice of prohibited status over mandatory downgrade of the license. While FMCSA suggests a state could choose to “receive ‘push’ notifications and enact a law to suspend the commercial privilege from the driver’s license until he or she completed RTD requirements, as three States have already done”, that option relies on state legislatures effecting that change. Further, this method becomes less of a discretionary option given the potential for MCSAP sanctions, and the fact that any state passing its own state law to suspend the commercial privilege would just be replacing a federal mandate with a state one. Either option equates to the same technical and programmatic issues.

### **Content of Driver-Specific Information Provided to SDLAs**

“The driver-specific information that would be provided to SDLAs through both “push” and “pull” notifications, would indicate only that the driver is prohibited from operating a CMV. Because FMCSA would not disclose any specific information concerning the details of the driver’s drug and alcohol program violation (e.g. whether the driver tested positive or refused a test), SDLAs would not need to interpret drug or alcohol test results or other Clearinghouse data.” AAMVA understands and respects the special sensitivity of health records and applauds this as a key privacy protection for all CMV drivers. AAMVA cites the simplicity of the data exchanges as an essential component of the program. FMCSA should refrain from attaching any additional information to any data exchanges and should preclude any additional information from being incorporated on the driver’s record as transmitted to SDLAs. FMCSA alone should manage DACH data, and SDLAs should only get an eligible or ineligible status indicator from DACH/FMCSA.

### **Proposed Methods of Transmitting Driver-Specific Information to SDLAs**

FMCSA states that:

“The Agency invites comment concerning the preferred method for FMCSA’s automated electronic transmission, by “push” or “pull”, of the CLP or CDL holder’s Clearinghouse information to the SDLAs, including associated costs and benefits. For example, if the existing CDLIS platform is utilized, what new data elements or fields would be required? Would a new AAMVA Code Dictionary (ACD) code be required? As noted below in the discussion of the estimated costs of the NPRM, if States “pulled” notification of a driver’s CMV operating status from the Clearinghouse via the CDLIS platform, the Agency intends that, under this option, the information would be provided as part of the CDLIS driver record check already required under §384.205. Under this approach, SDLAs would not be required to perform a separate query of the Clearinghouse; they would receive relevant Clearinghouse information along with any other driver-specific data, such as medical certification status, provided in response to the CDLIS record check.”

Depending on approach, the addition of a new status field to CDLIS indicating a DACH action would require substantial changes to the CDLIS system. The potential addition of a new indicator means that both the national system and all networked state systems must be able to receive this indicator from a new external entity – the DACH. So, it is erroneous to assume that “the information would be provided as part of the CDLIS driver record check already required under §384.205.” The record check required by §384.205 requires that a state “check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been disqualified, or if the applicant has been disqualified from operating a commercial motor vehicle.” Disqualification data does not currently coincide with DACH data. Unless FMCSA plans to integrate DACH data with disqualification data, CDLIS system modifications are unavoidable and could be significant. Additionally, AAMVA requests confirmation that FMCSA views the new prohibition on driving incorporated into §392.13 as a “disqualification” for purposes of performing a CDLIS check as described above.

FMCSA asks, “Should the SDLAs have the option to determine which electronic transmission format best suits their needs, or is a uniform system of Clearinghouse data transmission preferable? How would the NPRM affect States that permit drivers to complete commercial license transactions online?” AAMVA recommends that the final rule be developed in such a way that the technology solution is not prescriptive and affords states maximum flexibility in complying with regulatory requirements.

### **C. Compliance Date**

FMCSA requests comment on the time necessary for SDLAs to implement changes to their information technology systems in order to electronically request and receive information from the Clearinghouse once the technical specifications are made available. FMCSA should note that *before* technical specifications may be pursued, a number of the NPRMs proposals may require legislative changes that precede substantive technical implementation. As previously mentioned, the timeframe needs to account for legislative changes that may span multiple sessions, or be applicable to states legislatures that do not meet annually. The previous “final” compliance date of January 23, 2023 will not provide sufficient time for the states to complete the policy and technical implementation process.

### **D. Impact of MAP-21 and the NPRM on State Laws**

FMCSA indicates that eight States may be preempted by Clearinghouse requirements – AR, CA, NM, NC, OR, SC, TX, and WA, if they do not conform with these regulatory requirements. AAMVA defers comment to those states, but suggests that other states beyond those already “taking action” as a result of DACH results may have preemption issues related to what triggers a licensing status change. AAMVA appreciates that “States uncertain about whether their reporting requirements are inconsistent with the Clearinghouse statute (49 USC 31306a) or the Clearinghouse final rule may request a determination from the Agency.”

### **State Actions on the Commercial Driver License or Driving Record**

FMCSA states that “The NPRM’s sole impact on the driving record is the requirement, proposed in FMCSA’s preferred alternative, that the downgrade of the CLP or CDL be recorded on the CDLIS driver record for the downgrade to take effect.” This statement assumes CDLIS must be leveraged as the

solution, which excludes previously mentioned alternatives. Given the approach recommended by FMCSA, the states may have to modify driving systems to accommodate the record changes as well.

FMCSA goes on to state that it “does not propose that the reason for the downgrade, or the individual’s prohibited CMV driving status, be posted on a CMV operator’s driving record, though the NPRM does not prohibit states from doing so. Nor does the Agency propose any time limit for how long posted violation information may be retained on the driving record.” AAMVA notes that the driving record has to reflect “something” as a result of SDLA interactions with DACH, and that, depending on approach, the record change may result in some form of licensing requiring a unique data field on the driver’s record. Depending on how this record change is handled, it could become a telltale that is unique to carrying DACH information.

### **Economic Impact of Proposed Mandatory Downgrade**

AAMVA notes that there may be a discrepancy between driver completion of the RTD status and the reinstatement of the CLP or CDL. As stated by FMCSA, “The Agency acknowledges that this outcome could be viewed as inconsistent with §382.503, which currently states that drivers may resume safety sensitive functions, including driving a CMV, once the driver satisfies the RTD requirements of part 40, subpart O. In order to clarify this issue, the mandatory downgrade proposal would amend §382.503 to make clear that a valid CLP or CDL is required before the driver can operate a CMV after complying with RTD requirements.” AAMVA reads this statement to mean that a driver may only resume driving operations once the driver record transaction has been completed by SDLAs. While AAMVA defers comment to the trucking and labor associations, our members anticipate that the possible conflict in timing of clearance creates an inequity for drivers that is inconsistent with the Clearinghouse law.

“In addition, if an SDLA chooses to enter drug or alcohol testing violation information on a CMV operator’s driving record, and FMCSA later determines the information is inaccurate and removes it from the Clearinghouse, the SDLA should also remove it from the individual’s State-based driving record.” This statement indicates that data quality management efforts will be necessary as a part of ongoing efforts and should reflect appropriate costs.

### **Foreign Drivers**

FMCSA describes that for foreign drivers, “The Agency intends to ‘push’ a notification from the Clearinghouse to the Foreign Convictions and Withdrawal Database (FCWD) indicating that, under §382.501(a), the driver is prohibited from operating a CMV in the United States. Enforcement personnel who use CDLIS to electronically initiate a foreign-licensed driver status request will also receive notifications provided to the FCWD and would thus be informed that the driver is prohibited from operating a CMV in the United States. The foreign-licensed driver could be subject to citation for violating the driving prohibition.” Not all enforcement may have direct access to CDLIS for enforcement. Further, not all foreign issued licenses will be represented as CDLIS records, meaning that while the data is pushed to FCWD, it may not be represented as a primary data point in CDLIS.

### **J. Major Issues on Which the Agency Seeks Comment**

- 1) The NPRM proposes that SDLAs be prohibited from completing certain CLP or CDL transactions if the driver is subject to the CMV driving prohibition in §382.501(a), resulting in non-issuance. Do you agree with that proposal? Why or why not?

Setting aside AAMVA's contention around Congressional intent of the language included in MAP-21, non-issuance is less controversial than the other solutions described by FMCSA. Because this process amounts to the denial of a transaction based on information queried from the DACH, it simplifies the role of the SDLA from a liability and process standpoint. It also impacts a predicted smaller volume of data transactions such as first-time issuance, renewals, or upgrades. It does not impact CDL-holders "in the field" which will likely amount to the majority of data transactions resulting in failed or refused tests. However, FMCSA will still need to establish all technical components of the SDLA-DACH data exchange, including how that data will be transmitted and the process for all resulting notifications. This will include sufficient time for states to pass appropriate corresponding state legislation, process system requirements prior to implementation, test implementation, and finally begin start querying against the DACH.

A number of issues on non-issuance and the proposed licensing downgrade need to be resolved through the final rule. This includes FMCSA's intended role for CDLIS, whether FMCSA will establish a web-services functionality, how DACH information will be made available to law enforcement beyond SDLA license indicators, what the intended indicator for the driver record will be, providing sufficient resources for state partners, and developing an appropriate timeline for national and state system modifications.

- 2) In addition to non-issuance, should SDLAs be required to downgrade the license of CMV drivers subject to the driving prohibition, as proposed in FMCSA's preferred alternative? Why or why not?

SDLAs should not be *required* to downgrade the license of CMV drivers subject to the driving prohibition. AAMVA maintains the intent behind MAP-21 was to provide states with the discretion to make informed licensing decisions regarding an applicant or driver and the status of their license. FMCSA has since interpreted the role of the NPRM to increase enforcement opportunities against those that continue to drive after being prohibited. An indicator on the license record provides a data point that could assist law enforcement, but it does not equate to direct enforcement against prohibited drivers. It is one aspect of the equation. Instead, direct law enforcement access to DACH data could more appropriately accomplish the goal of enforcing against prohibited drivers.

In terms of accomplishing shared goals of safety, SDLAs can best modify their own laws to accommodate license downgrades if that option is made discretionary. Making the downgrade a discretionary determination also allows the states to develop their own implementation plans, independent of surrounding jurisdictions and provides the latitude to address state-specific system and process issues. It also addresses the issues FMCSA cites regarding the fact that not all states process a "downgrade" in a uniform fashion.

The first effective step towards increased enforcement has been accomplished through this NPRM. Codifying the prohibition against driving is helpful from an enforcement view, but the majority of states will need their own legislatures to act in order to remove the driving privilege as a result of

DACH queries. Further, the cost and administrative burden associated with the license downgrade is significantly higher in terms of operation and maintenance than it is on the non-issuance transactions, because it requires constant data quality efforts and an ever-changing population of “eligible” or “not eligible” drivers. With respect to CLP and foreign drivers, the issue of downgrade becomes problematic from a clarity standpoint. AAMVA is not certain that all records requiring a “downgrade” would be officially represented as records to take action on. Finally, a downgrade would require a state to ensure all RTD requirements were fulfilled prior to removing prohibited status. While FMCSA may provide notification on federal requirements, it means the states must align those federal notifications with any additional in-state requirements prior to license status change.

AAMVA defers to the states on the preferred method for receiving notice of a driver’s prohibited CMV driving status. As previously mentioned, each state has both individual system requirements associated with the driver record, its preferred method of system integration, and process requirements associated with performing functions associated with the record. Further, states may have individual state privacy restrictions associated with record access.

- 3) How would SDLAs choosing to receive notice of a driver’s prohibited CMV driving status, as proposed to the second alternative, use the information to enforce the prohibition? For example, would the state enact a law to suspend the CLP or CDL of affected drivers?

As described, “This alternative would permit, but not require, SDLAs to receive “push” notifications from the Clearinghouse whenever CMV drivers licensed in their State are prohibited from driving due to a drug or alcohol testing violation (optional notice of prohibited status.)” As previously mentioned, the discretionary nature of this proposal is preferable. AAMVA defers to the states to describe how that notice might further enforcement of the driving prohibition, but notes its previous comments under the heading “Law Enforcement Access to Data.” SDLAs should not be considered roadside enforcement agencies and are not positioned to advise professional enforcement entities on how best to perform their duties. SDLAs would only be positioned to advise how the driver record is administered and the driving privilege is conveyed. Should a state choose to use the notifications of status to take additional actions on a driver, state policymakers would need to revise their laws accordingly.

- 4) The Agency’s preferred alternative proposes that SDLAs must complete and record the downgrade on the CDLIS driver record within 30 days after receiving notice that a driver is prohibited from operating a CMV due to a drug and alcohol program violation. Does 30 days allow sufficient time to complete and record the downgrade? If not, please explain why more time would be needed.

Once the required systems for communication of driver prohibited status are in place with FMCSA, and the 30 day notice is recorded upon successful transmission and confirmation of receipt, 30 days should be sufficient. AAMVA has previously provided comment on the utility of notifying the state upon immediate receipt of a failed or refused test. The utility of making driver record changes only to have to perform a reciprocal transaction within a matter of days questions the utility of the transaction if states are provided with a full 30 days. AAMVA defers to FMCSA and state participants on whether there may be a compatible threshold between receipts of failed or refused tests and a driver’s

completion of RTD requirements that might be more useful before initiating changes to the driver record.

- 5) If the SDLA removes the CLP or CDL privilege, or takes other action on the license or driving record, based on information that FMCSA subsequently corrects or removes from the Clearinghouse, should FMCSA determine how States would reinstate the privilege and/or amend the driving record, or should that process be left to the States? Do SDLAs currently have established processes to correct errors on an individual's license or driving record?

As previously mentioned, there are numerous additional circumstances states need to consider with respect to reinstatement. States should be able to rely on the data from the DACH to make eligibility determinations on the license, but if FMCSA has erroneously reported information that has since been corrected, FMCSA must communicate any and all errors to SDLAs. But FMCSA should not mandate *how* the reinstatement is processed.

SDLAs do have established processes to correct errors on driver records that are maintained in their systems. However, SDLAs would be precluded from correcting any erroneous information on the DACH. As previously noted, FMCSA should be the sole party responsible for correcting erroneous information contained in the DACH, and should provide written instruction to individual drivers upon initial and any subsequent notice on how drivers can pursue correction of erroneous information (or request a hearing as applicable).

- 6) Based on SDLAs experience with the medical certification downgrade requirements currently in effect under §383.73(o)(4), how long does it take to reinstate the CLP or CDL privilege to the driver's license?

AAMVA defers comment to individual SDLAs on medical certification reinstatement.

- 7) If a driver's license is downgraded, he or she may incur costs, including fees associated with license reinstatement; time spent complying with reinstatement requirements; or the inability to earn income from driving during the period after RTD is completed, but before the license is reinstated. FMCSA invites comment, including quantitative data, addressing the economic impact of the proposed downgrade.

AAMVA defers comment to individual SDLAs on labor and reinstatement cost associated with reinstatement.

- 8) How would the proposed non-issuance and downgrade rules impact SDLAs and drivers in States allowing commercial licensing transactions, such as renewals, upgrades and transfers, to be completed online?

AAMVA defers detailed comment to its individual members. However, it would be presumed that any online transactions under the scenarios described would result in non-issuance rather than "trigger" a downgrade. This could also depend on the DACH communication mechanism FMCSA chooses, and whether the solution is integrated into current driver and customer portal systems. If an independent web services platform was used for communicating DACH results, the check may have to be integrated

into online service portals to ensure the transaction is subject to information accurately exchanged between the DACH and SDLAs. Individual SDLAs are best equipped to comment on how each solution could impact their specific online services.

- 9) How can FMCSA electronically transmit Clearinghouse information to the SDLAs most efficiently (e.g. by using the existing CDLIS platform, a web-based service, or some other automated means? What are the pros and cons of those transmittal options?

AAMVA members are best positioned to inform on best ways of accomplishing DACH program goals. While AAMVA urges FMCSA not to equate CDLIS with the data exchange described through this NPRM, we refer to the networking capabilities of CDLIS below for sake of discussion.

Method 1 (CDLIS platform): FMCSA and AAMVA would have to implement CDLIS/DACH integration for SDLAs to be able to inquire on drivers as well as to receive “push” notifications from DACH. This method will lead to significant changes to CDLIS which is likely to result in development of new CDLIS transactions to send inquiries to DACH (“pull”) and to receive notifications from DACH (“push”).

Under Method 1, AAMVA and FMCSA would incur one-time cost of developing new CDLIS transactions/ messages which will include analysis, documentation, solution design and development, testing with DACH and SDLAs, training and education, ongoing operations and maintenance support.

Method 2 (Web Services): FMCSA would have to build web services for SDLAs to be able to inquire on drivers as well as to receive “push” notifications from DACH. FMCSA would have to test web services with all SDLAs. Under this option, if no new data elements get added to CDLIS DHR, there would be no changes to CDLIS.

Under Method 2, prior to initiating each and every “push” notification (RTD or data error correction), DACH would need to send an inquiry to CDLIS to ensure the notification is sent to the current SOR (to account for the scenario when a driver moves to another state). Depending on the number of inquiries, FMCSA’s CDLIS usage cost might increase.

Under Method 2, FMCSA would incur one-time cost of developing web services and testing them with all states. FMCSA and AAMVA would incur ongoing operations and maintenances cost due to increased CDLIS inquiry transactions.

Under both Method 1 and Method 2, if DACH was to be treated similar to the MEC program (for which CDLIS contains, among other Medical Certification fields, a Medical Certification Status field), and/or if there is a need to add the reason for downgrade to CDLIS DHR, CDLIS will most likely be affected. FMCSA and AAMVA will incur cost related to CDLIS documentation update, CDLIS system changes and testing with the states.

- 10) How would the two options proposed for electronically transmitting Clearinghouse information (i.e. CDLIS or a web-based alternative) impact the States in terms of cost? Please be as specific as possible when answering this question, and include, for example, on-time development costs, as well as the cost of ongoing operation and maintenance, if applicable.

Under Method 1, SDLAs would incur one-time cost of developing and testing new CDLIS messages to be able to send inquires to DACH and receive “push” notifications from DACH as well as education and training cost. There could be an increased ongoing operation and maintenance cost due to increased number of CDLIS messages.

Under Method 2, SDLAs would incur one-time cost to build and test capabilities to initiate a web service to send inquires to DACH and receive web service “push” notifications from DACH as well as education and training cost. There could be an increased ongoing operation and maintenance cost due to increased number of messages and another system/ point of integration.

Under both Method 1 and Method 2, if DACH was to be treated similar to the MEC program (for which CDLIS contains, among other Medical Certification fields, a Medical Certification Status field), and/or if there is a need to add the reason for downgrade to CDLIS DHR, CDLIS will most likely be affected. SDLAs will incur cost of making system changes to be able to send and receive new DACH-related fields and testing.

	Method #1	Method #2
SDLAs interface with:	CDLIS	FMCSA provided Web Services
FMCSA interface with:	CDLIS	CDLIS and SDLAs
New functionality required	CDLIS transactions for “pull” and “push” mechanisms	Web Services for “pull” and “push” mechanisms
Entities bearing cost of new functionality development:	<ul style="list-style-type: none"> <li>• SDLAs: To update their systems to use new CDLIS functionality</li> <li>• AAMVA: To update CDLIS with new functionality and to update/create related documentation</li> <li>• FMCSA: To update their systems to use new CDLIS functionality</li> </ul>	<ul style="list-style-type: none"> <li>• SDLAs: To update their systems to use new WS functionality</li> <li>• FMCSA: To build the new WS functionality</li> <li>• AAMVA: To update CDLIS Procedures with DACH related requirements</li> </ul>
Operations and maintenance cost components	<ul style="list-style-type: none"> <li>• Push notifications sent by FMCSA to SDLAs via CDLIS</li> <li>• Inquiries submitted by SDLAs via CDLIS to FMCSA</li> <li>• CDLIS software maintenance</li> <li>• User training</li> </ul>	<ul style="list-style-type: none"> <li>• Push notifications sent by FMCSA to SDLAs via WS</li> <li>• Inquiries submitted by SDLAs via WS to FMCSA</li> <li>• Inquiries submitted by FMCSA to CDLIS (prior to each push notification)</li> <li>• WS software maintenance</li> <li>• User training</li> </ul>

Implementation Time	<ul style="list-style-type: none"> <li>• 1 year contract negotiation</li> <li>• 1 year to build specification/procedures</li> <li>• 2-4 years for SDLAs to implement</li> </ul>	<ul style="list-style-type: none"> <li>• FMCSA WS documentation/development/testing with states – TBD</li> </ul>
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11) In addition to IT-related costs, driver and motor carrier opportunity costs, and the cost incurred by drivers to have their CLP or CDL privilege reinstated, are there other costs to SDLAs that the Agency should consider in evaluating the regulatory impact of the proposed requirements?

See AAMVA's prior notes under the heading, "Costs and Benefits."

12) How much time do the SDLAs need to adapt their IT systems and implement related processes to request, receive, and act on information from the Clearinghouse, as proposed in this NPRM? Please indicate whether the amount of time needed would vary according to the method of electronic transmission (i.e. CDLIS or web-based), and whether the proposed downgrade would impact the time needed to make IT system changes.

As provided in previous comment, the time needed would be dependent on the solution proposed by FMCSA, the establishment of the communication mechanism, the testing of the communication mechanism, and the implementation of the changes. Further, all system work may be predicated on corresponding changes to state law, which could require legislative action. Given not all legislative sessions meet annually, the ability to make statute and legislative changes could take longer than a year.

13) Can the SDLAs that, under State law, currently disqualify CDL holders from operating a CMV due to violations of FMCSAs drug and alcohol program, provide quantitative or qualitative data addressing the safety benefit of those requirements?

AAMVA defers comment to those states that currently disqualify CDL holders due to violations of FMCSAs drug and alcohol program.

AAMVA thanks FMCSA for the opportunity to comment on this important safety initiative. We share in FMCSA's commitment to safety, and look forward to continued collaboration on how to best ensure the safety fitness of drivers on the nation's roadways.

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