

**Authority:** 5 U.S.C. 301–302, 41 U.S.C. 1707(a) and (b), 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

■ 2. Section 3009.108–7001 is revised to read as follows:

**3009.108–7001 General.**

Except as provided in (HSAR) 48 CFR 3009.108–7004, DHS may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395(b), or any subsidiary of such an entity.

■ 3. Section 3009.108–7004(a) is revised to read as follows:

**3009.108–7004 Waivers.**

(a) The Secretary shall waive the provisions of (HSAR) 48 CFR 3009.108–7001 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

\* \* \* \* \*

**PART 3052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 4. The authority citation for part 3052 is revised to read as follows:

**Authority:** 5 U.S.C. 301–302, 41 U.S.C. 1707(a) and (b), 41 U.S.C. 1702, 48 CFR part 1, subpart 1.3, and DHS Delegation Number 0700.

■ 5. Section 3052.209–70 is amended by revising the introductory text and paragraph (f) of the clause to read as follows:

**3052.209–70 Prohibition on contracts with corporate expatriates.**

As prescribed at (HSAR) 48 CFR 3009.108–7005, insert the following clause:

\* \* \* \* \*

(f) *Disclosure.* The offeror under this solicitation represents that [Check one]:  
 \_\_\_ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003;  
 \_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–7000 through 3009.108–7003, but it has submitted a request for waiver pursuant to 3009.108–7004, which has not been denied; or

\_\_\_ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108–

7000 through 3009.108–7003, but it plans to submit a request for waiver pursuant to 3009.108–7004.

\* \* \* \* \*

**Christina E. McDonald,**

*Associate General Counsel for Regulatory Affairs, Department of Homeland Security.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 391**

[Docket No. FMCSA–1997–2210]

**RIN 2126–AB39**

**Medical Certification Requirements as Part of the Commercial Driver’s License (CDL); Extension of Certificate Retention Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** The FMCSA amends its regulations to keep in effect until January 30, 2014, the requirement that interstate drivers subject to the commercial driver’s license (CDL) regulations and the Federal physical qualification requirements must retain paper copies of their medical examiner’s certificate. Interstate motor carriers are also required to retain copies of their drivers’ medical certificates in their driver qualification files. This action is being taken to ensure the medical qualification of CDL holders until all States are able to post the medical self-certification and medical examiner’s certificate data on the Commercial Driver’s License Information System (CDLIS) driver record. This rule does not, however, extend the compliance dates for States to collect and to post to the CDLIS driver record data from a CDL holder’s medical self-certification and medical examiner’s certificate.

**DATES:** This rule is effective December 15, 2011.

**ADDRESSES:** You may search background documents or comments to the docket for this rule, identified by docket number FMCSA–1997–2210, by visiting the:

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for reviewing documents and comments. Regulations.gov is available electronically 24 hours each day, 365 days a year; or

• *DOT Docket Management Facility (M–30):* U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008, (73 FR 3316) or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Senior Transportation Specialist, Office of Safety Programs, Commercial Driver’s License Division (MC–ESL), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–5014.

**SUPPLEMENTARY INFORMATION:**

**Legal Basis**

*Medical Certification Requirements as Part of the CDL*

The legal basis of the final rule titled “Medical Certification Requirements as Part of the Commercial Driver’s License,” published on December 1, 2008, (2008 final rule) (73 FR 73096–73097), is also applicable to this rule.

**Background**

On December 1, 2008, FMCSA published a final rule (73 FR 73096) adopting regulations to implement section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1767, Dec. 9, 1999). Section 215 directed initiation of a rule to provide for a Federal medical qualification certificate to be made a part of commercial driver’s licenses. The 2008 final rule requires any CDL holder subject to the physical qualification requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to provide a current original or copy of his or her medical examiner’s certificate to the issuing State Driver Licensing Agency (SDLA). The final rule requires the SDLA to post in the CDLIS driver record the self-certification that CDL holders are required to make regarding applicability of the Federal physical qualification requirements and, for drivers subject to those requirements, the medical certification information specified in the regulations. The final

rule also implemented other conforming requirements for both SDLAs and employers (73 FR 73096–73128). These requirements, for the most part, have a compliance date of January 30, 2012. On May 21, 2010, the Agency published several technical amendments to the 2008 final rule to make certain corrections and to address certain petitions for reconsideration of that final rule (75 FR 28499–28502).

Several SDLAs have recently advised the Agency that they may not have the capability by January 30, 2012, to receive the required medical certification and medical examiner's certificate information provided by a non-excepted, interstate CDL holder, and then manually post it to the CDLIS driver record. An SDLA's inability to receive and post the required material would render both the CDL holder and his or her employer unable to demonstrate or verify, respectively, that the driver is medically certified in compliance with the FMCSRs.

#### The Notice of Proposed Rulemaking

On June 14, 2011, FMCSA published a notice (76 FR 34635) proposing to maintain in effect, until January 30, 2014, the requirement for an interstate CDL holder subject to the Federal physical qualification standards to carry a paper copy of his or her medical examiner's certificate. Until January 30, 2014, a CDL holder would continue to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy, as valid proof of medical certification. Also, an interstate motor carrier that employs CDL holders would continue to obtain and file a copy of the CDL holder's medical examiner's certificate in its driver qualification files, as specified at § 391.51(b)(7)(i), if the motor carrier is unable to obtain that information from the SDLA issuing the CDL due to the SDLA's inability to post the medical certificate data. In this way, the Agency could ensure the medical qualification of CDL holders until all States are able to post the medical self-certification and medical examiner's certificate data on the CDLIS driver record.

The FMCSA did not propose to change the compliance dates it established in the 2008 final rule for SDLAs. SDLAs are still expected to meet the January 30, 2012, date specified in 49 CFR 383.73 to start collecting information from CDL applicants and posting and retaining this data on the CDLIS driver record. In addition, SDLAs are expected to collect and post the same data from all existing CDL holders by the January 30, 2014, compliance date. The Agency believes that

extending the requirement that both interstate CDL holders and motor carriers retain the copy of the medical examiner's certificate for 2 years, however, will provide sufficient overlap with the requirement that all SDLAs obtain the medical status and medical examiner's certificate information and post it on the driver's CDLIS driver record.

#### Response to Comments

Two State agencies, the Michigan Department of State and the Missouri Department of Transportation (MoDOT), submitted comments to the June 14, 2011, proposal. Both agencies support the proposal to extend certain compliance dates for interstate CDL drivers and the motor carriers that employ them. But the Michigan Department of State urged the Agency to also extend, until January 2014, the compliance dates established for States in the 2008 final rule.

The MoDOT noted that the Agency was silent regarding whether the deferred implementation date also applies to intrastate drivers and the intrastate employers. According to this commenter,

This omission creates uncertainty and ambiguity regarding the intended scope and meaning of these requirements. When the States attempt to enforce these safety regulations against intrastate drivers and motor carriers, this kind of uncertainty and ambiguity may be susceptible to exploitation by alleged offenders or their defense attorneys, and could potentially frustrate or even to [sic] thwart the State's ability to prosecute apparent violations of these requirements by intrastate drivers and motor carriers.

*FMCSA Response:* The FMCSA acknowledges Michigan's concerns. However, the Agency believes it is necessary for the States to continue working towards the January 2012 deadline. This is especially the case given that Michigan provided no justification in its comment for this request. As provided in 49 CFR 384.301(d), Michigan, like all the other States issuing CDLs, will have had 3 years (from the effective date of the final rule on January 30, 2009) to comply, and most States will be in compliance. If Michigan or any other State is unable to achieve substantial compliance with the requirements of 49 CFR 384.225, as adopted in December 2008, then the compliance review standards and procedures of 49 CFR part 384, subparts C and D will be implemented. The FMCSA will continue to work with the States by providing technical assistance, as resources permit, in achieving compliance.

Regarding MoDOT's request for FMCSA to make the provisions of this final rule applicable to intrastate CDL drivers and intrastate-only motor carriers, applicable statutes provide no authority for FMCSA to do so. As explained in the preamble to the final rule, FMCSA's authority to require CDL drivers to be physically-qualified and to obtain a medical certificate is limited to drivers in interstate commerce (49 U.S.C. 31305(a)(7)). Therefore, the requirement in the 2008 final rule that CDL drivers submit their medical certificates to SDLAs only applies to drivers engaged in interstate transportation who are not excepted from the requirement to be physically qualified (73 FR 73097, 49 CFR 383.71 and 383.73). Because the 2008 final rule does not apply to intrastate-only CDL drivers in the first place, FMCSA cannot take any action regarding the need for such drivers to carry paper copies of any medical certificates and for their employers to obtain copies for their driver qualification files.

#### The Final Rule

The Agency adopts the proposed rule as final without any changes.

#### Rulemaking Analyses and Notices

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

The FMCSA has determined that this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563, 76 FR 3821 (Jan. 21, 2011), or within the meaning of the Department of Transportation regulatory policies and procedures. Therefore, the Agency was not required to submit this rule to the Office of Management and Budget (OMB). The changes made in this final rule will have minimal costs and a full regulatory evaluation is unnecessary.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. The rule extends, until January 30, 2014, the existing requirement for interstate CDL holders subject to Federal physical qualifications requirements and their employers to retain a copy of a medical examiner's certificate. Because extending the current requirement will not materially impact small entities, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value in 2010 of \$100 million after adjusting for inflation) or more in any 1 year. The FMCSA has determined that the impact of this rulemaking will not reach this threshold.

*Executive Order 12988 (Civil Justice Reform)*

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

*Executive Order 13045 (Protection of Children)*

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

*Executive Order 12630 (Taking of Private Property)*

This final rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

*Executive Order 13132 (Federalism)*

The FMCSA analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. Although the 2008 final rule had Federalism implications, FMCSA determined that it did not create a substantial direct effect 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. Today's final rule does not change that determination in any way.

*Executive Order 12372 (Intergovernmental Review)*

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

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. FMCSA has determined that no new information collection requirements are associated with the requirements in this final rule.

*National Environmental Policy Act*

The FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004, (69 FR 9680) that this final rule does not have any significant impact on the environment. In addition, the actions in this rule are categorically excluded from further analysis and documentation as per paragraph 6.b of Appendix 2 of FMCSA's Order 5610.1. The FMCSA also analyzed this final rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. This final rule is exempt from the CAA's general conformity requirement since the action results in no increase in emissions.

*Executive Order 13211 (Energy Effects)*

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

**List of Subjects in 49 CFR Part 391**

Motor carriers, Reporting and recordkeeping requirements, Safety.

In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, Chapter III as follows:

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

■ 1. The authority citation for part 391 continues to read as follows:

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

■ 2. Amend § 391.23 by revising paragraphs (m)(2) introductory text, (m)(2)(i) introductory text, and (m)(2)(ii) to read as follows:

**§ 391.23 Investigation and inquiries.**

\* \* \* \* \*  
(m) \* \* \*

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

(i) Beginning January 30, 2014, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

\* \* \* \* \*

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

■ 3. Revise § 391.41(a)(2)(i) to read as follows:

**§ 391.41 Physical qualifications for drivers.**

(a) \* \* \*  
(2) \* \* \*

(i) Beginning January 30, 2014, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy for more than 15 days after the date it was issued as valid proof of medical certification.

\* \* \* \* \*

Issued on: October 28, 2011.  
**Anne S. Ferro,**  
*Administrator.*  
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**BILLING CODE 4910–EX–P**