

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: May 11, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 391

[Docket No. FMCSA-1997-2210]

RIN 2126-AB24

Medical Certification Requirements as Part of the Commercial Driver's License (CDL); Technical, Organizational, and Conforming Amendments

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

ACTION: Final rule; Technical amendments and response to petitions for reconsideration.

SUMMARY: The FMCSA amends its regulations implementing section 215 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). The purpose of this rule is both to make amendments responding to petitions for reconsideration and to make technical corrections to a FMCSA regulation.

DATES: The amendments in this final rule become effective May 21, 2010.

ADDRESSES: *Public Access to the Docket:* You may view, print, and download this final rule and all related documents and background material on-line at <http://www.regulations.gov>, using the Docket ID Number FMCSA-1997-2210. These documents can also be examined and copied for a fee at the U.S. Department of Transportation, Docket Operations, West Building-Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on today's final rule, please contact: Ms. Ava Herman, Office of Policy, Plans, and Regulations (MC-PRR), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366-7023.

SUPPLEMENTARY INFORMATION:

Legal Basis

Medical Certification Requirements as Part of the CDL

The legal basis of the 2008 final rule is also applicable to this rule. See 73 FR 73096-73097, December 1, 2008.

Background

The FMCSA determined that several technical errors were made in the December 1, 2008, Medical Certification Requirements final rule (73 FR 73096). The FMCSA also received two petitions for reconsideration of the final rule that are discussed further in today's final rule.

1. The December 1, 2008, final rule had an unintentional error in § 383.71(a)(ii), omitting the language "(C), or (D)" after "(A) or (B)". Today's final rule corrects this amendatory language error.

2. The December 1, 2008, final rule unintentionally replaced § 383.71(a) with the new text of § 383.71(a)(1); the Agency's intent was only to amend the language of § 383.71(a)(1). However, because of an amendatory language error, § 383.71(a)(2) through § 383.71(a)(9) were removed. The preambles of the NPRM and the final rule made no mention of an intent to change these sections, and revised § 383.71(a)(1), as adopted by the 2008 final rule, itself refers to the requirements of § 383.71(a)(2) through (9). Today's final rule therefore restores the text of § 383.71(a)(2) through (9).

3. The December 1, 2008, final rule included a new requirement in 49 CFR 383.71(h) for CDL holders to submit documents and information to State driver licensing agencies. The penalties listed in 49 CFR 383.73(g) for falsifying information and documents submitted in accordance with the requirements of § 383.71(h) are applicable. However, the provisions of § 383.73(g) needed to be clarified to reflect the application to the requirements in § 383.71(h). The provisions of § 383.73(g) have been clarified in response to the petition for reconsideration of December 30, 2008, from Advocates for Highways and Auto Safety (Advocates), as explained on pages 3 and 4 of the decision denying the petition dated May 12, 2010 and included in the docket.

4. In the December 1, 2008, final rule, § 383.73(j)(1)(iii) references business days for the specified time period, rather than calendar days. The preamble of the December 1, 2008, final rule also incorrectly references business days instead of calendar days, even though the other provisions of § 383.73(j)(2) and § 383.73(j)(3) correctly specify 10 calendar days. The language of

§ 383.73(j)(1)(iii) has been clarified in today's final rule. This is explained in footnote three on page seven of the decision denying the petition for reconsideration of December 30, 2008 from Advocates dated May 12, 2010 and included in the docket.

5. The December 1, 2008, final rule included an inconsistency in the language inserted into 49 CFR 383.73 (j). This language used the term "medical examiner's license or certificate number" to refer to the number on a medical examiner's license to practice in § 383.73(j)(iii)(D). However, in 49 CFR 383.73(j)(iii), (j)(iii)(C), and (j)(iii)(J), "medical examiner's certificate" is used to refer to the certificate a driver is issued when a medical examiner qualifies him or her to drive. This inconsistency has been clarified in today's final rule so that "medical examiner's certificate" clearly refers to the document a medical examiner issues a driver to qualify him or her to drive. In today's final rule 49 CFR 383.73(j)(iii)(D) is clarified to refer to the "medical examiner's license" to practice, issued to the medical examiner by the State in which he or she practices.

6. The FMCSA incorporates a change in several provisions of the final rule, as requested by a petition for reconsideration from the Indiana Department of Revenue, Motor Carrier Services Division, filed on December 29, 2008. The petition asked that FMCSA reconsider requirement for States to mail receipts to drivers as proof that a medical certification had been submitted to the State driver licensing agency. The FMCSA sent a response granting this petition on October 2, 2009. Through today's final rule, FMCSA removes the requirement for States to provide receipts to drivers, and to allow drivers and employers to utilize medical certificates as evidence that a CDL holder is medically certified for 15 calendar days from the date of issuance of the certificate. Therefore, several changes in the final rule text are necessary to implement this procedure. The changes are in 49 CFR 383.73(a)(5), 391.23(m)(2)(i)(B), 391.41(a)(2), and 391.51(b)(7)(ii).

7. The preamble to the December 1, 2008, final rule clearly states that the medical variance restriction code "V" must appear on both the CDL and the CDLIS driver record. Accordingly, FMCSA revised 49 CFR 383.95(b) to require this information to be placed on the CDLIS driver record, but inadvertently omitted a revision to 49 CFR 383.153 to require this information to be displayed on the commercial driver's license document. This rule

adds the conforming amendment to § 383.153(e).

Agency's Assessment and Decision

The Agency decided to issue these amendments because the changes and updates are necessary to correct amendatory language errors and to respond to issues raised in two petitions for reconsideration.

Rulemaking Analyses and Notices

Administrative Procedure Act

If an agency determines that the prior notice and opportunity for public comment on a rule normally required by the Administrative Procedure Act are impracticable, unnecessary, or contrary to the public interest (the so-called "good cause" finding), it may publish the rule without providing such notice and opportunity for comment. (See 5 U.S.C. 553(b).) The amendments made by this final rule make changes to correct inadvertent errors and to respond to petitions for reconsideration. For these reasons, FMCSA finds good cause that notice and public comment are unnecessary. Further, the Agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective upon publication.

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

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of the Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal costs; therefore, 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 makes several changes to correct inadvertent errors. FMCSA therefore certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$120 million or more in any 1 year.

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

Executive Order 12630 (Taking of Private Property)

This rulemaking does not effect 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 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. This rulemaking 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 action.

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. We have determined that no new information collection requirements are associated with the technical amendments to 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 action does not have any significant impact on the environment. In addition, the actions in this final 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 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. Approval of this action 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 action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We 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

49 CFR Part 383

Administrative practice and procedure, Highway safety, Motor carriers.

49 CFR Part 391

Motor carriers, Reporting and recordkeeping requirements, Safety.

■ In consideration of the foregoing, FMCSA amends Parts 383 and 391 of Title 49, Code of Federal Regulations, as follows:

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

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

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

■ 2. In § 383.71, revise paragraph (a) to read as follows:

§ 383.71 Driver application and certification procedures.

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

(1)(i) *Initial Commercial Driver's License applications submitted prior to*

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

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

(B) A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

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

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

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

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

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

(2) Pass a knowledge test in accordance with the standards contained in Subparts G and H of this part for the type of motor vehicle the person operates or expects to operate;

(3) Pass a driving or skills test in accordance with the standards contained in Subparts G and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test

administered by an authorized third party;

(4) Certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate;

(5) Provide to the State of issuance the information required to be included on the CDL as specified in subpart J of this part;

(6) Certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction;

(7) Surrender the applicant's non-CDL driver's licenses to the State; and

(8) Provide the names of all States where the applicant was previously licensed to drive any type of motor vehicle during the previous 10 years.

(9) If applying for a hazardous materials endorsement, comply with Transportation Security Administration requirements codified in 49 CFR Part 1572, and provide proof of citizenship or immigration status as specified in Table 1 to this section. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration Services (BCIS) Alien registration number.

TABLE 1 TO § 383.71—LIST OF ACCEPTABLE PROOFS OF CITIZENSHIP OR IMMIGRATION

Status	Proof of status
U.S. Citizen	<ul style="list-style-type: none"> • U.S. Passport. • Certificate of birth that bears an official seal and was issued by a State, county, municipal authority, or outlying possession of the United States. • Certification of Birth Abroad issued by the U.S. Department of State (Form FS-545 or DS 1350). • Certificate of Naturalization (Form N-550 or N-570). • Certificate of U.S. Citizenship (Form N-560 or N-561).
Lawful Permanent Resident	<ul style="list-style-type: none"> • Permanent Resident Card, Alien Registration Receipt Card (Form I-551). • Temporary I-551 stamp in foreign passport. • Temporary I-551 stamp on Form I-94, Arrival/Departure Record, with photograph of the bearer. • Reentry Permit (Form I-327).

* * * * *
 ■ 3. Revise § 383.73(a)(5), (g), (j)(1)(iii) introductory text, and (j)(1)(iii)(D) to read as follows:

§ 383.73 State procedures.

(a) * * *

(5) Beginning January 30, 2012, for drivers who certified their type of driving according to § 383.71(a)(1)(ii)(A) (non-excepted interstate) and, if the driver submits a current medical examiner's certificate, date-stamp the

medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (j) of this section.

* * * * *

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant falsified information contained in subpart J of this part, in

any of the certifications required in § 383.71(a) or (g), or in any of the documents required to be submitted by § 383.71(h), the State shall at a minimum suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

* * * * *

(j) * * *

(1) * * *

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

* * * * *

(D) Medical Examiner's license number and the State that issued it;

* * * * *

■ 4. Amend § 383.153 by adding paragraph (e) to read as follows:

§ 383.153 Information on the document and application

* * * * *

(e) If the State has been notified that the applicant has been issued a medical variance as specified in § 383.95(b), the restriction code "V" must be indicated on the license.

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

■ 5. 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.

■ 6. Amend § 391.23:

■ By removing "or" at the end of paragraph (m)(2)(i)(A) and adding "and" in its place; and

■ By revising paragraph (m)(2)(i)(B) to read as follows:

§ 391.23 Investigations and inquiries.

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B) Exception. If the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

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

§ 391.41 Physical qualifications for drivers.

(a) * * *

(2) CDL exception. (i) Beginning January 30, 2012, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter

documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy. If there is no medical certification information on that driver's CDLIS motor vehicle record defined at 49 CFR 384.105, a current medical examiner's certificate issued prior to January 30, 2012, will be accepted until January 30, 2014. After January 30, 2014, a driver may use a copy of the current medical examiner's certificate that was submitted to the State for up to 15 days after the date it was issued as proof of medical certification.

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

* * * * *

■ 8. Revise § 391.51(b)(7)(ii) to read as follows:

§ 391.51 General requirements for driver qualification files.

* * * * *

(b) * * *

(7) * * *

(ii) Exception. For CDL holders, beginning January 30, 2012, if the CDLIS motor vehicle record contains medical certification status information, the motor carrier employer must meet this requirement by obtaining the CDLIS motor vehicle record defined at § 384.105 of this chapter. That record must be obtained from the current licensing State and placed in the driver qualification file. After January 30, 2014, a non-excepted, interstate CDL holder without medical certification status information on the CDLIS motor vehicle record is designated "not-certified" to operate a CMV in interstate commerce. After January 30, 2014, a motor carrier may use a copy of the driver's current medical examiner's certificate that was submitted to the State for up to 15 days from the date it was issued as proof of medical certification.

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Issued on: May 17, 2010.

Anne S. Ferro, Administrator.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131363-0087-02]

RIN 0648-XW55

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 feet (18.3 m) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2010 Pacific cod total allowable catch allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 19, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 Pacific cod total allowable catch (TAC) allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI is 4,598 metric tons, as established by the final 2010 and 2011 harvest specification for groundfish in the BSAI (75 FR 11788, March 12, 2010) and subsequent reallocations on March 17, 2010 (75 FR 13444, March 22, 2010) and April 12, 2010 (75 FR 19562).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2010 Pacific cod directed fishing allowance allocated to catcher vessels less than 60