



State of California
Office of the Attorney General

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ATTORNEY GENERAL

March 2, 2026

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Secretary Sean Duffy
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Acting Administrator Jeffrey Clark
Office of Information and Regulatory Affairs
1800 F Street, NW
Washington, DC 20405

Administrator Derek Barrs
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Comments on Agency Information Collection Activities; Proposals, Submissions, and Approvals: Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses, Docket No. FMCSA-2025-0622-8035. OMB Control No. 2126-0087, ICR Reference No. 202509-2126-005 (January 30 Comment Request)

Dear Secretary Duffy, Administrator Barrs, and Acting Administrator Clark:

We, the Attorneys General of California, Colorado, Delaware, the District of Columbia, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Oregon, Rhode Island, Vermont, and Virginia (States), write to reiterate our opposition to the information collection activities that are the subject of the Information Collection Request titled “Non-Domiciled Commercial Driver’s License Records,” submitted to the Office of Information and Regulatory Affairs (OIRA) on January 30, 2026, and assigned OMB Control Number 2126-0087 (the ICR).¹ The ICR seeks approval for information collection activities that are detailed in

¹ 91 Fed. Reg. 4162 (Jan. 30, 2026).

an Interim Final Rule (the IFR) and a substantively identical Final Rule promulgated by the Federal Motor Carrier Safety Administration (FMCSA) related to the issuance of non-domiciled commercial driver's licenses (CDLs.)² Specifically, the Final Rule imposes new requirements for State Driver's Licensing Agencies (SDLAs) to retain copies of documents used to prove a non-domiciled CDL applicant's lawful status and documents showing the results of any query to DHS's Systematic Alien Verification for Entitlements system (SAVE) for at least two years. The Final Rule also requires SDLAs to provide copies of all documents involved in the licensing process, including immigration documents and SAVE query results, to FMCSA within 48 hours of a request.³

As a threshold matter, the ICR should be denied because the Final Rule that contains the information collection activities at issue is unlawful in its entirety. As several states detailed in a prior comment on the IFR,⁴ and as the Court of Appeals for the D.C. Circuit concluded in *Rivera Lujan v. Fed. Motor Carrier Safety Admin.*, No. 25-1215, 2025 WL 3182504, at *1 (D.C. Cir. Nov. 13, 2025), FMCSA acted arbitrarily and capriciously in issuing the IFR. The Final Rule is substantively identical to the IFR, and FMCSA failed to address the legal deficiencies identified by the states and the D.C. Circuit in drafting the Final Rule. FMCSA should rescind the Final Rule, and with it, the associated information collection activities that are the subject of the ICR.

But even if the Final Rule as a whole is not rescinded, FMCSA's ICR should be denied because the information collection activities described within it are separately unwarranted and are unlawful. FMCSA has not adequately addressed the concerns, previously raised in comments on the IFR regarding the information collection activities at issue in the ICR. In particular, FMCSA has failed to demonstrate that the information collection activities at issue are necessary for the performance of FMCSA's functions, or that they adequately protect the personally identifiable information (PII) contained in those records. Nor has FMCSA even attempted to justify the undue burdens that these collection activities will place on SDLAs.⁵

DISCUSSION

Under the Paperwork Reduction Act (PRA), an agency seeking to collect information from the public must submit an ICR to OIRA for OIRA's review and approval before the information can be collected. 44 U.S.C. § 3507(a)(2). To obtain approval, the agency must demonstrate, among other things, that that collection is "necessary for the proper performance of the functions of the agency," and that it "reduces to the extent practicable and appropriate the

² See Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL), 90 Fed. Reg. 46,509 (Sept. 29, 2025), as corrected, 90 Fed. Reg. 47,627 (Oct. 2, 2025) (Interim Final Rule); Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL), 91 Fed. Reg. 7044 (Feb. 13, 2026) (Final Rule).

³ 91 Fed. Reg. at 7100-01, 7103.

⁴ See Attorney General of Massachusetts, et al., Comment Letter regarding Interim Final Rule and Request for Comments: "Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL)," Comment ID No. FMCSA-2025-0622-7571 (November 26, 2026), <https://www.regulations.gov/comment/FMCSA-2025-0622-7571>.

⁵ See Attorney General of Massachusetts, et al., *supra* note 4, at 10-12.

burden on persons who shall provide information to or for the agency.” *Id.* § 3506(c)(3). In addition, pursuant to the Consolidated Appropriations Act of 2005, an agency seeking to collect information must address the privacy impacts of the proposed ICR, including its effects on individuals.⁶

The Final Rule’s document retention and turnover requirements that are the subject of the ICR do not satisfy these criteria, for three independent reasons.

First, FMCSA has not shown that this information collection is “necessary for the proper performance of the functions of the agency.” FMCSA has no statutory authority to carry out immigration functions. *See, e.g., California v. Trump*, No. 25-cv-208-JJM-PAS, 2025 WL 3072541, at *9 (D.R.I. Nov. 4, 2025) (Department of Transportation does not have authority to impose immigration-related conditions on federal transportation funding); *Bayou Lawn & Landscape Servs. v. Sec’y of Labor*, 713 F.3d 1080, 1083–1084 (11th Cir. 2013) (enjoining Department of Labor rule regarding employment of foreign workers and holding it likely that “DOL has exercised a rulemaking authority that it does not possess,” because “we would be hard-pressed to locate that power in one agency [DOL] where it had been specifically and expressly delegated by Congress to a different agency [DHS]”). Instead, as relevant here, FMCSA’s functions are to set “minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle.” 49 U.S.C. §31305(a). As FMCSA itself admitted in the IFR, FMCSA has no evidence demonstrating a relationship between immigration status and the fitness of an individual to operate a commercial motor vehicle.⁷ And FMCSA did not adduce any such evidence in its Final Rule.⁸

FMCSA otherwise fails to demonstrate how requiring SDLAs to retain copies of immigration documents and SAVE query results and to produce such documents to FMCSA, is “necessary” for the performance of its functions. In its renewed ICR, FMCSA contends that retention of immigration documents and SAVE query results will ensure FMCSA has the ability to review non-domiciled CLP and CDL issuance by SDLAs in a reasonable timeframe.⁹ But FMCSA does not even attempt to explain why review of an applicant’s immigration documents is relevant to its statutory duty to assess the fitness of individuals to operate commercial motor vehicles or how such review is relevant to the Final Rule’s stated goal of improving safety. Without any evidence that an individual’s immigration status is relevant to their ability to safely operate a motor vehicle, FMCSA cannot show that it is necessary for SDLAs to retain immigration documents for two years, much less that it is necessary for SDLAs to produce them to FMCSA within 48 hours of a request.

⁶ *See* 90 Fed. Reg. at 46,523.

⁷ 90 Fed. Reg. at 46,520 (“There is not sufficient evidence, derived from well-designed, rigorous, quantitative analyses, to reliably demonstrate a measurable empirical relationship between the nation of domicile for a CDL driver and safety outcomes in the United States such as changes in frequency and/or severity of crashes or changes in frequency of violations.”).

⁸ *See* 91 Fed. Reg. at 7064-67.

⁹ *See* 91 Fed. Reg. at 4163.

Second, FMCSA failed to adequately assess the privacy impacts of the proposed information collection. As FMCSA noted in its IFR, FMCSA did not prepare a Privacy Impact Assessment as part of the IFR or the Final Rule, despite the fact that the information collection activities require SDLAs to collect and retain copies of non-domiciled CDL applicants' immigration documents (including passports and I-94s), which contain PII, and to provide copies of all documents involved in the licensing process to FMCSA. In the Final Rule, FMCSA states that it was unnecessary to consider the privacy impacts of the information collection activities because the collection activities "do not result in a new collection of PII[.]"¹⁰ But even if SDLAs were collecting this information during the licensing process, FMCSA did not consider (or even discuss) the privacy impacts of requiring states to *retain* this information for an extended period and to *provide* that information to FMCSA within 48 hours of a request. Contrary to FMCSA's assertions, these new retention and production requirements implicate privacy concerns that FMCSA was required to assess in preparing the ICR.

Third and finally, the proposed activities do not "reduce[] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency." Rather, the collection activities place a considerable burden on SDLAs. The ICR contains no limitation as to how many documents FMCSA can request, or when or how often it can make requests, and its requirement that SDLAs provide documents on a 48-hour turnaround—irrespective of the volume of documents requested or the circumstances of the request—is plainly impracticable. Indeed, under that requirement, FMCSA could make a request for thousands of documents on a Friday evening at 8 p.m. and demand that the SDLA provide documents by Sunday evening at 8 p.m., without a single working day in between.

In its response to the States' comments on this issue, FMCSA does not attempt to justify this rigid timeline, stating only that the 48-hour requirement "ensures that the Agency has adequate access to the records."¹¹ But FMCSA provides no explanation for why it could not ensure adequate access with a more permissive (and less onerous) deadline. Moreover, existing regulations already provide for annual program reviews of SDLAs in accordance with 49 U.S.C. § 31311 and 49 C.F.R. § 384.307, in which SDLAs must cooperate and provide information to FMCSA. FMCSA does not explain why a new, separate 48-hour turnover requirement is necessary in light of these preexisting regulations, or how such a requirement is consistent with its obligation to "reduce[] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency."¹²

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¹⁰ 91 Fed. Reg. at 7,085.

¹¹ 91 Fed. Reg. at 4163.

¹²In addition, FMCSA failed to consider how these new information collection requirements would burden SDLAs in light of the significant operational burdens that FMCSA has already placed on SDLAs through its IFR and Final Rule. If it had not been stayed, States would have needed to verify immediate compliance with the IFR. For many States, implementing the new technological capacities contemplated as part of the information collection activities will further delay their ability to issue non-domiciled CDLs going forward. The ICR fails to acknowledge the burdens these changes would place on SDLAs.

For all of the foregoing reasons, the States urge FMCSA to rescind the ICR. If FMCSA does not do so, OIRA should deny the ICR.

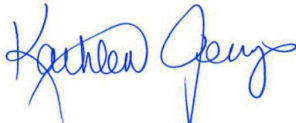
Sincerely,



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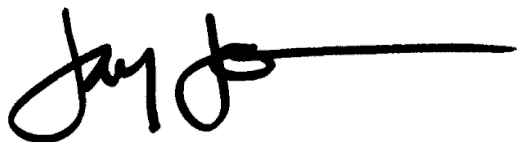
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