



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 383 and 384**

**[Docket No. FMCSA-2001-11117]**

**RIN 2126-AA70**

**Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement**

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

**ACTION:** Interim rules; re-opening of the comment period.

**SUMMARY:** In May 2003 and April 2005, FMCSA published interim final rules (IFR) regarding the limitations on the issuance of commercial driver's licenses with a hazardous materials endorsement. The comment period for the May 2003 IFR closed on July 7, 2003; there was no comment period for the April 2005 IFR. The Agency received over 50 comments on the 2003 IFR. FMCSA now plans to adopt the provisions of the IFRs that have not previously been made final. To ensure that interested parties have an opportunity to provide comments, the Agency has re-opened the comment period for 15 days.

**DATES:** The comment periods for the interim final rules published May 5, 2003, at 68 FR 23844, and April 29, 2005, at 70 FR 22268, are reopened. Comments must be received on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2001-11117 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for instructions on submitting comments.

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

**SUPPLEMENTARY INFORMATION:**

**I. Public Participation and Request for Comments**

**A. Submitting Comments**

If you submit a comment, please include the docket number for this IFR (FMCSA-2001-11117), indicate the specific section of the document to which each comment applies, and provide a reason for each suggestion or recommendation. You may

submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2001-11117, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this IFR based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

## **B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2001-11117, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey

Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

### **C. Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

## **II. Background**

On May 5, 2003, FMCSA published an IFR titled “Limitations on the Issuance of Commercial Driver’s Licenses with a Hazardous Materials Endorsement” (68 FR 23844). It revised its regulations to require State licensing agencies to issue or renew a hazardous materials endorsement for a CDL only if the Transportation Security Administration (TSA) has determined that the applicant does not pose a security risk warranting denial of such endorsement. To determine applicability, a CDL renewal, transfer, or upgrade was also considered a new issuance and fell within the scope of these requirements if it involved a hazardous materials endorsement. The IFR implemented FMCSA’s part of the requirements of section 1012 of the USA PATRIOT Act, which limited the issuance of hazardous materials licenses. Because FMCSA shares with TSA the responsibility for implementing section 1012, TSA concurrently published an IFR containing regulations governing the security risk determination process in 49 CFR parts 1570 and 1572 (May 5, 2003, 68 FR 23852). No public meeting was requested and none was held. The IFR became effective upon publication on May 5, 2003.

On April 29, 2005, FMCSA published an IFR titled “Limitations on the Issuance of Commercial Driver’s Licenses with a Hazardous Materials Endorsement” (70 FR 22268). That rule was issued as an IFR because it related to the 2003 IFR. In the preamble, FMCSA wrote that the 2005 IFR would be subsumed into the 2003 IFR when that rulemaking was finalized. FMCSA’s 2003 IFR provided a specific date on which States became subject to the new requirement. The 2005 IFR amended the FMCSRs to cross-reference the TSA’s compliance date as the date when FMCSA’s companion requirements also became applicable (70 FR 22268). Consistent with the TSA regulations, FMCSA also reduced the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement.

FMCSA solicited comments to the 2003 IFR. The Agency received over 50 comments. No comment period was included with the 2005 IFR.

On October 5, 2018, Congress enacted the FAA Reauthorization Act of 2018 (P.L. 115-254). Under Sec. 1977, a CMV driver who wants to obtain a hazardous materials endorsement on a commercial driver's license is an "applicable individual who is subject to credentialing or background investigation". Section 1978 exempted individuals who hold a valid transportation security card (TSC, or TWIC as implemented by TSA) issued under section 70105 of Title 46. FMCSA intends to incorporate this exemption when finalizing the IFRs, subject to TSA requirements on the issuance of the HME .

### **Comments Requested**

Considering the passage of time since the publication of the IFRs, and because some items may not have been touched on during the initial notice and comment, FMCSA is re-opening the comment period. At the end of the comment period, FMCSA will consider all issues under its authority and may change the IFR based on the comments. FMCSA may issue a final rule at any time after the close of the comment period.

Issued on: November 23, 2018

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Raymond P. Martinez,  
Administrator.

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