

Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204, Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 6-C410, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98-67), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure.

Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The complete text of this *Public Notice* may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202)

418-0531 (voice), (202) 418-7365 (TTY). This Public Notice can also be downloaded in Text and ASCII formats at: <http://www.fcc.gov/cgb/dro>.

### Synopsis

On September 23, 2003, AT&T Corp. ("AT&T") filed a petition for limited reconsideration to the *Second Improved TRS Order* published at 68 FR 50973 (August 25, 2003). AT&T requests that the Commission grant waivers to certain requirements adopted by the Commission in the *Second Improved TRS Order* concerning emergency call handling and three-way calling. See AT&T, *AT&T Petition for Limited Reconsideration and for Waiver*, CC Docket No. 98-67, CG Docket 03-123.

On September 29, 2003, Verizon filed a petition for reconsideration to the *Second Improved TRS Order*. Verizon also requests that the Commission reconsider the requirements regarding the handling of emergency calls at telecommunications relay centers. See Verizon, *Petition for Reconsideration of Verizon*, CC Docket No. 98-67, CG Docket No. 03-123.

Federal Communications Commission.

**Margaret M. Egler,**

*Deputy Chief, Consumer & Governmental Affairs Bureau.*

[FR Doc. 03-28016 Filed 11-6-03; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 383

[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 final rule; delay of compliance date; request for comments.

**SUMMARY:** The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting States from issuing, renewing, transferring or upgrading a commercial driver's license (CDL) with a hazardous materials (hazmat) endorsement unless the Transportation Security Administration (TSA) has first conducted a background records check of the applicant and determined the applicant does not pose a security risk warranting denial of the hazardous

materials endorsement. The compliance date provisions being revised require States to collect fingerprints from individuals applying for, renewing, upgrading or transferring a hazmat endorsement for a CDL beginning November 3, 2003. FMCSA and TSA are changing that date to April 1, 2004, and TSA may postpone that date, in individual cases, to not later than December 1, 2004.

**DATES:** *Effective:* This rule is effective on November 3, 2003. *Compliance:* State compliance with this rule is required beginning April 1, 2004.

*Comments:* Comments must be received on or before January 6, 2004.

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

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

- *Hand delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

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

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. Please see the Privacy Act heading for further information.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

*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 complete Privacy Act

Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477) or you may visit <http://dms.dot.gov>.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Office of Safety Programs, (202) 366-9579, FMCSA, 400 7th Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

This IFR is being adopted without prior notice and public comment. However, interested parties are invited to participate in this rulemaking by submitting written data, views, or arguments. All comments received, as well as a report summarizing each substantive public contact with FMCSA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

See **ADDRESSES** above for information on how to submit comments.

**Small Entity Inquiries**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FMCSA to comply with small entity requests for information or advice about compliance with statutes and regulations within FMCSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding SBREFA on the Small Business Administration's web page at [http://www.sba.gov/advo/laws/law\\_lib.html](http://www.sba.gov/advo/laws/law_lib.html).

**Background**

On September 11, 2001, several terrorist attacks were made against the United States. Those attacks resulted in catastrophic human casualties and property damage. In response to those attacks, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 26, 2001.<sup>1</sup> Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by adding a new section 5103a titled

"Limitation on issuance of hazmat licenses." Section 5103a(a)(1) provides:

A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.<sup>2</sup>

Section 5103a(a)(2) subjects license renewals to the same requirements.

Section 5103a(c) requires the Attorney General, upon the request of a State in connection with issuance of a hazardous materials endorsement, to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The term "Secretary" originally referred to the Department of Transportation, but these functions have been transferred to the Secretary of the Department of Homeland Security (DHS), and subsequently delegated by the Secretary to the TSA Administrator. The background records check must consist of: (1) A check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

**Safe Explosives Act**

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.<sup>3</sup> Sections 1121-1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully "ship or transport any explosive in or affecting interstate or foreign commerce" or "receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce." Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been

adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal prosecution.<sup>4</sup> These incidents are investigated by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) of the Department of Justice and referred, as appropriate, to the United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for "any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation and agencies thereof, and which pertains to safety." Under this exception, if DOT regulations address the transportation security issues of persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce.

**The PATRIOT Act Rule**

To comply with the mandates of the USA PATRIOT Act, and to trigger the exception in 18 U.S.C. 845(a)(1) for the transportation of explosives, TSA and FMCSA issued interim final rules on May 5, 2003.<sup>5</sup> The TSA rule established security threat assessment standards for determining whether an individual poses a security threat warranting denial of a hazmat endorsement for a CDL. Under the rules, TSA determines that an individual poses a security threat if he or she: (1) Is an alien (unless he or she is a lawful permanent resident) or a U.S. citizen who has renounced his or her U.S. citizenship; (2) is wanted or under indictment for certain felonies; (3) has a conviction in military or civilian court for certain felonies; (4) has been adjudicated as a mental defective or involuntarily committed to a mental institution; or (5) is considered to pose a security threat based on a review of pertinent databases.

The rules also established conditions under which an individual who has been determined to be a security threat could appeal the determination, and procedures TSA follows when

<sup>2</sup> The Secretary of Transportation delegated the authority to carry out the provisions of this section to the Under Secretary of Transportation for Security/Administrator. 68 FR 10988, March 7, 2003.

<sup>3</sup> Pub. L. 107-296, November 25, 2002, 116 Stat. 2280.

<sup>4</sup> The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to \$250,000.

<sup>5</sup> 68 FR 23844 and 68 FR 23851.

<sup>1</sup> Pub. L. 107-56, October 25, 2001, 115 Stat. 272.

considering an appeal. In addition, the rules provide a waiver process for those individuals who otherwise could not obtain a hazmat endorsement because they had a disqualifying felony, or were adjudicated as a mental defective or involuntarily committed to a mental institution. Finally, the rules prohibit an individual from holding, and a State from issuing, renewing, or transferring, a hazmat endorsement for a CDL unless the individual met the TSA security threat assessment standards.

The FMCSA rule places States on notice that failure to comply with those portions of the TSA rule applicable to States by November 3, 2003, will result in the withholding by DOT of certain Federal-aid highway funds.

The TSA rule requires States to begin collecting fingerprints from individuals applying for, renewing, or transferring a hazmat endorsement for a CDL on November 3, 2003, and to submit those fingerprints to TSA so that TSA can conduct fingerprint-based criminal history records checks (CHRCs).

#### Summary of Today's IFR

Elsewhere in today's issue of the **Federal Register**, TSA is postponing the date on which States are required to collect fingerprints from individuals who are applying for, renewing, upgrading, or transferring a hazmat endorsement for a CDL from November 3, 2003, to April 1, 2004. However, if a State requests a postponement of that date and provides a written justification, TSA may grant an extension, but in no case beyond December 1, 2004. FMCSA is therefore amending its rule to incorporate the same standard: States must comply with the TSA rule requiring the collection of fingerprints by April 1, 2004, unless TSA authorizes a later date under 49 CFR 1572.5(c)(4). After this date, whatever it may be, States that fail to comply with the TSA rule risk the loss of Federal-aid highway funds. FMCSA and TSA are making this change for several reasons.

TSA received comments from departments of motor vehicles and other agencies in over 23 States stating they have neither the infrastructure nor the funding to comply with the requirements of the rule. The main costs identified by States included the costs of purchasing fingerprinting equipment, and hiring and training personnel to operate the fingerprinting equipment. Most of the States requested Federal funding for these costs. The TSA rule discusses the cost issue in more detail.

Many States also commented that compliance with the Patriot Act rule, specifically the fingerprinting requirements, would require legislative

changes. In many States, the State legislatures meet only once a year with a few State legislatures meeting biennially. These States requested additional time to make necessary legislative changes.

For these reasons, FMCSA and TSA are moving the date that States must begin collecting fingerprints to April 1, 2004, with the possibility of postponement to a later date.

FMCSA is amending 49 CFR 383.141 paragraphs (a) and (c) to move the date on which States are required to collect fingerprints from individuals who are applying for, renewing, or transferring a hazmat endorsement for a CDL from November 3, 2003, to April 1, 2004, though TSA may extend the compliance date to not later than December 1, 2004. Section 383.141(c) requires States to notify drivers at least 180 days before the expiration date of a hazardous materials endorsement. Because FMCSA's May 5 IFR allowed only slightly more than 180 days before States were required to begin collecting fingerprints, part of which the States would need to establish notification procedures, § 383.141(c) provides that "Before November 3, 2003, a State must give the holder of a hazardous materials endorsement as much advance notice as practicable" [68 FR at 23850]. In view of today's postponement of the States' compliance date, which will allow them to give drivers a full 180 days of advance notice, the sentence quoted above has been deleted.

#### Rulemaking Analyses and Notices

##### *Justification for Immediate Adoption*

FMCSA is issuing this IFR without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows the agency to issue a final rule without notice and opportunity to comment when the agency for good cause finds that notice and comment procedures are "impracticable, unnecessary or contrary to the public interest." If the agency fails to immediately adopt this interim final rule, States could lose certain Federal-aid funding due to the short implementation deadline for TSA requirements announced in the May 2003 interim final rule (68 FR 23852) and an inability to meet those requirements due to lack of infrastructure and funding through no fault of their own and circumstances beyond their control.

This IFR changes the date on which States are required to collect fingerprints from individuals who are

applying for, renewing, or transferring a hazmat endorsement for a CDL. Because this IFR does not impose any new burdens on stakeholders, FMCSA believes that notice and comment procedures are "unnecessary." Due to the short deadline, the agency finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

##### *Regulatory Evaluation*

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. FMCSA has determined that this is a significant regulatory action within the meaning of Executive Order 12866 and under the Department's regulatory policies and procedures because of substantial public interest. This rule does not impose any costs on any public, private, or government sector, therefore further economic analysis is unnecessary.

##### *Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." I certify that the IFR will not have a significant economic impact on a substantial number of small entities. As noted above, this IFR will not impose any costs on any public, private, or government sector.

##### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This IFR does not contain any information collection requirements.

##### *Executive Order 13132 (Federalism)*

Executive Order 13132 requires FMCSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have

federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects 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." Under the Executive Order, FMCSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the federal statute.

Although this IFR has direct effects on the States, they are not substantial because the IFR will continue the status quo while allowing States more time to comply with the May 5, 2003, interim final rules. Thus, FMCSA has determined that this IFR does not have sufficient Federalism implications to warrant the preparation of a Federal Assessment.

As discussed in detail in the May 5 IFR [see 68 FR at 23847–23848], the provisions of 49 U.S.C. 31314, which require DOT to withhold certain Federal-aid highway funds from States that fail to comply substantially with the requirements for State participation in the CDL program, apply also to State compliance with those portions of the Transportation Security Administration (TSA) rule implementing Sec. 1012 that apply to States. In addition, 49 U.S.C. 31312 authorizes DOT to prohibit States from issuing CDLs if the Secretary determines "that a State is in substantial noncompliance" with 49 U.S.C. chapter 313. These penalties are available for DOT to use when and if appropriate to encourage State compliance with TSA's Sec. 1012 rule.

#### Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards-related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FMCSA has assessed the potential effect of this IFR and has determined that it will not impose any costs on domestic or international entities and thus would have a neutral trade impact.

#### Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final

rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires FMCSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows FMCSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted.

This IFR will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Thus, FMCSA has not prepared a written assessment under the UMRA.

#### National Environmental Policy Act

FMCSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this IFR will not have any significant impact on the quality of the human environment.

#### Energy Impact

FMCSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). FMCSA has determined that this IFR is not a major regulatory action under the provisions of the EPCA.

#### List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

■ For the reasons set forth in the preamble, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, as follows:

#### PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES [AMENDED]

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

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113

Stat. 1766; Sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; and 49 CFR 1.73.

■ 2. Revise § 383.141 paragraphs (a) and (c) to read as follows:

#### § 383.141 General.

(a) *Applicability date.* Beginning on April 1, 2004, this section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements. Individual State licensing agencies, pursuant to 49 CFR 1572.5(c)(4), may request an extension of the compliance date.

\* \* \* \* \*

(c) *Individual notification.* At least 180 days before the expiration date of the CDL or hazardous materials endorsement, a State must notify the holder of a hazardous materials endorsement that the individual must pass a Transportation Security Administration security screening process as part of any application for renewal of the hazardous materials endorsement. The notice must advise a driver that, in order to expedite the security screening process, he or she should file a renewal application as soon as possible, but not later than 90 days before the date of expiration of the endorsement. An individual who does not successfully complete the Transportation Security Administration security screening process referenced in paragraph (b) of this section may not be issued a hazardous materials endorsement.

\* \* \* \* \*

Issued on: November 5, 2003.

**Annette M. Sandberg,**  
*Administrator.*

[FR Doc. 03–28175 Filed 11–5–03; 2:44 pm]

BILLING CODE 4910-EX-P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### 49 CFR Part 1572

[Docket No. TSA–2003–14610; Amendment No. 1572–2]

RIN 1652-AA17

#### Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Amended Interim Final Rule

**AGENCY:** Transportation Security Administration (TSA), Department of Homeland Security (DHS).