

DEPARTMENT OF TRANSPORTATION**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 final rule; request for comments.

SUMMARY: The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit States from issuing, renewing, transferring or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration (TSA) has first conducted a background records check of the applicant and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. This interim final rule implements part of the requirements of section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) and certain provisions of the statutes dealing with explosives. The remaining requirements of section 1012 are implemented by a TSA interim final rule published elsewhere in today's issue of the **Federal Register**.

DATES: This rule is effective on May 5, 2003. State compliance with this rule is required by November 3, 2003. Comments must be received on or before July 7, 2003.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, FAX (202) 493-2251, on-line at <http://dmses.dot.gov/submit>. You must include the docket number that appears in the heading of this document in your comments. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at <http://dms.dot.gov/search.htm> by typing the

last four digits of the docket number appearing in the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

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:

Valerie Height, (202) 366-0901, Regulatory Development Division, FMCSA, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

On September 11, 2001, several terrorist attacks were made against the United States, which resulted in catastrophic human casualties and property damage. Two commercial aircraft were hijacked and flown into the World Trade Center in New York; and a similar attack occurred against the Pentagon. A fourth aircraft went down near Pittsburgh, Pennsylvania—the result of a hijacking attempt. Soon after, letters containing anthrax—a dangerous biological substance—were delivered to media and congressional and postal offices in Florida, New York, and Washington, DC. Several more lives were claimed during these incidents. National security and intelligence officials continue to warn that future terrorist attacks against civilian targets are possible.

In response to these events, Congress passed the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (USA PATRIOT Act) [Pub. L. 107-56, October 26, 2001, 115 Stat. 272]. Sec. 1012 of the USA PATRIOT Act [115 Stat. 396] amended the Hazardous Materials Transportation Act (49 U.S.C. chapter 51) by adding a new § 5103a entitled "Limitation on issuance of hazmat licenses." Section 5103a(a)(1) provides that "[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 * * * that the individual does not pose a security risk warranting denial of the license." There is no "hazmat license" *per se*, under State or Federal law, but Sec. 1012(b) amended the fitness and testing standards of the statute that created the Commercial Driver's License (CDL) program to require that drivers not be granted a CDL unless they have "first been determined under section 5103a of this title as not posing a security risk warranting denial of the license" [49 U.S.C. 31305(a)(5)(C)]. The Department of Transportation (DOT) therefore interprets the license referred to in § 5103a as the hazardous materials endorsement to a CDL, which is required by 49 CFR 383.93(b)(4). To qualify for the endorsement, the individual must first pass a specialized hazardous materials knowledge test (§ 383.121) in addition to the requisite general knowledge and skills tests. Section 5103a is therefore a *de facto* amendment to the CDL legislation.

FMCSA shares with TSA the responsibility for implementing the requirements of Sec. 1012. TSA has developed regulations governing the security risk determination process (see 49 CFR Part 1572) and has responsibility for that program. FMCSA has revised its regulations to require State licensing agencies to issue or renew a hazardous materials endorsement for a CDL only if TSA has determined that the applicant does not pose a security risk warranting denial of such endorsement. For the purpose of determining applicability, a CDL renewal, transfer, or upgrade is also considered a new issuance and falls within the scope of these requirements, if it involves a hazardous materials endorsement.

This interim final rule (IFR) is effective upon publication in the **Federal Register**. States, however, will not be required to comply with the requirements of the rule until November 3, 2003. This will allow TSA sufficient time to confer with the States and other entities about the best means of carrying out the TSA rule.

Definitions

Consistent with the requirements of Sec. 1012, the FMCSA is amending 49 CFR 383.5 to add the term "alien" and to revise the existing terms "hazardous materials" and "commercial motor vehicle." Under Sec. 1012, "alien" has the same meaning given the term in Sec. 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)), *i.e.*, any individual not a citizen or national of the United States.