

Similarly, § 5103a(b)(2) expanded the meaning of “hazardous materials” to include “any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General to pose a threat to national security.” FMCSA has worked closely with the Department of Justice and the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC), in defining an appropriate list. After careful consideration, and with the agreement of TSA, FMCSA has decided to cross-reference the CDC list of Select Agents and Toxins in 42 CFR, part 73. A hazardous material is therefore defined as any material that: (1) in accordance with Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), has been determined to pose an unreasonable risk to health, safety, and property when transported in commerce and that is required to be placarded under subpart F of part 172 of the Hazardous Materials Regulations (HMR) (49 CFR parts 171–180); or (2) any quantity of any material listed as a select agent or toxin by CDC in 42 CFR part 73.

The HMR do not require placarding for the transportation of all hazardous materials, because the Research and Special Programs Administration (RSPA) has determined that some such materials do not pose serious risks in smaller quantities. For example, explosives (Class 1 hazardous materials) may not be transported unless they have been tested, classified and approved by the agency. Class 1 materials are divided into six divisions, depending on the degree and nature of the explosive hazard presented. A Division 1.1 material presents a mass explosive hazard, *i.e.*, virtually the entire amount explodes simultaneously. A Division 1.4 material, on the other hand, has a minor explosion hazard that is largely confined to the package and does not involve projection of fragments. And some explosives, when mixed with other materials, will not explode at all. RSPA’s regulations therefore require placards for the transportation of explosives and other hazardous materials that pose significant threats to the public, but not for those which are unlikely to cause harm, whether because of their chemical properties, minimal quantities, or for other reasons. RSPA has determined that non-placarded shipments do not present a sufficient security risk in transportation to warrant the application at this time of the TSA background check requirements to persons who possess or transport such materials.

Conforming changes were made to the § 383.5 definition of a commercial motor vehicle and the description of a hazardous materials endorsement under § 383.93(b)(4) to ensure that drivers newly covered by the hazardous materials definition—transporters of any quantity of any material defined as a Select Agent or Toxin under CDC regulations—are required to obtain a CDL with a hazardous materials endorsement, and are subject to the new TSA security screening process for drivers. Paragraph (d) under the § 383.5 definition of a commercial motor vehicle (CMV) now cross-references the new hazardous materials definition. This change effectively broadens the scope of the CMV definition to include vehicles of any size that are used to transport any quantity of a Select Agent or Toxin. Likewise, the hazardous materials endorsement description under § 383.93(b)(4) now references a vehicle “[u]sed to transport hazardous materials as defined in § 383.5 of this part.”

Limitation on Learner’s Permit

In order to make the rules governing the CDL learner’s permit consistent with the purpose of Sec. 1012 and TSA’s implementing regulations, § 383.23(c) has been amended to provide that a learner’s permit does not authorize the holder of the permit to transport hazardous materials as defined in § 383.5. A person with a learner’s permit must pass the general knowledge and skills tests (§§ 383.111, 383.113), the special hazardous materials knowledge test (§ 383.121), and the TSA background records check before he/she is eligible for a CDL with a hazardous materials endorsement.

Changes in State Procedures and Requirements

Several important changes to commercial driver’s licensing procedures and regulations are required to implement this rule. These revisions will only apply to licensing procedures for hazardous materials endorsements issued with a CDL.

The driver application (§ 383.71) and State licensing (§ 383.73) procedures have been amended to require all individuals to pass the TSA security screening process when renewing, upgrading, transferring, or newly applying for a CDL with a hazardous materials endorsement.

Similarly, new subpart I prohibits the issuance of a hazardous materials endorsement for a CDL unless TSA has determined that the applicant does not pose a security risk warranting denial of the endorsement. Section 383.141(c)

requires a State to notify an individual at least 180 days (6 months) prior to the expiration date of the CDL or hazardous materials endorsement that he/she must pass the new TSA security screening process as a prerequisite to obtaining a hazardous materials endorsement, and therefore must immediately begin the renewal process. All States should urge drivers who intend to reapply to do so as soon as possible after receiving the notification. This will prevent the security risk review from unnecessarily delaying the renewal process.

States have widely varying renewal periods for CDLs and hazardous materials endorsements. To ensure that each holder of a hazardous materials endorsement for a CDL routinely and uniformly receives a security screening, § 383.141(d) requires States to adopt, at minimum, a 5-year renewal cycle for a hazardous materials endorsement for a CDL. As the TSA rule indicates, however, background checks utilizing the names of, and biographical data on, all drivers currently holding hazardous materials endorsements will begin almost immediately. If a driver is found not to meet its security threat assessment standards, TSA will notify the State that his/her hazardous materials endorsement should be revoked.

The TSA rule also addresses the prohibitions in 18 U.S.C. 842(i), which were recently amended by Sec. 1123 of the Homeland Security Act [Pub. L. 107–296, November 25, 2002, 116 Stat. 2135, at 2283]. Sec. 842(i) makes it a criminal offense for certain persons to ship or transport explosives in interstate commerce, or to receive or possess any explosive so shipped or transported. This prohibition applies to a person who is under indictment for, or convicted of, a felony [§ 842(i)(1)]; is a fugitive from justice [§ 842(i)(2)]; is an unlawful user of, or addicted to, a controlled substance [§ 842(i)(3)]; has been adjudicated a mental defective or committed to a mental institution [§ 842(i)(4)]; is an alien, except permanent resident aliens and certain other specified aliens [§ 842(i)(5)]; was discharged from the U.S. armed forces under dishonorable conditions [§ 842(i)(6)]; or has renounced U.S. citizenship [§ 841(i)(7)].

The prohibition in § 842(i), however, does not apply to any aspect of the commercial transportation of explosives which is regulated by the Department of Transportation and which pertains to safety [18 U.S.C. 845(a)(1)]. The Department of Justice has interpreted this provision to exempt persons from application of § 842(i) when (1) DOT has actually regulated a relevant aspect of