

be available only to U.S. citizens or lawful permanent resident aliens. FMCSA has no information on the number of temporary legal—or illegal—aliens who may currently hold hazardous materials endorsements. This rule has no effect on the supply or use of energy, nor do we believe it will cause a shortage of drivers qualified to distribute energy (*e.g.*, gasoline, fuel oil, etc.). If the number of drivers with hazardous materials endorsements drops noticeably as a result of this rule, they might be able to command higher wages, but we expect the supply of drivers to be adequate to meet the demand.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. (2 U.S.C. 1531 *et seq.*) States will have to make changes to their licensing procedures under this rule. Associated with those changes will be modest set-up costs as well as more significant ongoing costs to process the applications for hazardous materials endorsements. However, we assume that States will charge applicants for a hazardous materials endorsement a fee sufficient to cover their added costs.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutional Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This IFR requires States to comply with the TSA rule on background records checks prior to obtaining a hazardous materials endorsement authorizing a driver to transport hazardous materials in commerce. Specifically, it requires the applicant to pass a TSA screening process for the purpose of determining whether the individual is a security risk.

This action will not cause an increase in the number of hazardous materials incidents, nor increase the number of non-hazardous materials commercial motor vehicle crashes. Its purpose is to ensure public safety by preventing the use of a commercial motor vehicle hauling hazardous materials in the commission of terrorist acts against the United States. Therefore, the FMCSA certifies that this action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

List of Subjects

49 CFR Part 383

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

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, 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. Revise the authority citation for part 383 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. Amend § 383.5 to add in alphabetical order a new definition for “alien” and to revise the definitions of “commercial motor vehicle” and “hazardous materials” as follows:

§ 383.5 Definitions.

* * * * *

Alien means any person not a citizen or national of the United States.

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Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

* * * * *

Hazardous materials means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.

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■ 3. Amend § 383.23 to revise paragraph (c) to read as follows:

§ 383.23 Commercial driver's license.

* * *

(c) *Learner's permit.* State learners' permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

(1) The learner's permit holder is at all times accompanied by the holder of a valid CDL;

(2) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automotive drivers' licenses; and

(3) He/she does not operate a commercial motor vehicle transporting hazardous materials as defined in § 383.5.

■ 4. Amend § 383.71 to add a new paragraph (a)(9) and revise paragraphs (b)(3), (c)(3) and (d) to read as follows:

§ 383.71 Driver application procedures.

(a) * * *

(9) If applying for a hazardous materials endorsement, comply with Transportation Security Administration requirements codified in 49 CFR Part 1572, and provide proof of citizenship or immigration status as specified in Table 1 to this section. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration Services (BCIS) Alien registration number.