

rule. The comment is outside the scope of this case and no changes are made in the final rule.

## II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses. The proposed changes to DFARS clause 252.217-7001, Surge Option, are minimal and reflect only updates required to mirror current industry terminology and practice for support that may be required for industrial planning for selected essential military items in the event of an emergency. The rule continues to apply to contracts below the simplified acquisition threshold, however, the rule does not apply to commercial items, including commercially available off-the-shelf items.

## III. Executive Orders 12866 and 13563

E.O. 12866, Regulatory Planning and Review; and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

## IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not significant under E.O. 12866.

## V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise a clause to reflect current terminology and industry practices. The objective of this rule is to

improve the flexibility offered to contractors submitting pricing for surge options by giving them the option to quote prices by percentage or quantity increases, and to update the terminology used from “Production Surge Plan” to “Capability Analysis Plan” (CAP), since this is the most current and accurate term for this type of plan. The modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force under E.O. 13777, Enforcing the Regulatory Reform Agenda.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the scope of the rule limits the application of the reporting requirement to a small number of service contracts. Based on fiscal year 2017 data from the Federal Procurement Data System, the Government issued approximately 78 contract actions that used mobilization or essential research and development as the reason for other than full and open competition. Of the 78 contract actions, approximately 33 awards were made to 24 unique small entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

There are no known significant alternative approaches to the rule that would meet the proposed objectives.

## VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Parts 217 and 252

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 217 and 252 are amended as follows: 1. The authority citation for parts 217 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 217—SPECIAL CONTRACTING METHODS

### 217.208-70 [Amended]

■ 2. In section 217.208-70, amend paragraph (b)(1), by removing “percentage” and adding “percentage or quantity” in its place.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.217-7001 by—

- a. Removing the clause date of “(AUG 1992)” and adding “(DEC 2018)” in its place;
- b. Revising paragraph (a)(1);
- c. In paragraph (b)(1), removing “Production Surge Plan (DI-MGMT 80969)” and adding “Capabilities Analysis Plan (CAP)” in its place; and
- d. In paragraph (b)(2), removing “Production Surge Plan” and adding “CAP” in its place.

The revision reads as follows:

### 252.217-7001. Surge option.

\* \* \* \* \*

(a) \* \* \*

(1) Increase the quantity of supplies or services called for under this contract by no more than \_\_\_ percent or \_\_\_ [insert quantity and description of services or supplies to be increased]; and/or

\* \* \* \* \*

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## 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 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 December 19, 2018.

**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 (Pub. 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.

**Raymond P. Martinez,**  
Administrator.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 390

[Docket No. FMCSA-2012-0103]

RIN 2126-AC22

#### Lease and Interchange of Vehicles; Motor Carriers of Passengers; Extension of Compliance Date

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

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** FMCSA extends the compliance date of the May 27, 2015, final rule titled “Lease and Interchange of Vehicles; Motor Carriers of Passengers,” from January 1, 2019, to January 1, 2021. The final rule received 37 petitions for reconsideration. To address the concerns in the petitions, FMCSA initiated a new notice of proposed rulemaking (NPRM) that also included a proposal to extend the compliance date of the 2015 final rule from January 1, 2019, to January 1, 2021. This extension of the compliance date is necessary to provide time to consider all the issues raised in comments to the NPRM and to publish a final rule, while giving motor carriers sufficient time to comply with the revised requirements.

#### DATES:

*Effective date:* December 4, 2018 until January 1, 2021.

*Compliance date:* As of December 4, 2018, the compliance date for the requirements in subpart F of 49 CFR part 390 (§§ 390.300T, 390.301, 390.303,

and 390.305) is extended until January 1, 2021.

**FOR FURTHER INFORMATION CONTACT:** Ms. Loretta Bitner, (202) 366-2400, *loretta.bitner@dot.gov*, Office of Enforcement and Compliance. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. History

On May 27, 2015, FMCSA published a final rule titled “Lease and Interchange of Vehicles; Motor Carriers of Passengers” (80 FR 30164). The American Bus Association (ABA) and United Motorcoach Association (UMA) filed a joint request for an extension of the June 26, 2015, deadline to submit petitions for reconsideration of the final rule (80 FR 37553). On July 1, 2015, the Agency extended the deadline for such petitions until August 25, 2015 (80 FR 37553).

The Agency received 37 petitions for reconsideration, all of which were filed in the public docket referenced above. After the initial review of the petitions, FMCSA held a meeting on October 28, 2015, with a cross section of the petitioners. Attending were representatives from small and large bus companies, charter and regular-route operations, and diverse geographic areas of the nation. Additionally, two insurance company representatives were invited due to litigation and financial liability concerns. The purpose of the meeting was to have an open discussion and to gather additional details about petitioners’ specific operations and concerns.

Based on these discussions, and after further analysis, FMCSA concluded that some aspects of the petitions for reconsideration have merit. The Agency therefore extended the compliance date to January 1, 2018, to allay stakeholder concerns that there would not be sufficient time to adjust passenger carrier operations before compliance with the regulations was required (81 FR 13998, March 16, 2016). After further review of the petitions, the Agency announced on August 31, 2016, that it intended to consider changes to four aspects of the 2015 final rule, but it also denied requests to reconsider other issues raised by petitioners (81 FR 59951). The August 31 document announced that a public roundtable would be held to discuss the four issues. The roundtable was held on October 31, 2016.

On June 16, 2017, FMCSA published a final rule (2017 final rule) and a

proposal in the **Federal Register** (82 FR 27766, and 27768). The 2017 final rule extended the compliance date of the 2015 final rule from January 1, 2018, to January 1, 2019. The proposal provided information about FMCSA’s planned revisions to the 2015 final rule and requested public comment on those revisions.

##### B. Related Activity

To address the concerns in the petitions, FMCSA published an NPRM on September 20, 2018 (83 FR 47764). This NPRM (RIN 2126-AC07) proposed to extend the compliance date of the 2015 final rule from January 1, 2019, to January 1, 2021. It also included proposed revisions to the 2015 final rule and requested public comment by November 19, 2018.

In October 2018, several passenger carriers petitioned FMCSA to extend the compliance date immediately in accordance with the Agency’s prior commitments and provide sufficient time to finalize the NPRM, to avoid an uncertain operating environment, confusion, and disruption in industry operations. ABA wrote that the outcome of an uncertain business environment is entirely avoidable. The Agency should take the same action it has taken on two prior occasions, and simply publish a final rule to extend the compliance date of the current rule. ABA argued that extending the compliance date would not affect safety, as the current rule has never been in force; nor would an extension interfere with the rulemaking process to finalize revisions to the current rule. Further, the Agency has committed to extending the compliance date on several occasions for the stated purpose of allowing sufficient time to complete revisions to the current rule.

##### C. Comments Received

FMCSA received 15 comments supporting the extension of the compliance date of the 2015 final rule to January 1, 2021. The extension is necessary to provide time to consider all the issues and to publish a final rule, while giving motor carriers sufficient time to comply with the revised requirements. FMCSA therefore extends the 2019 compliance date until January 1, 2021.

##### D. Extending the Compliance Date

The Agency is extending the compliance date by 2 years, to January 1, 2021. The temporary section added to subpart F of 49 CFR part 390 when a previous extension of the compliance date was issued, is being updated to include the new compliance date. The temporary section continues to be in