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Dockets Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE, West Building, Ground Floor
Washington, DC 20590

Re: Interim Final Rule by Federal Motor Carrier Safety Administration Regarding Non-Domiciled Commercial Drivers' Licenses; Docket ID. FMSCA-2025-0622.

Dear Dockets Operations:

I write on behalf of MALDEF (Mexican American Legal Defense and Educational Fund) in response to the Interim Final Rule published by the Federal Motor Carrier Safety Administration (FMCSA) on September 29, 2025 (hereinafter "IFR").[1] Founded in 1968, MALDEF is the nation's leading Latino legal civil rights organization. Often described as the "law firm of the Latino community," MALDEF promotes social change through legislative and regulatory advocacy, community education, and high-impact litigation in voting rights, education, immigrant rights, employment, and freedom from open bias. MALDEF has a long history of fighting to secure services and fair treatment for immigrants.

MALDEF has grave concerns about the IFR's failure to follow the substantive and procedural requirements of the Administrative Procedure Act (APA). MALDEF is particularly concerned that the IFR prevents states from issuing "non-domiciled" commercial driver's licenses (CDLs) and commercial learner's permits (CLPs)[2] to immigrants who are not lawful permanent residents and who do not have an H-2A, H-2B, or E-2 visa.[3] As a result, the IFR will bar thousands of drivers with lawful

[1] Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL), 90 Fed. Reg. 46509 (Sept. 29, 2025) (to be codified at 49 C.F.R. pts. 383, 384).
[2] States may issue either resident or non-domiciled CDLs and CLPs. Only U.S. citizens and lawful permanent residents qualify for "resident" licenses and permits because they are "domiciled" in a U.S. state as defined by 49 C.F.R. § 383.5. *See* Commercial Driver's License Standards, Requirements and Penalties; Regulatory Guidance, 84 Fed. Reg. 8464, 8470 (2019). Prior to the IFR, immigrants who were neither U.S. citizens nor permanent residents – and who were not from Canada or Mexico – could obtain a non-domiciled CDL or CLP if they presented an I-94 form accompanied by an unexpired employment authorization document (EAD) or foreign passport. *See id.*
[3] *See* 90 Fed. Reg. at 46515.

immigration status from receiving or renewing these permits and licenses, and it will cause at least 194,000 drivers to lose their jobs.[4]

For the following reasons, MALDEF strongly opposes the IFR and urges FMCSA to withdraw it in its entirety.

I. THE IFR VIOLATES THE SUBSTANTIVE REQUIREMENTS OF THE APA.

Under the APA, agency action must be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] without observance of procedure required by law."[5] Agency action is considered arbitrary and capricious "if the agency has relied on factors which [sic] Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[6] For the following reasons, the IFR is arbitrary and capricious and therefore violates the APA.

a. The IFR Fails to Connect Immigration Status with Driver Safety.

An agency must "articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[7] The IFR conditions eligibility for non-domiciled CDLs and CLPs on immigration status.[8] Therefore, FMSCA was required to explain a rational relation between certain immigration statuses and driver safety.[9]

The agency failed to "articulate a satisfactory explanation."[10] It did not provide any empirical evidence of a correlation between the safety of a non-domiciled driver and their immigration status. It therefore failed to establish that restricting non-domiciled CDLs and CLPs to only three categories of visa holders would improve road safety.[11] Moreover, the agency conceded that there "is not sufficient evidence . . . [to] demonstrate a measurable empirical relationship between the nation of domicile for a CDL driver and safety outcomes in the United States."[12] In other words, FMSCA admitted that it could not prove that non-domiciled drivers are more dangerous than domiciled drivers. By the agency's own admission, it failed to demonstrate the need for the IFR.

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[4] *Id.* at 46519.
[5] 5 U.S.C. §§ 706(2)(A)-(D).
[6] *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 43 (1983).
[7] *Id.* at 43, 56 (citation and quotations omitted).
[8] *See* 90 Fed. Reg. at 46515.
[9] Because the IFR in effect determines employability of immigrants, resulting as noted in loss of jobs for 194,000 immigrants, and the Congress has delegated the determination of employability of immigrants solely to the Attorney General, *see* 8 U.S.C. § 1324a(h)(3), the FMSCA must justify its proposed rule on safety, not employability of immigrants. *See also infra* note 18.
[10] *State Farm*, 463 U.S. at 43.
[11] *See* 90 Fed. Reg. at 46520 ("Given insufficient evidence, a direct quantitative estimate of the potential safety benefits resulting from this IFR cannot be developed.").
[12] *Id.*

Undeterred, the agency promulgated the IFR, relying on five accidents from the last year to suggest that all immigrants, except three categories of visa holders, are too dangerous to hold CDLs.[13] These accidents are tragic, but the details recounted in the IFR show they were the product of individual driver error. Nothing in the IFR suggests that these accidents were more or less likely to happen if the drivers had been domiciled in the United States or held certain visas.

Moreover, these isolated incidents pale in comparison to the number of accidents involving domiciled commercial drivers. There have been 2,399 fatal large truck and bus accidents this year,[14] but FMSCA only cited five involving non-domiciled CDL holders. It is absurd, based on this evidence, to suggest that immigrants are uniquely dangerous drivers.

It is equally absurd to suggest that H-2A, H-2B, and E-2 visa holders are necessarily safer drivers than asylum seekers, refugees, and Deferred Action for Childhood Arrivals (DACA) recipients. The agency states that because these visa holders are required to submit "proof of work," they are approved for jobs that may require a non-domiciled CDL.[15] However, the immigrants newly excluded under the IFR can also obtain employment authorization,[16] and are often approved by their employers for jobs that require CDLs.[17] The agency can point to nothing special about these visa categories that make these visa holders safer drivers than those excluded under the IFR.

In sum, because FMSCA failed to connect the excluded immigration statuses with driver safety, the IFR is arbitrary and capricious.[18]

b. This Rule Cannot be Justified by Want of Access to Driver History.

Government lawyers now defend the rule in court against a pending challenge as necessary to ensure that states do not award licenses to applicants without verified driving records.[19] As the *Rivera Lujan* petitioners responded, this is a post-hoc rationalization that contradicts the justification in the IFR.[20] And as described below, the agency failed to consider that the driving histories of many excluded immigrants are as accessible as those of the immigrants who can still obtain non-domiciled CDLs and CLPs under the IFR.

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[13] *See id.* at 46512-13.
[14] *Crash Statistics,* FED. MOTOR CARRIER SAFETY ADMIN., https://ai.fmcsa.dot.gov/crashstatistics?tab=Summary&type=&report_id=1&crash_type_id=4&datasource_id=1&time_period_id=2&report_date=0&vehicle_type=1&state=NAT&domicile=ALL&measure_id=1&operation_id=null (Last accessed Nov. 11, 2025).
[15] *See* 90 Fed. Reg. at 46515.
[16] *See* 8 C.F.R. § 274A.12(c) (2025) (listing the immigrants eligible for employment authorization).
[17] *See* Emergency Motion for a Stay Pending Review for Petitioners-Appellants at 13, *Rivera Lujan et al. v. Fed. Motor Carrier Safety Admin et al.*, No. 25-1215 (D.C. Cir. Oct. 24, 2025).
[18] MALDEF also agrees with the King County petitioners that Congress did not give FMSCA the statutory authority to regulate based on immigration. *See* Emergency Motion for Stay Pending Review for Respondent at 14-15, *Martin Luther King, Jr. County v. Duffy et al.*, No. 25-1244 (Oct. 24, 2025).
[19] *See* Joint Response to Emergency Motions for Stay Pending Review for Respondents at 10-12, *Rivera Lujan, et al. v. Fed. Motor Carrier Safety Admin., et al.*, No. 25-1215,-1224 (D.C. Cir. Oct. 31, 2025).
[20] *See* Reply in Support of Emergency Motion for a Stay Pending Review for Petitioners at 3, *Rivera Lujan, et al. v. Fed. Motor Carrier Safety Admin., et al.*, No. 25-1215,-1224 (D.C. Cir. Nov. 3, 2025).

FMSCA concluded that state agencies issued CDLs to ineligible drivers because they could not obtain a ten-year driving history for applicants who had previously driven in foreign jurisdictions.[21] The agency also noted that because the IFR limits eligibility to three visa categories, fewer drivers with unknown safety records would be approved for licenses.[22]

The agency failed to establish that the driving records of the immigrants it now excludes are less accessible than those of select visa holders. For example, the rule bars DACA recipients from CDLs and CLPs,[23] even though they have lived most of their lives in the United States.[24] These immigrants likely learned to drive here and would have no foreign driving records; any driving records they have would be domestic and readily accessible.[25] Therefore, it cannot be true that it is always harder to access the driving records of a DACA recipient than those of an H-2A visa holder. The same could be said of many other excluded immigrants who either learned to drive in the United States or resided in the country for years.[26]

In banning classes of immigrants from CDLs and CLPs, FMSCA ignored that many immigrants have easily accessible driving records and that these records could be evaluated individually. Regardless, the agency's failure to consider an important aspect of the problem renders the IFR arbitrary and capricious.[27]

c. FMSCA Failed to Appropriately Account for Reliance Interests Created by Prior Regulations.

Because FMSCA "was not writing on a blank slate," it was "required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns" in the IFR.[28] The agency's failure to do so makes its action arbitrary and capricious.[29]

For years, FMSCA regulations have allowed a range of immigrants with employment authorization to obtain non-domiciled CDLs and CLPs.[30] In 2019, FMSCA guidance explicitly stated that foreign drivers "holding an employment authorization document or an unexpired foreign passport . . . [and an] I–94 Arrival/Departure Record may obtain a non-domiciled CDL."[31] Relying on past regulations, roughly

[21] *See* 90 Fed. Reg. at 46514.
[22] *See id.* at 46516.
[23] *See id.* at 46515.
[24] This change has a significant impact on the Latino community because the vast majority of DACA recipients are Latino. *See Deferred Action for Childhood Arrivals (DACA) Data Tools*, MIGRATION POL'Y INST., https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles?gad_source=1&gad_campaignid=46884364&gbraid=0AAAAD8CHmqLPMYT1QpgwkQFg8j-Tyje6&gclid=Cj0KCQiArOvIBhDLARIsAPwJXOav3jgdS-69PTNCS0wjpJeU0vuoXEjflqmwy_9ALvi9lIgmRYitteYaAs9REALw_wcB (last accessed Nov. 17, 2025).
[25] *See* Reply for Petitioners, *supra* note 20, at 4.
[26] *Cf. id.* at 4-5.
[27] *See State Farm*, 463 U.S. at 43.
[28] *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 33 (2020).
[29] *See id.* at 30.
[30] *See* 90 Fed. Reg. at 46515.
[31] 84 Fed. Reg. at 8470.

220,000 people currently hold non-domiciled CDLs or CLPs.[32] Under the IFR, roughly 194,000 are expected to lose their licenses.[33]

The IFR glosses over the significant reliance interests created by prior agency rules. Although FMSCA acknowledges that many drivers will lose their licenses, it states that the costs are de minimis and that most drivers will find work in unrelated sectors, like construction.[34] However, the rule provides no explanation, let alone evidence, why these drivers will successfully transition to other sectors. Indeed, the agency largely ignores the effect the IFR will have on drivers who will lose their licenses.[35]

The IFR also fails to analyze whether these reliance interests are indeed outweighed by any benefit. The agency insists the IFR is a safety measure yet concedes it cannot quantify the safety benefit.[36] FMCSA also offers no explanation as to why stripping 194,000 drivers of their licenses is necessary for safety, nor does it assess whether the commercial driving market can remain safe after losing so many workers. Indeed, some evidence suggests the rule may harm, rather than promote, public safety.[37]

Because FMSCA failed to address the reliance interests and concluded without evidence that they are outweighed, the IFR is arbitrary and capricious.

II. FMSCA FAILED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF THE APA.

The IFR violates the APA by failing to comply with its procedural requirements. Under the APA, legislative rules must undergo notice and comment before taking effect, unless an agency finds for good cause that these procedures are "impracticable . . . or contrary to the public interest."[38] This good cause exception is "narrowly construed and only reluctantly countenanced."[39] It excuses notice and comment only "in emergency situations . . . or where delay could result in serious harm."[40] There must be a real crisis to invoke the good cause exception; "unsupported assertion[s]" are insufficient.[41]

Here, FMSCA manufactured an emergency based on scant evidence to justify an IFR. It claims there is a crisis based on five fatal accidents this year involving non-domiciled CDL holders, out of 2,399 total.[42] FMSCA fails to articulate why these five accidents create any more of an emergency than 2,394 caused

[32] *See* 90 Fed. Reg. at 46519.
[33] *Id.*
[34] *Id.* at 46520.
[35] The IFR also violates Executive Order 12866, which requires agencies to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its cost" and "tailor regulations to impose the least burden on society." Exec. Order No. 12866, 3 C.F.R. 638 (1994). Without analysis of how non-domiciled CDL holders will transition to other sectors, the IFR cannot be based on a reasonable determination that it imposes the least societal burden.
[36] *See* 90 Fed. Reg. at 46520.
[37] *See* Reply for Petitioners, *supra* note 20, at 7.
[38] 5 U.S.C. § 553.
[39] *Tennessee Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1146 (D.C. Cir. 1992) (citation omitted).
[40] *Jifry v. F.A.A.*, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (citations omitted).
[41] *Sorenson Commc'ns Inc. v. F.C.C.*, 755 F.3d 702, 707 (D.C. Cir. 2014).
[42] *See* 90 Fed. Reg. at 46514; FED. MOTOR CARRIER SAFETY ADMIN., *supra* note 14.

by domiciled CDL holders.[43] Given that 120 people are killed in car crashes every day,[44] FMSCA should focus on efforts that actually address the dangers of driving on our roads rather than performative rulemaking that is not justified by evidence.

FMSCA also claims that complying with notice and comment procedures would have allowed a deluge of applications to be filed before the rule took effect, which would have caused states to issue licenses to ineligible applicants.[45] But, as the *Rivera Lujan* petitioners note, there is scant evidence to suggest there would be a surge in applications, or a corresponding surge in ineligible license holders.[46]

Ultimately, there is no good cause to justify forgoing notice and comment, and therefore the IFR violates the APA's procedural requirements.

III. CONCLUSION

FMSCA wants to strip most non-domiciled CDL holders of their licenses because of five accidents and a series of unsupported aspersions cast against immigrant drivers. To do so, it promulgated an IFR that is substantively and procedurally defective for the reasons stated above. If it remains in place, it will result in a substantial negative impact on the Latino community and on the many immigrants who relied on prior regulations when they joined the commercial driving industry.

For the foregoing reasons, MALDEF urges FMSCA to withdraw the IFR in its entirety. Please feel free to contact us with any questions or concerns about these comments at (202) 293-2828 or at salarcon@maldef.org.

Sincerely,

Sebastian T. Alarcon

Sebastian T. Alarcon
Staff Attorney

[43] *See* FED. MOTOR CARRIER SAFETY ADMIN., *supra* note 14.
[44] *About Transportation Safety*, CTRS. FOR DISEASE. CONTROL & PREVENTION, https://www.cdc.gov/transportation-safety/about/index.html#:~:text=Overview,cost%20estimates%20for%20lives%20lost (last accessed Nov. 12, 2025).
[45] *See* 90 Fed. Reg. at 46515.
[46] *See* Motion for a Stay for Petitioners-Appellants, *supra* note 17, at 21-24.