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Via Electronic Submission to Regulations.gov

Secretary Sean Duffy
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Administrator Derek Barrs
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Interim Final Rule and Request for Comments: "Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL)" (Docket No. FMCSA-2025-0622)

Dear Secretary Duffy and Administrator Barrs:

We, the undersigned Attorneys General of Massachusetts, California, Arizona, Colorado, Delaware, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington write in opposition to the above-entitled Interim Final Rule (IFR)[1] promulgated by the Department of Transportation and the Federal Motor Carrier Safety Administration (collectively, FMCSA). For the reasons that follow, FMCSA should rescind the IFR and should not repromulgate it as a final rule.

The IFR's dramatic new restrictions on eligibility for non-domiciled commercial driver's licenses (CDLs) and commercial learner's permits (CLPs) are unlawful. By FMCSA's own calculations, the IFR will strip nearly all of the country's 200,000 non-domiciled CDL holders of their licenses and their livelihoods, resulting in the loss of over 5% of the commercial driver workforce. FMCSA lacks the statutory authority to impose these restrictions, and its actions are arbitrary and capricious. FMCSA claims that the IFR's new restrictions are necessary for public safety, but the agency admits that it lacks evidence that these restrictions provide *any* additional safety

[1] *See* Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses (CDL), 90 Fed. Reg. 46,509 (Sept. 29, 2025), as corrected, 90 Fed. Reg. 47,627 (Oct. 2, 2025).

benefits. Further, while Congress has by statute mandated that FMCSA both (1) consult with the States *before* prescribing new regulations regarding the issuance of CDLs and CLPs, and (2) allow the public to review its proposed regulations and provide comments *before* the regulations go into effect, FMCSA circumvented these accountability provisions and made the IFR effective immediately, without any advance notice, opportunity to comment, consultation with the States, or consideration of the disruption the IFR would cause.

These unlawful actions have harmed and will continue to harm our States. Public and private employers—including State and local governments—depend on commercial drivers to drive the buses that bring children to school, to run the mass transit systems that transport people to work, to operate the construction vehicles that maintain and repair public roads, to drive the trucks that transport food and goods to businesses, and to provide many other indispensable services. The IFR will stop virtually all non-domiciled commercial drivers from performing these essential functions, raising costs and disrupting economic and other important activity across the nation. Tens of thousands of drivers will also face losing their licenses and their livelihoods. And the IFR will impose obligations directly on the States themselves, forcing them to overhaul their licensing systems and comply with needlessly burdensome requirements. These disruptions came without time for individuals, their families, their employers, or State and local governments to prepare, due to FMCSA's violation of the advance-consultation and notice-and-comment requirements that Congress mandated to prevent exactly this sort of rule by agency fiat.

The U.S. Court of Appeals for the D.C. Circuit has already temporarily stayed the IFR based on its determination that FMCSA's actions in promulgating the IFR were likely arbitrary, capricious, and unlawful.[2] While this stay may mitigate the impacts of the IFR for a time, FMCSA should not further delay in correcting its mistake and instead should rescind the IFR immediately and not repromulgate it as a final rule.

BACKGROUND

According to the IFR notice, there are 3.8 million active interstate CDL holders in the United States.[3] Of those, approximately 200,000, or slightly over 5%, hold what are known as non-domiciled CDLs, which are available to individuals who are not U.S. citizens or permanent residents but who are lawfully present in the United States and have satisfied the training, skills, and knowledge tests and requirements applicable to all individuals seeking to hold CDLs.[4] Non-domiciled CDL holders include recipients of Deferred Action for Childhood Arrivals (DACA), who arrived in the United States as children and have continuously resided in the United States throughout their lives. Non-domiciled CDL holders also include other long-time U.S.

[2] *See Rivera Lujan v. FMCSA*, No. 25-1215, 2025 WL 3182504 (D.C. Cir. Nov. 13, 2025).

[3] 90 Fed. Reg. at 46,520.

[4] *Id.*; 49 C.F.R. §383.71(f) (Sept. 28, 2025); *see* 49 C.F.R. pt. 383.

residents, such as individuals with temporary protected status or individuals who have been granted asylum or refugee status and may have lived in the United States for years or decades.

Even before the IFR was promulgated, all applicants for non-domiciled CDLs and CLPs were required to establish legal presence in the United States.[5] Specifically, even before the IFR, applicants already had to present documentation satisfying the standards for proving legal presence set forth by the U.S. Department of Homeland Security (DHS)—the federal department charged with the administration and enforcement of the nation's immigration and naturalization laws.[6]

The IFR—which FMCSA promulgated without any advance notice and without providing the public an opportunity to comment—imposes dramatic new restrictions on eligibility for non-domiciled CDLs and CLPs. In particular, the IFR restricts eligibility to three limited categories of individuals—Temporary Agricultural Workers (H-2A status), Temporary Non-Agricultural Workers (H-2B status), and Treaty Investors (E-2 status)—and bars all other non-U.S. citizens without lawful permanent residence from obtaining CDLs or CLPs.[7] This includes an outright bar on all asylum grantees, refugees, and DACA recipients—even though they are legally present and have legal authorization to work in the United States. Additionally, the IFR bars individuals in these categories who already have non-domiciled CDLs from renewing them—regardless of how many years or decades such individuals have held CDLs or whether their driving records demonstrate safe, conscientious, and legally compliant operations.

FMCSA estimates that there are roughly 200,000 non-domiciled CDL holders in the United States, and that the IFR will cause virtually all of them to lose their CDLs (as the CDLs come up for renewal), forcing them to exit the market entirely within two years.[8] FMCSA's own calculations state that this will result in a loss of approximately 5% of the nation's total CDL labor force.[9]

FMCSA claims that these dramatic restrictions on CDL and CLP eligibility are necessary for public safety.[10] At the same time, however, FMCSA expressly admits

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[5] 49 C.F.R. §383.71(f)(2) (Sept. 28, 2025).

[6] 76 Fed. Reg. 26,854, 26,858 (May 9, 2011) ("adopt[ing] the appropriate documents from the most recent list that DHS adopted for proof of citizenship or legal presence").

[7] 90 Fed. Reg. at 46,515.

[8] *Id.* at 46,520.

[9] *Id.*

[10] *Id.* at 46,514 (claiming as justification for the IFR that "eligibility requirements to obtain a non-domiciled CLP and CDL are not narrowly tailored to provide a sufficient margin of safety to protect the traveling public"); *see id.* at 46,513–46,515.

that it has *no* evidence that the IFR or its new CDL and CLP eligibility restrictions would provide *any* additional public safety benefits.[11] Specifically, FMCSA admits:

> There is not sufficient evidence, derived from well-designed, rigorous, quantitative analyses, to reliably demonstrate a measurable empirical relationship between the nation of domicile for a CDL driver and safety outcomes in the United States such as changes in frequency and/or severity of crashes or changes in frequency of violations. FMCSA conducted a literature review and found a few articles focused on the safety performance impacts of undocumented immigrants or illegal aliens,[12] but has not obtained information on how many such drivers have sought to obtain a non-domiciled CDL in the United States. Given insufficient evidence, a direct quantitative estimate of the potential safety benefits resulting from this IFR cannot be developed.[13]

Indeed, FMCSA's own data indicates that the CDL holders who are excluded under the IFR are involved in fatal crashes at a *lower* rate than drivers who will not be affected by the IFR's new restrictions.[14]

DISCUSSION

I. The IFR unlawfully exceeds FMCSA's statutory authority.

Federal agencies "are creatures of statute and as such literally have no power to act except to the extent Congress authorized them." *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 912 (D.C. Cir. 2024) (quotation marks and brackets omitted). Accordingly, an agency violates the Administrative Procedure Act (APA) if it acts "in excess of statutory jurisdiction, authority, or limitations," 5 U.S.C. §706(2)(C), or if it "relie[s] on factors which Congress has not intended it to consider." *Am. Clinical Lab. Ass'n v. Becerra*, 40 F.4th 616, 624 (D.C. Cir. 2022) (quotation marks omitted).

FMCSA violated these principles. The agency states that the IFR "is issued with respect to an immigration-related function of the United States,"[15] but FMCSA has no authority to carry out immigration-related functions. While FMCSA invokes

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[11] *Id.* at 46,520.

[12] FMCSA's references to articles that investigate undocumented immigrants are particularly specious. The IFR's exclusions are not targeted to undocumented immigrants. As discussed above, even before the IFR was promulgated, individuals who were not lawfully present in the United States were not allowed to apply for or obtain CDLs or CLPs. 49 C.F.R. §383.71(a)(5), (f)(2) (Sept. 28, 2025). The IFR's new exclusions extend to individuals who are lawfully present in the United States, including asylum grantees, refugees, and DACA recipients.

[13] 90 Fed. Reg. at 46,520.

[14] *See Rivera Lujan,* 2025 WL 3182504, at *2.

[15] 90 Fed. Reg. at 46,521.

49 U.S.C. §31305(a) for its authority to issue the IFR,[16] that section authorizes FMCSA only to prescribe regulations "on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle." It does not grant FMCSA open-ended regulatory authority, much less immigration-related regulatory authority. FMCSA has no statutory authority to carry out immigration functions or to issue a regulation "with respect to an immigration-related function." *See, e.g.*, *California v. Trump*, No. 25-cv-208-JJM-PAS, 2025 WL 3072541, at *9 (D.R.I. Nov. 4, 2025) (Department of Transportation does not have authority to impose immigration-related conditions on federal transportation funding); *Bayou Lawn & Landscape Servs. v. Sec'y of Labor*, 713 F.3d 1080, 1083–1084 (11th Cir. 2013) (enjoining Department of Labor rule regarding employment of foreign workers and holding it likely that "DOL has exercised a rulemaking authority that it does not possess," because "we would be hard-pressed to locate that power in one agency [DOL] where it had been specifically and expressly delegated by Congress to a different agency [DHS]").[17]

FMCSA's lack of immigration authority aside, the agency also overreads the statutes that it cites as justifying its action. As just discussed, for example, 49 U.S.C. §31305(a) allows FMCSA to promulgate regulations regarding testing and fitness; the statute enumerates eight specific things that such regulations "shall" or "may" do (*e.g.*, set minimum test scores). Nothing about the text, structure, history, or purpose of that provision gives the agency the power to completely exclude entire categories of applicants who are lawfully present in the United States based on their immigration status. The agency's references to 49 U.S.C. §31136(a)(1)–(2) and §31502(b) are similarly misplaced: those provisions likewise deal with safety standards for operation of vehicles—not the categorical exclusion of whole classes of drivers. FMCSA's invocation of 49 U.S.C. §31311(a)(12)(B)(ii) is inapt, too. Whatever power that statute gives the Secretary to "prescribe[]" regulations governing the CDL program, it does not grant the freewheeling authority FMCSA claims.

Finally, the IFR creates conflict with other statutory provisions. The Immigration and Nationality Act expressly prohibits employment discrimination on the basis of

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[16] *Id.* at 46,511.

[17] In defending the IFR in litigation, FMCSA has attempted to deny that the IFR is an immigration-related rule. Instead, FMCSA claims that "immigration status is relevant here only insofar as it relates to the accessibility of driving records by licensing agencies within the United States and the availability of alternative vetting mechanisms." Joint Resp. to Emergency Mots. for Stay Pending Review at 16, *Rivera Lujan v. FMCSA*, No. 25-1215 (D.C. Cir. Oct. 31, 2025), Doc. No. 2143339. FMCSA does not explain how it can reconcile this position with its claim in the IFR notice that the IFR "is issued with respect to an immigration-related function of the United States." 90 Fed. Reg. at 46,521. Additionally, as discussed below, even if FMCSA's justification for the IFR really were only based on the supposed unavailability of foreign driving history, the IFR is arbitrary and capricious, as it is both irrationally overinclusive and irrationally underinclusive and reflects a total "disconnect between the decision made and the explanation given." *Dep't of Commerce v. New York*, 588 U.S. 752, 785 (2019).

citizenship against individuals who have been granted asylum or refugee status, among others. 8 U.S.C. §1324b(a)(1), (3)(B). Likewise, the Civil Rights Act prohibits employment discrimination on the basis of citizenship against individuals who have work authorization, including DACA recipients. 42 U.S.C. §1981; *see, e.g.*, *Anderson v. Conboy*, 156 F.3d 167, 169 (2d Cir. 1998) (explaining that §1981 "proscribes private alienage discrimination with respect to the rights set forth in the statute," including "contracts of employment"); *Rodriguez v. Procter & Gamble Co.*, 465 F. Supp. 3d 1301, 1315 (S.D. Fla. 2020) (holding that "the text and legislative history of Section 1981 confirm that the statute's protection against employer alienage discrimination applies to all work-authorized immigrations," including "DACA recipients"); *Juarez v. Nw. Mut. Life Ins. Co., Inc.*, 69 F. Supp. 3d 364, 368–370 (S.D.N.Y. 2014) (employer hiring policy that "discriminates against a subclass of lawfully present aliens" violates §1981). The IFR is impossible to reconcile with the policies embodied in these statutes.

II. The IFR is arbitrary and capricious.

The IFR also violates the APA because it is arbitrary and capricious. As discussed above, FMCSA claims that the IFR's dramatic restriction on CDL and CLP eligibility is necessary for public safety.[18] At the same time, however, FMCSA expressly admits that it does not have evidence that the IFR provides any additional public safety benefits.[19] This alone is sufficient to render the IFR arbitrary, capricious, and unlawful. *See, e.g.*, *Cigar Ass'n of Am. v. FDA*, 132 F.4th 535, 540 (D.C. Cir. 2025) ("[A]gency action is arbitrary and capricious if it relies upon a factual premise that is unsupported by substantial evidence."); *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 237 (D.C. Cir. 2008) ("It is not consonant with the purpose of a rule-making proceeding to promulgate rules on the basis of inadequate data . . . .").

The IFR notice cites five fatal crashes involving drivers with non-domiciled CDLs that occurred in calendar year 2025.[20] Anecdotal reference to five crashes without any context or comparative data is not evidence that the IFR provides any safety benefits—as the IFR notice itself concedes.[21] FMSCA offers no facts suggesting that non-domiciled CDL holders are responsible for a disproportionate portion of these fatal crashes. By way of comparison, in calendar year 2023 (the most recent year for which FMCSA crash statistics for CDL holders are publicly available), there were

[18] 90 Fed. Reg. at 46,513–46,515.

[19] *Id.* at 46,520 ("There is not sufficient evidence, derived from well-designed, rigorous, quantitative analyses, to reliably demonstrate a measurable empirical relationship between the nation of domicile for a CDL driver and safety outcomes in the United States such as changes in frequency and/or severity of crashes or changes in frequency of violations.").

[20] *Id.* at 46,512–46,514.

[21] *Id.* at 46,520.

4,043 fatal large-truck and bus crashes involving CDL drivers.[22] FMCSA's citation to five fatal crashes does not provide support for its claimed justification that non-domiciled CDL and CLP holders present a particular safety risk or that restricting non-domiciled CDL and CLP eligibility would benefit public safety.

The IFR notice claims that its restriction on non-domiciled CDL and CLP eligibility is necessary because regulations require States to obtain applicants' complete ten-year driving history from all States where applicants were previously licensed, and (so the IFR notice claims) States are unable to carry out this requirement for individuals whose driving history exists predominantly or solely within a foreign jurisdiction.[23] But the IFR's restrictions on CDL eligibility bear no relation to the accessibility of driving history. On the one hand, the IFR applies to individuals with temporary protected status, asylum, or refugee status who have resided in the United States for years or decades and whose driving history is entirely or predominantly U.S.-based.[24] On the other hand, the IFR maintains CDL eligibility for individuals like temporary workers and foreign treaty investors whose driving history is predominantly or entirely foreign-based and thus inaccessible by the States.[25] "[T]he disconnect between the decision made and the explanation given" evidences such a "significant mismatch" so as to further render the IFR arbitrary, capricious, and unlawful. *Dep't of Commerce v. New York*, 588 U.S. 752, 783–785 (2019); *see, e.g.*, *World Shipping Council v. Fed. Maritime Comm'n*, 152 F.4th 215, 223 (D.C. Cir. 2025) (discussing arbitrariness

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[22] FMCSA, *Crash Statistics*, https://ai.fmcsa.dot.gov/CrashStatistics?tab=Driver&type=&report_id=36&crash_type_id=1&datasource_id=2&time_period_id=2&report_date=2023&vehicle_type=1&state=AllStates&domicile=ALL&measure_id=1&operation_id=null (FARS snapshot date Dec. 31, 2023) (last visited Nov. 26, 2025) (*Driver License Status Crash Statistics*). FMCSA statistics for calendar year 2025 states that there have been 3,136 fatal crashes involving large trucks and buses through October 31, 2025, but these statistics do not provide breakdowns by CDL status. FMCSA, *Crash Statistics*, https://ai.fmcsa.dot.gov/CrashStatistics?tab=Summary&type=&report_id=1&crash_type_id=1&datasource_id=1&time_period_id=2&report_date=2025&vehicle_type=1&state=AllStates&domicile=ALL&measure_id=1&operation_id=null (MCMIS snapshot date Oct. 31, 2025) (last visited Nov. 26, 2025).

[23] 90 Fed. Reg. at 46,514.

[24] For example, DACA recipients were required to have come to the United States prior to their sixteenth birthday and must have continuously resided in the United States since 2007. U.S. Citizenship and Immigr. Servs., *Consideration of Deferred Action for Childhood Arrivals (DACA) > Frequently Asked Questions*, https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions (last updated Oct. 30, 2025).

[25] The general requirements for an individual to be a treaty investor, for example, are that the individual must be a national of a country with which the United States maintains a treaty of commerce and navigation, must have invested or be actively in the process of investing a substantial amount of capital in a bona fide enterprise in the United States, and must be seeking to enter the United States solely to develop and direct the investment enterprise. U.S. Citizenship and Immigr. Servs., *E-2 Treaty Investors*, https://www.uscis.gov/working-in-the-united-states/temporary-workers/e-2-treaty-investors (last updated Apr. 8, 2025). There are no requirements that treaty investors have U.S. driving history—to the contrary, given the restriction that they may enter the United States "solely to develop and direct the investment enterprise," they are more likely to *not* have prior accessible U.S. driving history.

of "a seeming discrepancy in the reach of [an agency] Rule given its underlying rationale" where rule "is seemingly *under*inclusive" and also "*over*inclusive" compared to agency's supposed rationale (emphasis in original)).

III. The IFR fails to take serious reliance interests into account.

As the Supreme Court has held, when agencies change their existing policies, they must "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" *DHS v. Regents of the Univ. of California*, 591 U.S. 1, 30 (2020); *Encino Motorcars, LLC v. Navarro,* 579 U.S. 211, 221–222 (2016). "It would be arbitrary and capricious to ignore such matters." *Regents*, 591 U.S. at 30.

Before the IFR was promulgated, FMCSA had a longstanding policy that non-U.S. citizens with legal authorization to work in the United States were permitted to obtain CDLs. During the last Trump Administration, FMCSA reaffirmed this policy, publicly stating that "[a] foreign driver holding an employment authorization document or an unexpired foreign passport accompanied by an approved Customs and Border Protection (CBP) I-94 Arrival/Departure Record may obtain a non-domiciled CDL."[26] Numerous parties, including CDL holders, their family members, their employers, and State and local governments, reasonably relied on this policy and FMCSA's guidance. These individuals and entities have serious reliance interests in CDL holders' continued ability to do their jobs, which require them to maintain and renew their CDLs, and in the time and money spent training those CDL holders. FMCSA's failure to consider these serious reliance interests in promulgating an IFR that effectively strips these CDL holders of their licenses as soon as they come up for renewal, or when States are notified of a purported change in immigration status, renders the IFR arbitrary, capricious, and unlawful. *See Regents*, 591 U.S. at 31–33 (finding agency's action in rescinding DACA program to be arbitrary and capricious because "[t]he consequences of the rescission . . . would 'radiate outward' to DACA recipients' families, including their 200,000 U.S.-citizen children, to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them," and the agency "should have considered those matters but did not."); *Encino Motorcars*, 579 U.S. at 224 ("In light of the serious reliance interests at stake, the [agency]'s conclusory statements do not suffice to explain its decision.").

FMCSA acknowledges that "[t]his IFR will impact motor carriers that currently, or intend to, employ non-domiciled CDL holders that are no longer eligible to receive a credential" but claims that "[m]otor carriers that currently employ non-domiciled

[26] 84 Fed. Reg. 8464, 8470 (Mar. 8, 2019) ("*Question 1:* May a foreign driver with an employment authorization document obtain a CDL to operate a [commercial motor vehicle] in the United States? *Guidance:* Yes. A foreign driver holding an employment authorization document or an unexpired foreign passport accompanied by an approved Customs and Border Protection (CBP) I-94 Arrival/Departure Record may obtain a non-domiciled CDL.").

CDL holders will have some time to adjust to the change as the drivers will be aware if their license will not be renewed under the standards set forth in this IFR. By providing this time for adjustment, FMCSA anticipates that impacts to motor carriers will be mitigated."[27] FMCSA further acknowledges that the roughly 200,000 non-domiciled CDL holders currently in the United States "will exit the market within approximately two years as their credential comes up for renewal" but claims that "due to this prolonged two-year period of attrition, motor carriers will have time to adjust their hiring based on the requirements set forth in this IFR, including by marketing available positions to drivers with the proper qualifications to obtain a CDL."[28]

FMCSA's claims that motor carriers and other employers will have "time to adjust" and can "adjust their hiring" over the next two years fail. Contrary to FMCSA's claim, the IFR did not provide any "time for adjustment"—it went into immediate effect the day it was published, *i.e.*, September 29, 2025. Individuals whose non-domiciled CDLs came up for renewal on September 30, 2025, for example, or in October or November 2025, had no way to renew their CDLs and thus were effectively stripped of their livelihood immediately and abruptly, without any "time for adjustment." Employers likewise effectively lost these employees (and the time and money spent in finding, hiring, and training them) immediately and abruptly, without any "time for adjustment" or any transition period to find, hire, or train replacements. The supposed "prolonged two-year period" to which FMCSA alludes is the estimated time it will take for *all* non-domiciled CDL holders to lose their CDLs and exit the market, not for any given non-domiciled CDL holder to do so. Assuming CDLs come up for renewal at a consistent rate, approximately 8,000 non-domiciled CDLs will come up for renewal every month and, under the IFR's new restrictions, will not be renewable, leading to continuous ongoing losses (8,000 holders losing their jobs and 8,000 vacancies that employers will have to fill each month), not a "prolonged two-year period" for adjustment, as FMCSA claims.

FMCSA additionally claims that it "anticipates that drivers who will no longer be eligible for a non-domiciled CDL will be able to find similar employment in other sectors (*e.g.*, construction, driving vehicles that don't require a CDL, etc.)" and "will experience some de minimis costs as they move from one industry to another when their current credential expires."[29] The IFR notice, however, cites no data that supports its assertions that such individuals will be able to find similar employment or that their costs would be merely de minimis. Further, FMCSA's claim that transition costs resulting from the loss of a CDL will be merely "de minimis" is contradicted by FMCSA's statement that "[a] non-domiciled CDL is a high-value economic credential."[30] The IFR notice does not reconcile these conflicting statements and does not

[27] 90 Fed. Reg. at 46,519.

[28] *Id.* at 46,520.

[29] *Id.*

[30] *Id.* at 46,514.

take into account the serious reliance interests that non-domiciled CDL holders, their families, and their employers have in these "high-value economic credentials." *See, e.g.*, *World Shipping Council*, 152 F.4th at 221 (D.C. Cir. 2025) ("[O]f course, it would be arbitrary and capricious for the agency's decision making to be internally inconsistent.") (citation and quotation marks omitted).

IV. The IFR's immigration-document retention and turnover requirements are legally unsupported and unwarranted.

The IFR imposes new requirements for State Driver's Licensing Agencies (SDLAs) to retain copies of documents used to prove a non-domiciled CDL applicant's lawful status and documents showing the results of any query to DHS's Systematic Alien Verification for Entitlements system (SAVE) for at least two years, and to provide copies of all documents involved in the licensing process, including immigration documents and SAVE query results, to FMCSA within 48 hours after request.[31] These requirements are unsupported and unwarranted.

As the IFR notice acknowledges, these information-collection requirements are subject to the Paperwork Reduction Act of 1995 (PRA).[32] Under the PRA, an agency may not conduct or sponsor a collection of information unless the agency has complied with certain statutorily mandated steps. 44 U.S.C. §3507(a). These steps include conducting a review of the proposed collection to assess its necessity, how to efficiently use the information, and the burden imposed on the persons providing the information. *Id.* §§3506(c)(1), 3507(a)(1). The agency must also provide 60 days' notice in the Federal Register soliciting comments regarding necessity, minimizing burdens, and other topics. *Id.* §§3506(c)(2), 3507(a)(1)(D). Following a 60-day public comment period, the agency must certify, using supporting records or public comments, that the proposed collection of information meets ten statutory criteria, including that collection is "necessary for the proper performance of the functions of the agency," and that it "reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency." *Id.* §3506(c)(3). The IFR's document retention and turnover requirements do not satisfy these criteria.

First, this information collection is not "necessary for the proper performance of the functions of the agency." As discussed above, FMCSA has no statutory authority to carry out immigration functions. *See, e.g.*, *California*, 2025 WL 3072541, at *9; *Bayou Lawn & Landscape*, 713 F.3d at 1083–1084. Instead, as relevant here, FMCSA's functions are to set "minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle," 49 U.S.C. §31305(a)—and again, as FMCSA itself admits, FMCSA has no evidence demonstrating a relationship between immigration status and the fitness of an individual operating a

[31] *Id.* at 46,516.

[32] *Id.* at 46,522.

commercial motor vehicle.[33] Requiring SDLAs to retain copies of immigration documents and SAVE query results (which DHS, the federal department charged with the administration and enforcement of the nation's immigration and naturalization laws, would already have) and to produce such documents to FMCSA is unnecessary for the proper performance of FMCSA's functions.

Second, even if collection and production of these documents were necessary for the proper performance of FMCSA's functions, the IFR does not "reduce[] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency." Rather, the IFR places considerable burden on SDLAs. The IFR contains no limitation as to how many documents FMCSA can request, or when or how often it can make requests, and its requirement that SDLAs provide documents on a 48-hours turnaround is plainly impracticable and places significant burdens on SDLAs. Indeed, under that requirement, FMCSA could make a request for thousands of documents on a Friday evening at 8 p.m. and demand that the SDLA provide documents by Sunday evening at 8 p.m., without a single working day in between. The IFR notice does not contain any mention, much less explanation, of why this new 48-hour turnover requirement is necessary. As the FMCSA notes, regulations already provide for annual program reviews of SDLAs in accordance with 49 U.S.C. §31311 and 49 C.F.R. §384.307, in which SDLAs must cooperate and provide information to FMCSA.[34] FMCSA does not explain why a new, separate 48-hour turnover requirement is necessary in light of the regulations that already exist, or how such a requirement is consistent with its obligation to "reduce[] to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency."[35]

The IFR notice also states that the Consolidated Appropriations Act of 2005 requires agencies to assess the privacy impact of a regulation that will affect the privacy of individuals.[36] FMCSA claims that the IFR "would not result in the collection of personally identifiable information (PII)."[37] But the IFR requires SDLAs to collect and retain copies of non-domiciled CDL applicants' immigration documents (including passports and I-94s), which contain PII, and to provide copies of all documents involved in the licensing process to FMCSA. Contrary to FMCSA's claim, the IFR

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[33] *Id.* at 46,520 ("There is not sufficient evidence, derived from well-designed, rigorous, quantitative analyses, to reliably demonstrate a measurable empirical relationship between the nation of domicile for a CDL driver and safety outcomes in the United States such as changes in frequency and/or severity of crashes or changes in frequency of violations.").

[34] *Id.* at 46,512.

[35] *Cf.* 59 Fed. Reg. 26,029, 26,038 (May 18, 1994) ("The FHWA [FMCSA's predecessor agency] will rely in the first instance on the State's certification. The State is in a better position to evaluate its own compliance with the standards.").

[36] 90 Fed. Reg. at 46,523.

[37] *Id.*

requires the collection of PII. FMCSA's failure to comply with the statutory requirement to assess the privacy impact of the PII collection was arbitrary and capricious.[38]

Finally, the IFR has already placed an extreme operational burden on SDLAs, which have needed to verify immediate compliance with the IFR's new requirements. As a result, many SDLAs had to stop issuing non-domiciled CDLs altogether. For many States, implementing these new technological capacities will further delay their ability to issue non-domiciled CDLs going forward. The IFR failed to acknowledge the burdens these changes would have on SDLAs.

V. The IFR was unlawfully promulgated and violated the APA's requirement to provide notice and allow for public comment.

As the IFR notice itself acknowledges, "[u]nder the [APA], an agency must typically provide prior notice and an opportunity for public comment before a rule becomes effective."[39] The APA's notice-and-comment procedure is no mere check-the-box requirement—rather, the ability to comment on proposed rules protects the public's rights

> to present their views to the government agencies which increasingly permeate their lives. The interchange of ideas between the government and its citizenry provides a broader base for intelligent decision-making and promotes greater responsiveness to the needs of the people . . . . When substantive judgments are committed to the very broad discretion of an administrative agency, procedural safeguards that assure the public access to the decision-maker should be vigorously enforced.

Buschmann v. Schweiker, 676 F.2d 352, 357 (9th Cir. 1982). "[I]t is antithetical to the structure and purpose of the APA for an agency to implement a rule first, and then seek comment later." *California v. Azar*, 911 F.3d 558, 575 (9th Cir. 2018); *see Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979) ("In enacting the APA, Congress made a judgment that notions of fairness and informed administrative decisionmaking require that agency decisions be made only after affording interested persons notice and an opportunity to comment.").

FMCSA violated this statutory notice-and-comment requirement by promulgating the IFR and making it effective immediately without any advance notice or opportunity to comment. FMCSA claims that it was permitted to circumvent this

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[38] The IFR notice refers to a "supporting Privacy Impact Analysis (PIA), available for review in the docket, [that] gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to this final rule," but no such PIA is actually available for review on the docket. *See* FMCSA, Rulemaking Docket, *Restoring Integrity to the Issuance of Non-Domiciled Commercial Drivers Licenses*, https://www.regulations.gov/docket/FMCSA-2025-0622/document (last visited Nov. 26, 2025).

[39] 90 Fed. Reg. at 46,513.

congressional requirement because it found "good cause to issue this IFR without prior notice and comment and to make it effective immediately," supposedly because the IFR was immediately necessary "to address a recently discovered, two-front crisis that constitutes an imminent hazard to public safety and a direct threat to national security."[40] But an agency's claim of "good cause" to circumvent the APA notice-and-comment requirements that Congress has seen fit to impose on agencies is entitled to no deference. *See, e.g.*, *Sorenson Commc'ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014) ("[A]n agency has no interpretive authority over the APA; we cannot find that an exception applies simply because the agency says we should. Moreover, the good-cause inquiry is meticulous and demanding." (citations and quotation marks omitted)).

As discussed above, FMCSA itself expressly admits that it does not have evidence that the IFR will address an imminent hazard to public safety or provide any additional public safety benefits.[41] Nor does FMCSA support its claim that imminent national-security concerns warrant circumventing statutory notice-and-comment requirements.[42] Where, as here, an agency is "lacking record support proving the emergency" that it claims, its attempt to circumvent notice and comment and promulgate a rule with immediate effect is unlawful. *See, e.g.*, *Sorenson*, 755 F.3d at 707.

FMCSA claims that "providing advance notice through a proposed rule is impracticable and contrary to the public interest because it would actively subvert the rule's purpose by creating a foreseeable and concentrated surge in applications that would exacerbate the current safety crisis."[43] This argument fares no better. First, again, FMCSA itself expressly admits that it does not have evidence that the IFR will address an imminent hazard to public safety or provide any additional public safety benefits.[44] Second, the fact that proposing a rule might lead to an increase in applications before the rule goes into effect does not justify circumventing notice and comment. "The lag period before any regulation, statute, or proposed piece of legislation allow parties to change their behavior in response," but this does not "demonstrate the existence of an exigency justifying good cause" to circumvent the congressional mandate in the APA for notice and comment. *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 676 (9th Cir. 2021).

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[40] *Id.* at 46,513–46,514.

[41] *Id.* at 46,520 ("Given insufficient evidence, a direct quantitative estimate of the potential safety benefits resulting from this IFR cannot be developed.").

[42] As its sole support, FMCSA cites only one incident that involved a *non*-commercial motor vehicle. *Id.* at 46,514 & n.20.

[43] *Id.* at 46,514.

[44] *Id.* at 46,520.

VI. The IFR was unlawfully promulgated and violated the Commercial Motor Vehicle Safety Act's requirement for FMCSA to consult with the states.

As the IFR notice itself acknowledges, separate and apart from the APA's statutory requirement to provide notice and comment, the Commercial Motor Vehicle Safety Act of 1986 "requires the Secretary of Transportation (Secretary), *after consultation with the States*, to prescribe uniform minimum standards 'for testing and ensuring the fitness of an individual operating a commercial motor vehicle' (49 U.S.C. 31305(a))."[45] "Consultation" is not merely the opportunity for notice and comment under the APA. *Cal. Wilderness Coal. v. Dep't of Energy*, 631 F.3d 1072, 1087 (9th Cir. 2011) (explaining that the "interpretation of 'consult' to mean no more than notice-and-comment would render [statutory 'consultation' requirement] superfluous"); *Campanale & Sons, Inc. v. Evans*, 311 F.3d 109, 118 (1st Cir. 2002) ("Consultation . . . must mean something more than general participation in the public comment process . . ., otherwise the consultation requirement would be rendered nugatory."). Rather, "[c]onsultation requires an exchange of information and opinions **before** the agency makes a decision. This requirement is distinct from the opportunity to offer comments on the agency's decision." *Cal. Wilderness*, 631 F.3d at 1093 (emphasis in original). "Consultation" further requires at least "*some* effort by [the agency] to receive . . . views regarding proposed regulations . . . and then consider such advice." *Campanale*, 311 F.3d at 120 (emphasis in original). "The consultative process dictated by Congress serves the purpose of permitting the States to participate in the formulation of federal policy in an area of major interest to the States." *Cal. Wilderness*, 631 F.3d at 1092.

FMCSA violated this statutory consultation requirement by promulgating the IFR and making it effective immediately without any consultation with the States. Promulgating the IFR without consultation disregards the States' knowledge and experience in having administered CDL programs for decades, and their heightened reliance interests after having invested money and labor in their existing systems. The abrupt changes to these systems have required and will further require significant outlays of State resources.

FMCSA claims that "the immediate need" to issue the IFR "means it is not practicable to consult with the States prior to promulgation of this rulemaking,"[46] but the Commercial Motor Vehicle Safety Act does not contain an exception to its consultation requirement for impracticability. And even if there were such an exception, as discussed above, FMCSA has not actually established or supported its supposed claim that there was a need to issue the IFR immediately or that the statutorily required consultation before doing so was not practicable.

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[45] *Id.* at 46,511 (emphasis added); *see also id.* at 46,522–46,523.

[46] 90 Fed. Reg. at 46,523.

In defending the IFR in litigation challenging the IFR, FMCSA attempted to argue that it is not required to consult with the States when promulgating regulations under 49 U.S.C. §31305. Joint Resp. to Emergency Mots. for Stay Pending Review at 21, *Rivera Lujan v. FMCSA*, No. 25-1215 (D.C. Cir. Oct. 31, 2025), Doc. No. 2143339. This litigating-position reversal is wholly inconsistent with the IFR notice, which cites §31305 and affirms that FMCSA has a consultation requirement. This litigating-position reversal likewise is inconsistent with FMCSA's past rulemaking, where FMCSA has affirmed that rulemaking pursuant to §31305 requires consultation with the States. *See, e.g.*, 84 Fed. Reg. 32,689, 32,691 (July 9, 2019) ("The 1986 Act required the Secretary, after consultation with the States, to prescribe uniform minimum standards for the issuance of CDLs, including 'minimum standards for written and driving tests of an individual operating a commercial motor vehicle' (49 U.S.C. 31305(a)(1))."); *id.* at 32,695 (same); 89 Fed. Reg. 7327, 7329 (Feb. 2, 2024) (same). The D.C. Circuit rightly rejected FMCSA's attempt to reverse itself with respect to this consultation requirement. *Rivera Lujan*, 2025 WL 3182504, at *1.

CONCLUSION

Because the IFR is arbitrary, capricious, and unlawful; because FMCSA promulgated it unlawfully without advance notice, comment, or consultation with the States; and because FMCSA itself expressly admits that it does not have evidence that the IFR provides any additional public safety benefits, FMCSA should not further delay in correcting its errors and should rescind the IFR and not repromulgate it as a final rule.

Sincerely,

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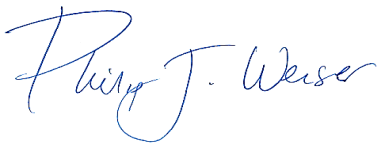

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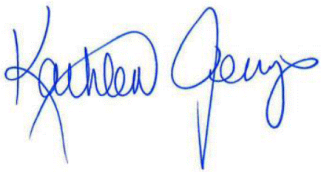

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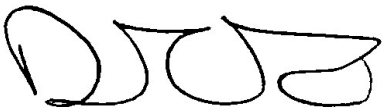

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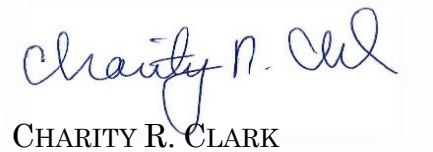

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