

July 7, 2003

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket No. FMCSA-2001-11117

The Wisconsin Department of Transportation has the following comments on the above docket relating to the interim final rules for the 2001 US Patriot Act, published May 5, 2003. Comments are arranged in order of concern – highest to lowest:

Section 383.141 – General and Section 1572.5 – Security threat assessment for commercial drivers’ licenses with a hazardous materials endorsement

Initial Applicability / Implementation Dates

Wisconsin has very serious concerns about the implementation timeframe of the interim final rule.

- TSA has not provided technical specifications necessary to modify the Commercial Driver License Information System (CDLIS). As written, the rule does not allow sufficient time to make changes to Wisconsin’s CDL issuance systems.
- TSA has not been able to provide details on many of the critical aspects of the credentialing and background check procedures, such as submission of application materials and fingerprints.
- We request either a substantial blanket delay to the implementation deadlines or the ability for states to apply for waivers if they are unable to meet the deadlines.

Implementation Costs

- Federal estimates on the cost of implementing are significantly less than expected actual costs and are placing an undue burden on the department budget. The cost of programming changes, notification requirements and forms development are in excess of \$500,000.
- Initial federal funding options to assist with implementation have not been awarded.
- Additional federal funding will not be available in time for implementation.

Section 1572.5 – Security threat assessment for commercial drivers’ licenses with a hazardous materials endorsement

H Endorsement Cancel vs. Revocation

Do not use the term “Revocation”. Use a more general term such as withdrawal or surrender. This allows states to implement whatever is the most appropriate license withdrawal method, so long as the intent is met – removing the H endorsement. This will help avoid unnecessary administrative burdens for those states where the term “revocation” has specific meaning in state statutes and requires specific actions.

H Endorsement Application Requirements and Transmittal

- Allow electronic submittal in a generally accepted, standard format to TSA to avoid sending double information and passing of paper.
- Middle initial should be accepted on application materials to more closely align with existing state driver application requirements and databases.

Surrendering H Endorsements / Notification and record keeping

- Clarify the penalties for drivers failing to surrender H endorsements during implementation. Are states required to take any additional action against a driver who fails to surrender their H

endorsement? E.g. the state may indicate on the state database that the H endorsement is not valid, but the driver may continue to hold a document that shows an H endorsement.

- Require TSA to maintain H endorsement status information centrally including required surrenders. This information could be used by all jurisdictions when H endorsement holders move from jurisdiction to jurisdiction.
- Clarify the surrender situations for which states are required to notify TSA, CDLIS and FMCSA.
- TSA should notify states of threat assessment status changes.

Fingerprinting

- Wisconsin has no infrastructure in place for fingerprinting of private citizens. Most law enforcement agencies have fingerprinting capability, but it's used for criminal justice bookings and is located in secure areas of law enforcement facilities, which is not conducive to public access. It will take Wisconsin at least 18 months to develop alternative delivery mechanisms so H endorsement applicants can get the required fingerprints taken and submitted to TSA. Preliminary cost estimates to locate just 12 fingerprint capture devices in the state is in excess of \$400,000 and the department does not have that amount available in its budget. And, having only 12 locations in the state would result in unnecessary hardship for H endorsement holders who will have to go to specific locations, perhaps hours from their work locations, to have their fingerprints captured.

Section 384.233 Background records checks and Section 1572.5 – Security threat assessment for commercial drivers' licenses with a hazardous materials endorsement

Portability of Threat Assessment Approval

- Allow threat assessment approval "status" to remain valid for a driver holding an H endorsement who continues to reside within a state. Do not require a resubmission to TSA for another threat assessment for those drivers replacing a lost document, changing their address or modifying other aspects of their license, as long as the state of record can validate the identity of the driver (e.g. matched pictures on the state database.)
- Allow a 90-day extension of the H endorsement for drivers moving to another jurisdiction. This will allow drivers with approved status to maintain their privilege and employment when moving to a different jurisdiction.

Section 383.71 - Driver Application Procedures

Testing Requirements For H Endorsement Holders

- Tie the requirement for all required tests for the H endorsement to renewal of the full CDL rather than to the H endorsement renewal. This allows for administrative efficiency and time saving for jurisdictions and customers.

Citizenship and Legal Residency Requirements

- Allow states to avoid repeating verification of citizenship once a driver has proven citizenship. This would avoid a time-consuming, repetitive process in situations where the likelihood of status change is extremely low.
- Require TSA to notify states when a legal alien is no longer legally present and allow legal aliens to maintain the H endorsement until such notice or until the endorsement expires. This will avoid an extremely cumbersome process for jurisdictions and for legal-alien H endorsement holders.

Beverly A. Larson
Acting Administrator
Wisconsin Division of Motor Vehicles

cc: Asa Hutchinson, Undersecretary for Border & Transportation Security, USDHS
Tom Blank, Assistant Administrator, Transportation Security Policy
Steve Sprague, Branch Chief, Highway Infrastructure, TSA
Dion Casey, Legal Counsel, Office of Chief Counsel, TSA
Bruce J. Brotman, Director, Credentialing Program Office, TSA
Angela L. Heim, Deputy Director, Stakeholder & Industry Affairs, TSA
John Grimm, Director, Office of Safety Programs, FMCSA
Valerie Height, Regulatory Development Division, FMCSA
Kevin Lewis, AAMVA
Frank Busalacchi, Secretary, Wisconsin Department of Transportation