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Docket Clerk  
United States Department of Transportation  
Docket Management Facility  
Docket No. FMCSA-2001-11117  
TSA-2003-14610  
Room PL-401  
400 Seventh Street, SW  
Washington, DC 20590-0001

**Comments on:**

*“Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License” and “Limitations on the Issuance of Commercial Driver’s Licenses with a Hazardous Materials Endorsement”*

J.B. Hunt is one of the largest truckload carriers in America with over 11,000 drivers operating in the 48 contiguous states and Canada. J.B. Hunt currently has 786 active drivers who have earned over a million safe miles, 68 with over 2 million safe miles, and 5 with over 3 million safe miles. These miles were all driven with J.B. Hunt and do not include miles from other jobs. Further, J.B. Hunt requires all drivers to have a hazardous materials endorsement. All of this is said to point out that we have a vested interest as well as experience in matters of safety. We take security just as seriously and hope that these comments will be given serious consideration prior to November 3<sup>rd</sup>.

The chief concern with this rule is the failure to provide timely reporting mechanisms for ensuring that disqualified drivers do not have access to hazardous material loads. The only way to affect this is to notify the motor carrier who makes the load assignments. The reasons for disqualification, by their very nature, indicate that these drivers have character flaws that will make self-reporting ineffective.

The California Department of Motor Vehicles’ “Employer Pull Notice Program” should serve as a model for a national driver registration program for all motor carriers. The program requires every carrier to enroll each driver they hire/contract and delete each driver who terminates from employment/contract. The carrier pays a fee for each driver enrolled and there is no fee to delete the driver. The benefits of this program are many. Additionally, the carrier pays a small charge for each report generated by a change in the driver’s record.

First, with this program the government would know where drivers are employed and can contact them as required to ensure regulatory compliance and/or address transportation security concerns that may arise with individual CDL holders. When the FMCSA was conducting their security audit after September 11<sup>th</sup>, they had a list of CDL holders that they needed to find. Had this program been in place, these drivers would be registered if a motor carrier employed them at the time.

Second, anytime the driver’s qualification/driving record changes, the motor carrier receives a notice of the change. This means that motor carrier can take immediate action with drivers whose license is suspended or who lose their hazardous materials endorsement. The carrier gets timely notification from

the department of motor vehicles instead of relying on the driver to self-report or discovering when a motor vehicle record is obtained for a driver's annual review. The time is right to implement this program nationally to protect the public from safety and security risks.

Another important benefit of this program is that it would eliminate the need for annual motor vehicle record runs by the motor carrier. This would offset the cost of administering a national Pull Notice Program. J.B. Hunt's experience has shown that almost 80% of drivers' records do not change from year to year. Motor carriers have been paying \$7 to \$20 per record, only to find that the record is the same as the year before. This would not be needed if the carriers were notified when the record changed.

More detailed information on the Employer Pull Notice Program can be obtained from the California DMV at the following website:

<http://www.dmv.ca.gov/vehindustry/eptn/eptnformlist.htm>

Another concern is the delay expected for completion of the endorsement issuance process. Inquiries to several state licensing agencies has demonstrated that they are not prepared for the November implementation deadline. The comments in the docket from the State of Nevada DMV and State of Nebraska DMV support the inquiry findings that the procedural and infrastructure requirements are lacking and will likely create situations where a driver whose job requires the endorsement will face periods of unemployment or reassignments due to their endorsement expiration prior to the process for re-issuance completion. While States "may" extend the expiration date of the endorsement until the TSA issues their findings {1572.5(c)(3)(i)}, there is no requirement for them to do so and the provision for allowing the extension did not make it into the FMSCA regulatory changes {383.141(b)}. To the motor carrier this would create potential service failures to customers and loss of revenue. It is recommended that implementation for required fingerprint background checks only go forward when all procedures and systems involved in this process have been thoroughly tested and the time required for completion of the issuance process is known for all states. At the writing of these comments, there are 137 days remaining until the November 3<sup>rd</sup> deadline. Part 383.141(c) requires that drivers apply for renewal of their endorsement not later than 90 days before the date of expiration of the endorsement. This gives 47 days for the states to develop a system to identify drivers with upcoming expirations and mail notices, for the notices to be received by the drivers who may be on the road for extended periods, and for the driver to complete and submit the application. As a final note on this topic, It is also possible that states will be unable to change their rules without legislative action. In some states, legislative sessions are on a two-year cycle that would make meeting the deadline impossible.

In the earlier comments on this rule, several trade associations expressed concerns about conflicting and redundant state requirements as well as duplication under varying federal agencies and/or programs. A truck driver may potentially be subject to background checks when delivering to ports, carrying hazardous materials, carrying explosives, carrying goods for the Department of Defense, at border crossings under the Free and Secure Trade (FAST) program, and under numerous state and local criminal background check programs. There should be a singular program to ensure that drivers do not pose a security risk in any security sensitive area where they may be expected to operate. This program should perform periodic background checks and issue driver credentials that will suffice for clearance wherever required. Further, the federal background check for truck drivers must preempt all other state and local requirements.

To ensure uniformity and fairness to the drivers who are subject to these rules, the length of the hazardous materials endorsement should be specified. Allowing states to set any duration up to five years will undoubtedly cause some drivers to go through the trouble and expense of these background checks more frequently than others.

The processes for state-to-state transfer of licenses need to be more clearly defined. It is not clear whether or not a driver who moves from one state to another must undergo a new background check for the hazardous material endorsement issuance, or if the check done by the previous state of licensure will suffice for an endorsement expiring prior to 5 years from the previous background check. Will an extension of the endorsement be allowed if the background check is required upon transfer from one state to another and the check will not be back immediately? Currently the TSA rule only permits the state of issuance to extend the endorsement when renewing and this is not in the FMSCA rule. It appears

that this will create a conflict with the FMCSR requirement to transfer CDL's within 30 days of change of domicile if the driver can only get an extension from the issuing state.

When driver's renew their endorsement will they be required to submit new fingerprints or will archived prints be used for the background search?

J.B. Hunt recommends changing drug-testing convictions to include misdemeanors because the person is at greater risk for compromise.

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