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The NYS DMV requests that the Federal Motor Carrier Safety Administration (FMCSA) and TSA revise their position regarding preemption, and find that this rule preempts all state laws related to hazmat endorsements and criminal history checks. In order to insure an efficient, effective and workable criminal history check system, one system should be adopted that applies to all states. Varying standards and procedures among 51 jurisdictions will certainly result in inefficiencies and confusion in the process. This will only undermine the goal of weeding out hazardous material endorsees who may pose a threat to the nation's security.

In addition, these new regulations impose a significant burden on the trucking industry. If 51 jurisdictions adopt requirements, in addition to that required by this rule, such requirements will also result in inefficiencies and confusion among the industry. To insure fairness and effectiveness, it only makes sense to establish one set of standards that apply nationally to all CDL holders. Therefore, we request that FMCSA and TSA find that the final rule totally preempts all state regulations and statutes related to criminal history checks for holders of the hazmat endorsement.

As explained in the "background" section of the interim final rule, the U.S. Patriot Act was a response to the terrorist attacks of September 11, 2001. The TSA, an agency within the Department of Homeland Security, is "responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats." (p. 23853 of interim rule) The Congress recognized that the Federal government has the primary responsibility to protect its citizens against terrorist threats. Protecting citizens against the threat of internal and external terrorism has always been and must remain the duty and constitutional prerogative of the federal government. In this light, it follows that FMCSA's and TSA's regulations regarding criminal history checks for hazmat endorsees should "totally occupy the field" and preempt all state laws related to this matter.



The New York State Department of Motor Vehicles (NYS DMV) requests that the November 3, 2003 compliance date be changed to a later date that is more feasible for states to meet.

The interim final rule requires that no later than November 3, 2003, no state may issue, renew or transfer a hazardous materials (hazmat) endorsement unless the state receives a "Notification of No Security Threat" from TSA. In addition, the state must notify current holders of a hazmat endorsement at least 180 days prior to the expiration date of the endorsement that they are subject to the security threat assessment.

Based on the May 5, 2003 effective date of the interim final rule, states are already out of compliance because the 180-day notice requirement has passed for endorsements expiring on November 3, 2003. Also, the provisions of the actual final rule have not yet been determined. Therefore, we feel it is reasonable to ask that the compliance date be changed to a later date.



In New York State, and to our understanding in several other states, farmers are not required to have a commercial driver license if they operate their vehicles within a 150 mile radius of the farm. However, if they transport hazardous materials that are placardable, they must have a farm hazmat endorsement attached to their basic operator's Class D license. To get that endorsement, the applicant must pass the regular CDL hazmat written test and must pass a driving test in a representative vehicle.

Since these drivers are not required to possess a CDL, are they exempt from the security threat assessment requirements?



1. Regarding TSA's initial security threat assessment, how will TSA notify the individual and the state of the result? What is the expected turn-around time for the results?
2. Regarding TSA's ongoing security threat assessments after the applicant's fingerprints have been submitted and reviewed, how will TSA notify the individual and the state of the result? What is the expected turn-around time for the results?
3. How will TSA notify the state if the driver successfully appeals the disqualification, or if the driver is granted a waiver? What is the expected turn-around time for the results?
4. If a driver transfers to another state while the assessment is in progress, will TSA be able to notify the new state of the assessment results and update CDLIS?

5. The security threat assessment is valid for 5 years. Is the calculation of that period based on the date TSA provides notification of the assessment results? If there is a subsequent reversal of that result, will the date of that reversal begin a new 5-year period of validity?

Recommendation: All notifications between TSA and the states should be done electronically. TSA should post the assessment results, appeals decision, waiver decision, and date on the CDLIS pointer record. CDLIS should initiate the notification to the State of Record electronically. This process would ensure the most timely and consistent posting of this information on CDLIS.

6. When requesting a driver's status or history, will the hazmat status and expiration date (or the date the hazmat status was determined) be provided from the State of Record or from CDLIS?



The interim final rule requires each hazmat endorsement applicant to complete an extensive application form.

Recommendation: One standard application form should be created and used by all jurisdictions. There should not be any requirement for jurisdictions to data-enter the information on the form.

The interim final rule requires that the citizenship status and alien registration number (if the individual is a resident alien) be collected on the application, and that state DMVs enter this information on CDLIS.

Recommendation: After TSA concludes its security threat assessment, TSA should post all of the required, verified information on CDLIS: the applicant's citizenship status, the alien registration number (if applicable), the assessment results, and the date. If state DMVs post the information, there is no way of ensuring its validity because not all DMVs verify that information. Information should not be posted on CDLIS until it has been verified.

According to the interim final rule, "The State" must forward the completed form to TSA.

1. By what method should the form be sent to TSA?

Recommendation: States should be allowed to choose the method.

2. "The State" is vague. Who must send the application form to TSA?
3. Must the applicant's application form, fingerprints, and fees be sent to TSA together, as one "package"?

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1. Who will be required, or allowed, to collect the fingerprints and the fees, and forward them to the designated federal agency?

Recommendation: State DMVs should not be required to do this. Instead, states should be allowed to have options, such as using enforcement agencies, or using a TSA third party vendor. NYS DMV currently has fiscal constraints, staff shortages, and space limitations in its field offices. Having the option of using a source other than DMV offices to take the fingerprints and collect the fees will allow NYS DMV to avoid what would otherwise be a significant operational and fiscal hardship.

2. If electronic fingerprinting is not available in a state, is there a particular type of fingerprint card that should be used?

Recommendation: TSA should select, and issue, one standard fingerprint card that all states must use.

3. Can an applicant who does not currently have a CDL, but who intends to get one, initiate the hazmat endorsement application process? Specifically, can the applicant's fingerprints be submitted to TSA before s/he gets a CDL?
4. Does the applicant have to pass the hazmat written test before fingerprints can be submitted to TSA?
5. When issuing a reciprocal license, does the applicant have to be fingerprinted and undergo a security threat assessment even if s/he had successfully passed the security threat assessment in the previous State of Record within the last 5 years? Or, will TSA waive the assessment after reviewing the existing information on TSA's file?

Recommendation: TSA should not require the new State of Record to administer another security threat assessment if the applicant's previous assessment is still valid and resulted in a determination that the applicant is not a security threat.

6. Will there be a provision for the FBI to retain the fingerprints for more than one 5-year cycle?
7. What happens if the fingerprints that are submitted to TSA are rejected because they are unreadable? What process will occur?
8. What will the fingerprinting procedure be for individuals who choose to dispute the initial security threat assessment?

Thank you for this opportunity to express our concerns, questions and recommendations relative to TSA's implementation of this important national security initiative. Any questions you might have relative to these comments may be directed to Kevin O'Brien, Director, Motor Carrier and Driver Safety Services here at NYSDMV. Kevin can be reached by email at KOBRI@dmv.state.ny.us or by telephone at (518) 474-0855.