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U.S. Department of Transportation
Dockets Management Facility
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

RE: Docket Nos. FMCSA-2001-11117 ; TSA-2003-14610 (Amendment No. 1572-1); RSPA-03-14982 (HM232C)

To Whom It May Concern:

Please accept the following comments on behalf of the Texas Department of Public Safety (TXDPS), Driver License Division (DLD), as it pertains to the above referenced Docket Nos. as published respectively by the Federal Motor Carrier Safety Administration (FMCSA), Transportation Security Administration (TSA), and Research and Special Programs Administration (RSPA) on May 5, 2003. As the DLD is the administrator of the state's Commercial Driver License Program (CDL), comments offered here, except where noted, are limited to that program and not the Department's oversight of the Traffic Law Enforcement or Motor Carrier programs. Some responses also incorporate comments reflective of the Agency's Crime Records Service, the state's administrator and pass-through for criminal records, and are clearly delineated as such within the text.

The May 5, 2003 Interim Final Rules (IFRs) solicit comments on the regulations governing the implementation of Section 1012 of the U.S.A. Patriot Act. Specifically, the following responses are offered to the published requirements associated with this Agency's issuance of commercial driver licenses with hazardous materials (HM) endorsements.

It is also noted that in cases where the FMCSA, TSA, and RSPA intend for the electronic exchange of information (e.g. CDLIS), many jurisdictions will be unable to complete automated systems changes in advance of the IFRs effective dates. To facilitate jurisdictional compliance, non-automated interim plans should be defined.

FMCSA-2001-11117(Pages 23844-23850)

1. Is the TXDPS obligated to provide 180 days notice to any HM holders prior to November 3, 2003? The IFR states that the licensee must be notified 180 days prior to expiration of the endorsement, however, TSA stated that this requirement does not go into effect until November 3, 2003. Does that mean that anyone coming in on November

3, 2003 through May 2, 2003 to renew is not subject to the background check requirement because they were not given the 180-day notice? (see p. 23845)

2. The IFR states the endorsement is only valid for 5 years. What constitutes the 5 year period? Is it 5 years from the date of application for the endorsement; 5 years from the date TSA approves the applicant for the endorsement; or, 5 years from the date the state issues the CDL with the HM endorsement post-notification of no security threat? The TXDPS cannot provide appropriate information to affected individuals or develop contingency plans until this issue is resolved. Additionally, as Section 383.141(d) requires States to adopt, at a minimum, a 5 year renewal cycle for a HM endorsement (see p. 23845), the TXDPS strongly suggests the language be changed to read 5 years or *for the validity of the license, if that period is less than 5 years.* Example: My CDL expires in 2005 and I apply for and am approved for a HM endorsement in December of 2003. According to the rule my endorsement is good until 2008. When I come in to renew my CDL in 2005, do I have to submit to the security threat assessment check again? If the validity period of the endorsement is 5 years regardless of when the CDL expires, the expiration cycles will vary. Both the licensing jurisdiction and record holder will incur greater expense in additional transactions and processing in order to retain a valid CDL and a valid HM endorsement. (see p. 23845 and 23850, relating to Section 383.141)

TSA-2003-14610 (Pages 23852-23873)

3. How will TSA notify the TXDPS of the individual's status following a name-based check? Is the TXDPS required to take action on an initial notification or only on a final determination? (see p. 23857 and 23870, relating to Section 1572.5) CDLIS electronic notification was referenced during the TXDPS' participation in AAMVA's Region II conference call on June 10, 2003. Would CDLIS notifications occur on a daily, weekly, or monthly basis? How will the notification be formatted and what data will be included?
4. What is the TXDPS' obligation if an individual self-reports a disqualifying conviction, etc? Are there any penalties to the TXDPS if an individual fails to report? (see p. 23859 and 23869, relating to Section 1572.5) What is the process to remove the endorsement when the person does notify the State?
5. The IFRs use the terms cancel, revoke, and deny inconsistently. Each of the terms has specific, but different, meanings and implications in driver license administration. The IFRs should consistently use terms which honor the intent of the Act and the routine practices of licensing jurisdictions.
6. Where is the grant of authority to remove (revoke/cancel/deny) an endorsement that has already been issued? (see p. 23857) Section 383.71 and 383.73 amendments relate to TSA screening only when renewing, upgrading, transferring, or newly applying for HM endorsement. (see p. 23860)
7. How will TSA notify the TXDPS if they determine that an individual does not meet the security threat assessment? Will TSA utilize CDLIS, other electronic means, or written correspondence? (see p. 23859)
8. How much is the fee for fingerprint processing that TXDPS, outside of state imposed or allowable fees, must collect for the federal background check? What is the fee breakout for the federal portion?

9. The IFR indicates that the fee for a criminal history records check will be collected when the prints are captured and then forwarded to the FBI. The FBI will then send the fingerprint submission results to TSA. However, TSA stated during the AAMVA facilitated conference call that the fingerprints would be submitted directly to that agency. How will this conflict be resolved?
10. Once a person submits fingerprints for a criminal history records check, is the applicant required to be fingerprinted again or can the first set of prints be used to conduct subsequent background checks? (see p. 23866)
11. The proposed language within Section 1572.5(3)(iii) pertaining to the required statement on the application seems to indicate that the provision of the social security number (SSN) is voluntary. The TXDPS considers this requirement to be mandatory and requests clarification on the proposed notification statement. If it is mandatory to furnish a SSN in order to obtain a CDL, why is it voluntary to provide it for the background check? (see p. 23870)
12. In what format will the application be forwarded to TSA? Section 1572.5(e)(2) lacks sufficient detail for the TXDPS to define related policy and procedure. Please note that if the IFR requires a hard copy submission of the application, potentially over 300 field offices would be affected. Related postage and mailing envelopes would be cost prohibitive to the DLD. The impact would be similar if the field offices forwarded the information to the TXDPS' Headquarters location for subsequent mailing to TSA. (see p. 23871)
13. The IFR specifies what information must be contained in the Hazardous Material Endorsement Application. The applicant must certify that "I have not been adjudicated as a mental defective or committed to a mental institution involuntarily" and that "I have been informed that Federal regulations under 49 CFR 1572.5(b) impose a continuing obligation to disclose to the State within 24 hours if he or she is convicted, or found not guilty by reason of insanity, of any disqualifying crime, or adjudicated as a mental defective or committed to a mental institution, while he or she has a hazardous material endorsement for a CDL." Should the wording be the same concerning involuntary commitment to a mental institution? Also, what is the definition of "mental defective?"
14. As it concerns modifications to CDLIS and related data elements, the only driver status' currently defined are "eligible", "not eligible", "licensed", "reported deceased." Will modifications be made to incorporate the HM endorsement status, as TSA requires revocation of endorsement only? Will applicable ACD codes be established?
15. The following comments relate to the TSA's guidelines/requirements on appeal provisions (see pp. 23862 and 23863):
    - By what method will TSA provide the TXDPS application status during the appeal process?
    - If a "Final Notification" has been forwarded to the state and then reversed through the appeal process, what type of notification will TSA provide the TXDPS?
    - If an appeal deadline has been extended by TSA, what is the status of the endorsement during this period?
    - If an appeal is denied, will TSA notify the TXDPS?
16. The following comments relate to the TSA's guidelines/requirements on Waiver provisions. (see p. 23864)

- Will individuals receive information regarding the waiver application process when TSA issues the initial and/or final notification to them?
- If revocation of the endorsement has occurred and the individual wants to pursue a waiver 3 years later, will TSA provide a process for pursuing the waiver separate from application for endorsement through state licensing, since state records would indicate not eligible for endorsement?
- Will waivers require renewal every 5 years as is required of the background checks? There is no information provided in the rule concerning the effective period of a waiver and no stipulations for revocation of a waiver. What happens if an individual with a waiver has a disqualifying event and does not report to the state, will TSA track these waivers?

17. If a person is found to not meet the security threat assessment standards after 120 days following publication of the rule on May 5, 2003, they must surrender the endorsement. Who is going to notify the licensee and how? What is the penalty to an individual for not surrendering the HM endorsement? How is the enforcement officer going to know that this person has not been approved for the endorsement if they stop him/her on the road before the person's record has been flagged? (see pp. 23857, 23858 and 23859)
18. Beginning September 2, 2003, the Department may start receiving surrendered licenses from individual's complying with Section 1572.5(b)(1)(ii) and (iii) since the initial TSA checks will be based on CDLIS information, will states be required to submit TSA notification of the "voluntary surrender" of these endorsements (if so, in what manner) or will TSA conduct follow-up checks to CDLIS prior to issuance of their notifications? (see p. 23869)
19. When reviewing individual criminal history records, TSA will alert the jurisdiction and FMCSA if records indicate disqualifying criminal offense listed 48 CFR 383.51 and will not issue a notification of no security threat until FMCSA or the state informs TSA that the individual is not disqualified under that section. How/when will this occur? Will TSA contact both FMCSA and the state? Will TSA provide details (specific offense, date, state/city/county)? Will the background check remain in a pending status indefinitely? Will TSA issue an initial notification to the individual concerning this matter? (see p. 23870)
20. When TSA issues notice of initial determination and/or notice of final determination or notice of no security threat/granting of waiver, will any of the notices issued to individuals indicate an expiration date?
21. TSA is provided the authority to grant extensions to individuals and itself. What are the time parameters for these extensions and what is the status of the endorsement during the extension period? (see p. 23873, relating to Section 1572.143)
22. The rule requires the State to notify the holder of a HM endorsement 180 days prior to expiration. It also states that the licensee should begin the renewal process 90 days prior to expiration. What happens if the licensee does not initiate the process 90 days prior to expiration, other than they will not be issued the hazardous materials endorsement? (see p. 23858)
23. This Act has no effect on military personnel who are exempt from having a CDL while driving a CMV while on duty. Is this individual subject to the security threat assessment if they hold a CDL with the HM endorsement and use it for purposes other than while on duty in the military? If so, we would have to ask each applicant

how they use their endorsement, which will become confusing to our personnel. (see p. 23859)

24. The IFR provides that between 6 and 12 months after the May 5, 2003 effective date of the rule, if TSA is conducting a security threat assessment on an individual applying to renew a hazardous materials endorsement, the State may extend the expiration of the endorsement. Is this based on the initial review of records that are being done now without the submission of fingerprints? Should the TXDPS take the position that unless notified by TSA, HM endorsements during this timeframe can be issued outside of the IFR requirements? If true, this seemingly contradicts the requirement that "after 180 days following the effective date of the rule, no State may issue, renew, or transfer a hazardous materials endorsement unless TSA has notified the State that the individual holding or applying for the endorsement does not pose a security threat." (see pp. 23858 and 23860)

25. A State may not issue a hazardous material endorsement upon transfer until TSA has notified the State that the person is not a security threat. Is there any grace period for persons who have recently undergone the assessment prior to the transfer? (see p. 23859)

26. The IFR requires the States to include certain information on the application for renewal or original application for the HM endorsement, or upon transfer from one State to another. Can this information be included on just one form (i.e. Hazardous Material Endorsement Certification) that is submitted with other required form(s) or does it have to be on each CDL form used? Use of a single form would minimize fiscal impact to the Agency. (see p. 23860)

27. Regarding the information listed as to what has to be included on the application, the IFR states "social security number or alien registration number, if the applicant is an alien." Section 383.153 of the Federal Motor Carrier Safety Act requires a person to provide their SSN unless they are obtaining a non-resident CDL. Suggest the replacement of "or" with "and" to ensure an applicant cannot circumvent disclosure of their SSN. It is noted that per DLD policy, the TXDPS does not issue non-resident CDLs. (see p. 23860)

28. The rule states that the fee for submitting fingerprints to the FBI for a criminal history check will be collected when the prints are captured. Is the requirement intended to be restrictive or permissive to accommodate jurisdictional differences? (see p. 23857)

29. The timeline used to determine if someone does not meet the security threat assessment is 7 years for convictions or 5 years if incarcerated. The TXDPS suggests for uniformity that TSA consider applying the same disqualifying period of 10 years as currently defined in Section 383.51(a)(5) of the Federal Motor Carrier Safety Act. (see p. 23861)

30. Will the States be provided contact information for the persons at TSA conducting the analysis of the criminal background check and issuing Initial Notification of Threat Assessments in order to assist individuals who wish to appeal the findings? (see p. 23862)

31. The IFR applies the background check requirement to persons applying for a Learners License. Currently, the TXDPS issues a restricted non-CDL Class A or B license without endorsements to persons wanting to learn to drive. Must the TXDPS modify its policy and procedures for this group of applicants? As well, policy does

not require the DLD to ask those applying for an instruction permit for truck driving schools if they are going to be training with hazardous materials.

32. If TSA intends for the TXDPS to collect fingerprints in the DMV office, impact to field offices throughout the state would be significant. This would require additional equipment, space, and training on how to collect a quality set of fingerprints. Would there be limitations on which employees could collect the prints? In Field Offices where traffic is lighter, the additional duties could likely be absorbed, however, this would still cause some delay in servicing other applicants in a timely fashion. As well, it should be noted that there are over 300 full or part-time field offices located throughout the state. An alternative would be to designate a few offices in key locations around the state, however, this would put an undue burden on those offices and would be an inconvenience to the applicants. The TXDPS strongly suggests that applicants be routed to a local law enforcement agency or a third-party collection entity.

33. Can a person begin the background check before they actually renew the endorsement without coming into a field office? If so, the TXDPS would be unable to determine if the applicant had paid the fee and completed the Hazardous Material Endorsement Application. The TXDPS suggests that the applicant should not be allowed to initiate the process prior to making application for the CDL with the HM endorsement in their home licensing jurisdiction. Further, upon the 180-day notification from the state of their eligibility to renew and as an individual applies for their renewal, should the TXDPS issue the HM endorsement? Alternatively, should the TXDPS issue the CDL without the endorsement, but collect the required fee for the background check and issue a fingerprint card?

34. Comments and questions bulleted here are provided by the TXDPS' Crime Records Service. Generally, the Crime Records Service will be unable to participate in the background check portion of the TSA rule due to the following outstanding issues/questions regarding the fingerprint procedure.
    - Is there an expectation that the states will process the cards through the state system prior to submission to the FBI?
    - What is the path for submissions to the FBI - CJIS WAN or postal delivery?
    - If electronic submissions are acceptable, have Type 2 definitions been established, e.g. NFUF versus FAUF, dual 2.073 CRIs (TSA and the state of submission)?
    - If the state retains the licensee in the state AFIS, can TSA accept Rap back information? Does TSA have the expectation that the states will do any suitability determinations?
    - For "application" information, would an extract of the NIST Fingerprint Exchange Standard Type 2 record suffice?
    - What is the expected turnaround time for suitability determinations? What about indeterminate findings based upon incomplete criminal history records? What is the process for review and correction?
    - Is there any problem with DPS contracting with vendors to provide fingerprinting services? Are there any standard procedures for determining identification at the time of fingerprinting (i.e. government issued photo ids)?

RSPA-03-14982 (HM232C) (Pages 28232-23842)

The TXDPS offers no comments to the RSPA IFR.

The DLD also offers that IT impact cannot be accurately assessed at this time. Additionally, the TXDPS disagrees with the estimated $15,000 fiscal impact to IT items as included in TSA's IFR (see p. 23867). Specifically, the TXDPS suggests that all required CDLIS modifications have not been defined; therefore, the DLD believes the estimate is premature. Further, the TXDPS contends the estimate does not include impact to internal systems beyond CDLIS that must be modified. Again, however, a true estimate is unavailable at this time.

AAMVA recently advised member jurisdictions that TSA has requested specific information from each state in conjunction with the IFR. As such, TXDPS responds to that inquiry as follows:

1. How do you handle current HAZMAT endorsement applications - do you keep the application or scan it for electronic storage?

> Hard copy applications are forwarded to the headquarters location from field offices for microfilming.

2. States are obligated to provide the new application data to TSA. How many states now have the capability to store that data and to get it to them electronically?

> As programming is completed, the TXDPS could collect application data and forward it to TSA electronically.

3. Do you need to pass legislation or can you implement this rule through administrative procedures? If so, what is the identifying issue?

> The TXDPS believes that it can address the IFR requirements by administrative rule, with the exception of modifying Texas' statutorily defined 6-year license validity period to the required 5 years.

4. Given the choice for fingerprinting would you: (a) accept a grant from FMCSA/TSA to collect the fingerprints in the DMV offices; (b) have TSA or TSA third party vendor located in the DMV offices collect the fingerprints and share the revenue stream or (c) have local law enforcement take fingerprints.

> While the TXDPS can only provide a preliminary response, the agency would consider implementation of livescan collection of the fingerprints in its field offices if grant monies from FMCSA/TSA were available.

5. When does your notice of renewal go out to CDL holders?

> All renewal notices are mailed 8 weeks prior to license expiration.

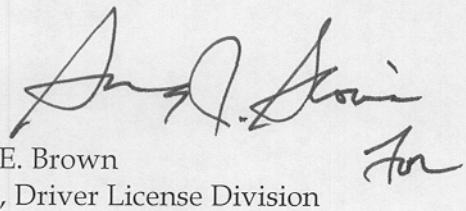
In assessing the IFRs and via participation in the AAMVA facilitated conference call, it is clear that many key requirements have yet to be clearly defined. Until the TSA, FMCSA, and RSPA can collectively adopt requirements, procedures, and/or interpretations needed to implement Section 1012 of the U.S.A. Patriot Act, the effective date of November 3, 2003 should be postponed. The TXDPS suggests the repeal of the current IFRs until all procedural requirements can be clearly defined or interpretations published.

Failure to do so would be unnecessarily burdensome and potentially punitive to the state licensing jurisdictions.

Should you have additional questions based on statements offered here, please contact Maggie Gillean at 512/424-5657 or via email at maggie.gillean@txdps.state.tx.us.

Respectfully submitted for your consideration.

Sincerely,



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