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DOCKETS

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**REF: Docket Number TSA-2003-14610; Amendment No. 1572-1
Docket Number FMCSA-2001-11117**

INTRODUCTION

This letter provides comments in response to the Final Rule, as published in the May 5, 2003 Federal Register (page 23852), by the Department of Homeland Security, Transportation Security Administration pertaining to Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License, and the Interim Final Rule, published by the Department of Transportation's Federal Motor Carrier Administration, on the same date (page 23844) pertaining to Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement.

GENERAL COMMENT

The TSA and FMCSA rules establish an aggressive mandatory implementation schedule that will be difficult, if not impossible, to attain by Delaware. Following are major obstacles that must be overcome:

The Delaware General Assembly may consider enabling legislation this month. If they do not pass this bill within two weeks, the legislature will adjourn on June 30th, and not convene again until January 2004. The Division could consider drafting administrative procedures so that we comply with the new TSA rules if this occurs. However, this process would be more difficult and time consuming than the legislative approach. Furthermore, administrative procedures can be circumvented by future legislative or court actions. The proper course of action is to pass enabling legislation, which may not be possible until 2004.

All licensing functions are computer generated by a single application. A driver either has a HAZMAT endorsement or they do not. Currently the application does not allow this nor any other endorsement to be revoked and there are currently no expiration dates associated with the endorsements on licenses. Furthermore the database does not include the new information which would be required, like the alien registration number, citizenship data, etc. Also, CDLIS must be changed to enable communication between TSA and State agencies. For the above reasons we must undergo major systems modifications in order to implement TSA's interim final rule by November 3, 2003. These software changes take time and money - money that is not included in next year's budget. Nor should we even begin the process of revamping our computer software until TSA publishes the final rule, which may not be released until later this fall.

Once the legislation, software and procedures are in place, drivers must be informed that new procedures are in effect and that DMV is ready to take applications. To send out notices before the entire system is revamped, and methods and procedures are finalized (by Jurisdictions, TSA and FMCSA) will only make a bad situation worse.

DE Recommendation 1: It took over 18 months from the time the USA PATRIOT Act was passed until the TSA's Final Rule and FMCSA's Interim Final Rule was published. States also need similar time to implement not only rules and procedures but also to purchase equipment and reprogram systems. For these reasons, Delaware requests that the implementation date of TSA's final rule be slipped for at least one year to give us time to prepare for this large task.

OTHER COMMENTS

Expiration Period: The interim final rule says States must adopt, at minimum, a 5-year renewal cycle for the hazardous materials endorsement. Delaware issues a 5-year driver license that expires on the driver's birthday. A driver may renew this license, and therefore all endorsements on the license, up to 6 months before the expiration date. In order to reduce office traffic, reduce resource requirements, and provide better customer service, Delaware requests the authority to have the hazardous materials endorsement expiration date coincide with the CDL license expiration date. This could conceivably result in the endorsement being valid for a maximum of 5 years and six months in Delaware. Otherwise, the driver will have to come into our offices three times to obtain or renew a license and then the endorsement, when currently one can accomplish the same task in one visit.

DE Recommendation 2: Allow those states whose license renewal date is every 5 years to use the same expiration date for the CDL license as well as the hazardous materials endorsement.

Electronic Transmission and Status Reporting: Delaware can provide all the personal data collected on the hazardous materials application and electronically transmit it to TSA via FTP or through the AAMVAnet connection. The Division can also transmit the applicant's image in a JPEG format. The State Police are able to fingerprint all hazardous materials applicants. They use the Print-Track system, which captures prints in the IFIS standard and stores them in the FBI format. We are also confident that we can establish procedures between ourselves and the State Police to insure positive person identification. We have been informed that this device can transmit the images electronically via FTP.

DE Recommendation 3: We recommend that the application and fingerprinting communication process between the State licensing agencies and TSA be done electronically. When the application and fingerprint information is received by either agency, TSA should report this back to the agency that sent it so that the agency and our customers will always know the status of their application. Using paper products adds to processing time, errors, and is prone to losing documents and the documents will not be able to be tracked throughout the process. The only information missing would be the individual's signature, but this would be on file in the licensing State.

Fingerprinting Options: Delaware currently has 6000 CDL drivers with hazardous materials endorsements, which means we will fingerprint, on the average, only 4 drivers a day during a 5-year period. The Delaware State Police have a fingerprinting facility in Dover and any driver can reach this facility within one hour from anywhere in the State. The most cost effective and efficient way to handle our fingerprinting work is to have the CDL driver be fingerprinted by the State Police. We are also confident that we are able to establish procedures between ourselves and the State Police to insure positive person identification. If FMCSA or TSA demands that the fingerprinting be done at a DMV office, then grant money must be provided given our State's projected budget shortfalls.

DE Recommendation 4: TSA procedures should include the provision for the State Police to fingerprint all hazardous materials endorsement applicants until such time as federal grants are available to pay for the fingerprinting equipment and personnel training.

Maintaining Assessment Status Thru Transfers: As we understand the TSA rule, when a CDL license holder transfers their license to our State, their hazardous materials endorsement must be withdrawn pending another TSA security assessment, which may take 30 to 90 days. If TSA has already given them a notification of not being a security threat assessment within the previous 5 years, then it seems unreasonable to withhold their employment opportunities just because they moved into another State. Additionally this will create additional workload on the systems established and additional costs to the driver and their employers.

DE Recommendation 5: Those drivers who are transferring to another state be allowed to retain their hazardous materials endorsement as long as the previously approved 5-year endorsement has not expired. Then they will not lose their employment opportunities. The endorsement expiration date could remain the same as determined in the previous state and/or a new expiration date be established based on a new threat assessment to be made at the time of transfer.

Fifteen (15) Day Waiver Period: Delaware recognizes the seriousness of the crimes for which an individual would be sent an Initial Notification of Threat Assessment and understands the urgency to remove the HAZMAT endorsement either immediately or as soon as possible depending on the degree of the threat. At the same time, TSA has recognized the need for the Appeals and Waiver processes.

Delaware and many other states have over-the-road drivers who may be gone from their residences for long periods of time. Therefore, they may not realize that they have been sent an Initial Notification of Threat Assessment. If they are away from home for an extended period, they could easily miss the 15-day window to file their appeal or submit their request for waiver. If an extension of time is needed to file an appeal or request a waiver, 49CFR Sub-Part B Part 1572.141(g) and 143(d) require that the request be made prior to the end of the 15 day period. Drivers who want to appeal or request a waiver will lack sufficient time to gather supporting documents. The 15-day period is not sufficient for drivers who are commonly away from home to appeal or request a waiver.

DE Recommendation 6: To accommodate for over-the-road drivers' long absences from home, we suggest that provisions be added to the rules which would permit an individual who failed to respond within 15 days to subsequently submit an appeal or request a waiver if they can demonstrate that their failure to respond within 15 days was caused by mitigating circumstances.

TSA Promulgate Standard Form: TSA or FMCSA should develop a national hazardous materials endorsement application in an electronic format, and send it to all jurisdictions as soon as possible. If TSA/FMCSA does NOT promulgate such guidance TSA will be faced with 51 or more differently formatted submissions from the jurisdictions. Not only will these be difficult to translate, but changes to submissions would have to be coordinated individually with each jurisdiction. Whether to send last name and then first name, or first name and then last name, is one simple example. Establishing and promulgating standard formats at the start will enable the jurisdictions to develop forms/systems, and also enable TSA/FMCSA to globally implement changes to the standard format as procedures mature.

DE Recommendation 7: TSA or FMCSA develop a national hazardous materials endorsement application format and send it to all jurisdictions as soon as possible.

Interim/Transitional Endorsement Expiration Periods: Bearing in mind that currently CDL endorsements do not have expiration dates, states will need guidance on how to handle those drivers currently possessing Hazardous Material Endorsements. As our systems develop expiration dates for endorsement, may we just assume 5 years from November 2003 for these drivers?

DE Recommendation 8: TSA inform the states on how to handle drivers currently possessing hazardous material endorsements.

We once again thank the TSA and FMCSA for providing us the opportunity to comment on these rules intended to increase national security within our Nation.

Sincerely,



Arthur G. Ericson
Chief of Driver Services

AGEVE\ccm

c: AAMVA's Director of Government Affairs
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7/24/03

Comments

TSA document docket no. TSA-2003-14610; Amendment no. 1572-1

1. What will the procedure be for sending Hazmat endorsement applications to TSA?
2. Since New Mexico is a state of due process and has not notified any of its Hazmat drivers about the requirement to pass a security threat assessment, will those that are now being checked without their knowledge have any legal recourse if they are denied their endorsement?

page 23860 para 1572.59d)(3).

1. If TSA finds a conviction for DWI, leaving the scene of an accident, or felony involving the use of a CMV on an applicants record, will that disqualify him from passing the assessment?
2. If so, shouldn't this information be placed onto the required application so that the applicant will know?

Page 23860 para 1572.5(e)

1. Is a new application required from a driver upon each renewal and each transfer?
2. If a driver already holds a Hazmat endorsement and gets notified by TSA that there is a problem, how will the carrier be notified in case the driver fails to tell them and continues to drive?
3. Will these drivers be placed onto some sort of list?
4. If a driver has passed a security assessment in one state and he transfers to another state where his job requires a Hazmat endorsement, will he be able to keep the current endorsement while the new state waits for an answer from TSA?

Page 23860

We are to notify CDLIS of driver's security assessment status. How soon will CDLIS have these requirements ready for testing?
Or will the information be part of the state driving record and be sent along with the currently required information. I am told by our programmer for CDLIS projects that the information envelope we currently use does not have any spare areas for new information.
Will an ACD code be assigned to indicate assessment status?

Questions in response to FMCSA document docket no. FMCSA -2001-11117

Page 23844—"STATES, HOWEVER, WILL NOT BE REQUIRED TO COMPLY WITH THE REQUIREMENTS OF THE RULE UNTIL NOVEMBER 3,2003"-CONFLICT WITH WORDING IN TSA DOCUMENT PAGE 23857"As of 120 days following publication of the rule, any CDL holder who does not meet the security threat assessment standards prescribed in this rule is not authorized to hold or obtain a hazardous materials endorsement."

Questions:

1. Which is correct? It appears that one says states do not have to comply until November but drivers must comply by 120 days

Page 23845—a learner's permit does not authorize the holder of the permit to transport HAZMAT. Driver must have taken written, skills and passed security assessment.

Questions

1. In NM we have the CDL applicant take and pass all written exams before the permit is issued.

Should we remove the HAZMAT written exam from the permit and require it before licensing instead?

- 2.What if the driver fails the written exam (we require at this time applicant wait a week) and his security assessment comes back ok to issue. When he retakes the exam will he need to reapply?

- 3.What if driver becomes suspended, revoked or disqualified during time TSA is conducting security assessment and is found eligible, does the assessment stay good for 5 years from time of eligibility? So that when driver becomes eligible to drive the assessment is still valid.

Definitions page 23849

Questions

Since compliance is November 2003, New Mexico will be unable to get any statute work done until our next 60-day session which is 2005. Will we become non compliant in November 2003?

Page 23849

Driver application procedures

We are required to be presented with proof of citizenship at the time a HAZMAT endorsement is applied for

Question

1. Are we required to forward copies of these documents on to TSA? Are we to keep them in the application package?
2. Proof of us citizenship--in our state we have many Native Americans who do not have birth certificates. Especially those of the Navajo tribe. They have been issued "certificate of Indian blood" documents, by their tribal authorities. We have accepted those as a "birth certificate". The only listed documents to prove U.S. citizenship are the U.S. birth certificate and the U.S. passport. Will we be able to continue to accept these for drivers applying for HAZMAT and for those that already have the HAZMAT endorsement?

3. Will we need to amend our state laws to include proof of citizenship in the application process for a HAZMAT endorsement?