

VIA ELECTRONIC FILING

July 7, 2003

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

Re: Docket Number: TSA-2003-14610; Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Driver's License

Docket Number FMCSA-2001-11117; Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement

Dear Docket Clerk:

The Truckload Carriers Association (TCA) is pleased to submit these comments in response to the Transportation Security Administration's (TSA's), and the corresponding Federal Motor Carrier Safety Administration's (FMCSAs) interim final rules in the above-referenced dockets.

TCA is the national trade association representing the truckload segment of the trucking industry. Truckload carriers account for approximately 97 percent of the for-hire freight tonnage annually transported by motor carriers, and TCA member companies employ a significant number of hazardous material (HM)-endorsed CDL holders. Consequently, matters relating to and affecting the licensure and proper criminal background checks of the industry's HM drivers are of vital interest to our members. We therefore appreciate the opportunity to submit our thoughts and concerns on this extremely critical issue.

On July 1, 2003, National Tank Truck Carriers (NTTC) submitted its comments to Docket No. 2003-14610, urging TSA to "indefinitely postpone" the November 3, 2003 effective date designated for implementation of the interim final rule; those comments are indexed in the docket as "TSA-2003-14610-26." NTTC provided a number of compelling reasons why the implementation date of this interim final rule should be delayed, including: (1) the complete lack of preparation and capability of the individual state licensing agencies and American Association of Motor Vehicle Administrators (AAMVA) responsible for managing the Commercial Driver's License (CDL) program, including the background check that would be required by the interim final rule; (2) the fact that TSA has yet to advise the public about the acceptable "form and manner" of the fingerprinting process; and (3) that there has been no chain of custody procedures published regarding how fingerprinting records are to be sent from the entity doing the fingerprinting to the state licensing agency.

An important amplification to the se concerns is provided in the comments submitted to this docket by AAMVA (TSA-2003-14610-13 and FMCSA-2001-11117-26) which stated in relevant part:

The AAMVA community has very serious concerns about the implementation time frame of the interim final rule, particularly in light of the fact that neither the technical specifications states need to make necessary modifications to the Commercial Driver License Information System (CDLIS) have not been detailed nor have many of the other critical aspects of the credentialing and background check procedures.

. . . . Furthermore, if it comes to pass that states are not in compliance by November 3, 2003, administrators may advise their state officials of the liability associated with issuing HAZMAT endorsements to potential terrorists and recommend that their state cease such issuance until they are able to come into full compliance with the interim final rule. This could potentially have an adverse effect on the transport of hazardous materials throughout the country.

. . . . Therefore, we [AAMVA] ask that you employ a technical amendment to the interim rule to move the compliance date from November 3rd to allow TSA and FMCSA adequate time to develop well-thought-out system specifications and credentialing procedures.

NTTC's concerns and request to stay the implementation date have since been voiced by the American Trucking Associations (ATA) in their comments to this docket (TSA-2003-14610-60). ATA comments further advised "that there will be tremendous disruption in the issuance and renewal of hazardous materials endorsements, which will adversely impact the trucking industry by exacerbating the already existing problem of attracting and retaining qualified drivers to transport hazardous materials." ATA Comments at 4-5.

TCA agrees completely with the concerns expressed by NTTC and ATA regarding the wholesale chaos the will result unless the implementation date of the interim final rule is indefinitely postponed. TCA therefore joins both organizations in urging TSA to postpone implementation of the interim final rule pending the satisfactory resolution of the matters raised by these groups, as well as by the AAMVA.

Additionally, TCA supports the recommendation of the Distribution and LTL Carriers Association (DLTLCA) in their comments to this docket (TSA-2003-14610-9 and FMCSA-2001-11117-18), requesting that the interim final rule be amended to authorize the states to extend the expiration date of an individual's existing endorsement beyond April 29, 2004, the date currently prescribed under the proposed interim final rule. For the same reason cited above, the states will clearly not be able to meet this deadline.

Lastly, TCA also agrees with the concern expressed by DLTLCA and ATA that the proposed interim final rule will not provide for direct notification to the current motor carrier employer by either the licensing state or a federal agency regarding the determination made about an individual's security threat. Employers must be given access to this background check information, as they are ultimately in the best position to prevent that individual driver from gaining control of the truck. The ultimate success of this program requires that trucking company employers promptly know the results of the TSA investigations, and there is no valid privacy or administrative why the states or the TSA cannot - and, more importantly, should not - provide such information to employers.

Sincerely

Robert A. Hirsch
President