Docket No. TSA-2003-14610 Exemption Notice

To: State Points of Contact for Hazardous Materials Endorsements

Date: November 10, 2004

Re: Exemption from 49 CFR §1572.5(c)(2)(i), issuance of renewal and transfer HMEs

Pursuant to statutory authority,[1] the Transportation Security Administration (TSA) is granting the States an exemption from a requirement in the security threat assessment standards[2] codified at 49 Code of Federal Regulations (CFR) part 1572. TSA is exempting the States from a portion of section 1572.5(c)(2)(i), which requires the security threat assessments for transfer and renewal hazardous materials endorsements (HME) to begin January 31, 2005. Under this exemption, processing of security threat assessments for transfer and renewal HMEs may begin March 31, 2005, and become effective on May 31, 2005. TSA is not exempting new HMEs from the effective date of January 31, 2005.

Background

On May 5, 2003, TSA published an interim final rule (May 5 IFR) that requires a security threat assessment of commercial drivers who are authorized to transport hazardous materials in commerce.[3] The May 5 IFR implements statutory mandates under The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act[4] and the Safe Explosives Act[5] (SEA). The May 5 IFR established security threat assessment standards for determining whether a driver poses a security threat warranting denial of an HME, including the requirement at paragraph 1572.5(c)(2)(i) that States may not issue, renew, or transfer a hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.

TSA issued several extensions to the original compliance date in response to States' requests. In accordance with the latest of these extensions, January 31, 2005 is the date on which States must be in compliance with the May 5 IFR.[6]

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[1] 49 U.S.C. 114(r).
[2] Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License, 68 FR 23852 (May 5, 2003).
[3] 68 FR 23852 (May 5, 2003).
[4] Pub. L. 107-56, October 25, 2001, 115 Stat. 272.
[5] Pub. L. 107-296, November 25, 2002, 116 Stat. 2280.
[6] 69 FR 17696 (April 6, 2004).

Under 49 U.S.C. 114(r), TSA may grant an exemption from a regulation prescribed in carrying out the agency's duties if the agency determines that the exemption is in the public interest. As noted above, paragraph 1572.5(c)(2)(i) of the May 5 IFR provides that the States may not issue, renew, or transfer an HME unless the State receives a Notification of No Security Threat from TSA. In addition, the States must provide 60 days notice to drivers prior to the expiration of their HME. Thus, the States must send notices very shortly to the drivers who's HMEs expire on January 31, 2005. In order to avoid any unnecessary expense, it is important that TSA issue this exemption now. TSA believes allowing for an exemption to this requirement for renewals and transfers is appropriate in recognition of the need for additional time and resources to implement this program. Moreover, TSA has completed a name-based threat assessment of all current HME holders and repeats this check periodically. TSA has disqualified the individuals TSA has concluded pose or may pose a security threat. Therefore, TSA has determined that delaying the implementation date for individuals who currently hold an HME and must renew or transfer them within the next several months will not adversely impact security.

Exemption

For these reasons, TSA believes that granting the States an exemption from paragraph 1572.5(c)(2)(i) of the May 5 IFR would be in the public interest. Accordingly, TSA is granting the States an exemption from the compliance date for renewal and transfer HMEs codified at 49 CFR 1572.5(c)(2)(i). This exemption includes the following conditions and limitations:

1. Implementation for processing renewal and transfer applications is effective under this exemption on May 31, 2005.
2. No State may begin processing renewal or transfer applications prior to March 31, 2005.
3. This exemption will terminate on the effective date of any revision to 49 CFR part 1572 that TSA publishes in the Federal Register.
4. The compliance date for new HMEs remains January 31, 2005.

If you have any questions regarding this exemption, please contact Cathy Morrison, Office of Transportation Vetting and Credentialing, Transportation Security Administration HQ, East Building, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-3941; e-mail Cathy.Morrison@dhs.gov.

4/18/05

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