

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2003–14610]

Exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice; temporary exemption.

SUMMARY: TSA is granting a temporary exemption from requirements in 49 CFR part 1572 regarding expiration of TSA security threat assessments (STAs) for Hazardous Material Endorsement (HME) holders. For the duration of this exemption, a State may grant an extension of up to 180 days for an HME that expired or would otherwise expire between March 1, 2020 and the end date of this exemption, even if the individual was unable to initiate or complete the required STA before the expiration date. If the state grants an extension, the individual with an expired HME must initiate the process of renewing his or her STA for an HME no later than 60 days before the end of the State-granted extension. TSA may extend this exemption at a future date depending on the status of the COVID-19 crisis.

DATES: This exemption becomes effective on April 2, 2020, and remains in effect through July 31, 2020, unless otherwise modified by TSA through a notice published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephanie Hamilton, 571-227-2851 or HME.question@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2020, the World Health Organization declared the SARS-CoV-2 virus and Coronavirus Disease 2019 (COVID-19) to be a global pandemic. On March 13, 2020, the President declared a National Emergency.¹

The USA PATRIOT Act of 2001 requires individuals who seek to transport hazardous materials via commercial motor vehicle to undergo an STA conducted by TSA.² As required by TSA's implementing regulations in 49 CFR part 1572, the STA for an HME consists of criminal, immigration, and security threat checks.

Under 49 CFR 1572.13(a), no State may issue or renew an HME for an individual's commercial driver's license (CDL), unless the State first receives a Determination of No Security Threat for the individual from TSA following a TSA-conducted STA. An individual seeking renewal of an HME must initiate an STA at least 60 days before expiration of his or her current HME.³ The process of initiating an STA requires the individual to submit information either to the State licensing agency or a TSA enrollment center, including fingerprints and the information required by 49 CFR 1572.9,⁴ at least 60 days before the expiration of the HME.⁵

It may be impracticable for some commercial drivers to renew their STAs during the current COVID-19 crisis. Measures to prevent the spread of COVID-19 may affect

¹ See Proclamation 9994, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020). Published at 85 FR 15337 (Mar. 18, 2020).

² Pub. L. 107-56 (Oct. 26, 2001; 115 Stat. 396), § 1012(a)(1), *codified as amended at* 49 U.S.C. 5103a.

³ 49 CFR 1572.13(b).

⁴ 49 CFR 1572.15.

⁵ 49 CFR 1572.13(b).

the ability of commercial drivers to present themselves in-person to a State licensing agency location or TSA enrollment center for the collection of fingerprints and applicant information. Without the new STA, TSA's regulations prevent States from renewing or extending the expiration of the individual's State-issued HME.⁶

Authority and Determination

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.⁷ TSA has determined that it is in the public interest to grant an exemption from certain process requirements in 49 CFR part 1572 related to STAs for HMEs, given the need for commercial drivers with an HME to continue to work without interruption during the current COVID-19 crisis. This action would not compromise the current level of transportation security resulting from the HME requirements because TSA maintains the ability to conduct recurrent security threat checks on HME holders and take action to revoke an HME if derogatory information becomes available, regardless of expiration date. TSA will use data previously submitted by these individuals with expired or expiring HMEs, to conduct recurrent vetting against terrorism watch lists and databases to ensure that these individuals continue to meet TSA requirements for having an HME.

This exemption permits States to extend the expiration date for an HME for up to 180 days for individuals with an HME that expires between March 1, 2020, and the end date of this exemption (eligible individuals), even if the individual did not initiate or

⁶ 49 CFR 1572.13(a).

⁷ See 49 U.S.C. 114(q). The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Security, effective March 26, 2020, during the period of the National Emergency cited *supra*, n. 1.

complete submission of required information for an STA at least 60 days before expiration of the HME.⁸ Consistent with the requirements in 49 CFR 1572.13(b), if the State grants an extension to an individual, the State must, if practicable, notify the individual that the State is extending the expiration date of the HME, the date that the extension will end, and the individual's responsibility to initiate the STA renewal process at least 60 days before the end of the extension. If it is not practicable for a State to give individualized notice, the State may publish general notice, for example, on the appropriate website. TSA assumes that the length of this exemption provides adequate time for States to make these notifications after resumption of some or all of their licensing operations.

The purpose of this exemption is to allow States to provide commercial drivers with up to four months of relief from actions necessary to meet TSA's STA renewal requirements during the COVID-19 crisis, and also allow for the 60 days TSA needs to complete processing of the individual's application for STA renewal once it is submitted. The exemption permits, but does not require, States to extend the expiration date for HMEs.

By permitting States to extend the expiration date of HMEs within the scope of this exemption, TSA better positions States to ensure that CDL holders with HMEs will be able to continue to provide their critical services during this COVID-19 crisis. TSA has determined that there is little or no risk to transportation security associated with the

⁸ The exemption remains in effect through August 1, 2020, unless otherwise modified by TSA through a notice published in the **Federal Register**. TSA considered tying the duration of the exemption to the duration of a public health emergency declaration, but believes that 120 days, with the option for further modification as noted above, provides clearer notice to and better certainty for States administering the program.

exemption, which is subject to the following conditions:

(1) The extensions will only be available with respect to eligible individuals, ensuring that TSA has relatively current information on the individual based on their last STA (No Determination of Security Threat) and can continue to conduct recurrent-vetting;

(2) The extensions will be for a set, limited time, dependent on the duration and scope of the COVID-19 crisis, and subject to possible modification by TSA before the closure of the effective period; and

(3) TSA will continue to recurrently vet these individuals against Federal terrorism and national security-related watch lists and databases during the period of the extensions and retain its full authority to immediately revoke or suspend an individual's STA (Determination of No Security Threat) and to order a State to revoke an individual's HME.⁹

Exemption

State Exemption. During the effective period of this exemption, States are exempt from the requirement in 49 CFR 1572.13(a) prohibiting renewal of an eligible individual's HME for a CDL, unless the State receives a new STA (Determination of No Security Threat) from TSA. For the duration of this exemption, a State may extend the expiration date of an eligible individual's HME for a period of no more than 180 days without a new STA. The State must notify each eligible individual that he or she is subject to an STA for renewal of the HME and that he or she must initiate the STA at least 60 days before the extended expiration date of the HME. If it is not practicable for a

⁹ See 49 CFR 1572.5(b) and 1572.13.

State to give individualized notice to drivers, the State may publish general notice, for example, on the appropriate website. TSA will continue to recurrently vet these individuals against terrorism and other governmental watch lists and databases and reserves authority under 49 CFR 1572.5(b) and 1572.13 to direct a State to revoke an individual's HME immediately and at any time.

For purposes of this exemption, an *eligible individual* is defined as an individual who held a valid, unexpired HME with an STA (Determination of No Security Threat) on or after March 1, 2020, which HME has expired or would otherwise expire between that date and the close of the effective period of this exemption.

Limits of Exemption: This exemption does not apply to new HMEs nor does it affect any other requirements applicable to obtaining a commercial driver's license under 49 CFR parts 383 and 384.

Dated: April 2, 2020.

Stacey Fitzmaurice

Executive Assistant Administrator for Operations Support.