



[9110-05-P]

**DEPARTMENT OF HOMELAND SECURITY**

**Transportation Security Administration**

**[Docket No. TSA–2003–14610]**

**Notice to Extend Exemption from Renewal of the Hazardous Materials**

**Endorsement Security Threat Assessment for Certain Individuals**

**AGENCY:** Transportation Security Administration, DHS.

**ACTION:** Notice, extension of temporary exemption.

**SUMMARY:** TSA is extending the exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals that TSA published on July 31, 2020 which was scheduled to expire on October 30, 2020, through December 31, 2020. Under this exemption, states may extend the expiration date of hazardous materials endorsements (HMEs) that expire on or after March 1, 2020, for 180 days, due to restrictions and business closures in place in response to the COVID-19 pandemic. If a state grants an extension, the individual with an expired HME must initiate the process of renewing his or her security threat assessment (STA) for the HME no later than 60 days before the end of the state-granted extension. Federal partners, state licensing agencies and related associations report ongoing difficulties in timely renewal of expiring HMEs and asked TSA to consider extending the exemption until the end of calendar year 2020. TSA has determined it is in the public interest to extend the exemption through December 31, 2020, which aligns with similar waivers issued by the U.S. Department of Transportation. TSA may extend this exemption at a future date depending on the status of the COVID-19 crisis.

**DATES:** This extension of the previously issued exemption published on July 31, 2020 (85 FR 46152) becomes effective on October 30, 2020, and remains in effect through December 31, 2020, unless otherwise modified by TSA through a notice published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Background**

A public health emergency exists in this country as a consequence of the COVID-19 pandemic.<sup>1</sup> In response to this pandemic, on April 2, 2020, TSA issued an exemption from requirements in 48 CFR part 1572 regarding expiration of a TSA security threat assessment (STA) for HMEs.<sup>2</sup> TSA subsequently extended the duration of the exemption through October 29, 2020.<sup>3</sup>

The USA PATRIOT Act of 2001 requires individuals who transport hazardous materials via commercial motor vehicle to undergo a STA conducted by TSA.<sup>4</sup> As required by TSA's implementing regulations in 49 CFR part 1572, the STA for an HME consists of criminal, immigration, and terrorist checks. The STA and HME remain valid for five years.

Under 49 CFR 1572.13(a), no state may issue or renew an HME for an

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<sup>1</sup> See HHS, Renewal of Determination that a Public Health Emergency Exists (Oct. 2, 2020), available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-2Oct2020.aspx>. See also Proclamation 9994, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (March 13, 2020). Published at 85 FR 15337 (Mar. 18, 2020).

<sup>2</sup> See 85 FR 19767 (April 8, 2020).

<sup>3</sup> See 85 FR 46152 (July 31, 2020).

<sup>4</sup> Pub. L. 107-56 (Oct. 26, 2001; 115 Stat. 396), § 1012(a)(1), *codified as amended at* 49 U.S.C. 5103a.

individual's commercial driver's license (CDL), unless the state first receives a Determination of No Security Threat for the individual from TSA following the STA. An individual seeking renewal of an HME must initiate an STA at least 60 days before expiration of his or her current HME.<sup>5</sup> 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,<sup>6</sup> at least 60 days before the expiration of the HME.<sup>7</sup>

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 the ability of commercial drivers to present themselves in-person to a state licensing agency 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.<sup>8</sup>

Consistent with the requirements in 49 CFR 1572.13(b), if the state grants an extension to a driver, the state must, if practicable, notify the driver 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 to drivers, the state may publish general notice, for example, on the appropriate website.

### **Authority and Determination**

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<sup>5</sup> 49 CFR 1572.13(b).

<sup>6</sup> 49 CFR 1572.15.

<sup>7</sup> 49 CFR 1572.13(b).

<sup>8</sup> 49 CFR 1572.13(a).

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest.<sup>9</sup> On April 2, 2020, TSA determined that it was 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 HME drivers to work without interruption during the COVID-19 crisis.<sup>10</sup> On July 31, 2020, TSA extended that exemption by 90 days through October 29, 2020.<sup>11</sup> TSA has determined that it is in the public interest to extend the exemption through December 31, 2020.

The exemption does not compromise the current level of transportation security because TSA continues to conduct recurrent security threat checks on HME holders and is able to take action to revoke an HME if derogatory information becomes available, regardless of expiration date. TSA uses data previously submitted by these individuals to conduct recurrent vetting against terrorism watch lists and databases to ensure that they continue to meet TSA requirements for having an HME.

The exemption permits states to extend the expiration date for an HME for up to 180 days for individuals with an HME that expires on or after March 1, 2020, even if the individual did not initiate or complete submission of required information for an STA at least 60 days before expiration of the HME.<sup>12</sup> With the extension TSA announces in this

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<sup>9</sup> 49 U.S.C. 114(q). The Administrator of TSA delegated this authority to the Executive Assistant Administrator for Operations Support, effective March 26, 2020, during the period of the National Emergency cited *supra*, n. 1.

<sup>10</sup> *See* Exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals, 85 FR 19767 (Apr. 8, 2020).

<sup>11</sup> *See* Notice to Extend Exemption from Renewal of the Hazardous Materials Endorsement Security Threat Assessment for Certain Individuals, 85 FR 46152 (July 31, 2020).

<sup>12</sup> This exemption remains in effect through December 31, 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 the option for further modification as noted above provides clearer notice to and better certainty for states administering the program.

notice, states may continue this procedure through December 31, 2020. Individuals who were eligible for an extension of their HMEs during the initial exemption may continue to be eligible under this notice of extension of the exemption.

Federal partners, States, the American Trucking Associations and the American Association of Motor Vehicle Administrators asked TSA to consider extending the exemption to align with the U.S. Department of Transportation Federal Motor Carrier Safety Administration's exemptions and waivers for drivers and States impacted by the COVID-19 crisis.<sup>13</sup> Some states continue to face challenges maintaining regular operations at state Drivers Licensing Centers due to public health considerations related to the inability to predict how or where COVID-19 may spread in the future. Although most TSA enrollment centers have remained open during the pandemic, temporary closures in states and regions with limited enrollment center alternatives have complicated drivers' ability to enroll for an STA. TSA's enrollment provider has reopened sites that were temporarily closed, but due to the uncertain nature of the spread of COVID-19, applicants may encounter renewed closures in the coming months. The extension will help ensure that drivers can continue to perform critical services during the pandemic.

For these reasons, TSA is extending the exemption through December 31, 2020.

Dated: October 23, 2020

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<sup>13</sup> See FMCSA, *Waiver in Response to the COVID-19 National Emergency – For States, CDL Holders, CLP Holders, and Interstate Drivers Operating Commercial Motor Vehicles* (Sept. 18, 2020), available at <https://www.fmcsa.dot.gov/emergency/waiver-response-covid-19-national-emergency-states-cdl-holders-clp-holders-and-0>.

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