



TEAMSTERS **Safety &** **Health** **FACTS**

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HAZMAT BACKGROUND CHECKS – FREQUENTLY ASKED QUESTIONS

1. What is the rule under which TSA is conducting the Hazmat Driver Threat Assessment Program?

A. On May 5, 2003, the Transportation Security Administration (TSA) published a rule to secure the transportation of hazardous materials (Hazmat), including explosives, by requiring threat assessments for all individuals who apply for, renew, or transfer a Hazardous Materials Endorsement (HME) on their Commercial Driver's License (CDL). Under the TSA rule, individuals who have been convicted of certain felonies, who are fugitives, who are not U.S. citizens or lawful permanent residents, who have been adjudicated as mentally incompetent or involuntarily committed to a mental institution, or who are determined to be a threat of terrorism or a threat to national transportation security will not be allowed to hold a HME. TSA issued the rule as a result of requirements in the USA PATRIOT Act (Public Law 107-56, Section 1012) and the Safe Explosives Act (Public Law 107-296, Sections 1121-1123). This rule is a companion to a rule issued by the Federal Motor Carrier Safety Administration (FMCSA), which prohibits states from issuing a HME unless the driver has successfully completed the TSA threat assessment. FMCSA's rule also requires states to require renewal of a driver's Hazmat endorsement at least every five years.

TSA will require the collection of fingerprints from new HME applicants beginning January 31, 2005, and March 31, 2005 from drivers who wish to renew or transfer their HME. For more information, please refer to IBT's Background Check for Hazmat Drivers Fact Sheet.

2. Who is affected by the rule?

A. Only commercial drivers who wish to transport hazardous materials requiring vehicle placards under DOT regulations must undergo threat assessments. This rule *does not apply* to applicants for or holders of a CDL who do not wish to transport hazardous materials.

3. Will TSA conduct any type of threat assessment prior to January 31, 2005?

A. TSA is conducting name-based terrorist-focused checks on the entire Hazmat driver population to determine whether any of these drivers present a potential terrorist threat.

4. Does this rule apply to drivers entering the U.S. from Canada and Mexico?

A. This rule applies only to drivers who hold a CDL issued by a State of the United States. Generally, this would not include drivers from Canada and Mexico. There is a separate rulemaking that addresses Canadian drivers hauling explosives into the United States. Eventually, all drivers will have to meet threat assessment and eligibility standards that are comparable to the standards that now apply to Hazmat drivers in the U.S.

5. What constitutes a “hazardous material” under this rule?

A. Any material that requires placarding under the DOT hazardous materials regulations is considered a hazardous material for purposes of this rule. Hazardous materials include many items that play a critical role in our daily lives, such as gasoline; propane and liquid natural gas; ammonia; chlorine and fluorine; hydrochloric acid and sulfuric acid; radioactive medical waste; explosive cartridges and blasting caps; and infectious substances such as anthrax. Because of the potential these materials have for causing death or serious injury, commercial truck drivers who transport them require a special endorsement to their CDL. For more detail on the Hazmat regulations, see 49 CFR Parts 171-180.

6: Who is eligible to hold a HME under the rule?

A. A driver must be a U.S. citizen or lawful permanent resident; cannot have a disqualifying criminal offense; cannot be adjudicated as mentally incompetent or involuntarily committed to a mental institution; and must not pose a threat of terrorism or a threat to national or transportation security.

The following criminal convictions are **permanent disqualifiers**, prompting a "lifetime ban" from holding a HME:

- ◆ Terrorism
- ◆ Espionage
- ◆ Sedition
- ◆ Treason
- ◆ Murder
- ◆ Unlawful use, purchase, receipt, transfer, shipping, transporting, import, export, or storage of an explosive
- ◆ A crime involving a severe transportation security incident (i.e., security incident involving a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area)

- ◆ RICO violations (if the crime underlying the RICO conviction is on the list of permanently disqualifying crimes)
- ◆ Improper transportation of a Hazmat (minor infractions involving transportation of hazardous materials will *not* disqualify a driver; for instance, no driver will be disqualified for minor roadside infractions or placarding violations)
- ◆ Conspiracy or attempt to commit any of these crimes

An individual is **disqualified** from holding an HME if he or she was convicted or found not guilty by reason of insanity within the past seven years, was released from prison within the past five years, or is wanted or is under indictment, for any of the following crimes:

- ◆ Assault with intent to murder
- ◆ Kidnapping or hostage taking
- ◆ Rape or aggravated sexual abuse
- ◆ Extortion
- ◆ Robbery
- ◆ Arson
- ◆ Bribery
- ◆ Smuggling
- ◆ Immigration violations
- ◆ Dishonesty, fraud, or misrepresentation, including identity fraud (e.g. felony-level embezzlement, tax evasion, perjury, and false statements to the Federal government)
- ◆ RICO violations (if the crime underlying the RICO conviction is on the list of interim disqualifying crimes)
- ◆ Distribution of, possession with intent to distribute, or importation of a controlled substance (“simple possession” of a controlled substance without an intent to distribute is not considered disqualifying)
- ◆ Unlawful use, purchase, receipt, transfer, shipping, transporting, import, export, or storage of a firearm
- ◆ Conspiracy or attempt to commit any of these crimes

The crimes listed above are disqualifying, regardless of the jurisdiction (civilian or military). Convicted means any plea of guilty or nolo contendere or any finding of guilt.

7. Will a conviction for a minor placarding violation or roadside infraction involving the transport of hazardous materials disqualify a driver from holding a Hazmat endorsement?

A. No. Under the rule, a driver will be disqualified from holding a Hazmat endorsement if the driver was ever convicted or found not guilty by reason of insanity of a felony involving improper transportation of a hazardous material. Minor violations involving transportation of hazardous materials, including minor roadside infractions or placarding violations, will not disqualify a driver from obtaining or renewing a Hazmat endorsement.

8. What happens to drivers who currently hold Hazmat endorsements but who are disqualified under this rule?

A. Drivers who do not meet the standards *must* voluntarily and immediately surrender their Hazmat endorsement. Drivers who have been convicted or found not guilty by reason of insanity of a disqualifying criminal offense, or who were adjudicated as mentally incompetent or involuntarily committed to a mental institution, may apply to TSA for a waiver.

9. What happens when a threat assessment indicates that a driver does not meet standards set forth under the rule?

A. TSA notifies the endorsement holder or applicant of the initial finding that a disqualifying event or status exists. If TSA makes a final determination that an individual poses a security threat, TSA will direct the state to revoke that person's Hazmat endorsement. If TSA discovers that a person has outstanding criminal or immigration violations warrants, that information will be transmitted to the proper authorities.

10. Is there an appeal process for drivers who are disqualified?

A. Yes. Applicants who have been told they are disqualified may appeal the disqualification on the grounds of mistaken identity or other information, such as a reversed conviction. The individual may also apply for a waiver in cases where they acknowledge being convicted or found not guilty by reason of insanity of a disqualifying criminal offense, or acknowledge being adjudicated as mentally incompetent or involuntarily committed to a mental institution, but still believe they should be able to hold a HME because of other information or circumstances.

TSA must respond to an appeal or waiver within 30 days of receiving the request (although TSA can grant itself an extension of time for good cause). At the end of the period, if no appeal or waiver is granted, TSA will notify the applicant and the State that the driver is disqualified from holding a Hazmat endorsement. If an appeal or waiver is granted, TSA will notify the applicant and the State that the driver is qualified to hold a Hazmat endorsement.

11. Will TSA tell a candidate why he or she is disqualified?

A. Yes, unless the information is classified.

12. How often must a driver be fingerprinted and qualified under this rule?

A. Generally, drivers must renew their Hazmat endorsement every five years, although States may require more frequent reviews. The driver will be required to submit new fingerprints at the time of renewal of the endorsement. If a driver has been convicted of a disqualifying criminal offense or no longer meets the standards in the rule after obtaining the Hazmat

endorsement, his or her endorsement will be revoked. Drivers are responsible for self-reporting any offense and surrendering their Hazmat endorsement as required under the rule.

It is also important to note that drivers who have certain disqualifying criminal offenses may be allowed to reapply for Hazmat endorsements after the rule's seven- and five-year waiting periods have expired.

13. Why must individual truckers and/or their employers pay for the security threat assessment?

A. Congress did not appropriate funds to cover the cost of the security threat assessment, and so we must charge a fee to recover those costs. Currently, State motor vehicle departments require drivers to bear all the costs of applying for a Hazmat endorsement to a CDL. At this time, TSA does not expect the cost to exceed \$100.

14. Who is not covered by this rule?

A. Commercial drivers who do not wish to obtain Hazmat endorsements are unaffected by this rule. Similarly, any commercial driver who wishes to surrender his or her Hazmat endorsement will not be asked to undergo fingerprinting under this rule. Drivers who may be disqualified from carrying hazardous materials due to past criminal convictions will not lose their right to hold a CDL or to transport non-hazardous cargo.