IME
institute of makers of explosives

The safety and security institute of the commercial explosives industry since 1913

October 25, 2010

Ms. Joanna Johnson
TSA PRA Officer
Office of Information Technology, TSA-11
Transportation Security Administration
601 S Hayes Street
Arlington, VA 20598-6011

Re: Docket No. TSA-2003-14610: Intent to Request Renewal From OMB of One Current Public Collection of Information: Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License[1]

Dear Ms. Johnson:

On behalf of the Institute of Makers of Explosives, I am submitting comments on the Transportation Security Administration's (TSA) request to renew, with changes, the information collection (ICR) the agency uses to determine that a commercial driver seeking a hazardous materials endorsement (HME) for a commercial drivers license (CDL) is not a threat to transportation security.

Interest of the IME

The IME is a non-profit association founded to provide accurate information and comprehensive recommendations concerning the safety and security of commercial explosive materials. The IME represents U.S. manufacturers, distributors and transporters of commercial explosive materials and oxidizers as well as companies providing related services. Our members' products are transported by every mode, in every state and worldwide.

We have a long history of proactive attention to the safe and secure transportation of our products. Our industry is also among the most highly regulated sectors of the economy. We acknowledge that commercial explosives would be of interest to terrorists. As such, our member companies are subject to a number of government security-based vetting and credentialing programs including those of TSA, Customs and Border Protection, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), and, soon, the National Protection and

[1] 75 FR 52961 (August 30, 2010).

Programs Directorate (NPPD). We have a direct interest in how these programs are administered.

Comments

TSA proposes to modify its existing request for the collection of information from applicants for HME in order to collect additional information to help the agency prove U.S. citizenship, and determine if the applicant is applying to renew or transfer the HME. Additionally, TSA states that States must maintain a copy of the HME application for a period of one year. We are at a loss as to why the burden of collecting and retaining this information is being accounted for now since TSA rules have provided for the collection and retention of this information since 2007.[2]

With regard to the collection of information "to prove" citizenship, we would appreciate additional explanation from TSA about the use of this information. By law, TSA's HME threat assessment is to include a criminal history background check to determine if the applicant has been convicted of disqualifying crimes, a check of the "terrorist watch list" to determine if the applicant has terrorist ties, and a check of immigration status to determine if the applicant is legally in the country. Proof that an applicant is legally in the country is not the same as proof of citizenship. In conversations with the NPPD about the scope of the background checks to be conducted under the agency's proposed Chemical Facility Anti-terrorism Standards "personal surety" program, the same issue has come up. The question is whether TSA and other agencies are leveraging statutory authority to determine immigration status to obtain proof of an applicant's country of citizenship. If this is the case, the regulated community should be told what effect citizenship status will have on applications for an HME.

TSA regulations also require a check to determine if the applicant has a mental incapacity, and to determine if an applicant has been discharged from the armed forces under dishonorable conditions.[3] These two disqualifications were added when TSA initially published its HME threat assessment rules in 2003 at the insistence of the ATF as a precondition to invoking 18 U.S.C. 845(a)(1). Section 845(a)(1) provides an exception from the Federal Explosives Law (FEL) for "aspects of the transportation of explosives materials … that pertain to safety, including security, and are regulated by the United States Department of Transportation or the Department of Homeland Security." The FEL precludes anyone from possessing (whether actual or constructive) explosives unless they have been subject to a background check equivalent to 18 U.S.C. 842(i). Section 842(i) bars those with a mental incapacity and those with a dishonorable discharge from the military from possessing explosives. Without the addition of these two disqualifications to TSA's HME threat assessment rules, section 845(a)(1) would not have been triggered and all those who may possess explosives in the course of transportation would be subject to FEL requirements and penalties. At the time, for-hire carriers of all modes stated that they would refuse explosives shipments rather than be

[2] 49 CFR 1572.9(a)(14) and (15), and 1572.15(b)(2)(iv).

[3] 49 CFR 1572.109 and1572.9(b)(7).

subjected to the provisions of the FEL. Now, TSA is proposing, through an ICR, to remove the requirement for applicants to disclose their military status and whether they were dishonorably discharged. IME would adamantly oppose the removal of this disqualifying screen if it meant the inadvertent loss of the 18 U.S.C. 845(a)(1) exception.

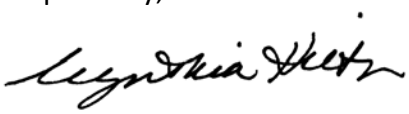
Finally, our industry has faced a proliferation of federal vetting and credentialing programs in the last decade. IME has long advocated for consolidation, or at least reciprocity, among these programs, which, as noted above, have been spawned from essentially the same set of disqualifications. As part of the ICR process, TSA invites comments on ways to minimize the burden of the information collection on the regulated community. We note that TSA has yet to implement Section 1556(b) of P.L. 110-53. Section 1556(b) allows TSA to waive an HME threat assessment of those holding a Transportation Worker Identification Credential (TWIC). TSA already waives the TWIC threat assessment for those presenting a CDL with a HME. Commercial drivers possessing an HME are the largest segment of TWIC holders. If TSA is serious about minimizing burden on the regulated community as well as conserving scarce agency resources used to administer the redundant vetting between the HME and TWIC programs, the agency would implement Section 1556(b).

Conclusion

IME is concerned when agencies seek substantive change to rules through the ICR process. We support any agency's efforts to increase options for compliance and to reduce regulatory burden, but not at the expense of inadvertently triggering more stringent requirements that, in this case, would essentially shut down the for-hire transportation of explosives. Substantive changes should be proposed through notice and comment rulemaking. Additionally, TSA's failure to implement Section 1556(b) perpetuates the costly burden of HME threat assessments on TWIC holders years after Congress directed the agency to eliminate this redundancy. TSA should implement Section 1556(b) as quickly as possible.

Thank you for the opportunity to provide these comments.

Respectfully,



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