



Driving Trucking's Success

American Trucking Associations

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Ms. Joanna Johnson
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Via email

Re: 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.

The American Trucking Associations, Inc. (ATA) submits these comments in response to the Department of Homeland Security's Intent to Request Renewal from OMB of One Current Public Collection of Information; Security Threat Assessment (STA) for Individuals Applying for a Hazardous Materials Endorsement (HME) for a Commercial Drivers License.¹ As the national representative of the trucking industry, ATA is interested in all matters that affect the ability of the trucking industry to continue to deliver the nation's freight.² As such, ATA is specifically interested in the Transportation Security Administration's (TSA) various security credentialing programs, including the HME.

These comments focus on two specific aspects of TSA's initiatives in developing security threat assessment programs:

- (1) TSA's plan to track the enrollments and re-enrollments of HMEs. Industry stakeholders also seek this information to better understand and mitigate the ongoing driver shortage; and,
- (2) TSA's efforts to coordinate/consolidate the HME and Transportation Worker Identification Credential (TWIC) screening programs. Providing a single instrument, such as the TWIC, for compliance with multiple screening requirements should be a priority for TSA.

¹ See 72 *Federal Register* at 73865 (December 28, 2007) (hereinafter "Collection").

² ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

Tracking Enrollments and Renewals in the HME Program

TSA's notice proposes to amend the application for an HME background check to gather new information – particularly on renewals – to determine retention rates for HME drivers. According to TSA, there were an estimated 2.7 million HME-holders before the STA background check requirement went into effect in 2005³. TSA has received and cleared roughly 750,000 applicants since that date.⁴ Thus, these statistics seem to indicate a dramatic reduction of the total population of drivers qualified to transport hazardous materials. Given the HME's 5 year lifecycle, it will be impossible to fully gauge the population change until June 2010. ATA supports having the Collection in place to verify the number of HME-qualified drivers in the commercial driver population in advance of that date.

If the HME security threat assessment (STA) program established by TSA is resulting in a significant reduction of HME-holders, then the current driver shortage—already a major problem in the general freight industry—will be exacerbated in the hazardous materials sector.⁵ ATA is very interested in reviewing any data collected by TSA regarding enrollment and re-enrollment rates of commercial drivers seeking an HME, and we fully support this information collection. Once collected, we urge TSA to share this data with industry stakeholders.

Coordinating/Merging of HME and TWIC Programs

The issue of coordinating or merging the HME program with the TWIC program has been a huge source of frustration for the trucking industry and, sadly, is a good example of bureaucratic inefficiency. The TWIC was intended to be a single, federally issued, identification card that truck drivers could use to access facilities that require individuals to pass a STA. In January 2003, Admiral Loy, then the second most senior official at TSA, summed it up best, stating:

*A fourth initiative also underway is development of a Transportation Worker Identification Credential or TWIC . . . The idea is to have these [transportation] employees undergo only one standard criminal background investigation . . . I've heard that there are some truck drivers currently carrying up to 23 ID cards around their necks. I wouldn't want to pay that chiropractor bill. Under the TWIC program drivers and other transportation workers will only have one card to deal with which would be acceptable across the United States.*⁶

³ Transportation Security Administration; Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a CDL, Final Rule; *Federal Register*, volume 69, NO. 226, Wednesday, 11/24/2004 at 68739

⁴ Oral Testimony of Admiral Kip Hawley, TSA Administrator, before the U.S. House of Representatives Committee on Homeland Security. October 31, 2007. http://www.tsa.gov/press/speeches/103107b_hawley_house.shtm.

⁵ See *The U.S. Truck Driver Shortage: Analysis and Forecasts*. <http://www.truckline.com/NR/rdonlyres/E2E789CF-F308-463F-8831-0F7E283A0218/0/ATADriverShortageStudy05.pdf>.

⁶ Remarks of Admiral James M. Loy, Under Secretary of Transportation for Security, Transportation Security Administration, during Transportation Research Board 82nd Annual Meeting Chairman's Luncheon, January 15, 2003.

Unfortunately, the TWIC program/concept has not lived up to its promise. Today, truck drivers must obtain a TWIC to access secure areas of port facilities, an HME to transport hazardous materials, a FAST card to cross the border, a SIDA check to access airport facilities, and individual credentials to access certain chemical facilities and railroad transfer stations. The original objective of TWIC has not been achieved. ATA encourages TSA to work with industry stakeholders to make Admiral Loy's vision a reality.

The TWIC is a statutorily mandated screening and credentialing program required for transportation workers to gain unescorted access to secure areas regulated by the U.S. Coast Guard. Such workers include truck drivers who, on a daily, weekly or monthly basis, are likely to visit such ports and thus will be required to have a TWIC. The number of drivers that participate in intermodal commerce and also carry hazardous materials over the course of a five-year span is significant. These drivers currently must bear the expense and burden of undergoing two separate enrollment processes for both the HME and the TWIC. Given the natural convergence between these two large user populations and the programmatic similarities between the TWIC and the HME, TSA should minimize the burden on the user population by combining the two programs. Merging the two programs would allow TSA to continue complying with statutory mandates and continue maintaining a high level of security within the transportation sector.

In the collection notice, TSA's statement that it plans to "provide comparability with other Federal background checks, including Transportation Workers Identification Credential (TWIC)" falls short of achieving goals recently established by Congress, and is unacceptable in light of the agency's delay in coordinating or merging the TWIC and HME programs.⁷ ATA does not concur that TSA has a need to investigate the comparability of the HME and TWIC programs because the agency has already established that the programs are comparable: both programs require the same identification documents, use identical disqualifying criteria, and conduct fingerprint-based criminal history records checks and threat assessments, in addition to immigration checks and searches of other pertinent databases.⁸

ATA believes that TSA should recognize drivers carrying a valid TWIC as fully compliant with the security requirements for the HME expressed in 49 CFR Parts 1570 and 1572. ATA arrives at such a conclusion based on two key premises:

First, TSA already has the statutory authority to do so under Public Law 110-53 (H.R. 1, Implementing the Recommendations of the 9/11 Commission). Section 1556 states in part, "An individual who has a valid transportation employee identification card issued by the Secretary under section 70105 of title 46, United States Code, shall be deemed to have met the background records check required under section 5103a of title 49, United States Code." In practical terms this means that a TWIC holder could walk into a State's Department of Motor Vehicles (DMV) office and be legally issued an HME, assuming the driver passes the knowledge test, without

⁷ 72 *Federal Register* at 73865.

⁸ http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtml#security; HME-TWIC background check compatibility; See response to question, "Does someone with a Hazardous Materials Endorsement (HME) have to repeat the criminal history records check (CHRC) if they are applying for a TWIC?"

requiring further screening under the HME threat assessment program. ATA supports such a scenario, and we urge TSA to make such a policy a reality.⁹

Similarly, Public Law 109-347 (H.R. 4954, The Safe Port Act) exempts HME holders from the STA process when applying for a TWIC.¹⁰ Today an HME holder is exempted from undergoing a STA when applying for a TWIC. However, the reverse is not true: a TWIC holder who has undergone a TWIC STA must still undergo an HME STA. Such a policy should apply reciprocally to both programs and thus a TWIC holder should already be compliant and not be subjected to the HME STA requirement.

Second, there is regulatory precedent for compliance with the HME STA through enrollment in a separate STA credentialing program. On August 7, 2006 TSA recognized Canadian and Mexican commercial drivers enrolled in the Free and Secure Trade (FAST) program as being fully compliant with the HME background check requirements. 71 *Federal Register* at 44876, states:

TSA has concluded that the FAST background records check for commercial driver applicants is similar to that required for domestic HME drivers. Accordingly, TSA concludes that acceptance into the FAST commercial driver program is sufficient evidence that the holder of the card has undergone a threat assessment similar to that required for domestic HME holders.

Furthermore, and in a similar fashion, in its Final Rule on the TWIC, TSA states:

The Secretary may apply TWIC requirements to individuals including those “not otherwise covered by this subsection”. TSA has exercised the discretion by allowing Canadian and Mexican commercial drivers who transport hazardous materials to obtain TWICs, which will allow them to transport hazardous materials in the United States.”¹¹

ATA supports and applauds TSA’s policy and solution to allow Canadian and Mexican commercial drivers to be in compliance with the HME STA requirements. ATA believes that U.S. commercial drivers should be afforded the same flexibility for compliance with the HME STA requirements. In essence, U.S. CDL holders who seek an HME on their license and who hold a TWIC should not be required to undergo the HME STA.

Conclusion

ATA supports TSA’s information collection regarding HME applications, renewals, and retention rates. We believe that such information will allow both government agencies and industry partners to better understand the impact of the HME STA program. Tracking the number of HME-qualified drivers will allow TSA to quantify the impact of its HME STA program. At the same time, sharing this information with stakeholders will provide valuable data

⁹ ATA notes that States will still be the final arbiters of the safety/skills-based portion of HME issuance.

¹⁰ §104.

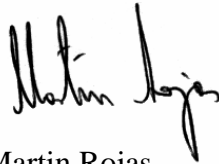
¹¹ 72 *Federal Register* at 3511

to consider potential programs to help mitigate the trucking industry's driver shortage in the hazardous materials transport sector.

In addition, TSA should coordinate or merge the TWIC and HME programs to the greatest extent possible. At a minimum, TSA should provide a policy that implements, in the short term, section 1556 of the 9/11 Commission bill, and consider TWIC holders as already compliant with the HME STA program. TSA has demonstrated that the security threat assessments and other relevant procedures in both programs are identical. TSA has the statutory authority and already has regulatory precedence to establish such a policy. Providing such a process would bring us closer to fulfilling the original goal and objectives of the TWIC card as stated by Admiral Loy, simplify the process for commercial drivers to comply with multiple requirements.

Thank you for considering ATA's concerns on this issue. Should you have any questions regarding the above comments, please contact the undersigned at 703 838-7950 or mrojas@trucking.org.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Martin Rojas', with a stylized flourish at the end.

Martin Rojas
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