



## Frequently Asked Questions: Hazmat Driver Documentation Rule

**1: What is the rule?**

**A:** On May 5, 2003, the Transportation Security Administration (TSA) published rules to secure the transportation of hazardous material (hazmat), including explosives, by requiring background checks for all individuals applying for a commercial drivers license (CDL) with a hazardous materials (hazmat) endorsement. Beginning May 5, 2003, current hazmat endorsement holders are subject to a name-based FBI criminal history records check and a check of Federal databases. Starting on November 3, 2003, individuals who apply for new, transferred, or renewed hazmat endorsements to their CDL must provide fingerprints which will then be used to check criminal history; other checks will include citizenship status and international and Federal databases. Individuals who have been convicted of certain felonies, who are not a U.S. citizen or lawful permanent resident, 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 hazmat endorsement to their CDL.

**2: Why did TSA issue this rule?**

**A:** TSA issued this rule to establish security measures that will protect the national transportation system by establishing safeguards around the transport of the most dangerous commercial products. It also issued this rule to ensure continued secure transportation of a range of products—from chlorine to gasoline—that are crucial to the economic vitality of the United States, and to fulfill its obligation under the “USA PATRIOT Act,” (Public Law 107-56), which was enacted by Congress on October 25, 2001. This rule is a companion to a rule issued simultaneously by the Federal Motor Carrier Safety Administration (FMCSA), which prohibits States from issuing a hazmat endorsement unless the driver has successfully completed the TSA background check. FMCSA’s rule also requires States to require renewal of a driver’s hazmat endorsement at least once every five years.

**3: Does the TSA rule affect any other government regulations?**

**A:** The rule also addresses requirements set forth in the Safe Explosives Act (SEA), which limits the individuals who are authorized to transport explosives, such as blasting caps, fuses, dynamite, and incendiary devices. Any person who violates the SEA is subject to criminal penalties issued by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). However, under these statutory provisions the Department of Transportation (DOT) may issue regulations relating to safety, including security that overrides ATF’s authority.

By issuing this rule, TSA, FMCSA and the DOT's Research and Special Programs Administration (RSPA) supersede ATF's authority to issue criminal penalties relating to the transportation of explosives by truck.

**4: Who is covered by this rule?**

**A:** Only commercial drivers who wish to transport hazardous materials requiring vehicle placards under RSPA regulations will be required to undergo these background checks. This rule does not apply to applicants for a CDL who do not apply for a hazmat endorsement.

Starting on November 3, 2003, current hazmat endorsement holders will be asked to submit fingerprints when they renew or transfer their CDL, and new applicants will be required to undergo a fingerprint-based check before they can be awarded a hazmat endorsement. TSA is currently developing a fingerprinting process and may require current hazmat endorsement holders to submit fingerprints before November 3 under certain circumstances.

**5: Will this rule apply to drivers entering the U.S. from Canada and Mexico?**

**A:** Drivers who are legal citizens and residents of Canada and Mexico will need to meet the same background check and eligibility standards as U.S. based drivers, but that will be done under separate agreements with both of those nations. The rule issued by TSA establishes a procedure for the conduct of security assessments only for drivers who apply for a hazmat endorsement to a CDL issued by States within the U.S. An equivalent background check will be conducted for drivers who are residents of and licensed by Canada and Mexico. International negotiations and discussions are underway to finalize cross-border equivalencies. Under the North American Free Trade Agreement (NAFTA), all three nations agree to apply "national standards" to the qualification of cross border workers.

**6: What are some of the hazardous materials covered by this rule?**

**A:** Hazardous materials include many items that play a critical role in our daily lives. These include gasoline; flammable gases such as propane and liquid natural gas; nonflammable gases such as ammonia; poisonous gases such as chlorine or fluorine; poisonous and corrosive liquids such as hydrochloric acid and sulfuric acid; radioactive materials including medical waste; explosive materials such as explosive cartridges, 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. RSPA issues hazardous material designations and regulations that apply to transporting hazmat in all modes of transportation. For more detail on the hazmat regulations, see 49 CFR Parts 171-180.



**7: Who is qualified for a hazmat endorsement under this rule?**

**A:** In general, a person must be a U.S. citizen or lawful permanent resident; must not have a disqualifying criminal offense; must not have been 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.

**8: Who is not qualified for a hazmat endorsement under this rule?**

**A:** A person may not qualify for a hazmat endorsement if he or she was convicted or found not guilty by reason of insanity of certain felony-level crimes. Certain crimes are disqualifying for life, including terrorism; espionage; sedition; treason; unlawful possession, use, sale, distribution, or manufacture of an explosive; arson; crimes involving a severe transportation security incident; improper transportation of hazardous material; and conspiracy or attempt to commit any of these crimes.

Other crimes are disqualifying only if a person was convicted or found not guilty by reason of insanity of the crime in the last seven years, was released from incarceration for committing the crime in the last five years, or is wanted or under indictment for the crime. These crimes are felonies involving: murder; assault with intent to murder; kidnapping or hostage taking; rape or aggravated sexual abuse; unlawful possession, use, sale, distribution, or manufacture of an explosive device, firearm or other weapon; extortion; robbery; distribution of, intent to distribute, possession, or importation of a controlled substance; dishonesty, fraud, or misrepresentation, including identity fraud; bribery; smuggling; immigration violations; violations of the Racketeer Influenced and Corrupt Organizations Act (RICO); and conspiracy or attempt to commit any of these crimes. All the crimes are disqualifying regardless of the jurisdiction, civilian or military.

**9: Will a conviction for marijuana possession or use disqualify a driver from holding a hazmat endorsement?**

**A:** Only if the applicant was convicted within the last seven years, or was released from prison within the last five years, for felony possession. State laws on the quantity of marijuana required for the offense to be considered a felony vary. Typically, however, to be convicted of felony marijuana possession a person must possess a quantity of marijuana greater than an amount considered for "personal use." For example, in Illinois marijuana possession is not considered a felony until a person is in possession of more than 30 grams. In Washington, the quantity is 40 grams, and in Texas, 112 grams. Misdemeanor drug offenses will not disqualify a driver from holding a hazmat endorsement under this rule.

**10: Will a conviction for a minor placarding violation or roadside infraction involving hazmat 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 hazardous material. Minor violations involving transportation of hazardous materials, including minor roadside infractions or placarding violations, will not disqualify a driver from obtaining a hazmat endorsement.

**11: What happens to drivers who currently hold hazmat endorsements but who would be disqualified under this rule?**

**A:** Drivers who do not meet the standards are being asked to voluntarily surrender their hazmat endorsement by September 2, 2003. Effective immediately, drivers who currently hold a hazmat endorsement will be subject to a name-based FBI criminal history records check and a check of Federal databases. Also, under certain circumstances, 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 for a waiver under the rule.

**12: What happens when the background check indicates that a driver does not meet the standard?**

**A:** TSA notifies the endorsement holder or applicant of the initial finding that a disqualifying event or status exists. If TSA determines 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.

**13: Is there an appeal process for drivers who are disqualified?**

**A:** Applicants who have been told they are disqualified have 15 days to appeal to TSA if they wish. They 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 which they acknowledge being convicted or found not guilty by reason of insanity for a disqualifying criminal offense, or acknowledge being adjudicated as mentally incompetent or involuntarily committed to a mental institution, but request to receive a hazmat endorsement based on other information or circumstances.



TSA must respond to an appeal or requested waiver within 30 days. At the end of the period, if no appeal or waiver is granted, TSA will notify the applicant's State that the driver is disqualified from holding a hazmat endorsement. If an appeal or waiver is granted, TSA will notify the State that the driver is qualified for a hazmat endorsement.

**14: Will a disqualified candidate be told why he or she is being rejected?**

**A:** This rule allows TSA to determine whether or not any or all of the information involved in a disqualification may be revealed. If TSA determines that information disclosed during the background check may be sensitive or may compromise national security, the information cannot be released. However, if the information is not sensitive, TSA will release it to the driver.

**15: How often must a driver be fingerprinted and qualified under this rule.**

**A:** Generally, drivers must renew the hazmat endorsement at least once every five years, although any State may require more frequent reviews. Most likely, the driver will submit new fingerprints at the time of renewal of the endorsement. If a driver is convicted of a disqualifying criminal offense or no longer meets the standards in the rule after obtaining the hazmat endorsement, his or her hazmat endorsement will be revoked. Fingerprints may be required at each renewal. Drivers are responsible for self-reporting any offense and surrendering their hazmat endorsement.

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

**16: Most State Departments of Motor Vehicles (DMVs) do not have fingerprinting capabilities now. How will this be done?**

**A:** TSA will provide guidance to States regarding the establishment of programs to take drivers' fingerprints. TSA will work closely with the States and the trucking industry over the next 180 days to set up efficient and effective methods for collecting fingerprints, as conditions will vary significantly within and among the States. TSA will issue further guidance when the fingerprinting process is finalized.

**17: How many drivers will be fingerprinted in compliance with this rule?**

**A:** An estimated 3.5 million commercial drivers are currently authorized to carry hazardous materials.

**18: Why are individual truckers and/or their employers being made to pay for background checks?**

**A:** Because individual applicants or their employers have the best knowledge of whether they plan to or now require a hazmat endorsement, these individuals or their employers will pay for fingerprinting and background checks. The current system in use by all State DMVs calls for individual applicants or their employers to bear all the costs of applying for a hazmat endorsement to a CDL. At this time, TSA does not expect the cost of fingerprinting services to exceed \$100.

It should also be noted that Congress directed that background checks be conducted for commercial drivers requiring hazmat endorsements, but did not appropriate any additional funding for this purpose.

**19. Will employers be told that a driver is being disqualified?**

**A:** No. Information about a driver's criminal history records check will be used only by TSA to determine eligibility for a hazmat endorsement. TSA will tell State motor vehicle agencies only whether the driver may or may not be issued a hazmat endorsement. Under the TSA rule, States will update a driver's permanent driving record with the results of the TSA background check (i.e., whether the driver was found eligible for a hazmat endorsement). Employers have access to a driver's permanent driving record.

**20: Who is not covered by this rule?**

**A:** Commercial drivers who do not wish to secure 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.

Drivers entering the United States from Canada or Mexico and transporting hazmat are not directly covered by this rule but will be subjected to similar or equivalent criminal background checks under a future TSA/FMCSA rulemaking.



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**21: Will TSA apply the same standards used in hazmat endorsements for workers in other modes of transportation?**

**A:** TSA is considering creating a security assessment procedure that will be used, with little change, for other transportation workers, including railroad workers who transport hazmat and maritime workers who handle hazmat. No final decisions have been made at this time. Currently all airport and air carrier employees with unescorted access to secured areas must undergo a comprehensive background inspection.

**22: Will there be a comment period?**

**A.** Although the rule is effective immediately, to improve the security on our nation's highways, there will be a simultaneous 60-day comment period, starting the day of publication in the Federal Register. Comments must be received on or before July 7, 2003. TSA will review all comments following the 60-day period and will amend the rule if necessary, based on the comments received.

**23. Where do I go with questions that are not answered here?**

**A.** You may e-mail TSA at [patriotact@dhs.gov](mailto:patriotact@dhs.gov).