

Calendar No. 550

107TH CONGRESS }
2d Session }

SENATE

{ REPORT
107-241 }

**HAZMAT ENDORSEMENT REQUIREMENTS
ACT**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 1750



AUGUST 1, 2002.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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HAZMAT ENDORSEMENT REQUIREMENTS ACT

AUGUST 1, 2002.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 1750]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1750) to make technical corrections to the HAZMAT provisions of the USA PATRIOT Act, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

PURPOSE OF THE BILL

S. 1750 would amend section 1012 of the USA PATRIOT Act of 2001 (Public Law 107-56) to ensure that the Department of Transportation (DOT), the States, and the drivers of commercial vehicles are provided a clear statutory direction with respect to the requirements associated with hazardous materials endorsements and background checks. S. 1750 assumes continuation of the basic framework of section 1012 requiring that: (1) States request security checks from the United States Attorney General (AG) for driver's license applicants who will transport hazardous materials; (2) the AG conducts checks of relevant information systems and provides the results to the United States Department of Transportation (DOT); and (3) the DOT notifies requesting States whether applicants pose a security threat.

BACKGROUND AND NEEDS

The terrorist attacks on September 11, 2001, have changed the paradigm for what constitutes safety in transportation. Attention has shifted from accident prevention to also protecting people and cargo from deliberate acts of terrorism. Since the attacks on the World Trade Center and the Pentagon, a new White House Office

of Homeland Security has been created, supplemental appropriations have been approved to fight the war on terrorism, and security at United States border points of entry has been increased. Congress is also currently considering a number of measures to improve cargo security, as well as to creating a new departmental agency dedicated to Homeland Security.

In October 2001, the Congress passed legislation entitled the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107-56). The USA PATRIOT Act consists of ten titles which, among other things, give Federal law enforcement and intelligence officers greater authority (at least temporarily) to gather and share evidence with respect to wire and electronic communications; amend Federal money laundering laws involving overseas financial activities; create new Federal crimes, increase the penalties for existing Federal crimes, and adjust existing Federal criminal procedure with respect to acts of terrorism; modify immigration law, increasing the ability of Federal authorities to prevent suspected foreign terrorists from entering the United States, detain foreign terrorist suspects, deport foreign terrorists, and mitigate the adverse immigration consequences for the foreign victims of September 11; and authorize appropriations to enhance the capacity of immigration, law enforcement, and intelligence agencies to more effectively respond to the threats of terrorism.

Section 1012 of the USA PATRIOT Act requires background checks for drivers of commercial trucks carrying hazardous materials. Authored by Senator Orrin Hatch, this section was added to the legislation without thorough review by the Senate Commerce, Science, and Transportation Committee (Committee). The issue of background checks, however, was discussed by the Subcommittee on Surface Transportation and Merchant Marine (Subcommittee) at a hearing on October 10, 2001. During the hearing, many options for increasing the security of hazardous materials shipments were discussed, including requiring background checks for drivers of commercial vehicles carrying hazardous materials. Committee members expressed concerns about reports that terrorists may have been seeking licenses to drive trucks carrying hazardous materials. For example, on October 4, 2001, a Federal grand jury in Pittsburgh, PA, indicted 16 people on charges of fraudulently obtaining commercial driver's licenses, including licenses to haul hazardous materials. In September 2001, the Federal Bureau of Investigation (FBI) arrested Nabil Al-Marabh, linked to an associate of Osama bin Laden, who possessed a commercial driver's license with a hazardous material endorsement issued by the State of Michigan. That license, issued on September 11, 2000, allowed Mr. Al-Marabh to operate vehicles weighing 10,000 pounds or more.

While the Committee generally supports the intent of section 1012, there are many concerns about its interpretation and implementation. For example, the provisions of section 1012 should amend chapter 313 of title 49 of the United States Code rather than chapter 51. Chapter 313 sets forth Federal requirements for State issuance of Commercial Driver's Licenses (CDLs), while chapter 51 sets forth hazardous materials transportation requirements across the modes. In addition, section 1012 does not identify the

type or quantity of hazardous materials being transported that would require the driver to submit to a background check. The Committee believes the requirement should be limited to drivers carrying substances for which DOT requires placarding or which are on the Centers for Disease Control list of select agents. Because of the ambiguities of section 1012, the DOT initiated a rulemaking to clarify the requirements for background checks; however, at the time this report was filed, the rulemaking had not yet been finalized.

Background check requirements are not uncommon in the transportation industry. Passed on November 16, 1990, the Aviation Security Improvement Act of 1990, Public Law 101-604, required the Administrator of the Federal Aviation Administration to issue regulations for employment screening and, if deemed necessary, background checks for positions with access to security-sensitive areas of airports or airplanes. Further, on November 19, 2001, the Aviation Security Act, Public Law 107-71, mandated background checks for all airline and airport employees, including contract employees, who have access to secure areas of airports. S. 1214, the Port and Maritime Security Act, which was unanimously approved by the Senate on December 20, 2001, also would require background checks for port employees with access to secure areas.

HAZARDOUS MATERIALS TRANSPORTATION

Railroads, highways, and marine vessels carry 800,000 shipments of hazardous materials each day and more than 4 billion tons per year. Experts note that transportation of hazardous materials presents significant safety and security risks. The extent of these systems, consisting of millions of miles of rail, highway, coastal and inland maritime, and oil and gas pipeline networks, make these systems difficult to fully safeguard.

Trucks transport the majority of hazardous materials shipments, although the tonnage transported is equally divided between truck and rail. The trucking industry employs more than 9 million commercial drivers, one-third of whom have CDLs with hazardous materials endorsements. The types of vehicles carrying hazardous materials on the nation's highways range from cargo tank trucks to conventional tractor-trailers and flatbeds that carry large portable tank containers.

The DOT's Research and Special Programs Administration (RSPA) sets regulations for commercially-transported hazardous materials. The Secretary of Transportation determines what substances are considered to be hazardous, and classifies them according to the different dangers they present. However, the 1,000 pages of Federal Hazardous Materials Transportation Regulations were designed primarily to promote safety during transportation—not to ensure security and reduce risks from terrorist attacks.

Companies transporting hazardous materials must register with the DOT annually. The registration process involves a simple registration form and the payment of a fee, and does not require any licensing or approvals. Companies transporting hazardous materials are responsible for knowing and following the law, including the proper labeling, storage, and securing of hazardous materials. Companies transporting explosives are required to provide additional information, including submitting shipping routes for mate-

rials after they have been transported. Nuclear waste transport triggers additional United States Department of Energy safety requirements.

In 2000, there were 17,347 hazardous materials incidents related to transportation in the United States: 1,419 via air transportation; 14,861 via highway transportation; 1,052 via railway transportation; and 15 via water transportation. These incidents mostly involved minor releases of chemicals; 244 incidents caused injuries, and 13 caused fatalities (12 via highway transportation and 1 via railway transportation).

COMMERCIAL DRIVER'S LICENSE STANDARDS

The Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, established minimum national standards that States must meet when licensing commercial motor vehicle (CMV) drivers, and penalizes those States that do not adhere to the minimum standards by withholding Federal highway funds. The Act made it illegal for a commercial motor vehicle operator to hold more than one driver's license and required States to adopt testing and licensing standards for truck and bus drivers to check a person's ability to operate the intended type of vehicle. It is important to note that the Act does not require operators to obtain a separate Federal license; it required States to upgrade their existing testing and licensing programs where necessary to conform with the Federal minimum standards. The Federal Motor Carrier Safety Administration (FMCSA) is responsible for monitoring State compliance with the Federal CDL requirements and to take enforcement action when a State is found to be not in compliance.

Under the Federal minimum standards, a CDL applicant must pass a 50-question general knowledge test on operating a commercial motor vehicle and pass a three-part skills test that includes pre-trip inspection, off-road vehicle control maneuvers, such as alley docking and parallel parking, and road maneuvers in actual traffic conditions. An applicant who wishes to haul radioactive and other hazardous materials also must pass a specialized knowledge test to obtain a hazardous materials endorsement.

Until the passage of the USA PATRIOT Act, there were no Federal employment or criminal background checks required of drivers seeking a license and endorsement to transport hazardous materials. The drivers of hazardous materials are required to know what type of substances they are hauling and to properly placard their CMV.

FEDERAL ACTIONS TO HEIGHTEN SECURITY OF MOTOR CARRIERS

To address ground transportation vulnerabilities following September 11, numerous Federal efforts have been initiated. DOT has asked the domestic transportation industry to remain at a heightened state of alert and to implement security measures commensurate with this level of security. As reported by Admiral James W. Underwood who testified at the Subcommittee hearing on railroad and maritime security on October 2, 2001, DOT's Office of Intelligence and Security is monitoring threats to transportation. The FBI has warned representatives at industrial facilities, particularly those that manufacture, distribute, transport or store hazardous

materials, that they should be especially vigilant. The FBI is coordinating a formal threat assessment with the DOT.

On September 26, 2001, the FMSCA ordered State directors to visit carriers that transport hazardous materials. According to an FMSCA memo to State directors dated September 26, 2001, these “security sensitivity visits” were intended to “heighten the sensitivity of carriers to be alert for suspicious behaviors from drivers, shippers, consignees, or the public and to report threats to proper authorities.” The State directors also were directed to contact State trucking associations involved in the transport of hazardous materials to emphasize the “need to heighten security awareness.”

BORDER ISSUES

Federal and State agents at Mexican and Canadian border crossings are responsible for monitoring hazardous materials on, and the safety of, motor vehicles entering the United States. Law enforcement, intelligence, customs, truck safety, and immigration functions all converge at these border crossings. To stop hazardous materials that could be used as weapons to commit acts of terrorism, border agents not only need information from United States law enforcement and intelligence agencies about specific threats, but also immigration and intelligence information regarding unsafe and potentially dangerous drivers, whether they have poor driving records or a background of criminal or terrorist activities. A coordinated sharing of information and responsibilities at the border is one of the keys to both stopping terrorism and making sure foreign trucks are safe for American roads.

The Committee believes it is important to apply standards equally to all CMV drivers carrying hazardous materials in the United States. Therefore, drivers licensed in Canada or Mexico who carry hazardous materials into and through the United States would be required to submit to similar background checks.

LEGISLATIVE HISTORY

On October 10, 2001, the Subcommittee held a hearing on bus and truck safety and hazardous materials licensing. The hearing was chaired by Senator Breaux. The following witnesses testified: Joseph Clapp, Administrator, FMCSA; Ellen Engleman, Administrator, RSPA; Duane W. Acklie, Chairman of the Board, American Trucking Associations; Peter Pantuso, President and CEO, American Bus Associations; Keith Gleason, Director, Tankhaul Division, International Brotherhood of Teamsters; Lieutenant Paul Sullivan, Massachusetts State Police, Commercial Vehicle Enforcement Division; and Joan Claybrook, President, Public Citizen, and Program Co-chair, Advocates for Highway and Auto Safety.

On October 26, 2001, the USA PATRIOT Act (P.L. 107–56) was signed into law. Section 1012 enacts 49 U.S.C. 5103a, which limits the issuance of hazardous materials endorsements to instances where the Secretary of Transportation has certified that the applicant is not a security risk. It requires the States to request a background check from the AG, which consists of a check of the relevant criminal history databases; in the case of an alien, the status of the alien under the immigration laws of the United States; and as appropriate, a check of the relevant international databases.

through Interpol-United States National Central Bureau. It expands the definition of hazardous materials to include chemical and biological materials and agents, and authorizes the Secretary of the Transportation to require the States to report relevant related information. Section 1012 also amends 49 U.S.C. 31305 with respect to the minimum standards for commercial motor vehicle operator fitness to include a determination under section 5103a that the applicant does not pose a security risk.

On November 30, 2001, Senators Ernest Hollings, John McCain, John Breaux, and Gordon Smith introduced S. 1750 to help improve upon the implementation requirements of the USA PATRIOT Act with respect to background checks for commercial truck drivers transporting hazardous materials. S. 1750 assumes continuation of the basic framework of section 1012, but provides additional direction to the DOT regarding standards, requirements, and rulemakings.

On April 18, 2002, the Committee met in executive session and ordered S. 1750 reported with an amendment in the nature of a substitute. This amendment provided technical changes to clarify the intent of the USA PATRIOT Act, including provisions maintaining the confidentiality of records, provisions delineating the authority of the Secretary of Transportation to issue an interim final rule on conducting background checks for commercial drivers, and provisions authorizing DOT to assess the risks associated with motor carrier transportation and to carry out research and testing of devices to increase security of hazardous shipments.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 20, 2002.

Hon. ERNEST F. HOLLINGS,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1750, Hazmat Endorsement Requirements Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Julie Middleton (for federal costs) and Susan Sieg Tompkins (for the state and local impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1750—Hazardous Materials Endorsement Requirements Act

S. 1750 would authorize the Secretary of Transportation to assess security risks associated with motor carrier transportation of hazardous materials and to research the feasibility of requiring hazardous materials transporters to install security devices. Based on information from the Department of Transportation, CBO estimates that implementing S. 1750 would cost \$2 million over the 2002–2007 period, assuming appropriation of the necessary funds.

In addition, S. 1750 would clarify provisions of the USA PATRIOT Act (Public Law 107–56) that prohibits states from issuing licenses for the transportation of hazardous materials unless the Department of Transportation determines that the applicant does not pose a security risk. S. 1750 would establish specific criteria to judge who may be a security risk and it would define hazardous materials under the USA PATRIOT Act. CBO estimates that these clarifications to current law would have no significant impact on the federal budget.

CBO estimates that implementing S. 1750 would increase revenues and direct spending by less than \$500,000 a year because the act would establish new criminal penalties for obtaining fraudulent commercial driver's licenses. Criminal fines are recorded in the federal budget as governmental receipts (revenues). Criminal fines are then deposited in the Crime Victims Funds and are available to be spent without further appropriations in the following year. Because the bill could affect revenues and direct spending, pay-as-you-go procedures would apply; but CBO expects that any additional receipts and direct spending resulting from this bill would be negligible because of the small number of cases involved.

S. 1750 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The hazardous materials provisions of the USA PATRIOT Act could impose significant costs on states to upgrade their information management systems to track the results of criminal background checks. Based on information from state motor vehicle administrators, initial costs for all states could range from \$25 million to \$60 million, depending on how the final regulations are written by the Department of Transportation. While S. 1750 would provide more detail about how the original USA PATRIOT Act requirements would be carried out, it would not place any additional requirements on states. Any costs states incur are the result of enactment of the USA PATRIOT Act, not S. 1750.

The CBO staff contacts for this estimate are Julie Middleton (for federal costs) and Susan Sieg Tompkins (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Because S. 1750 does not create any new programs in addition to section 1012 of the USA PATRIOT Act, the legislation would have no additional regulatory impact, and would result in no addi-

tional reporting requirements. The legislation would have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

SUMMARY OF MAJOR PROVISIONS

S. 1750 would set forth Federal requirements for State issuance of CDLs with hazardous materials endorsements; establish offenses that would disqualify drivers, similar to those for aviation employees; clarify the definition of hazardous materials; authorize the Secretary of Transportation to provide a waiver for State compliance if a background check for renewal of a hazardous materials endorsement cannot be completed in a timely manner through no fault of the applicant; provide for due process in the event that a driver is denied an endorsement; require that Canadian and Mexican commercial drivers carrying hazardous materials in the United States be subjected to a similar background check; establish penalties for issuing fraudulent CDLs or endorsements; and require the Secretary of Transportation to assess the security risks associated with the transportation of hazardous materials and various security and technological means to reduce the risks of transporting such materials.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section provides that the bill may be cited as the “Hazmat Endorsement Requirements Act.”

Section 2. Limitation on Issuance of Hazardous Materials Endorsements

Section 2 would correct the Commercial Driver’s License (CDL) provisions of section 1012 of the USA PATRIOT Act which amended chapter 51 of title 49, United States Code, which sets forth hazardous materials transport requirements for all modes of transportation. The section would instead amend chapter 313 of title 49, United States Code, which sets forth Federal requirements for State issuance of CDLs, to establish a new section 31318 captioned “Issuance, renewal, upgrade, transfer, periodic check of hazardous materials licenses.”

This section would set State requirements for the issuance of hazardous materials endorsements, as follows: (1) a State may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a CDL unless the Secretary of Transportation has determined that the individual does not pose a security risk warranting denial of the endorsement; (2) each State is to implement a program under which a background records check is requested whenever a CDL with a hazardous materials endorsement is to be issued, renewed, upgraded or transferred; and (3) under regulations to be prescribed by the Secretary, States would also be required to periodically conduct background checks on other holders of CDLs with a hazardous materials endorsement.

This section would establish conditions for a driver’s disqualification. Under this section, an individual may not be denied a haz-

ardous materials endorsement for a commercial driver's license unless the Secretary determines that, during the past 10 years, the applicant was convicted, or found not guilty by reason of insanity, of an offense described in section 44936 (b)(1)(B) of title 49 United States Code, (which are the same offenses that would disqualify aviation employees), offenses described in 18 U.S.C. 175b(b)(2), or denied admission to the United States or removed from the United States under clauses of the Immigration and Nationality Act. Under this section, the Secretary would be required to consider circumstances or other factors of any disqualifying act or offense that may indicate an applicant does not pose a security risk by holding a hazardous materials endorsement. This section would further direct the Secretary to establish an appeals process for applicants who are denied a hazardous materials endorsement. The appeals process would include notice of the reason for denial and the opportunity for a hearing.

To issue a hazardous materials endorsement, the States would be required to request that the AG conduct a background check on the applicant. Under this section, the AG would conduct the background check, and, upon completion, notify the Secretary of Transportation of the results. The Secretary of Transportation would make a determination regarding disqualifying acts and offenses as described above and notify the State. The AG would be authorized to take appropriate criminal enforcement action based on information developed or obtained while conducting the background check. The background checks would involve review of relevant criminal, immigration, and international databases. If a background check for renewal of a hazardous materials endorsement cannot be completed in a timely manner through no fault of the applicant, the Secretary would be permitted to provide a waiver for State compliance and the individual could continue to hold a hazardous materials endorsement until the new background check is completed.

Under this section, States would be required to provide timely information to the Secretary of Transportation about individuals holding hazardous materials endorsements. Information collected about individuals must remain confidential and may not be made available through the Freedom of Information Act.

This section would define "hazardous materials" as substances or materials designated as hazardous by DOT under 49 U.S.C. 5103 or as those which require placarding. Hazardous materials would also include substances or materials designated by the Secretary for purposes of this Act, including a substance or material on the CDC list of select agents. Security checks would be performed only on drivers of trucks hauling hazardous materials.

States failing to comply with the provisions of this Act would be subject to withholding of Federal highway funds. However, no enforcement action would be taken against a State for noncompliance with this Act prior to the effective date of the interim final rule prescribed by the Secretary of Transportation. The Secretary of Transportation would be directed to issue an interim final rule within 90 days after the date of enactment of this legislation.

Section 3. Prohibition on Operating Without Proper Hazardous Materials Endorsement or License

Section 3 would provide that no individual may operate a commercial motor vehicle transporting a hazardous material in commerce in the United States without a hazardous materials endorsement issued by a State. Under this section, a hazardous materials endorsement or license issued by the government of Canada or Mexico, or a political subdivision, must provide for a background check that is the same as, or substantially similar to, the background check required under the terms of this Act. The Secretary of Transportation would be directed, by regulation, to prescribe penalties for violation of this section.

Section 4. Penalties For Issuing Fraudulent CDLs or Endorsements

Section 4 would provide that any person who knowingly issues, obtains, or facilitates the issuance, renewal, upgrade, transfer, or acquisition of a commercial driver's license or a hazardous materials endorsement, or attempts to do so, is guilty of a Class E felony punishable by a fine, imprisonment, or both as provided in Title 18 of the United States Code.

Section 5. Motor Carrier Security Report

Section 5 would provide that the Secretary of Transportation is to assess the security risks associated with motor carrier transportation, the transportation of hazardous materials, and various security and technological means to reduce the risks of its transport. The assessment is to include a review of any actions taken by the public and private sectors to address hazardous materials security issues. The Secretary would be required to consult with operators, drivers, safety advocates, public safety officials, and the Transportation Research Board of the National Academy of Sciences. Further, the Secretary would be required, within 180 days of enactment of this Act, to submit a report to Congress, in both classified and redacted forms, with its assessment and proposals for providing Federal financial or technical support to assist carriers and shippers in addressing the risks of terrorism.

Section 6. Study

Section 6 would direct that the Secretary of Transportation to conduct a study using FY 2003 funds appropriated pursuant to the authority of section 5001(a)(5) of the Transportation Equity Act for the 21st Century, Public Law 105-178, to determine the effectiveness of installing ignition- or engine-locking devices, silent alarms, or satellite technology in vehicles transporting hazardous materials. The Secretary would be authorized to conduct a pilot program to assess such devices.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE III. GENERAL AND INTERMODAL PROGRAMS

CHAPTER 51. TRANSPORTATION OF HAZARDOUS MATERIAL

§ 5103a. Limitation on issuance of hazardous materials licenses**[(a) LIMITATION.—**

[(1) ISSUANCE OF LICENSES.—A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.

[(2) RENEWALS INCLUDED.—For the purposes of this section, the term “issue”, with respect to a license, includes renewal of the license.

[(b) HAZARDOUS MATERIALS DESCRIBED.—The limitation in subsection (a) shall apply with respect to—

[(1) any material defined as a hazardous material by the Secretary of Transportation; and

[(2) any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General as being a threat to the national security of the United States.

[(c) BACKGROUND RECORDS CHECK.—

[(1) In general. Upon the request of a State regarding issuance of a license described in subsection (a)(1) to an individual, the Attorney General—

[(A) shall carry out a background records check regarding the individual; and

[(B) upon completing the background records check, shall notify the Secretary of Transportation of the completion and results of the background records check.

[(2) SCOPE.—A background records check regarding an individual under this subsection shall consist of the following:

[(A) A check of the relevant criminal history data bases.

[(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

[(C) As appropriate, a check of the relevant international data bases through Interpol-U.S. National Central Bureau or other appropriate means.

[(d) REPORTING REQUIREMENT.—Each State shall submit to the Secretary of Transportation, at such time and in such manner as the Secretary may prescribe, the name, address, and such other information as the Secretary may require, concerning—

[(1) each alien to whom the State issues a license described in subsection (a); and

[(2) each other individual to whom such a license is issued, as the Secretary may require.

[(e) ALIEN DEFINED.—In this section, the term “alien” has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act.]

* * * * *

TITLE 49. TRANSPORTATION

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART B. COMMERCIAL

CHAPTER 313. COMMERCIAL MOTOR VEHICLE OPERATORS

§ 31305. General driver fitness and testing

(a) MINIMUM STANDARDS FOR TESTING AND FITNESS.—The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

(1) shall prescribe minimum standards for written and driving tests of an individual operating a commercial motor vehicle;

(2) shall require an individual who operates or will operate a commercial motor vehicle to take a driving test in a vehicle representative of the type of vehicle the individual operates or will operate;

(3) shall prescribe minimum testing standards for the operation of a commercial motor vehicle and may prescribe different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that an individual taking the tests has a working knowledge of—

(A) regulations on the safe operation of a commercial motor vehicle prescribed by the Secretary and contained in title 49, Code of Federal Regulations; and

(B) safety systems of the vehicle;

(5) shall ensure that an individual who operates or will operate a commercial motor vehicle carrying a hazardous material—

(A) is qualified to operate the vehicle under regulations on motor vehicle transportation of hazardous material prescribed under chapter 51 of this title;

(B) has a working knowledge of—

(i) those regulations;

(ii) the handling of hazardous material;

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of hazardous material; and

(iv) appropriate response procedures to follow in those emergencies; and

(C) is licensed by a State to operate the vehicle after having first been determined under [section 5103a] *section 31318* of this title as not posing a security risk warranting denial of the license.

(6) shall establish minimum scores for passing the tests;

(7) shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations

prescribed by the Secretary and contained in title 49, Code of Federal Regulations, to the extent the regulations apply to the individual; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to an individual passing the tests; and

(B) the individual to have a copy of the certification in the individual's possession when the individual is operating a commercial motor vehicle.

(b) REQUIREMENTS FOR OPERATING VEHICLES.—

(1) Except as provided in paragraph (2) of this subsection, an individual may operate a commercial motor vehicle only if the individual has passed written and driving tests that meet the minimum standards prescribed by the Secretary under subsection (a) of this section to operate the vehicle and has a commercial driver's license to operate the vehicle.

(2) The Secretary may prescribe regulations providing that an individual may operate a commercial motor vehicle for not more than 90 days if the individual—

(A) passes a driving test for operating a commercial motor vehicle that meets the minimum standards prescribed under subsection (a) of this section; and

(B) has a driver's license that is not suspended, revoked, or canceled.

TITLE 49. TRANSPORTATION

SUBTITLE VI. MOTOR VEHICLE AND DRIVER PROGRAMS

PART B. COMMERCIAL

CHAPTER 313. COMMERCIAL MOTOR VEHICLE OPERATORS

§ 31311. Requirements for State participation

(a) GENERAL.—To avoid having amounts withheld from apportionment under section 31314 of this title, a State shall comply with the following requirements:

(1) The State shall adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title.

(2) The State may issue a commercial driver's license to an individual only if the individual passes written and driving tests for the operation of a commercial motor vehicle that comply with the minimum standards.

(3) The State shall have in effect and enforce a law providing that an individual with a blood alcohol concentration level at or above the level established by section 31310(a) of this title when operating a commercial motor vehicle is deemed to be driving under the influence of alcohol.

(4) The State shall authorize an individual to operate a commercial motor vehicle only by issuing a commercial driver's license containing the information described in section 31308(3) of this title.

(5) At least 60 days before issuing a commercial driver's license (or a shorter period the Secretary prescribes by regulation), the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the proposed issuance of the license and other information the Secretary may require to ensure identification of the individual applying for the license.

(6) Before issuing a commercial driver's license to an individual or renewing such a license, the State shall request from any other State that has issued a driver's license to the individual all information about the driving record of the individual.

(7) Not later than 30 days after issuing a commercial driver's license, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, of the issuance.

(8) Not later than 10 days after disqualifying the holder of a commercial driver's license from operating a commercial motor vehicle (or after revoking, suspending, or canceling the license) for at least 60 days, the State shall notify the Secretary or the operator of the information system under section 31309 of this title, as the case may be, and the State that issued the license, of the disqualification, revocation, suspension, or cancellation, and the violation that resulted in the disqualification, revocation, suspension, or cancellation shall be recorded.

(9) If an individual violates a State or local law on motor vehicle traffic control (except a parking violation) and the individual—

(A) has a commercial driver's license issued by another State; or

(B) is operating a commercial vehicle without a commercial driver's license and has a driver's license issued by another State, the State in which the violation occurred shall notify a State official designated by the issuing State of the violations not later than 10 days after the date the individual is found to have committed the violation.

(10)(A) The State may not issue a commercial driver's license to an individual during a period in which the individual is disqualified from operating a commercial motor vehicle or the individual's driver's license is revoked, suspended, or canceled.

(B) The State may not issue a special license or permit (including a provisional or temporary license) to an individual who holds a commercial driver's license that permits the individual to drive a commercial motor vehicle during a period in which—

(i) the individual is disqualified from operating a commercial motor vehicle; or

(ii) the individual's driver's license is revoked, suspended, or canceled.

(11) The State may issue a commercial driver's license to an individual who has a commercial driver's license issued by another State only if the individual first returns the driver's license issued by the other State.

(12) The State may issue a commercial driver's license only to an individual who operates or will operate a commercial motor vehicle and is domiciled in the State, except that, under regulations the Secretary shall prescribe, the State may issue a commercial driver's license to an individual who operates or will operate a commercial motor vehicle and is not domiciled in a State that issues commercial drivers' licenses.

(13) The State shall impose penalties consistent with this chapter that the State considers appropriate and the Secretary approves for an individual operating a commercial motor vehicle.

(14) The State shall allow an individual to operate a commercial motor vehicle in the State if—

(A) the individual has a commercial driver's license issued by another State under the minimum standards prescribed by the Secretary under section 31305(a) of this title;

(B) the license is not revoked, suspended, or canceled; and

(C) the individual is not disqualified from operating a commercial motor vehicle.

(15) The State shall disqualify an individual from operating a commercial motor vehicle for the same reasons and time periods for which the Secretary shall disqualify the individual under subsections (b)–(e), (g)(1)(A), and (g)(2) of section 31310.

(16)(A) Before issuing a commercial driver's license to an individual, the State shall request the Secretary for information from the National Driver Register maintained under chapter 303 of this title (after the Secretary decides the Register is operational) on whether the individual—

(i) has been disqualified from operating a motor vehicle (except a commercial motor vehicle);

(ii) has had a license (except a license authorizing the individual to operate a commercial motor vehicle) revoked, suspended, or canceled for cause in the 3-year period ending on the date of application for the commercial driver's license; or

(iii) has been convicted of an offense specified in section 30304(a)(3) of this title.

(B) The State shall give full weight and consideration to that information in deciding whether to issue the individual a commercial driver's license.

(17) The State shall adopt and enforce regulations prescribed by the Secretary under section 31310(h) of this title.

(18) The State shall maintain, as part of its driver information system, a record of each violation of a State or local motor vehicle traffic control law while operating a motor vehicle (except a parking violation) for each individual who holds a commercial driver's license. The record shall be available upon request to the individual, the Secretary, employers, prospective employers, State licensing and law enforcement agencies, and their authorized agents.

(19) The State shall—

(A) record in the driving record of an individual who has a commercial driver's license issued by the State; and

(B) make available to all authorized persons and governmental entities having access to such record, all information the State receives under paragraph (9) with respect to the individual and every violation by the individual involving a motor vehicle (including a commercial motor vehicle) of a State or local law on traffic control (except a parking violation), not later than 10 days after the date of receipt of such information or the date of such violation, as the case may be. The State may not allow information regarding such violations to be withheld or masked in any way from the record of an individual possessing a commercial driver's license.

(20) The State shall revoke, suspend, or cancel the commercial driver's license of an individual in accordance with regulations issued by the Secretary to carry out section 31310(g).

(21) *The State shall comply with the requirements of section 31318.*

(b) STATE SATISFACTION OF REQUIREMENTS.—A State may satisfy the requirements of subsection (a) of this section that the State disqualify an individual from operating a commercial motor vehicle by revoking, suspending, or canceling the driver's license issued to the individual.

(c) NOTIFICATION.—Not later than 30 days after being notified by a State of the proposed issuance of a commercial driver's license to an individual, the Secretary or the operator of the information system under section 31309 of this title, as the case may be, shall notify the State whether the individual has a commercial driver's license issued by another State or has been disqualified from operating a commercial motor vehicle by another State or the Secretary.

§31318. Issuance, renewal, upgrade, transfer, and periodic check of hazardous materials endorsements

(a) *IN GENERAL.*—A State may not issue, renew, upgrade, or transfer a hazardous materials endorsement for a commercial driver's license to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless the Secretary of Transportation has determined that the individual does not pose a security risk warranting denial of the endorsement. Each State shall implement a program under which a background records check is requested—

(1) *whenever a commercial driver's license with a hazardous materials endorsement is to be issued, renewed, upgraded, or transferred; and*

(2) *periodically (as prescribed by the Secretary by regulations) for all other individuals holding a commercial driver's license with a hazardous materials endorsement.*

(b) DETERMINATION OF SECURITY RISK.—

(1) *IN GENERAL.*—An otherwise qualified individual may not be denied a hazardous materials endorsement for a commercial driver's license under subsection (a) unless the Secretary determines that individual—

(A) *in the 10-year period ending on the date of the application for a background investigation, was convicted (or found not guilty by reason of insanity) of an offense de-*

scribed in section 44936(b)(1)(B) of this title (disregarding the matter in clause (xiv)(IX) after “1 year,”);

(B) is described in section 175b(b)(2) of title 18, United States Code; or

(C) may be denied admission to the United States or removed from the United States under subclause (IV), (VI), or (VII) of section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)).

(2) **MITIGATING CIRCUMSTANCES.**—In making a determination under paragraph (1), the Secretary shall give consideration to the circumstances of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be reasonably concluded that the individual does not pose a security risk warranting denial of the endorsement.

(3) **APPEALS PROCESS.**—The Secretary shall establish an appeals process under this section for individuals found to be ineligible for a hazardous materials endorsement for a commercial driver’s license that includes notice and an opportunity for a hearing.

(c) **BACKGROUND RECORDS CHECK.**—

(1) **IN GENERAL.**—Upon the request of a State regarding issuance of a hazardous materials endorsement for a commercial driver’s license to an individual, the Attorney General shall—

(A) conduct a background records check regarding the individual;

(B) take appropriate criminal enforcement action required by information developed or obtained in the course of the background check; and

(C) upon completing the background records check, notify the Secretary of Transportation of the completion and results of the background records check.

(2) **SCOPE.**—A background records check regarding an individual under this subsection shall consist of the following:

(A) A check of the relevant criminal history data bases.

(B) In the case of an alien, a check of the relevant data bases to determine the status of the alien under the immigration laws of the United States.

(C) As appropriate, a check of the relevant international data bases through Interpol-U.S. National Central Bureau or other appropriate means.

(D) Review of any other national security-related information or data base identified by the Attorney General for purposes of such a background records check.

(3) **SECRETARY TO NOTIFY STATE.**—After making the determination required by subsection (b)(1), the Secretary of Transportation shall promptly notify the State of the determination.

(d) **REPORTING REQUIREMENT.**—Each State shall submit to the Secretary of Transportation, at such time and in such manner as the Secretary may prescribe, such information as the Secretary may require, concerning each individual to whom the State issues a hazardous materials endorsement for a commercial driver’s license.

(e) **RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.**—

(1) *FOIA NOT TO APPLY.*—Information obtained by the Attorney General or the Secretary of Transportation under this section may not be made available to the public under section 552 of title 5, United States Code.

(2) *CONFIDENTIALITY.*—Any information obtained by the Secretary of Transportation under this section shall be maintained confidentially by the Secretary and may be used only for making determinations under this section.

(f) *RENEWAL WAIVER FOR BACKGROUND CHECK DELAYS.*—The Secretary may, in accordance with procedures prescribed by the Secretary, provide a waiver for State compliance with the requirements of subsection (a) for renewals to the extent necessary to avoid the interruption of service by a license holder while a background check is being completed. The Secretary may not grant a waiver under this subsection to avoid interruption of service if the interruption of service would be due to the license holder's failure to comply with the licensing renewal requirements or to furnish necessary documentation in a timely manner.

(g) *DEFINITIONS.*—In this section:

(1) *HAZARDOUS MATERIALS.*—The term “hazardous material” means—

(A) a substance or material designated by the Secretary under section 5103(a) of this title for which the Secretary requires placarding of a commercial motor vehicle transporting it in commerce; and

(B) a substance or material, including a substance or material on the Centers for Disease Control's list of select agents, designated as a hazardous material by the Secretary under procedures to be established by the Secretary for the purposes of this section.

(2) *ALIEN.*—The term “alien” has the meaning given the term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

§31319. Prohibition on unauthorized transportation of hazardous materials

(a) *IN GENERAL.*—Notwithstanding any provision of law, treaty, or international agreement to the contrary, after the effective date of the interim final rule promulgated by the Secretary of Transportation under section 2(d)(3) of the Hazmat Endorsement Requirements Act, no individual may operate a commercial motor vehicle transporting a hazardous material (as defined in section 31318(g)) in commerce in the United States without a hazardous materials endorsement or a license authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce—

(1) issued by a State in accordance with the requirements of section 31318 of this title; or

(2) issued by the government of Canada or Mexico, or a political subdivision thereof, after a background check that is the same as, or substantially similar to, the background check required by section 31318.

(b) *PENALTY.*—The Secretary shall by regulation prescribe the penalty for violation of subsection (a).

§31320. *Penalty for fraudulent issuance, renewal, upgrade, or transfer of commercial driver's license*

Any person who knowingly issues, obtains, or facilitates the issuance, renewal, upgrade, transfer, or obtaining of, a commercial driver's license or an endorsement for a commercial driver's license, or attempts to do so, knowing the license or endorsement to have been wrongfully issued or obtained, or issued, renewed, upgraded, transferred, or obtained through the submission of false information or the intentional withholding of required information is guilty of a Class E felony punishable by a fine, imprisonment, or both as provided in title 18, United States Code.

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(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Department of Transportation and the Department of Justice such amounts as may be necessary to carry out **section 5103a** *section 31318* of title 49, United States Code, as added by subsection (a).

