

**WEST VIRGINIA
SECRETARY OF STATE
JOE MANCHIN, III
ADMINISTRATIVE LAW DIVISION**
Form #7

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Filing Date

FILED

2004 JUL -6 P 3:46

WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Division of Motor Vehicles TITLE NUMBER: 91

CITE AUTHORITY: WV Code §§17A-2-9, 17B-2-15, 17E-1-18

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 91 CSR 4

TITLE OF RULE BEING AMENDED: Examination and Issuance of Driver's Licenses

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Please see attached Facts and Circumstances.



Authorized Signature

Use additional sheets if necessary



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317

Bob Wise
Governor

Fred VanKirk, P. E.
Secretary

F. Douglas Stump
Commissioner

91 CSR 4

Circumstances Requiring Emergency Filing of Rule

The circumstances that require amendments to the current driver's license rule are two fold.

1. Authorizing the Agency to implement fingerprint based background security checks is required to comply with a time limitation established by federal regulation which provides that all states have in place a method to collect fingerprints and screen licensees who transport hazardous materials. The United States Department of Homeland Security, Transportation Safety Administration established a deadline of January 31, 2005 for all states to initiate fingerprint based federal background checks for Commercial Driver's License holders who have a Hazardous Material endorsement (49 CFR Part §1572). This rule is based on the USA Patriot Act, Section §1012 which amended 49 U.S.C. §51 by adding a new section §5103 titled; Limitation on Issuance of HazMat endorsed licenses which reads:

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.

The background records check must consist of a check of the relevant criminal history data bases, for non-citizens, a check for legal presence status and as appropriate, a check of international databases. The fee that the federal government will charge the hazardous material endorsement holder for the security check assessment will be established in another federal rule to be promulgated by the Transportation Security Administration later this year.

Failure to implement this rule may result in the licensing of dangerous persons to drive commercial motor vehicles containing hazardous materials, a decertification of West Virginia's Commercial Driver's License program and a loss in federal highway funding for non compliance with federal law. At this time the exact percentage of federal highway funding which may be affected has not been determined.

2. Authorizing immediate changes to the rule to allow non citizens who are not eligible for either a Social Security Number or an Individual Taxpayer Identification Number, but who otherwise qualify to obtain a driver's license prevents substantial harm to the public interest. The Social Security Administration, recognizing the need for a social security number for driver's licensing purposes under a previous rule, (20 CFR Part §422) issued social security numbers to non-citizens who would not normally require or qualify for a social security number. Consequently, all applicants for a driver's license could meet the requirements of 91 CSR 4 to provide a social security number or in the alternative, an Individual Taxpayer Identification Number.

However the Social Security Administration amended the rule (Federal Register Volume 68, Number 186) to exclude driver's licensing from the definition of "valid non work purposes." Without changes to the division's driver's license rule, the Agency would in effect be denying driving privileges to applicants who are not citizens of the United States, but who meet all other criteria for licensing such as passing written and driving skills tests, showing legal presence in the United States, showing West Virginia residency and showing proof of identity. It is the position of the Division of Motor Vehicles that it is not in the best interest of the State to deny a driver's license solely on the basis of a change of Federal policy on the issuance of social security numbers to non citizens. Licensing also places these drivers under the jurisdiction of the Agency in terms of maintaining driving records and sanctions for accruing traffic violations. The Social Security Administration is encouraging states to adopt alternative identifiers for non citizens who are affected by the changes to the Social Security Administration rule.



F. Douglas Stump
Commissioner



WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • 304/558-0444

Bob Wise
Governor

Fred VanKirk, P. E.
Secretary

June 17, 2004

The Honorable Joe Manchin III
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Secretary:

The Commissioner of Motor Vehicles is hereby authorized to promulgate emergency and proposed amendments to 91 CSR 4, Examination and Issuance of Driver's Licenses.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Fred Van Kirk".

Fred VanKirk, P.E.
Secretary/Highways Commissioner

FV:sd
Enclosure

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Division of Motor Vehicles

Type of Rule: Legislative Interpretive Procedural

Agency: Division of Motor Vehicles

Address: Building 3, Capitol Complex
Charleston, WV 25317

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	0	0	0	0	0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of Above Estimates:

This rule will not increase or decrease the revenue or expenses of the State

3. Objectives of These Rules:

This rule modifies procedures for issuing driver's licenses, and references federally mandated fingerprint based background check for commercial drivers who haul hazardous material.

Rule Title: Examination and Issuance of Driver's Licenses

4. Explanation of Overall Economic Impact of Proposed Rule:

A. Economic Impact on State Government:

None. DMV anticipates contracting with a third party vendor to collect the fingerprints and to forward these records on to the FBI and the State Police for the criminal background checks.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of

Citizens: CDL drivers with hazardous materials endorsements will pay for the fingerprint based background checks. 15,000 CDL drivers will pay somewhere between \$100 and \$200 for these background checks.

C. Economic Impact on Citizens/Public at Large.

None

Date: JULY 06, 2004


Signature of Agency Head or Authorized Representative:

F. Douglas Sharp

EMERGENCY RULE QUESTIONNAIRE

DATE: June 25, 2004

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Steven O. Dale 

Division of Motor Vehicles
Building 3, Capitol Complex
Charleston, WV 25317
Phone: 304 558-2723

EMERGENCY RULE TITLE: Examination and Issuance of Driver's Licenses

1. Date of filing July 6, 2004

2. Statutory authority for promulgating emergency rule:
WV Code §§17A-2-9, 17B-2-15, 17E-1-18

3. Date of filing of proposed legislative rule: July 6, 2004

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? Amends current rule

5. Has the same or similar emergency rule previously been filed and expired?
NO

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~Please see attached~~



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

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91 CSR 4

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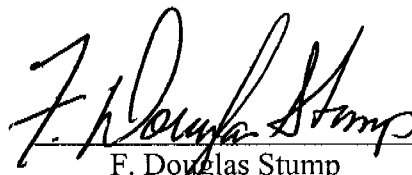
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F. Douglas Stump
Commissioner

FILED

**EMERGENCY
WEST VIRGINIA LEGISLATIVE RULES
DIVISION OF MOTOR VEHICLES
91 CSR 4**

2005 JUL -5 P 3:46

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Title: Examination and Issuance of Driver's Licenses

§91-4-1. General

1.1 Scope- This rule establishes the procedures for the examination of applicants for driver's licenses and the issuance of driver's licenses.

1.2 Authority- West Virginia Code §17A-2-9, §17B-2-7, §17B-2-15 and §17E-1-18.

1.3 Filing Date-

1.4 Effective Date-

§91-4-2. Application and Enforcement.

2.1 Application- This rule applies to the examination of applicants for driver licenses and the issuance and renewal of driver's licenses and identification cards.

2.2 Enforcement- Enforcement of this rule is vested with the Commissioner of Motor Vehicles or the Commissioner's lawful designee.

§91-4-3. Definitions.

3.1. Birth Certificate- Means the certified original or a certified copy of a birth certificate issued by a state or other governmental agency of the United States, its territories, or Puerto Rico responsible for the collection of vital records indicating a person's name and date of birth. For the purposes of this rule, a document issued by a hospital is not considered a birth certificate.

3.2. Certified- Means a validation of a document by a state or other governmental agency responsible for the issuance, collection or verification of documents with a raised or stamped seal indicating the authenticity of the document. Duplicate copies, or notarized copies not certified by the issuing agency are not acceptable.

3.3. Court Order- Means a certified original or certified copy of a court's official determination or final order.

3.4. Divorce Decree- Means a certified original or certified copy of a court's judgement or decree dissolving a marriage which also specifically states the name that a person is to use for legal purposes.

3.5. Driver's License- Means any permit or license issued by this state or any other state or jurisdiction which authorizes the person to operate a motor vehicle including an instruction permit, level 1, 2 or 3 driver's license or a commercial driver's license.

3.6. ~~Immigration and Naturalization Service or INS~~ Means the United States Department of Justice, ~~Immigration and Naturalization Service~~ United States Citizen and Immigration Services or USCIS- Means the United States Department of Homeland Security, Citizen and Immigration Services or its successor agency of the United States Department of Homeland Security. Where ever the term United States Immigration and Naturalization Services or INS is used, it shall be construed as referring to its successor agency, the United States Citizen and Immigration Services.

3.7. Marriage Certificate- Means the certified original or certified copy of the record of marriage verified by the state or other governmental agency responsible for the collection or verification of marriage records.

3.8. Individual Taxpayer Identification Number or ITIN- Means the number issued by the United States Department of the Treasury, Internal Revenue Service (IRS) to persons who are required to have a U.S. taxpayer identification number but who do not have, and are not eligible to obtain a Social Security Number (SSN) issued by the Social Security Administration (SSA). Under this rule, the Individual Taxpayer Identification number is, if the applicant is eligible, the alternative for persons not eligible to receive a social security number.

3.9. School Enrollment Form- Means the document approved by the State Department of Education and issued by a county Board of Education indicating that an applicant under the age of eighteen is in current compliance with the provisions of West Virginia Code §18-8-11.

3.10. Social Security Card- Means the official document issued by the Social Security Administration (SSA) indicating the social security number assigned to a person. The Division requires the social security number of every applicant for a driver's license or identification card or holder of a driver's license or identification card as required by the provisions of the Personal Responsibility and Work Opportunity Act of 1996 as amended at 42 USC §666(a)(13) and as authorized by the provisions of the Tax Reform Act of 1976 as amended at 42 USC §405(C). The social security card is the proof of the actual issued number. For the purposes of this rule, except when the United States Social Security Administration electronically fails to verify the match between submitted name and number; the term "social security card" or proof of social security number shall also include;

3.10.a. A Medicare card issued in the applicant's name which contains the

applicant's social security number and the signature of the applicant as card holder,

3.10.b. A military identification card with the social security number issued to the applicant indicating active, retired, reserve or dependant status in the military of the United States,
or

3.10.c. an original or a copy certified by a governmental entity of the Military Discharge Form DD 214 with the social security card.

3.10.d. At the discretion of the Division, a Wage and Tax Statement Form W-2 or payroll stub with the applicant's employer's name and employer identification number, the applicant's social security number and the applicant's name and address may be accepted in lieu of a social security card.

3.10.e. At the discretion of the Division, an applicant who is not a citizen of the United States but who presents proof of legal presence, identity and residency in this state in accordance with this rule, who is not eligible to receive either a social security number or an individual taxpayer identification number may present a written statement subject to verification in the manner prescribed by the Commissioner, that he or she is not eligible for a social security card or an Individual Taxpayer Identification Number in lieu of a social security card and social security number.

3.11. Valid Driver's License- Means a driver's license issued to a person whose privilege to operate a motor vehicle has not expired, and is not currently suspended, revoked or cancelled for any reason.

§91-4-4 Preliminary Examination of Applicants Never Licensed, Holding a License Expired more than 6 Months or Holding an Expired License from Another State or Jurisdiction.

4.1. An applicant for an instruction permit to operate a motor vehicle shall present a properly completed application on the form designated by the Commissioner. The application shall include the applicant's full name as evidenced by the applicant's certified birth certificate, and the applicant's certified marriage license if the applicant desires to use a name other than the full name on the birth certificate, or a divorce decree or court order which specifically states the name that the applicant is to use, and the applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall obtain an individual taxpayer identification number if eligible from the Internal Revenue Service. The application shall also include the address and all other information required by the provisions of the West Virginia Code and any other information required by the Division. The applicant shall also comply with the following:

4.1.a. The applicant shall provide the certified original or certified copy of a birth certificate as evidence of the applicant's full birth name, and date of birth. Foreign birth certificates are not acceptable. If no record of birth exists, in lieu of a birth certificate, the applicant shall provide

any documentation required by the Division to establish the applicant's full birth name and date of birth. An applicant who is not a citizen of the United States shall present all documents required by the Division to verify his or her legal status presence in the United States, proof of identity, and proof of residency in this state;

4.1.b. The applicant shall provide proof of his or her social security card number or individual taxpayer identification number card if he or she is ineligible for a social security number;

4.1.c. If the applicant is under the age of eighteen, the applicant must have the consent of his or her parent or guardian as evidenced by the custodial parent or legal guardian's signature on the application for an instruction permit. However, an applicant under the age of eighteen who presents a marriage certificate as proof of marital status is exempt from the parental consent requirement;

4.1.d. An applicant under the age of eighteen shall present proof of current school enrollment in the form of certification from the applicant's school dated less than thirty days prior to the date of application. When application is made during summer, the school enrollment form may be dated during the last month of school of the previous semester and is valid through the summer until the beginning of the next semester. If the applicant is not enrolled in school, he or she shall present evidence of progress toward a general education degree, exemption from school attendance or enrollment in an institution of higher education as approved by the applicant's county board of education;

4.1.e. A marriage certificate does not exempt an applicant from the requirement to submit a school enrollment form or from compliance with the requirements of the graduated driver's license program.

4.1.f. An applicant who has a change of gender from the birth certificate shall provide a court order specifically indicating the change is complete; and

4.1.g. An applicant age eighteen or older shall provide two documents showing residency as provided in section 10 and one additional document verifying identity as provided in section 11 of this rule.

4.2. The preliminary examination shall consist of five components.

4.2.a. The Division shall administer a visual acuity test with a standard eye testing chart or mechanical device.

1. An applicant with uncorrected visual acuity of 20/40 or better in at least one eye will pass the visual acuity test.

2. An applicant with visual acuity of 20/40 or better in at least one eye with

the use of contact lenses or glasses will pass the visual acuity test with the appropriate restriction placed on his or her driver's license.

3. An applicant whose visual acuity is less than 20/40 will fail the visual acuity test. An applicant who fails the visual acuity test may request a Driver License Advisory Board Form 2.

4. An applicant who presents a properly completed Driver License Advisory Board Form 2 which indicates that the applicant is within the parameters set forth in West Virginia Legislative Rules, Division of Motor Vehicles, Denial, Suspension, Revocation or Nonrenewal of Driving Privileges, 91 CSR 5 will pass the visual acuity test with the appropriate restrictions placed on his or her driver's license.

5. An applicant may not use special lens arrangements, including but not limited to bioptic or telescopic lenses, to satisfy the visual acuity standard.

6. An applicant for a Commercial Driver's License or endorsement shall adhere to the visual acuity standard in section 14 of this rule.

7. An applicant or licensee who cannot meet the requirements in paragraphs (1) - (6) of this subdivision is not entitled to a license or instruction permit.

4.2.b. Before the Division issues an instruction permit, the Division may require the applicant to pass a color vision test that determines the applicant's ability to distinguish between the colors green, amber and red.

4.2.c. Before the Division issues an instruction permit, the Division may require the applicant to pass a depth perception test that detects deficiencies in depth perception.

4.2.d. An applicant shall pass a basic knowledge examination consisting of not less than twenty-five questions based on information contained in the West Virginia Driver Licensing Handbook and other materials provided by the Division. An applicant may test orally if the applicant presents documentation from an adult basic education center or a county board of education certifying that the applicant has reading comprehension difficulty. At the Division's discretion, the applicant may use a translator. An applicant shall answer at least seventy-six percent of the questions correctly in order to pass the examination.

4.2.e. An applicant shall complete a driving while under the influence awareness education component as prescribed by West Virginia Code §17B-2-7(b).

4.3. The driver license examiner shall mark and return an application for an instruction permit or a copy of the application to an applicant who fails a portion of the preliminary examination. The applicant may return in seven days for reexamination.

4.4. The driver license examiner shall approve the application of an applicant who successfully completes all components of the preliminary examination. The applicant is eligible for an instruction permit subject to the following:

4.4.a. A national check of the applicant's driver license status is completed and shows that the applicant's privilege to operate a motor vehicle is not currently suspended or revoked by this or any other state or jurisdiction; and

4.4.b. The applicant pays the required fee.

4.5. The instruction permit shall contain the full name of the applicant and all other information required by law or prescribed by the Commissioner. The Division shall maintain the social security number as a part of the licensee's record but it shall not appear on the face of the instruction permit.

4.6. The West Virginia Driver Licensing Handbook is the instruction guide of the Division concerning the examination of applicants for a driver's license and the qualifications required of applicants.

§91-4-5 Road Skill Examination

5.1. Applicants who present a valid instruction permit and who meet all other statutory requirements may complete the appropriate application and take the road skills examination subject to the following:

5.1.a. The applicant is accompanied to the examination site by a supervising driver aged twenty-one or older, or a driver education instructor with a valid driver's license;

5.1.b. The applicant presents his or her valid instruction permit, and if under the age of eighteen, a school enrollment form. Applicants age eighteen and older shall provide one additional document verifying residency as required by section 10 of this rule;

5.1.c. The applicant presents current proof of insurance and a valid registration card for the vehicle used for testing; and

5.1.d. The applicant who is under the age of eighteen presents proof of completion of an approved course of driver's education, or the form prescribed by the Division indicating completion of a minimum of thirty hours of behind the wheel instruction.

5.2. The road skills examination shall consist of:

5.2.a. A check of the safety equipment of the testing vehicle; and

5.2.b. An examination of the applicant's ability to operate a motor vehicle on a designated course consisting of a moderate grade, right turn, left turn and a traffic control device or stop sign. The applicant must show successful mastering of all skills required to safely operate a motor vehicle including backing and parallel parking. The applicant must give the proper turn signals, use good judgement in traffic situations and have the proper regard for pedestrians and traffic control devices and signals. Available occupant restraint devices must be properly adjusted and securely fastened whenever the vehicle is in motion. Only the applicant and the examiner or examiners and an interpreter may occupy the vehicle during the test.

5.3. An applicant will fail the road skills examination if the applicant:

5.3.a. Appears for the road skills test with a vehicle with illegal or inoperable equipment. However, the Division may allow an applicant to correct a minor defect and continue the examination;

5.3.b. Has an accident involving any property damage or personal injury or an accident was prevented only by the action of another driver or the examiner;

5.3.c. Drives into or stalls the vehicle into a location which may be hazardous under certain traffic conditions;

5.3.d. Passes another vehicle yielding to a pedestrian in a crosswalk;

5.3.e. Makes two successive turns from the wrong lane under conditions which make the action hazardous;

5.3.f. Fails to stop for a traffic control device or signal;

5.3.g. Refuses to perform a maneuver which is part of the test;

5.3.h. Makes it apparent that he or she is dangerously inexperienced after proceeding a short distance on the course; or

5.3.i. Does not demonstrate the ability to locate and use all mechanical and safety equipment on the vehicle.

5.4. The examiner shall evaluate the applicant's performance and determine whether the applicant possesses the skills necessary to operate a motor vehicle. He or she shall record the results of the equipment check and road skills examination and record any restrictions.

5.5. The applicant may use a translator at the Division's discretion.

5.6. An unsuccessful applicant may return for reexamination after a minimum of seven days have passed and if the applicant still holds a valid instruction permit. The applicant for reexamination must complete all of the components of the road skills examination. The applicant is eligible for three attempts to pass the examination while the instruction permit is valid. After the third failed attempt to pass, or upon expiration of the permit the applicant shall complete all requirements for an instruction permit as if he or she was never previously licensed.

5.7. An unsuccessful applicant under the age of eighteen who renews his or her level one instruction permit prior to its expiration is eligible for three more attempts at the road skills test without first completing a second six month period of infraction free driving.

~~5.7.~~ 5.8. Applicants who successfully complete the road skills examination are eligible for a driver's license with the appropriate restrictions and endorsements subject to the following:

~~5.7.a.~~ 5.8.a. The applicant shall complete an application on the form prescribed by the Commissioner, endorsed by the examiner and validated with the appropriate information;

~~5.7.b.~~ 5.8.b. A national check of the applicant's driver license status shows that the applicant's privilege to operate a motor vehicle is not currently suspended or revoked by this or any other state or jurisdiction; and

~~5.7.e.~~ 5.8.c. If under the age of eighteen, the applicant shall present a school enrollment form and proof of completion of an approved course of driver's education, or the form prescribed by the Division indicating completion of a minimum of thirty hours of behind the wheel instruction.

5.9. An applicant who successfully completes either the passenger vehicle knowledge examination or road skills examination shall obtain the appropriate instruction permit or driver's license within thirty days of successfully passing the examination.

§91-4-6. Issuance and Content of the Driver's License and Identification Card

6.1. The driver's license or identification card shall contain the full name of the applicant as evidenced by the applicant's certified birth certificate, the applicant's certified marriage certificate, if the applicant desires to use a name other than the full name on the birth certificate, or a court order which specifically states the name that the applicant is to use, a color photograph of the applicant taken by the Division and all other information required by law or prescribed by the Commissioner. The Division shall maintain the social security number as a part of the licensee's or identification card holder's record but it shall not appear on the face of the driver's license or identification card.

6.1.a. The Commissioner shall designate distinguishing colors for licenses issued to drivers under the ages of eighteen and twenty-one.

6.1.b. In order for a driver to obtain the appropriately colored license based upon his or her age, the Commissioner may extend the license to thirty days after the expiration date that appears on the front of the license.

6.1.c. The applicant may choose from the following options as to display of his or her name on the driver's license or identification card. However, a court order specifying a change of name supersedes a birth and or marriage certificate:

1. Last name, first name then middle name as evidenced by the applicant's birth certificate;

2. Last name of spouse, as evidenced by the applicant's marriage certificate, then first name and middle name as evidenced by the applicant's birth certificate; ~~or~~

3. Last name as evidenced by the applicant's marriage certificate, first name, then maiden name as evidenced by the applicant's birth certificate to stand in place of the middle name or

4. Last name as a combination of the applicant's last name as evidenced by the applicant's marriage certificate separated by a hyphen from the applicant's maiden name as evidenced by the applicant's birth certificate or as customarily used by a foreign born applicant.

§91-4-7 Renewal of Driver's License and Identification Card.

7.1. The driver's license or identification card is valid for the statutory period of time based on the age of the applicant and the length of the applicant's authorized legal presence in the United States.

7.2. The Division shall mail an application for renewal to each licensee at least thirty days prior to the day of the license's expiration to the licensee's address of record.

7.3. A licensee shall renew his or her license prior to or on the expiration date in order to legally drive a motor vehicle in this or any other state.

7.4. The Division shall complete a national check of the renewal applicant's driver license status. Any licensee whose driving privileges are suspended or revoked in this or any other state for an offense for which this state would suspend or revoke a person's privilege to operate a motor vehicle, is not eligible for renewal of his or her driver's license.

7.4.a. The Division shall not refuse to renew a driver's license for an offense that is more than ten years old and not involving a driving under the influence related offense.

7.4.b. The Division, at its' discretion, may renew an applicant's driver's license if his or her driving privileges are suspended or revoked by another state or jurisdiction for an offense for

which the jurisdiction of record can not provide records or assistance to clear the offense. The renewal applicant shall provide written documentation from the suspending jurisdiction indicating that the records to clear the suspension or revocation are unavailable.

7.5. Any West Virginia licensee whose license is expired six months or less may renew the license without resubmitting to a written or road test. Any West Virginia licensee whose license is expired more than six months, shall resubmit to the examination requirements applicable to the type of license and endorsements the licensee is renewing. At the discretion of the Division, this requirement may be waived if the renewal applicant's driver's license has been expired less than one year and he or she can establish that he or she was hospitalized, incarcerated or otherwise seriously incapacitated consequently preventing the applicant from renewing his or her license in a timely manner. The retesting requirement may not be waived unless the Division determines the applicant has sufficiently recovered from any disability which may prevent the applicant from safely operating a motor vehicle.

7.6 A licensee who will be out of state at the time his or her license expires shall renew the license prior to departure. The licensee may renew the license within two years prior to expiration.

7.7. The Division may, upon request, renew the driving privileges of a licensee who is temporarily located out of state at the time his or her license expires. The Division shall not issue a new driver's license to the licensee out of state. The Division may issue a certified driving record to the licensee indicating that the licensee has renewed his or her driver's license with a notation of the new expiration date. The licensee shall obtain a new license upon returning to West Virginia.

7.8. The Division shall upon request issue a certified driving record to active duty military personnel licensed in West Virginia which indicates that the license remains valid and shall not expire until six months after the licensee's honorable discharge.

7.9. Any licensee or identification card holder seeking to renew his or her license or identification card shall present one proof of identity and one proof of residency as prescribed by the Division and this rule and pay all required fees. An applicant who presents the division's renewal notice mailed to his or her address and whose residence address appears in the records of the division and whose residence address has not changed since the renewal notice was mailed is not required to present proof of residency.

7.10. The Division, in the event of system or equipment failure, may issue a non-transferable, temporary driver's license valid for a period of time not to exceed fourteen days to an applicant with a class E or class F driver's license, whose driving privileges are not suspended, revoked or cancelled and who is otherwise eligible for renewal. The temporary driver's license shall be marked not valid for transfer to another state or jurisdiction.

7.11. For the purposes of this rule when an applicant's driver's license expires on a weekend, holiday, or on a day that a full service regional office is closed, the applicant has until the end of the

next business day to renew his or her license to avoid payment for the additional penalty fee of five dollars. If the date upon which the driver's license has been expired more than six months occurs on a weekend, holiday or on a day that a full service regional office is closed, the applicant has until the end of the next business day to renew his or her driver's license without being required to take the vision, written and road skills examination. Nothing in this provision may be interpreted to grant an applicant relief from any criminal penalties associated with operating a motor vehicle without a valid driver's license.

§91-4-8 Transfer of Driver's License

8.1. A new resident who wishes to operate a motor vehicle in this state shall obtain a West Virginia driver's license within thirty days of establishing residency in this state. The applicant shall substantiate identity, West Virginia residency, social security number or substitute and legal presence with the documents required under sections 3, 10, 11 and 12 of this rule

8.2. An applicant age eighteen or older who holds a valid driver's license from another state or jurisdiction of the United States or from a foreign jurisdiction with which this state has a reciprocal agreement may exchange the out of state driver's license for a West Virginia driver's license without taking the written examination or road skills examination prescribed in section 4 and 5 of this rule subject to the following:

8.2.a. The Division completes a national check of the applicant's driver's license status. Any licensee whose driving privileges are suspended or revoked in this state, or in any other state or jurisdiction for an offense for which this state would suspend or revoke a person's privilege to operate a motor vehicle, is not eligible for licensure;

8.2.b. The applicant surrenders his or her valid out of state license. If the applicant's driver's license has been lost, the applicant shall provide a certified driving record dated thirty days or less from the date of application from the applicant's former state of residence indicating that the applicant's driver's license is valid and a written statement indicating his or her intention to surrender his or her driving privileges and the circumstances of why the applicant does not have a valid driver's license in his or her possession;

8.2.c. The applicant presents his or her certified birth certificate as evidence of the applicant's full name and age. Any change of gender from the birth certificate requires a court order specifically indicating that the gender change is complete. If no record of birth exists, the applicant shall provide any documentation required by the Division to establish the applicant's full birth name and date of birth;

8.2.d. The applicant presents his or her social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant if eligible shall obtain an individual taxpayer identification number from the Internal Revenue Service;

8.2.e. The applicant passes the visual acuity test prescribed by this rule, and completes the driving under the influence awareness component as prescribed as prescribed by West Virginia Code §17B-2-7(b).

8.2.f. The applicant presents two proofs of residence as prescribed in section 10 of this rule; and

8.2.g. The applicant licensed by a foreign jurisdiction with which this state has a reciprocal agreement shows proof of legal presence as required under section 12 of this rule.

8.3. The Division may require a driving record from an applicant's prior licensing state or jurisdiction to be incorporated into the record maintained by the Division. The Division may consider the entire record in a revocation or suspension action, or consider any restrictions applied to an applicant's privilege to operate by the applicant's prior licensing state to determine eligibility for a license.

8.4. An applicant under the age of eighteen who holds a valid driver's license from another state or jurisdiction of the United States which has a graduated driver's license system may exchange the out of state driver's license for a West Virginia driver's license at a comparable level, without taking the written examination or road skills examination prescribed in section 4 and 5 of this rule subject to the following:

8.4.a The applicant complies with the provisions of subsection 8.2. of this rule and in addition presents a:

1. Valid school enrollment form as prescribed in subdivision 4.1.d of this rule that will also meet the proof of residency requirement of Section 10 of this rule, and;

2. Driving record dated thirty days or less from the applicant's prior state or jurisdiction of licensure.

8.4.b. An applicant who does not possess a graduated driver's license which equals or exceed this state's level 2 graduated driver's license or who was previously licensed in a state or jurisdiction which does not have a graduated driver's license system, shall comply with the provisions of section 4 and 5 of this rule as if he or she never held a license. However, the applicant will be credited with whatever time period the applicant held the previous state or jurisdictions license toward any time periods required for level 1 graduated driver's license if the applicant presents a current driving record at the time of his or her initial application for a West Virginia driver's license.

8.4.c. An applicant's driving record from his or her previous state of licensure will be transferred and become part of the applicant's West Virginia driving record.

§91-4-9 Reissuance of Driver's License with Changes or Issuance of a Duplicate Driver's License or Identification Card.

9.1. Change of Address- In accordance with law, all licensees shall provide the Division with a correct address within twenty days of moving to a new location. If a licensee's address is changed by the United States Postal Service, the licensee shall provide the Division with a correct address twenty days prior to the final date on which mail with the old address is deliverable. If the licensee chooses to obtain a new driver's license, he or she shall present at least one proof of identity and one proof of residency as described in Sections 10 and 11 of this rule.

9.2. Change of Name- Any person who changes his or her name shall apply for a new license or identification card within twenty days of the name change and shall present at least one proof of identity and one proof of residency as described in Sections 10 and 11 of this rule in addition to any documents required to substantiate the change of name.

9.2.a. The licensee or identification card holder shall substantiate a change of name by marriage with a marriage certificate. The licensee or identification card holder may choose from the following options as to display of his or her name on the driver's license. However, a court order specifying a change of name supersedes a birth and marriage certificate:

1. Last name, first name then middle name as evidenced by the applicant's birth certificate;

2. Last name of spouse, as evidenced by the applicant's marriage certificate, then first name and middle name as evidenced by the applicant's birth certificate; ~~or~~

3. Last name as evidenced by the applicant's marriage license, first name, then maiden name as evidenced by the applicant's birth certificate to stand in place of the middle name or

4. Last name as a combination of the applicant's last name as evidenced by the applicant's marriage certificate separated by a hyphen from the applicant's maiden name as evidenced by the applicant's birth certificate.

9.2.b. The licensee or identification card holder shall substantiate a change of name by divorce, or court order with a copy of the certified divorce decree or certified court order that specifically states the new name the applicant will use for legal purposes.

9.2.c. Any other change in the name requires a certified birth certificate or a court order ordering the name change.

- 9.3. Any change in the birth date requires a certified birth certificate.
- 9.4. Any change or correction of the social security number requires a social security card.
- 9.5. Any change of gender requires a court order specifically indicating that the gender change is complete.
- 9.6. Any change to restriction or endorsement requires proper documentation.
- 9.7. The Division shall collect the statutory fee for the reissuance of any license or identification card.
- 9.8. An applicant requesting a change to his or her driver's license or identification card shall surrender the previously issued driver's license or identification card.
- 9.9. An applicant under the age of eighteen requesting a duplicate driver's license or a change to his or her driver's license shall also present current proof of school enrollment which shall also serve as proof of residency.

§91-4-10 Residency Requirement

10.1. An applicant for any license or identification card shall be a resident of the State of West Virginia. The West Virginia address of residence shall appear on the face of the license or identification card. The Division shall not license or issue an identification card to an applicant who does not have a West Virginia address unless the applicant resides in an area of West Virginia not served by a West Virginia post office. Acceptable documents for proof of residency are:

- 10.1.a. Current utility bills indicating a West Virginia address;
- 10.1.b. Tax records indicating a West Virginia address;
- 10.1.c. Residential rental and lease agreements for a West Virginia residence;
- 10.1.d. Mortgage documents for a West Virginia residence;
- 10.1.e. A W-2 form not more than 18 months old with a West Virginia address;
- 10.1.f. A current concealed weapons permit with a West Virginia address;
- 10.1.g. A current West Virginia School enrollment form if applicant is under the age of eighteen;
- 10.1.h. A motor vehicle registration card in the name of the applicant issued by the Division with a West Virginia address;

10.1.i. West Virginia Voters Registration Card;

10.1.j. Proof of receipt of West Virginia Public Assistance, and

10.1.k. West Virginia Homestead tax exemption.

10.1.l. Notarized affidavit of homeowner or lessee that the applicant lives at the household address and verified by two proofs of residency in the name of the homeowner or lessee.

10.2. The Division may, at its discretion accept or require other documentation to substantiate residency in this state.

10.3 The Division shall not license or issue an identification card to persons who are not bona fide residents of this state. Nonresidents who previously resided and were licensed or issued an identification card in West Virginia may not renew their West Virginia license or identification card until they again establish a residence in this state.

10.4. Licensees who have either obtained their initial driver's license, renewed their driver's license or obtained a duplicate driver's license since July 1, 2003 are not required to present proof of residency if there has been no change of address.

10.5. Applicants for renewal who have received the division of motor vehicles renewal notice at their address, have provided the division with their residence address and whose address has not changed since they received the renewal notice are not required to present proof of residency.

§91-4-11 Identity Requirements.

11.1. Acceptable forms of proof of identity for citizens of the United States are:

11.1.a. A certified original or certified birth certificate;

11.1.b. A valid photo driver's license or identification card expired six months or less issued the Division or by another state or jurisdiction;

11.1.c. A valid United States passport;

11.1.d. A valid United States active duty, retiree or reservist Military photo identification card (DOD IDDD-2);

11.1.e. A valid United States Uniform Service Identification and Privilege photo card (DD 1173),

11.1.f. A certificate of United States citizenship INS Form N-560; and

11.1.g. A certificate of United States naturalization INS Form N-550 or N-570.

11.2. The Division may at its discretion accept other documentation to substantiate identity. ~~in this state.~~

11.3 Acceptable forms of identity documents for persons who are not citizens of the United States are valid ~~INS USCIS~~ documents with a photo that can be verified with the ~~Immigration and Naturalization Service.~~ United State Citizen and Immigration Service.

11.4 All documents required by this rule to show age, identity, residency and or legal presence in this country must show the same name and or date of birth, or an association between the information on the forms. Additional documentation may be required if a connection between the documents can not be established or if the documents are not original or certified copies issued by the authorized government agency. The Division may waive any documents required to establish a connection, match or association between names if the Division determines that the applicant is not attempting to change his or her identity, to assume someone else's identity or to perpetuate a fraudulent identity.

§91-4-12 Proof of Legal Presence in the United States.

12.1. The Division shall not issue a driver's license or identification card to a person who is not a citizen of the United States who does not submit proof satisfactory to the Division that the applicant's presence in the United States is authorized under federal law and who can not show that he or she is a resident of West Virginia.

12.2. Acceptable documents to establish United States citizenship are:

12.2.a. An original or certified birth certificate;

12.2.b. A United States passport either valid or expired;

12.2.c. A Certificate of Naturalization INS Form N550, N-57, N-578;

12.2.d. A Certificate of Citizenship INS Form N-560, N-561, N-565; and

12.3. The Division at its discretion may accept another document which establishes a place of birth in the United States or its' territories or which indicates United States citizenship.

12.4. The following subdivisions describing categories of persons who are not citizens of the United States, prescribe the documents required to establish that an applicant is authorized under federal law to be in the United States and who is eligible to receive a driver's license if he or she has

complied with all other requirements of West Virginia law and this rule.

12.4.a. Immigrants- Immigrants shall provide the following documents:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall if eligible present an individual taxpayer identification number from the Internal Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule;

2. Two forms showing West Virginia residency as identified in section 10 of this rule; and

3. One of the following documents or similar successor documents:

A. An INS Form I-551 Alien Registration Receipt Card;

B. A valid Temporary I-551 stamp in Foreign Passport (with English translation) or on INS Form I-94; or,

C. Valid re-entry permit INS Form I-327.

D. The Division may at its discretion accept other INS or USCIS documentation that establishes the applicant's legal presence.

12.4.b. Non-Immigrants- Non immigrants are persons granted temporary entry into the United States. ~~Persons granted temporary entry into the United States for one year or less are not eligible for a West Virginia driver's license or identification card.~~ Applicants who are Non-Immigrants, granted temporary entry into the United States ~~for more than one year~~ shall provide:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number and if eligible obtain an individual taxpayer identification number from the Internal Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule;

2. Two documents showing West Virginia residency as identified in section 10 of this rule;

3. A valid foreign passport with English translation;

4. A form I-94;

5. A visa issued by the United States if applicant is from a nation whose citizens are required by the United States to obtain a visa; and,

6. All original INS documents to verify status and length of authorized stay.

A. If applicant's status is F-1 or F-2, a form I-20 and written verification of attendance at the school listed on form I-20 is also required:

B. If the applicant's status is H1-A, H1-B, H-3, or H-4, written verification from employer is also required.

C. If the applicant's status is J-1, or J-2, a form ~~IAP-66~~ DS 2019 and written verification of attendance at the school listed on form ~~IAP-66~~ DS 2019 is also required;

12.4.c. Refugee- An applicant who is a refugee with a sponsoring organization shall provide:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number and if eligible obtain an individual taxpayer identification number from the Internal Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule;

2. One form showing West Virginia residency as identified in section 10 of this rule;

3. INS Form I-94 showing grant of refugee status;

4. A Reception and Placement Program Assurance Form; and

5. Written verification of identity and West Virginia residency presented by an employee of a sponsoring organization approved by the United States Department of State to resettle refugees in West Virginia.

12.4.d. Applicants who are refugees who do not have an approved sponsoring organization or an asylee shall provide the following:

1. The applicant's social security number as evidenced by the applicant's social security card. If an applicant is not eligible to receive a social security number, the applicant shall present written documentation from the Social Security Administration that he or she is not eligible for a number and if eligible obtain an individual taxpayer identification number from the Internal

Revenue Service or a statement of ineligibility for either number in accordance with section 3 of this rule ;

2. Two forms showing residency as identified in section 10 of this rule;
3. Form INS I-94 stamped Refugee/Asylee; and
4. Form I-688 B and I-766 Employment Authorization Document.

12.5. The Division may require verification of any submitted documents and the applicant's legal status by the ~~Immigration and Naturalization Service~~ United States Citizen and Immigration Service before a driver's license or identification card is issued.

12.6. All INS forms designations refer to the current form or to any successor or substitute form promulgated by the Immigration and Naturalization Service or the United States Citizen and Immigration Service.

12.7. The Division may at its discretion accept other INS or USCIS documentation that establishes the applicant's legal presence in this county.

§91-4-13 Motorcycle License or Endorsement

13.1. An applicant for a motorcycle-only instruction permit shall submit to the preliminary examination described in section 4 of this rule except that the written examination may contain information from the West Virginia Motorcycle Licensing Handbook as well as the West Virginia Driver Licensing Handbook.

13.2. An applicant for a motorcycle endorsement instruction permit shall present a valid West Virginia license, pass the visual acuity test described in section 4 of this rule and pass a written examination as described in section 4 of this rule except that the examination may contain information from the West Virginia Motorcycle Licensing Handbook in addition to the West Virginia Driver Licensing Handbook.

13.3. Any applicant under this section shall pass a road skill examination designed to test the skills of a motorcycle operator and meet the requirements described in section 5 of this rule. The Division may exempt any applicant who satisfactorily completes the West Virginia motorcycle safety education program from the road skill examination. No applicant is eligible for the road skill examination until at least seven days after issuance of the motorcycle instruction permit.

13.4. An applicant shall perform the motorcycle road skill examinations on a motorcycle with a 50 cc engine or larger.

13.5. In addition to the West Virginia Driver Licensing Handbook, the West Virginia Motorcycle Licensing Handbook is the instruction guide of the Division concerning the examination and qualification of applicants for a motorcycle license or endorsement.

13.6. Any applicant for a motorcycle license or endorsement under the age of eighteen shall complete the following Graduated Driver's License requirements prior to application:

13.6.a. The applicant shall hold a level one instruction permit conviction free for one hundred eighty days immediately preceding the date of application;

13.6.b. The applicant shall complete either a driver's education course approved by the state department of education or thirty hours of behind the wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one on the form prescribed by the division: Provided, That nothing in this subdivision shall be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student; and

13.6.c. The applicant shall present a current school enrollment form or otherwise show compliance with West Virginia Code §18-8-11.

13.7. Applicants for a motorcycle license or endorsement shall comply with all identity, residency and legal presence requirements of this rule.

§91-4-14 Commercial Driver's License

14.1. An applicant for a commercial driver's license instruction permit shall complete a Commercial Driver's License Application. The applicant shall include a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (physical long form) unless he or she is exempt under Title 49 CFR §390.3 of the Federal Motor Carrier Safety Regulations. The applicant shall satisfactorily complete a written examination for the Commercial Driver's License and each endorsement as prescribed by the Commissioner.

14.2. An applicant for a Commercial Driver's License or endorsement shall present a Commercial Driver instruction permit and satisfactorily complete any applicable road skill examination as determined by the Commissioner.

14.3. In addition to the West Virginia Driver Licensing Handbook, the West Virginia Division of Motor Vehicles Commercial Driver's License Manual is the instruction guide of the Division concerning the examination and qualification of applicants for a Commercial Driver's License.

14.4 A licensee shall maintain a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (DOT physical long form) on file with the Division. Any certificate more than

two years old is not current. A licensee with a Class D driver's license who operates a commercial vehicle over 10,000 pounds but less than 26,001 pounds is required to comply with requirements related to submitting and maintaining a current Federal Motor Carrier Safety Administration Medical Examiners Certificate.

14.5. The Division may cancel the license of any licensee that does not provide a current Federal Motor Carrier Safety Administration Medical Examiners Certificate (physical long form) within twenty days from the date the previous Certificate is no longer current.

14.6. The following provisions apply to the Intrastate Waiver Program for drivers of commercial vehicles with either a Commercial Driver's License or a Class D Driver's License:

14.6.a. Licensees who do not meet the requirements of Title 49 CFR §391.41(b) and cannot obtain a federal interstate waiver may apply for an intrastate waiver with the Division;

14.6.b. A commercially licensed driver with an intrastate waiver may only operate a commercial vehicle in West Virginia. Individuals with an intrastate waiver may not drive a commercial vehicle in furtherance of interstate commerce;

14.6.c. A licensee with an intrastate waiver is not eligible for passenger and hazardous material endorsements except that an individual who has a passenger or hazardous material endorsement prior to passage of this rule may, in the Commissioner's discretion, maintain the endorsement as long as all other criteria in this rule and federal law and rule are met;

14.6.d. A licensee shall complete and submit a Commercial Driver License Application, a Federal Motor Carrier Safety Administration Medical Examiners Certificate (physical long form), a supplemental Medical History Form and/or a Vision Form, and any other information considered necessary; and

14.6.e. An applicant may submit any other information pertaining to the applicant's ability to safely operate a commercial motor vehicle such as letters from a treating physician, a specialist or an employer.

14.7. The Commissioner, or his or her designee, shall review the documents provided in subdivision (d) and (e), the driver history record of the applicant, and the following medical guidelines:

14.7.a. ~~Paraplegia or Quadriplegia~~ Limb Impairment: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of a loss or impairment of a foot, leg, arm, hand or fingers unless the applicant passes a skills test in a commercial vehicle adapted for the specific disability. Any waiver issued shall be vehicle specific;

14.7.b. Vision: The Division shall not issue an intrastate waiver to an applicant

disqualified from an interstate license because of vision problems unless it is found that:

1. The applicant has a distance visual acuity of 20/60 or better with or without corrective lenses in at least one eye;
2. The applicant uses only conventional corrective lenses which excludes bioptic lenses;
3. The applicant does not exhibit uncorrectable double vision;
4. The applicant does not show evidence of disease or rapid deterioration of vision;
5. The applicant can readily distinguish which light is illuminated on a traffic signal showing standard red, amber, and green; or
6. An ophthalmologist or optometrist reports on the supplemental Vision Form that the applicant can safely operate a motor vehicle with appropriate restrictions;

14.7.c. Epilepsy: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of epilepsy or any other condition likely to cause loss of consciousness unless the applicant is seizure free for three years immediately preceding application and free from loss of consciousness, a blackout, fainting or disorientation for one year immediately preceding application. The applicant shall prove reliability in taking prescribed medication by providing blood content level readings;

14.7.d. Cardiovascular: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of cardiovascular problems unless there is no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure. The Division shall not grant an intrastate waiver to any applicant who is disqualified from an interstate license because of a blood pressure reading outside of acceptable federal limits;

14.7.e. Diabetes: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of diabetes unless a board certified/eligible endocrinologist attests that the applicant:

1. Is free from insulin reactions which means the applicant does not have severe hypoglycemia or hypoglycemia unawareness, and has less than one documented, symptomatic hypoglycemic reaction per month;
2. Is able to and has demonstrated willingness to properly monitor and

manage his or her diabetes;

3. Is not likely to suffer any diminution in driving ability due to his or her diabetic condition; and

4. Has not exhibited any instances of diabetic shock or coma in the year immediately preceding the application for an intrastate waiver;

14.7.f. Alcohol or Drugs: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license until the applicant has been free from addiction to or abuse of alcohol or other drugs for one year immediately preceding application;

14.7.g. Psychiatric Disorders: The Division shall not issue an intrastate waiver to an applicant disqualified from an interstate license because of a mental, nervous, organic, or functional disease or psychiatric disorder if:

1. The applicant exhibits homicidal, suicidal, or destructive behavior;

2. The applicant has experienced extreme anxiety, depression, paranoia, confusion, delusions or hallucinations in the year immediately preceding application; or

3. The applicant has been hospitalized for any condition described in Paragraph (A) or Paragraph (B) in the three years immediately preceding the application; and

14.7.h. An applicant disqualified from an interstate license for a medical condition not discussed in this subdivision may apply for an intrastate waiver. The Division shall review applications on a case by case basis with due regard for the applicant's ability to safely operate a commercial motor vehicle. The Division shall not issue an intrastate waiver to an applicant who does not meet the federal standards for hearing found in Title 49 CFR §391.41 (11).

14.7.i. After reviewing the relevant material, the Commissioner or his or her designee may grant or deny a intrastate waiver, or refer the application to the Medical Advisory Board for a recommendation. If an intrastate waiver is granted, the Commissioner or his or her designee may apply restrictions or conditions to the license as determined necessary.

14.7.j. If at any time after issuing the license, it is determined the applicant failed to meet a condition or no longer qualifies for an intrastate waiver, then the Commissioner shall cancel the license or modify it with appropriate restrictions, endorsements and/or conditions.

14.7.k. If an intrastate waiver is denied or canceled, the applicant may reapply with additional information at any time. An applicant or licensee who is denied an intrastate waiver is not entitled to an administrative hearing.

14.7.1. Intrastate waivers granted by another state are not valid in West Virginia.

14.8. A licensee whose commercial driving privileges are disqualified based on a sworn report submitted by a law-enforcement officer in accordance with West Virginia Code §17E-1-15 may request a hearing in accordance with West Virginia Legislative Rules, Division of Motor Vehicles, Administrative Due Process, 91 CSR 1. The docket fee for the hearing is fifty dollars.

14.9. A third party examiner who has paid a fifty-dollar application fee and has contracted with the Division may conduct a road skills examination test. The Division may dismiss a third party examiner who fails to comply with the terms of any contract or agreement with the Division.

14.10. Designated employees of the Division shall conduct random checks of third party examinations for compliance with state rules and federal regulations and any written agreement. All third party examiners shall maintain current certification.

14.11. The Division shall conduct the hazardous material endorsement examination in the English language only and shall issue the endorsement in accordance with the provisions of Section 1012 of the USA Patriot Act as codified at 49 USC § 5103 and Federal Rules implementing the provisions of Section 1012.

14.11.a. In accordance with the provisions of 49 USC §5103 and 49 CFR §Part 1572 (2004), all applicants for either an original or renewal of a hazardous material endorsement shall submit finger prints in the manner prescribed by the Division and undergo a security threat assessment check by the United States Department of Homeland Security Transportation Security Administration and by the United States Department of Justice, Federal Bureau of Investigation.

14.11.b. Any appeal of a denial of a hazardous material endorsement by the United States Department of Homeland Security Transportation Security Administration shall be heard by the appropriate federal agency and not by the Division of Motor Vehicles.

14.12. The division may, upon appropriate application allow a licensee with a commercial driver's license to temporarily downgrade his or her driver's license status to a Class E passenger vehicle driver's license at the time of renewal if he or she has a temporary disability which prevents the licensee from immediately meeting the Federal Motor Carrier Safety Administration medical criteria. The licensee may restore his or her driver's license to CDL status without retesting if the licensee meets the federal medical criteria within two years of the initial downgrade.

§91-4-15 Non Driver Identification Cards

15.1. The Division may issue a children's identification card to any person two years old or older but younger than sixteen years old subject to the following:

15.1.a. A custodial parent or legal guardian accompanies the child at the time of application;

15.1.b. The parent or legal guardian provides the child's certified birth certificate and social security card. If the child is not a citizen of the United States, the parent or legal guardian shall provide in lieu of the birth certificate, proof of the child's legal presence in accordance with section 12 of this rule; and

15.1.c. The parent or legal guardian provides proof of West Virginia residency.

15.1.d. The Division may issue a children's identification card containing less information than a non-driver identification card.

15.1.e. The Division may use the information from a children's identification card to assist law-enforcement officials to locate a missing or kidnapped child.

15.2. The Division may issue a non-driver identification card to any person sixteen years old or older subject to the following:

15.2.a. The applicant does not have a valid driver's license;

15.2.b. The applicant provides a certified birth certificate and social security card;
and

15.2.c. The applicant complies with the applicable provisions of this rule pertaining to identity, residency and legal presence.

15.3. The holder of an identification card or children's identification card shall surrender the card to the Division when the holder is issued a driver's license. A holder of a identification card who has surrendered his or her driver's license in order to obtain an identification card may obtain a driver's license without the requirement of retesting if otherwise eligible under section 7.5 of this rule, if he or she reinstates his or her driver's license within six months of obtaining the identification card.

15.4. The Division may issue a non-transferable temporary identification card valid for a period not to exceed 60 days to applicants who appear otherwise eligible but who submit documents that require additional verification.

§91-4-16 Review and Verification of Documents.

16.1. The Division reserves the right to photocopy, review and verify any document submitted to meet the requirements of this rule prior to the issuance of a driver's license or identification card.

16.2. The Division shall notify the applicant or licensee by regular mail to the address of record of its determination, and may require the applicant to provide the original documents upon his or her return to the office for issuance of the driver's license or identification card.



**WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles**

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91 CSR 4

2004-2005 Proposed Amendments

Federal Laws and Regulations Pertaining to Proposed Amendments

- Appendix 1. 49 U.S.C. §5103a; Federal law pertaining to the U.S.A Patriot Act prohibiting States from issuing Commercial Driver License holders hazardous material endorsements unless the licensee has first passed a background security screening that the individual does not pose a security risk.
- Appendix 2. 49 CFR §PART 1572; amendments to Federal rule promulgated by Federal Transportation Security Administration on April 1, 2004 which establishes the deadline for all states to start the screening process for hazardous material endorsement holders.
- Appendix 3. 49 CFR §PART 1572; Complete rule as of June 21, 2004.
- Appendix 4. 20 CFR §PART 422; Federal Register filing (Volume 68, Number 186, September 25, 2003) for Social Security Administration change to rule which changes SSA rules to prohibit the issuance of social security number to persons for driver's licensing purposes.

Appendix 1

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▷

United States Code Annotated Currentness

Title 49. Transportation (Refs & Annos)

▣ Subtitle III. General and Intermodal Programs (Refs & Annos)

▣ Chapter 51. Transportation of Hazardous Material (Refs & Annos)

→ § 5103a. Limitation on issuance of hazmat 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.

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(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.

CREDIT(S)

(Added Pub.L. 107-56, Title X, § 1012(a)(1), Oct. 26, 2001, 115 Stat. 396.)

HISTORICAL AND STATUTORY NOTES

References in Text

The Immigration and Nationality Act, referred to in subsec. (e), is Act June 27, 1952, c. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 of Title 8, (8 U.S.C.A. § 1101 et seq.). Section 101(a)(3) of such Act is classified to 8 U.S.C.A. § 1101(a)(3). See Tables for complete classification.

Authorization of Appropriations

Pub.L. 107-56, Title X, § 1012(c), Oct. 26, 2001, 115 Stat. 398, provided that: "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 of title 49, United States Code, as added by subsection (a) [this section]."

49 U.S.C.A. § 5103a, **49 USCA § 5103a**

49 U.S.C.A. § 5103a

Current through P.L. 108-238, approved 6-22-04

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Appendix 2

April 6, 2004 Amendments

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DEPARTMENT OF HOMELAND SECURITY

[4910-62-P]

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA-2003-14610; Amendment No. 1572-3]

RIN 1652-AA17

**Security Threat Assessment for Individuals Applying for a Hazardous Materials
Endorsement for a Commercial Drivers License; Final Rule**

AGENCY: Transportation Security Administration (TSA), Department of Homeland
Security (DHS).

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) is issuing this final rule, which amends its Interim Final Rule (IFR) establishing security threat assessment standards for commercial drivers authorized to transport hazardous materials. TSA is changing the date on which fingerprint-based background checks must begin in all States to January 31, 2005. TSA is making this change so that the States will have enough time to make changes to their existing commercial driver safety and testing programs to facilitate implementation.

DATES: EFFECTIVE [~~INSERT DATE OF PUBLICATION IN THE FEDERAL~~ *April 6, 2004* ~~REGISTER~~ *aa*].

FOR FURTHER INFORMATION CONTACT: For technical questions: John Berry,
Credentialing Program Office, Transportation Security Administration Headquarters,
East Building, Floor 8, 601 12th Street, telephone: 571-227-1757, e-mail:

Filed: 4/1/04
2:37pm
Publish: 4/6/04

**PART 1572 – CREDENTIALING AND BACKGROUND CHECKS FOR LAND
TRANSPORTATION SECURITY**

1. The authority citation for part 1572 continues to read as follows:

Authority: 49 U.S.C. 114, 5103a, 40113, 46105.

2. In § 1572.3 add the following definition:

§ 1572.3 Terms used in this part.

* * * * *

Pilot State means a State that volunteers to begin the security threat assessment process prior to January 31, 2005.

* * * * *

3. In § 1572.5, revise paragraphs (b)(2), (c)(1), (c)(2), (c)(3), and (c)(4) to read as follows:

§ 1572.5 Security threat assessment for commercial drivers' licenses with a hazardous materials endorsement.

* * * * *

(b) * * *

(2) Submission of fingerprints. (i) If TSA determines that an individual does not meet the security threat assessment standards described in paragraph (d) of this section prior to completing a fingerprint-based criminal history records check and directs the State to revoke the individual's hazardous materials endorsement, the individual may submit fingerprints in a form and manner specified by TSA if he or she believes that the determination is based on mistaken identity.

(ii) When so notified by the State, an individual must submit fingerprints in a form and manner specified by the State and TSA when the individual applies to obtain, renew, or transfer a hazardous materials endorsement for a CDL, or when requested by TSA.

(c) States. (1) Each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the standards for security threat assessment in paragraph (d) of this section.

(2) Beginning January 31, 2005:

(i) No State may issue, renew, or transfer a hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.

(ii) Each State must notify each individual holding a hazardous materials endorsement issued by that State that he or she will be subject to the security threat assessment described in this section as part of any application for renewal of the endorsement, at least 180 days prior to the expiration date of the individual's endorsement. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 90 days before the expiration date of the individual's endorsement.

(3) Prior to January 31, 2005, as approved by TSA, a Pilot State may not issue, renew or transfer a hazardous materials endorsement for a CDL unless the Pilot State—

(i) Collects the information required in § 1572.5(e);

(ii) Collects and submits fingerprints in accordance with procedures approved by TSA; and

(iii) Receives a Notification of No Security Threat from TSA.

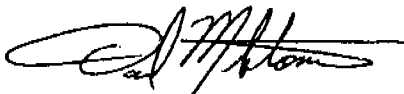
June 28, 2005 *aa*

(4) From January 31, 2005 to ~~[insert date 180 days after January 31, 2005]~~, while

TSA is conducting a security threat assessment on an individual applying to renew or transfer a hazardous materials endorsement, the State that issued the endorsement may extend the expiration date of the individual's endorsement until the State receives a Final Notification of Threat Assessment or Notification of No Security Threat from TSA.

* * * * *

Issued in Arlington, VA on **APR 01 2004**



David M. Stone
Acting Administrator.

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49 C.F.R. § 1572.1

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Current through June 21, 2004; 69 FR 34532

§ 1572.1 Applicability.

This part prescribes regulations for credentialing and background checks in specified uses for maritime and land security.

<General Materials (GM) - References,
Annotations, or Tables>

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49 CFR § 1572.1

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Current through June 21, 2004; 69 FR 34532

§ 1572.3 Terms used in this part.

For purposes of this part:

Alien means any person not a citizen of the United States.

Alien registration number means the number issued by the United States Department of Homeland Security to an individual when he or she becomes a lawful permanent resident of the United States.

Commercial drivers license (CDL) is used as defined in 49 CFR 383.5.

Convicted means any plea of guilty or nolo contendere, or any finding of guilt.

Endorsement is used as defined in 49 CFR 383.5.

Final Notification of Threat Assessment means a final administrative determination by TSA that an individual poses a security threat warranting denial of the authorization for which the individual is applying.

Hazardous materials is used as defined in 49 CFR 383.5.

Incarceration means confined or otherwise restricted to a jail-type institution, half-way house, treatment facility, or another institution, on a full or part-time basis pursuant to a sentence imposed as the result of a conviction.

Initial Notification of Threat Assessment means an initial administrative determination by TSA that an individual poses a security threat warranting denial of the authorization for which the individual is applying.

Lawful permanent resident means an individual who has been lawfully admitted for permanent residence to the United States, as defined in 8 U.S.C. 1101.

Mental institution means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

Notification of No Security Threat means an administrative determination by TSA that an individual does not pose a security threat warranting denial of the authorization for which the individual is applying.

Pilot State means a State that volunteers to begin the security threat assessment process prior to January 31, 2005.

Revoke means the process by which a State cancels, suspends, withdraws, annuls, or disqualifies a hazardous material endorsement.

Severe transportation security incident means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

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State means a State of the United States and the District of Columbia.

[Amdt. 1572-1, 68 FR 23869, May 5, 2003; Amdt. 1572-2, 68 FR 63039, Nov. 7, 2003; Amdt. 1572-3, 69 FR 17973, April 6, 2004]

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§ 1572.5 Security threat assessment for commercial drivers' licenses with a hazardous materials endorsement.

(a) Scope. This section applies to State agencies responsible for issuing hazardous materials endorsements for a commercial drivers license, and individuals who hold or are applying for such endorsements, under 49 CFR part 383.

(b) Individuals.

(1) Requirements. Beginning on September 2, 2003:

(i) Prohibitions. No individual may hold a CDL with a hazardous materials endorsement, or exercise the privileges of a hazardous materials endorsement, if:

(A) The individual does not meet the citizenship status requirements in § 1572.105;

(B) The individual has a disqualifying criminal offense, as described in § 1572.103;

(C) The individual has been adjudicated as a mental defective or committed to a mental institution, as described in § 1572.109; or

(D) TSA has notified the individual that he or she poses a security threat warranting denial of the endorsement, as described in § 1572.107.

(ii) Surrender of endorsement. An individual who is prohibited from holding a CDL with a hazardous materials endorsement under this section must surrender the hazardous materials endorsement to the issuing State.

(iii) Continuing responsibilities. Each individual with a hazardous materials endorsement who is convicted of, wanted, or under indictment in any jurisdiction, civilian or military, for, or found guilty by reason of insanity of, a disqualifying crime listed in § 1572.103; who is adjudicated as a mental defective or committed to a mental institution as specified in § 1572.109; or who renounces his or her U.S. citizenship; must report the offense, adjudication, or commitment to the State that issued the endorsement, and surrender the endorsement to the State, within 24 hours of the conviction, finding of not guilty by reason of insanity, adjudication, commitment, or renunciation.

(2) Submission of fingerprints.

(i) If TSA determines that an individual does not meet the security threat assessment standards described in paragraph (d) of this section prior to completing a fingerprint-based criminal history records check and directs the State to revoke the individual's hazardous materials endorsement, the individual may submit fingerprints in a form and manner specified by TSA if he or she believes that the determination is based on mistaken identity.

(ii) When so notified by the State, an individual must submit fingerprints in a form and manner specified by the State and TSA when the individual applies to obtain, renew, or transfer a hazardous materials endorsement for a CDL, or when requested by TSA.

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(c) States.

(1) Each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the standards for security threat assessment in paragraph (d) of this section.

(2) Beginning January 31, 2005:

(i) No State may issue, renew, or transfer a hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.

(ii) Each State must notify each individual holding a hazardous materials endorsement issued by that State that he or she will be subject to the security threat assessment described in this section as part of any application for renewal of the endorsement, at least 180 days prior to the expiration date of the individual's endorsement. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 90 days before the expiration date of the individual's endorsement.

(3) Prior to January 31, 2005, as approved by TSA, a Pilot State may not issue, renew or transfer a hazardous materials endorsement for a CDL unless the Pilot State--

(i) Collects the information required in § 1572.5(e);

(ii) Collects and submits fingerprints in accordance with procedures approved by TSA; and

(iii) Receives a Notification of No Security Threat from TSA.

(4) From January 31, 2005 to June 28, 2005, while TSA is conducting a security threat assessment on an individual applying to renew or transfer a hazardous materials endorsement, the State that issued the endorsement may extend the expiration date of the individual's endorsement until the State receives a Final Notification of Threat Assessment or Notification of No Security Threat from TSA.

(d) Standards for security threat assessment.

(1) TSA determines that an individual does not pose a security threat warranting denial of a hazardous materials endorsement for a CDL if:

(i) The individual meets the citizenship status requirements in § 1572.105;

(ii) The individual does not have a disqualifying criminal offense, as described in § 1572.103;

(iii) The individual has not been adjudicated as a mental defective or committed to a mental institution, as described in § 1572.109; and

(iv) TSA conducts the analyses described in § 1572.107 and determines that the individual does not pose a security threat.

(2) In conducting the security threat assessment requirements of this section, TSA uses one or more of the following:

(i) An individual's fingerprints.

(ii) An individual's name.

(iii) Other identifying information.

(3) When reviewing the individual's criminal history records, TSA will not issue a Notification of No Security Threat, and will alert the State(s) and the Federal Motor Carrier Safety Administration (FMCSA) if the records indicate a disqualifying criminal offense listed in the FMCSA's rules for holders of CDLs at 49 CFR 383.51, until the FMCSA or the State(s) informs TSA that the individual is not disqualified under that section.

(4) If TSA determines during the course of conducting a security threat assessment, that it is necessary to revoke a hazardous materials endorsement immediately, TSA will direct the State to revoke a hazardous materials endorsement immediately. The individual may appeal the revocation following surrender of the endorsement, pursuant to the procedures set forth in § 1572.141(i).

(e) Application form.

(1) When an individual applies to a State to issue, renew, or transfer a hazardous materials endorsement for a CDL, the State must have the

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individual complete an application that includes the following:

(i) The disqualifying crimes identified in § 1572.103.

(ii) A statement that the individual signing the application:

(A) Was not convicted, or found not guilty by reason of insanity, of any disqualifying crime in any jurisdiction, civilian or military, during the 7 years before the date of the individual's application;

(B) Was not released from incarceration in any jurisdiction, civilian or military, for committing any disqualifying crime during the 5 years before the date of the individual's application;

(C) Is not wanted or under indictment in any jurisdiction, civilian or military, for a disqualifying crime;

(D) Has not been adjudicated as a mental defective or committed to a mental institution involuntarily;

(E) Is either a United States citizen who has not renounced his or her United States citizenship, or a lawful permanent resident of the United States;

(F) Has or has not served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(G) Has been informed that Federal regulations under 49 CFR 1572.5(b) impose a continuing obligation to disclose to the State within 24 hours if he or she is convicted, or found not guilty by reason of insanity, of any disqualifying crime, or adjudicated as a mental defective or committed to a mental institution, while he or she has a hazardous materials endorsement for a CDL.

(iii) A statement reading:

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. Purpose: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a hazardous materials endorsement for a commercial drivers license. Your Social

Security Number (SSN) or alien registration number will be used as your identification number in this process and to verify your identity. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will prevent the completion of your security threat assessment, without which you may not be granted a hazardous materials endorsement. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

(iv) A statement reading:

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.

(v) Lines for the individual's--

(A) Printed name, including first, middle, and last, and any applicable suffix.

(B) Current residential address, and all other residential addresses for the previous seven years.

(C) Date of birth.

(D) Social security number, if the individual is a citizen of the United States, and date of naturalization, if the individual is a naturalized citizen of the United States.

(E) Gender.

(F) City, State, and country of birth.

(G) Citizenship.

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(H) Alien registration number, if the individual is a lawful permanent resident of the United States.

(I) Signature and date of signature.

(2) Each individual must complete and sign the application form. The State must forward it to TSA in a form and manner acceptable to TSA.

(3) The State must inform the individual that a copy of the individual's criminal history record will be provided to the individual by TSA, if the individual makes a written request for the record.

(f) Determination of arrest status. When a criminal history records check on an individual applying for a hazardous endorsement for a CDL discloses an arrest for any disqualifying crime listed in § 1572.103 without indicating a disposition, TSA follows the procedures in § 1572.103.

(g) Notification.

(1) Notification of No Security Threat. If, after conducting the security threat assessment, TSA determines that an individual meets the standards described in paragraph (d) of this section, TSA serves a Notification of No Security Threat to the State in which the individual applied for the hazardous material endorsement.

(2) Initial Notification of Threat Assessment. If, after conducting the security threat assessment, TSA determines that an individual does not meet the standards described in paragraph (d) of this section, TSA serves an Initial Notification of Threat Assessment on the individual and the State in which the individual applied for the hazardous materials endorsement, in accordance with § 1572.141(b). The individual may appeal this determination under the procedures in § 1572.141.

(3) Final Notification of Threat Assessment. If, after completing the process in § 1572.141, TSA determines that an individual does not meet the standards described in paragraph (d) of this section, TSA serves a Final Notification of Threat Assessment on the individual and the State in which the individual applied for the hazardous materials endorsement, in accordance with § 1572.141(e). The individual may not appeal this determination, but may apply for a waiver.

(4) Waivers. If an individual does not meet the standards in paragraph (d) of this section, he or she may apply for a waiver under § 1572.143.

(5) State notification requirements. Within 15 days of the receipt of a Notification of No Security Threat, a Final Notification of Threat Assessment, or a grant of a waiver, the State must:

(i) Update the individual's permanent record to reflect:

(A) The results of the security threat assessment;

(B) The issuance or denial of a hazardous materials endorsement; and

(C) The hazardous materials endorsement expiration date.

(ii) Notify the Commercial Drivers License Information System operator of the results of the security threat assessment.

(iii) Revoke or deny the individual's hazardous materials endorsement, if TSA serves the State with a Final Notification of Threat Assessment.

(iv) Grant or renew the individual's hazardous materials endorsement, if TSA serves the State with a Notification of No Security Threat, or a written decision from TSA to grant a waiver, and the individual is otherwise qualified.

[Amdt. 1572-1, 68 FR 23869, May 5, 2003; Amdt. 1572-2, 68 FR 63039, Nov. 7, 2003; Amdt. 1572-3, 69 FR 17973, April 6, 2004]

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WAIVERS FOR SECURITY THREAT
ASSESSMENTS**

Current through June 21, 2004; 69 FR 34532

§ 1572.103 Disqualifying criminal offenses.

(a) An individual has a disqualifying criminal offense if the individual:

(1) Was convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in paragraph (b) of this section in any jurisdiction, civilian or military, during the 7 years before the date of the individual's application for the authorization, except as provided in paragraph (d) of this section;

(2) Was released from incarceration for committing any of the disqualifying crimes listed in paragraph (b) of this section in any jurisdiction, civilian or military, during the 5 years before the date of the individual's application for the authorization, except as provided in paragraph (d) of this section; or

(3) Is wanted or under indictment in any jurisdiction, civilian or military, for any of the disqualifying crimes listed in paragraph (b) of this section.

(b) The disqualifying crimes are felonies involving:

(1) Any crime listed in 18 U.S.C. Chapter 113B--Terrorism.

(2) Murder.

(3) Assault with intent to murder.

(4) Espionage.

(5) Sedition.

(6) Kidnapping or hostage taking.

(7) Treason.

(8) Rape or aggravated sexual abuse.

(9) Unlawful possession, use, sale, distribution, or manufacture of an explosive, explosive device, firearm, or other weapon.

(10) Extortion.

(11) Robbery.

(12) Arson.

(13) Distribution of, intent to distribute, possession, or importation of a controlled substance.

(14) Dishonesty, fraud, or misrepresentation, including identity fraud.

(15) A crime involving a severe transportation security incident.

(16) Improper transportation of a hazardous material.

(17) Bribery.

(18) Smuggling.

(19) Immigration violations.

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(20) Violations of the Racketeer Influenced and Corrupt Organizations Act; 18 U.S.C. 1961, et seq.

(21) Conspiracy or attempt to commit any of the crimes listed in paragraph (b) of this section.

(c) Determination of arrest status.

(1) When a criminal history records check on an individual discloses an arrest for any disqualifying crime listed in paragraph (b) of this section without indicating a disposition, TSA will notify the individual.

(2) The individual must provide TSA with written proof that the arrest did not result in a disqualifying criminal offense within 30 days after the service date of the notification in paragraph (c)(1) of this section. If TSA does not receive proof in that time, TSA may issue an Initial Notification of Threat Assessment in accordance with § 1572.141.

(d) The time periods specified in paragraphs (a)(1) and (a)(2) of this section do not apply to:

(1) The crimes listed in paragraphs (b)(1), (b)(4), (b)(5), (b)(7), (b)(12), (b)(15), and (b)(16) of this section;

(2) The crime in paragraph (b)(9) of this section involving an explosive; and

(3) Conspiracy or attempt to commit the crimes listed in paragraphs (d)(1) and (d)(2) of this section.

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TRANSPORTATION SECURITY
PART 1572--CREDENTIALING AND
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TRANSPORTATION SECURITY
SUBPART B--STANDARDS, APPEALS, AND
WAIVERS FOR SECURITY THREAT
ASSESSMENTS

Current through June 21, 2004; 69 FR 34532

§ 1572.141 Notification of threat assessment and appeal.

(a) Scope. This section applies to individuals who receive an Initial Notification of Threat Assessment stating that they do not meet the standards for a security threat assessment and who wish to appeal the notification.

(b) Initial Notification of Threat Assessment.

(1) If TSA determines that an individual poses a security threat warranting denial of the authorization, TSA serves upon the individual an Initial Notification of Threat Assessment.

(2) The Initial Notification includes--

(i) A statement that TSA has determined that the individual poses a security threat warranting denial of the authorization;

(ii) The basis for the determination; and

(iii) Information about the correction of records and appeals processes.

(c) Grounds for Appeal.

(1) An individual may appeal an Initial Notification only if the individual is asserting that he or she meets the standards of the authorization for which he or she is applying.

(2) If the Initial Notification was based on a conviction for a disqualifying crime listed in § 1572.103, the individual may present evidence that the underlying criminal record is incorrect, or that the conviction was pardoned, expunged, or overturned on appeal. An executive pardon, expungement, or overturned conviction may nullify a disqualifying conviction if the pardon, expungement, or overturned conviction does not impose any restrictions on the individual. A correction of the record(s) may nullify the disqualifying conviction.

(d) Appeal. An individual may initiate an appeal of an Initial Notification by submitting a written request for materials or a written reply to TSA. If the individual does not initiate an appeal within the time periods specified in this paragraph, TSA serves a Final Notification of Threat Assessment under paragraph (e) of this section.

(1) Request for materials. Not later than 15 days after the date of service of the Initial Notification, the individual may serve upon TSA a written request for copies of the materials upon which the Initial Notification was based.

(2) TSA response. Not later than 30 days after receiving the individual's request for materials, TSA serves copies upon the individual of the releasable materials upon which the Initial Notification was based. TSA will not include any classified information or other protected information described in paragraph (f) of this section.

(3) Correction of records. If the Initial Notification of Threat Assessment was based on an FBI criminal history record that the individual believes is erroneous, the individual may correct the record, as follows:

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(i) The individual may contact the local jurisdiction responsible for the information and the FBI or other agency to complete or correct the information contained in his or her record.

(ii) The individual seeking to correct his or her record must provide TSA with the revised FBI criminal history record, or a certified true copy of the information from the appropriate court, before TSA may determine that the individual meets the standards for the security threat assessment.

(4) Reply.

(i) The individual may serve upon TSA a written reply to the Initial Notification not later than 15 days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to the individual's request for materials under paragraph (d)(2) of this section, if the individual served such a request.

(ii) In an individual's reply, TSA will consider only material that is relevant to whether the individual meets the standards for the security threat assessment in § 1572.5(d).

(5) Final determination. Not later than 30 days after TSA receives the individual's reply, TSA serves a Final Notification of Threat Assessment or a Withdrawal of the Initial Notification in accordance with paragraph (e) of this section.

(e) Final Notification of Threat Assessment.

(1) Review. The Associate Administrator/Chief Operating Officer reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to the agency before making a final decision.

(2) Issuance. If the Associate Administrator/Chief Operating Officer determines that the individual poses a security threat, the Associate Administrator/Chief Operating Officer serves upon the individual, and, in the case of a security threat assessment under § 1572.5, the State in which the individual applied for the authorization, a Final Notification of Threat Assessment.

(i) The Final Notification to the individual includes

a statement that the Associate Administrator/Chief Operating Officer has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him or her, and has determined that the individual poses a security threat warranting denial of the authorization.

(ii) The Final Notification to the State contains a statement that TSA has determined that the individual poses a security threat warranting denial of the authorization.

(3) Withdrawal of Initial Notification. If the Associate Administrator/Chief Operating Officer does not conclude that the individual poses a security threat warranting denial of the authorization, TSA serves upon the individual a Withdrawal of the Initial Notification. In the case of a security threat assessment under § 1572.5 of this part, TSA will also serve a Notification of No Security Threat to the State in which the individual applied for the authorization.

(f) Nondisclosure of certain information. In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in section 1.1(d) of Executive Order 12968, and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(g) Extension of time. TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

(h) Judicial review. For purposes of judicial review, the Final Notification of Threat Assessment constitutes a final TSA order in accordance with 49 U.S.C. 46110.

(i) Appeal of immediate revocation.

(1) If TSA directs a State to revoke the hazardous materials endorsement immediately pursuant to § 1572.5(d)(4), the individual may--

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(i) Within 10 days of revocation, submit a written request to TSA to appeal the decision on which the revocation was based.

(ii) The written request must include the basis on which the appeal should be granted, including a correction of records, and all supporting documentation.

(2) Within 10 days of receipt of the written request, TSA will serve on the individual and the State in which the individual applied for a hazardous materials endorsement, its final decision and a statement explaining the basis for the decision.

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(ii) The written request must include the basis on which the appeal should be granted, including a correction of records, and all supporting documentation.

(2) Within 10 days of receipt of the written request, TSA will serve on the individual and the State in which the individual applied for a hazardous materials endorsement, its final decision and a statement explaining the basis for the decision.

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(1) Review. The Associate Administrator/Chief Operating Officer reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to the agency before making a final decision.

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(f) Nondisclosure of certain information. In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in section 1.1(d) of Executive Order 12968, and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(g) Extension of time. TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

(h) Judicial review. For purposes of judicial review, the Final Notification of Threat Assessment constitutes a final TSA order in accordance with 49 U.S.C. 46110.

(i) Appeal of immediate revocation.

(1) If TSA directs a State to revoke the hazardous materials endorsement immediately pursuant to § 1572.5(d)(4), the individual may--

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(i) Within 10 days of revocation, submit a written request to TSA to appeal the decision on which the revocation was based.

(ii) The written request must include the basis on which the appeal should be granted, including a correction of records, and all supporting documentation.

(2) Within 10 days of receipt of the written request, TSA will serve on the individual and the State in which the individual applied for a hazardous materials endorsement, its final decision and a statement explaining the basis for the decision.

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§ 1572.143 Waivers.

(a) Scope.

(1) Except as provided in paragraph (a)(2), this section applies to individuals who do not meet the standards for a security threat assessment and who are requesting a waiver from those standards.

(2) Individuals who do not meet the standards for a security threat assessment under § 1572.105 or § 1572.107 are not eligible for a waiver.

(b) Waivers.

(1) An individual who does not meet the standards for a security threat assessment in this part may send a written request to TSA for a waiver at any time but not later than 15 days from the date of service of the Final Notification of Threat Assessment.

(2) In determining whether to grant a waiver, TSA will consider the following factors, if the disqualification was based on a disqualifying

criminal offense:

(i) The circumstances of any disqualifying act or offense;

(ii) Restitution made by the individual;

(iii) Any Federal or State mitigation remedies; and

(iv) Other factors that indicate the individual does not pose a security threat warranting denial of the authorization for which he or she is applying.

(c) Grant or denial of waivers. TSA will send a written decision to grant or deny a waiver under this section to the individual and, if applicable, the State in which the individual applied for the authorization, within 30 days of the service date of the individual's application for a waiver, or such longer period as TSA may determine for good cause.

(d) Extension of time. TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

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Appendix 4

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RULES and REGULATIONS

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Regulation No. 22]

RIN 0960-AF05

Evidence Requirements for Assignment of Social Security Numbers (SSNs);
 Assignment of SSNs for Nonwork Purposes

Thursday, September 25, 2003

*55304 AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our enumeration processes for assigning Social Security Numbers (SSNs). By changing evidence requirements for assignment of SSNs and by defining "valid nonwork reasons," the opportunity for fraud through misuse and/or improper attainment of SSNs will be reduced, and the integrity of our enumeration processes will be enhanced.

We are clarifying our rules regarding when we will assign an SSN to an alien not under authority of law permitting him or her to work in the U.S. We are now defining a "valid nonwork purpose" as those instances when a Federal statute or regulation requires an alien to have an SSN in order to receive a federally-funded benefit to which the alien has otherwise established entitlement, or when a State or local law requires an alien who is legally in the U.S. to have an SSN in order to receive general public assistance benefits (i.e., a *55305 public benefit that is means-tested) to which the alien has otherwise established entitlement.

These rules also change the age at which a mandatory in-person interview is required for original applications for an SSN. In addition, these rules eliminate the waiver of evidence of identity for children under age 7 who are applying for an original SSN card. We will now require an in-person interview with all individuals age 12 or older who are applying for an original SSN, and we will no longer waive the requirement to provide evidence of identity in original

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applications for a child under age 7. We are clarifying that evidence of identity must contain sufficient biographical or physical information to identify the individual. Additionally, we are eliminating reference to a pilot that we are no longer conducting, pertaining to the processing of replacement SSN cards for U.S. citizens.

EFFECTIVE DATE: The rule is effective October 27, 2003.

FOR FURTHER INFORMATION CONTACT: Arthur La Veck or Karen Cool, Social Insurance Specialists, Office of Income Security Programs, 157 RRCC, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, ((410) 966-5665, arthur.laveck@ssa.gov or (410) 966-7094, karen.r.cool@ssa.gov) or TTY (410) 966-5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet Web site, Social Security Online, at <http://www.socialsecurity.gov>.

Electronic Version: The electronic file of this document is available on the date of publication in the Federal Register at <http://www.access.gpo.gov/su--docs/aces/aces140.html>. It is also available on the Internet site for SSA (i.e., Social Security Online) at <http://www.socialsecurity.gov/regulations/>.

SUPPLEMENTARY INFORMATION:

Explanation of Changes

Who Can Be Assigned a Social Security Number

We are changing § 422.104 of our regulations to define what we consider to be a valid "nonwork reason" for assigning an SSN to an alien who does not have evidence of authority permitting him or her to work. The only valid nonwork reasons for assigning an SSN to such an alien are:

- To satisfy a Federal statute or regulation that requires the alien to have an SSN in order to receive a federally-funded benefit (such as Temporary Assistance to Needy Families) to which the alien has otherwise established entitlement; or
- To satisfy a State or local law that requires an alien who is legally in the U.S. to have an SSN in order to receive public assistance benefits (such as State-funded General Assistance) to which the alien has otherwise established entitlement.

Thus, under this clarification, State and local entities will be permitted to continue to require individuals to disclose their already assigned SSNs for purposes of receiving benefits or services. However, we will no longer assign an

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SSN to an alien for any nonwork purpose other than to receive Federal, State or local benefits as described in § 422.104.

In-Person Interview

We are changing § 422.107 of our regulations to require an individual age 12 or older be present at an in-person interview before assignment of an original SSN. The current threshold is age 18. As part of this interview, we will attempt to determine if an SSN had been previously assigned by asking additional questions of the applicant and, if a previously assigned SSN cannot be located, why an SSN was not obtained at an earlier time.

This measure offers necessary additional protection against fraud while minimizing the burden on the public because:

- At age 12, a child may have photo identification, such as a student identification card, which can be used for comparison purposes. If photo identification is not available, there should be other convincing documentary evidence of identity available.
- Although the parent or other adult authorized to act on behalf of the child will be in attendance and may be the primary respondent, we believe that requiring SSN applicants age 12 or older to be interviewed in person will significantly reduce opportunities for fraudulent applications. We believe that requiring the child to appear in person provides an additional measure of security when reviewing the evidence submitted in support of the application.
- A 12-year old may be able to provide answers to some questions without parental assistance.
- Few individuals will be affected by this measure as it is rare for a person to obtain an SSN for the first time as late as 12 years of age.

Today, most children need an SSN well before age 12. Section 11111 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amended the Internal Revenue Code (IRC) section 32 (concerning the earned income credit). The amendment requires individuals filing tax returns after December 31, 1991 to include the taxpayer identification number--usually the SSN--of each qualifying child age 1 or older. The Uruguay Round Agreements Act (Pub. L. No. 103-465) amended IRC section 6109 to generally require that individuals include the taxpayer identification number of each dependent for whom an exemption is claimed, regardless of age, for taxable years beginning after December 31, 1994. Additionally, SSNs generally are required for the receipt of government aid or assistance. Children who have not been claimed on tax returns or have not received any government assistance may have needed SSNs for medical insurance purposes, savings accounts or other financial instruments, often within a short time after birth. Because most children generally will have an SSN before their first birthday, lowering the age for a mandatory interview is in accord with our goals for fraud prevention because additional interviewing will be done when a

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child does not obtain an SSN at a very early age.

Furthermore, our available data suggest that some individuals assigned SSNs prior to age 18 have obtained those SSNs fraudulently because we sought no additional development and documentation before assigning an SSN. This issue is addressed in two audits by our Inspector General, the May 28, 1999 "Management Advisory Report: Using Social Security Numbers to Commit Fraud #A- 08-99-42002, which can be found at <http://www.socialsecurity.gov/oig/office--of--audit/audit1999.htm> and "Procedures for Verifying Evidentiary Documents Submitted with Original Social Security Number Applications" which can be accessed at <http://www.socialsecurity.gov/oig/ADOBEPDF/A-08-98-41009.pdf>. Lowering the age at which additional documentation is required should limit further occurrences of fraudulently obtained SSNs for children. This form of SSN misuse can impact all levels of government in the form of illegal employment and fraudulent entitlement to government benefits and services. In addition, an SSN improperly assigned could be used to defraud creditors and other businesses.

Although children generally need an SSN at an early age, we rejected setting the threshold at an age younger than 12 because requiring the presence of younger children at in-person interviews would be overly burdensome on the children and unproductive for *55306 SSA, even with the parent in attendance.

Evidence of Identity

We are changing § 422.107 of our regulations to eliminate the provision to waive the requirement for evidence of identity for children under age 7 when an original application for an SSN is filed. Evidence of identity is required for all SSN applicants, regardless of age. Thus, an SSN will not be assigned to a child under age 7 without all the evidentiary requirements being met. Such evidence requirements also have a direct correlation with the prevention of fraud. Through convincing documentary evidence of identity, the individual's continued existence is established in our records, thus limiting opportunities for fraud such as identity theft.

We are clarifying that the identity document should contain sufficient biographical or physical information to identify the applicant (e.g., contain the applicant's name plus age, date of birth, or parents' names and/or a photograph or physical description). Identity documents containing biographical or physical data can be used for comparison with data we already have or with other documents the applicant may submit in connection with the application for an SSN card. A birth record is not sufficient evidence to establish identity. In a 2000 audit, "Procedures for Verifying Evidentiary Documents Submitted with Original Social Security Number Applications (#A-08- 98-41009)," SSA's Inspector General indicated that SSA assigned SSNs to individuals whose U.S. birth certificates were counterfeit. Individuals typically posed as the mothers of nonexistent children and presented counterfeit birth certificates as evidence. This audit can be found at <http://www.socialsecurity.gov/oig/ADOBEPDF/A-08-98-41009.pdf>. Requiring an identity document other than a birth certificate will make it harder for fraudulent applicants to obtain SSNs under a fictitious identity because they must

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obtain additional evidence. This requirement should not unduly burden legitimate applicants because sufficient proof of identity, such as a medical record or school record, will normally exist, even for very young children.

The pilot project on providing replacement SSN cards by telephone, which we were conducting on the issuance of duplicate SSN cards for U.S. citizens, has been completed. Therefore, we are removing from § 422.107(c) the rules pertaining to this pilot.

Public Comments and Responses

On March 26, 2003, we published a notice of proposed rulemaking in the Federal Register (68 FR 14563) that led to these final rules. We provided a 60 day comment period. During this period, we received over 60 comments from interested individuals, organizations, two States and a foreign government. We carefully considered all of the comments we received and provide our responses to those comments below. While we have condensed, summarized, or paraphrased the comments, we have tried to present all views adequately and to respond to all the relevant issues raised by the commenters.

Valid Nonwork Reason

Comment: Several commenters expressed their concern that the elimination of the need for a driver's license as a "valid nonwork reason" for obtaining an SSN presents a hardship for spouses of employment-authorized aliens and for States that rely on the SSN as a unique identifier. Specifically, these commenters indicated that, because some States still require an SSN from all drivers' license applicants, the need for a drivers' license should remain a "valid nonwork reason" for the assignment of an SSN. These commenters include numerous members of the general public as well as representatives from the State of Illinois, the State of Pennsylvania, the Government of Japan, the American Immigration Lawyers Association, the National Council of La Raza, the American Council on International Personnel, the Brazilian Immigrant Center, and three Japanese Chambers of Commerce in the U.S., and other organizations, and counsel for the plaintiffs in *Sonali Iyengar v. Jo Anne B. Barnhart*, Civil Action No. 02-0825 (ESH) in the U.S. District Court for the District of Columbia.

Response: We are changing our policy based on the guidance provided by investigative authorities that show that some non-citizens assigned SSNs for nonwork purposes misuse those SSNs. Our experience has revealed that fraud and misuse regarding SSNs for nonwork purposes has been almost exclusively in relation to SSNs issued for driver licensing. SSN misuse can impact all levels of government in the form of illegal employment in the U.S., fraudulent entitlement to Federal and State benefits and services, and identity theft. It may also help illegal aliens, including those who are lawfully admitted but overstay the period of their lawful entry, to integrate into U.S. society.

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Moreover, the primary use of SSNs is for SSA to track earnings over a worker's lifetime. As steward of the SSN, one of our chief concerns is to do all we can to prevent SSN fraud and misuse. This rule change will help prevent this type of SSN fraud and misuse, and in doing so, help protect the American public by enhancing homeland security.

Meanwhile, we do plan to continue assigning SSNs for entitlement to federally-funded benefits (as required by Federal statute) and to State and local public assistance programs for non-citizens in lawful status in deference to State and local statutes requiring SSNs. Our experience shows that the SSNs assigned for these programs have not been misused.

We acknowledge that our definition of a "valid nonwork reason" may present a challenge to some aliens without work authorization. We have encouraged States to develop an alternative identifier for several years, and our efforts have been met with considerable success as many States that previously required an SSN for all drivers' license applicants no longer do. In 1997, there were 17 States that required an SSN from all applicants for a driver's license. Currently, there are only seven States that have laws requiring an SSN for all drivers' license applicants. Furthermore, four of those States were previously able to implement systems of alternative identification during the period of March 1, 2002 through December 6, 2002 when SSA was not assigning SSNs for driver's license purposes. Additionally, we have, with the assistance of the American Association of Motor Vehicle Administrators and the support of the U.S. Department of Transportation, combined efforts to assist States that require SSNs for driver licensing and motor vehicle registration purposes to develop alternative identifier systems to accommodate individuals not authorized to work in the U.S. As issuing drivers' licenses is a State function, we continue to urge those few remaining States that require an SSN from all drivers' license applicants to develop an alternative identifier for those individuals affected by this rule change.

Finally, we believe that while section 466(a)(13) of the Social Security Act, 42 U.S.C. 666(a)(13) concerning the recording of SSNs on driver's licenses and other documents, does require that States have procedures which require recording an individual's SSN that he or she may have, this section of the Act does not require that an individual be *55307 issued an SSN if the person is not otherwise eligible for one as a condition of receiving a license. This interpretation of 42 U.S.C. 666(a)(13) is also held by the Department of Health and Human Services, Office of Child Support Enforcement (OCSE), which enforces this statutory provision. See the memorandum from the Commissioner of OCSE, dated July 14, 1999 at <http://www.acf.dhhs.gov/programs/cse/pol/piq-9905.htm>.

Comment: Numerous commenters expressed their concerns that aliens without work authorization often have difficulties obtaining goods or services without an SSN. Specific concerns mentioned by commenters include difficulty in obtaining cell phones, credit cards, mortgages, bank accounts, marriage and professional licenses, various forms of insurance, admission to academic institutions and financial aid for student loans.

Response: None of the concerns raised by these commenters are affected by this rule change, as none of these examples previously represented a "valid nonwork

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reason" for obtaining an SSN.

We understand that some States and private entities sometimes request or require an SSN for the various services mentioned by the commenters. However, as described in our response to the previous set of comments above, the primary use of SSNs is for SSA to track earnings over a worker's lifetime.

In-Person Interview

Comment: One individual commented that age 12 is too young for a child to appear for a personal interview. The commenter indicated that the Bureau of Citizenship and Immigration Services does not require children under age 14 to be fingerprinted. In addition, the Legal Aid Foundation of Los Angeles said that the proposal to require minors age 12 and up to appear for an in-person interview was inappropriate because a minor was unlikely to have personal knowledge as to why an SSN was not issued earlier or to otherwise properly represent themselves in an interview setting. Additionally the Legal Aid Foundation of Los Angeles indicated that not all children had photo identification or other documents that could be used as evidence of identity.

Response: We are lowering the mandatory interview age because our data suggest that some SSNs assigned prior to age 18 are at higher risk for fraud. By establishing the need for additional development and documentation at an earlier age, we will eliminate this opportunity for fraud.

SSN fraud can impact all levels of government in the form of illegal employment and fraudulent entitlement to government benefits and services. In addition, an SSN improperly assigned could be used to defraud creditors and other businesses.

We believe that the proposed age 12 threshold for in-person interviews provides a balance between allowing us to screen effectively for a prior SSN without being overly burdensome on the children or their parents. In setting the age 12 threshold, we considered that it was rare for individuals to obtain an SSN for the first time as late as 12 years of age because children must have SSNs to be shown as dependents on Federal Income Tax Returns and to receive most Federal and State benefits. However, we rejected setting the threshold at a younger age because we felt that requiring the presence of younger children at in-person interviews would have been overly burdensome on the children and unproductive for SSA, even with the parent in attendance. Furthermore, while the commenter states that a child would not have the knowledge to answer these questions, we anticipate that these interviews will be conducted with the parent/authorized representative and the child.

We acknowledge that children are not required to appear in person when applying for a U.S. passport when they are under age 14. However, a U.S. passport is generally not required to function in U.S. society, while an SSN is generally needed shortly after birth to be listed as a dependent on a Federal Income Tax Return or to obtain general public assistance benefits. Therefore, we believe that it is appropriate to require additional screening when a 12-year-old has not

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obtained an SSN previously.

Relative to evidence of identity, we agree that not all children will have photo identification. We do not require that individuals provide photo identification to obtain an SSN. Very young children may have clinic or hospital records, church or daycare records or records from a social services organization which can be used to establish identity. Furthermore, parents are offered the opportunity to apply for the SSN during the birth registration process at the hospital or with the mid-wife. In this scenario, the parent does not have to do or provide anything other than his or her acceptance for an SSN to be assigned.

Other Comments

In response to one comment suggesting that our proposed language in § 422.104(a)(3)(i) and (ii) lacked specificity, we added the word "otherwise" prior to the phrase "established entitlement." This change clarifies that the alien requires an SSN to fully establish entitlement and that merely meeting the other established criteria is not sufficient to receive the benefit. Additionally, we rewrote some of the language in § 422.104(a)(3) to improve clarity but did not change the substance. We also added the phrase "such as" prior to "NOT VALID FOR EMPLOYMENT" in § 422.104(a)(3)(b) to allow for future changes in the precise language of the legend. We also changed the name "Immigration and Naturalization Service" to "Department of Homeland Security" to reflect the new organization that administers immigration matters. Finally, we added information throughout the preamble to more fully explain our proposed rule changes.

Changes in the Final Rules

Other than the changes described under "Other Comments" above we have made no changes from the proposed rules.

Regulatory Procedures

Executive Order 12866, as Amended by Executive Order 13258

The Office of Management and Budget (OMB) has reviewed these rules in accordance with Executive Order 12866 as amended. We have also determined that these rules meet the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that these rules would not have a significant economic impact on a

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substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Federalism

We have reviewed these regulations under the threshold criteria of Executive Order 13132 and have determined that they would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As noted above, we will continue assigning SSNs for State general assistance benefit-related purposes. The impact is limited to those States that have not developed an alternative system for identifying individuals who are seeking drivers' licenses and are not eligible for SSNs.

Paperwork Reduction Act

These rules contain reporting requirements in § 422.107. We have been collecting this information under *55308 Office of Management and Budget (OMB) Number 0960-0066, using Form SS-5 (Application for SSN Card) and from State Bureaus of Vital Statistics (BVS) through the enumeration at birth process. However, the changed reporting requirements in § 422.107, described above, and the revised form will require clearance from OMB under the Paperwork Reduction Act of 1995. An Information Collection Request has been submitted to OMB for clearance.

We solicited comments on: The burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social security.

Dated: June 19, 2003.

Jo Anne B. Barnhart,

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Commissioner of Social Security.

For the reasons set out in the preamble, we are amending part 422, subpart B, chapter III of title 20, Code of Federal Regulations as follows:

PART 422--ORGANIZATION AND PROCEDURES

Subpart B--[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b-1, and 1320b-13).

20 CFR § 422.104

2. Revise § 422.104 to read as follows:

20 CFR § 422.104

§ 422.104 Who can be assigned a social security number.

(a) Persons eligible for SSN assignment. We can assign you a social security number if you meet the evidence requirements in § 422.107 and you are:

(1) A United States citizen; or

(2) An alien lawfully admitted to the United States for permanent residence or under other authority of law permitting you to work in the United States (§ 422.105 describes how we determine if a nonimmigrant alien is permitted to work in the United States); or

(3) An alien who cannot provide evidence of alien status showing lawful admission to the U.S., or an alien with evidence of lawful admission but without authority to work in the U.S., if the evidence described in § 422.107(e) does not exist, but only for a valid nonwork reason. We consider you to have a valid nonwork reason if:

(i) You need a social security number to satisfy a Federal statute or regulation that requires you to have a social security number in order to receive a Federally-funded benefit to which you have otherwise established entitlement and you reside either in or outside the U.S.; or

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(ii) You need a social security number to satisfy a State or local law that requires you to have a social security number in order to receive public assistance benefits to which you have otherwise established entitlement, and you are legally in the United States.

(b) Annotation for a nonwork purpose. If we assign you a social security number as an alien for a nonwork purpose, we will indicate in our records that you are not authorized to work. We will also mark your social security card with a legend such as "NOT VALID FOR EMPLOYMENT." If earnings are reported to us on your number, we will inform the Department of Homeland Security of the reported earnings.

20 CFR § 422.107

3. Section 422.107 is amended by revising paragraphs (a) and (c) to read as follows:

20 CFR § 422.107

§ 422.107 Evidence requirements.

(a) General. An applicant for an original social security number card must submit documentary evidence that the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity. An applicant for a duplicate or corrected social security number card must submit convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status. An applicant for an original, duplicate, or corrected social security number card is also required to submit evidence to assist us in determining the existence and identity of any previously assigned number(s). A social security number will not be assigned, or an original, duplicate, or corrected card issued, unless all the evidence requirements are met. An in-person interview is required of an applicant who is age 12 or older applying for an original social security number except for an alien who requests a social security number as part of the immigration process as described in § 422.103(b)(3). An in-person interview may also be required of other applicants. All documents submitted as evidence must be originals or copies of the original documents certified by the custodians of the original records and are subject to verification.

* * * * *

(c) Evidence of identity. An applicant for an original social security number or a duplicate or corrected social security number card is required to submit convincing documentary evidence of identity. Documentary evidence of identity may consist of a driver's license, identity card, school record, medical record, marriage record, passport, Department of Homeland Security document, or other similar document serving to identify the individual. The document must contain sufficient information to identify the applicant, including the applicant's name and (1) the applicant's age, date of birth, or parents' names; and/or (2) a

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photograph or physical description of the individual. A birth record is not sufficient evidence to establish identity for these purposes.

* * * * *

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