



**Transportation
Security
Administration**

INFORMATION

MEMORANDUM FOR: John S. Pistole
Administrator

FROM: Stephen Sadler 
Assistant Administrator
Office of Intelligence and Analysis

Francine J. Kerner
Chief Counsel

SUBJECT: Exemption from Certain Security Threat Assessment (STA)
and Full-Fee Requirements for Hazardous Materials
Endorsement (HME) Applicants if Holding a Valid
Transportation Security Worker Identification Credential
(TWIC)

Purpose

The purpose of this memorandum is to provide information regarding a revision to the exemption to HME STA and full-fee requirements in 49 CFR part 1572. This exemption applies to States that can support the ability to adjust an HME expiration date within their State commercial driver's license (CDL) systems and regulations, and to eligible individuals seeking to obtain an HME from one of the States that chooses to apply the exemption. The revision expands the exemption to include the State of New Mexico.

Background

The Transportation Security Administration (TSA) has the same STA requirements for the HME and TWIC programs so that similar workers are treated consistently, and to leverage economies of scale. Prior to 2012, TSA used the comparability of these STAs to reduce the administrative burden on TWIC applicants, but was unable to offer STA comparability and a reduced fee option to individuals holding a TWIC and later applying for an HME because there was no electronic mechanism for TSA to verify whether the individual's TWIC and corresponding STA were valid. Stakeholders urged Congress to



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Background

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include a statement in the 9/11 Act that STAs for TWIC and HME are comparable, and TSA worked to develop a process to implement this comparability.¹

In February 2012, TSA implemented the initial information technology (IT) solution to verify TWIC STAs, and issued the first exemption to the HME STA fee requirements. This exemption provides a reduced fee option to eligible individuals who hold a valid TWIC if they are seeking to obtain an HME in one of the States that: 1) can support the capability to adjust an HME expiration date separate from the CDL expiration date, to ensure that the HME expiration date does not exceed the TWIC STA expiration date; 2) is not precluded from offering a reduced-fee HME by State regulations; and 3) chooses to allow applicants to use a comparable TWIC STA for an HME application.

In June 2012, TSA issued a revised exemption that expanded the exemption to States with the capability to adjust the HME expiration date if at least four years remain before expiration of the TWIC STA (partial comparability) and added additional States as covered parties. In January 2013, this exemption was expanded to make comparability available to States that do not use the TSA contractor to collect data and added the State of Virginia as a covered party. This current revision (June 2013) expands full comparability to another State, making New Mexico a covered party.

A. Full and Partial Comparability Options

To accommodate States and their differing capacity to adjust HME expiration dates due to policy and technology issues, TSA developed two options for comparability – *full* and *partial*. Full comparability was designed for those States that can issue an HME on an individual's CDL if the applicant has an existing, valid TWIC STA with at least one year remaining before expiration. These States have the ability to issue an HME with an expiration date less than four years out from the processing date. Partial comparability was designed for those States that have the capability to issue an HME based on an existing TWIC STA if the TWIC STA has at least four years remaining before expiration. These States do not have the ability to issue an HME with an expiration date less than four years out from the processing date, due to system or process constraints.

TSA implemented two phases of HME/TWIC comparability. In February 2012, the IT solution was deployed to conduct the verification during the HME application process. Twelve (12) States, including the District of Columbia, implemented full comparability. In June 2012, TSA deployed an upgrade to the IT solution which enabled States to offer partial comparability. This implementation deployed partial comparability to 9 States and expanded the number of full comparability States to 14 (for a total of 23 States that support some form of comparability).

¹ Section 1556 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266 (August 3, 2007)) provides that a person with a valid TWIC is deemed to have met the STA required for an HME.

B. Agent and Non-Agent State Comparability Options

To date, all States currently supporting comparability, except Virginia, are States that use the TSA-managed contractor to collect fingerprints and driver applications; these States are referred to as 'TSA Agent States'. There are currently 40 TSA Agent States and the District of Columbia.

The remaining States that do not use the TSA Agent, but rather collect the required data through their individually established and maintained programs, are referred to as 'TSA Non-Agent States'. There are currently 10 TSA Non-Agent States. In January 2013, TSA made a system enhancement that allows Non-Agent States to submit HME applications for reduced-fee HME enrollment, and comparability was offered by the first Non-Agent State, Virginia.

Discussion

TSA evaluated several options to implement TWIC and HME STA comparability and the associated reduced fee, and determined that the most efficient method was to issue an exemption. TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest. 49 U.S.C. § 114(q). TSA determined that it is in the public interest to grant an exemption from the HME regulations found at 49 CFR part 1572 as it removes a redundant STA requirement, reduces fees for individuals, and saves time and resources for the Government and transportation workers.

The exemption reduces the HME STA fee by \$19.50 for individuals using the TWIC as a comparable STA and applying for an HME in a TSA Agent State. The threat assessment fee of \$34 is reduced by \$5, because this is the historical cost of the portion of the threat assessment that is satisfied by previously conducted TSA vetting services. In addition, the \$14.50 FBI fee is not required because the applicant is not resubmitting fingerprints for a new criminal check. Since the individual has already received this service, the associated cost does not have to be recovered.

For individuals using the TWIC as a comparable STA and applying for an HME in a TSA Non-Agent State, the exemption will reduce the HME STA fee by no less than \$19.50. The exact amount of the reduction may vary depending on which State is processing the application. The threat assessment fee of \$34 is reduced by \$5, because this is the historical cost of the portion of the threat assessment that is satisfied by previously conducted TSA vetting services. In addition, the FBI fee is not required because the applicant is not resubmitting fingerprints for a new criminal background check. The additional amount of reduction varies between TSA Non-Agent States due to additional fingerprint processing fees that may be included, but at a minimum will be \$14.50.

TSA will continue to work with States to develop their options regarding comparability, and to make system enhancements so that comparability may benefit as many States as possible. Ultimately, offering HME-TWIC comparability to individuals will continue to be the decision of each State. We anticipate that industry and applicant stakeholders,

especially those individuals required to possess both a TWIC and a HME to fulfill their employment responsibilities, may encourage more States to adopt comparability in the future.

Attachments: Exemption from TSA Regulations
Exemption History Table
Comparability between STAs for the HME and the TWIC – Individuals
Comparability between STAs for the HME and the TWIC – States

EXEMPTION FROM TSA REGULATIONS

<u>SUBJECT</u>	Exemption from Certain Security Threat Assessment (STA) and Full-Fee Requirements Set Forth in 49 CFR Part 1572 for Hazardous Materials Endorsement (HME) Applicants if Holding a Valid Transportation Worker Identification Credential (TWIC)
<u>COVERED PERSONS</u>	Individuals who apply in one of the States listed in Attachment A or B for an HME on a State-issued commercial drivers license (CDL) based on comparability with a TWIC STA; and the States listed in Attachment A and B
<u>LOCATION</u>	States listed in Attachments A and B
<u>EFFECTIVE</u>	June 03, 2013

APPLICABILITY: THIS EXEMPTION APPLIES ONLY TO THE CODE OF FEDERAL REGULATION PROVISIONS LISTED IN SECTION III. STATES MUST CONTINUE TO VERIFY THAT ALL HME APPLICANTS HAVE AN APPROVED STA PRIOR TO ISSUING AN HME ON A CDL.

This Exemption cancels and supersedes the Exemption from TSA Regulations issued on January 22, 2013 (Exemption from Certain Security Threat Assessment (STA) and Full-Fee Requirements Set Forth in 49 CFR Part 1572 for Hazardous Materials Endorsement (HME) Applicants if Holding a Valid Transportation Worker Identification Credential (TWIC)).

REVISION SUMMARY

- Adds an additional State as a covered party to Appendix A

I. BACKGROUND

A. STA Requirements

The USA PATRIOT Act¹ provides that no State may issue an HME on a CDL until TSA notifies the State that the applicant does not pose a security threat. The Transportation Security Administration (TSA) must complete a comprehensive STA consisting of criminal, immigration, and terrorist checks to determine whether the applicant poses a security threat. The Maritime Transportation Security Act (MTSA) of 2002² requires TSA to conduct an STA consisting of criminal, immigration, and terrorist checks for individuals who apply for a TWIC.

¹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. 107-56, 115 Stat. 272 (October 26, 2001).

² Pub. L. 107-295, 116 Stat. 2064 (November 25, 2002).

B. HME and TWIC STA Comparability

TSA has determined that the STA for a TWIC is comparable to the STA for an HME.³ Individuals who successfully complete an STA for an HME application are not required to repeat the STA when applying for a TWIC and may pay a reduced fee for the TWIC. TSA sought to make reduced fees available to individuals who have successfully completed an STA for a TWIC and are applying for an HME. Therefore, TSA implemented an information technology (IT) solution, for use in the HME application process, to verify whether an individual's TWIC and corresponding STA are valid. On February 27, 2012, TSA issued the initial Exemption from TSA Regulations that enabled States that could support the IT solution to choose to offer TWIC STA comparability and reduced fees to HME applicants. TSA is issuing this revised Exemption to include an additional State, New Mexico, that has developed the capacity to support the IT solution.

C. States that Can Support IT Solution: Capability to Adjust HME Expiration Date on CDL

Under regulations issued by the U.S. Department of Transportation (DOT), States must establish an HME STA renewal period of at least once every five years. Many States require a new HME STA every four or five years, to coincide with their CDL expiration. The TWIC STA remains valid for five years.⁴ If a State processes an HME application on the basis of the comparable TWIC STA, the HME STA expiration may not exceed the expiration date of the TWIC STA.

Some States are able to adjust their HME expiration dates, whether four or five years, to match the TWIC STA expiration date. TSA contacted all of the States and the District of Columbia to determine which States could support comparability and offer individuals the ability to use a TWIC STA for an HME threat assessment application. States have differing capacity to support comparability and adjust HME expiration dates depending on policy and technology issues unique to each State.

1. States listed in Attachment A have the capability to modify the standard HME expiration date on an individual's CDL if the driver has an existing, valid TWIC STA with at least one year remaining before expiration.⁵ Individuals may apply for a reduced fee HME in a State listed in Attachment A if that State chooses to support comparability and the individual has at least one year remaining on their TWIC STA.
2. States listed in Attachment B have the capability to issue an HME on an individual's CDL based on an existing TWIC STA if the driver has an existing, valid TWIC STA with at least four years remaining before expiration.⁶ Individuals may apply for a reduced fee HME in a State listed in Attachment B if that State chooses to support comparability and the individual has at least four years remaining on their TWIC STA.

³ Section 1556 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110-53, 121 Stat. 266 (August 3, 2007)) provides that a person with a valid TWIC is deemed to have met the STA required for an HME.

⁴ 49 C.F.R. § 1572.23.

⁵ The District of Columbia and 14 of the States in Attachment A were included in the previous Exemption issued on January 22, 2013; they continue to be covered by this revised Exemption.

⁶ The nine States listed in Attachment B were included in the previous Exemption issued on January 22, 2013; they continue to be covered by this revised Exemption.

D. States that Can Support IT Solution: TSA Agent and TSA Non-Agent States

Currently, 40 States and the District of Columbia use a TSA-managed contractor to collect fingerprints and driver applications and submit this information to TSA; these States are referred to as 'TSA Agent States.' The remaining 10 States have opted not to use the TSA Agent. They collect the required data through their individually established and maintained programs and submit this information to TSA through prior approved methods; these States are referred to as 'TSA Non-Agent States.' TSA has developed the IT capability for both Agent and Non-Agent States to verify whether an individual has a comparable TWIC security threat assessment during the HME application process.

E. STA Fee Adjustment

For individuals in TSA Agent States, this exemption reduces the HME STA fees by \$19.50 for applicants who use their TWIC as a comparable STA. The threat assessment fee of \$34 is reduced by \$5, because this is the historical cost of the portion of the threat assessment that is satisfied by previously conducted TSA vetting services. In addition, the \$14.50 FBI fee is not required because the applicant is not resubmitting fingerprints for a new criminal background check. All HME applicants must continue to remit the information collection fee of \$38, in accordance with 49 C.F.R. § 1572.405(a)(1), if a TSA Agent State transmits applicant information. Therefore, such individuals will pay a total of \$67 for an HME STA issued based on TWIC STA comparability.

For individuals who use their TWIC as a comparable STA, and who reside in TSA Non-Agent States, this exemption reduces the HME STA fees by various amounts, depending upon which State is processing the application. The threat assessment fee of \$34 is reduced by \$5, because this is the historical cost of the portion of the threat assessment that is satisfied by previously conducted TSA vetting services. In addition, the FBI fee is not required because the applicant is not resubmitting fingerprints for a new criminal background check. The additional amount of reduction varies between TSA Non-Agent States due to additional State fingerprint processing fees that may be included, but at a minimum will be \$14.50. All HME applicants within TSA Non-Agent States must continue to remit their State's information collection fee as applicable in their respective State.

II. DETERMINATION

TSA may grant an exemption from a regulation if TSA determines that the exemption is in the public interest. 49 U.S.C § 114(q). TSA determined that it is in the public interest to grant an exemption from the HME regulations found at 49 CFR part 1572, as described in Section III. This exemption will allow individuals who hold a valid TWIC the opportunity to use the TWIC as a comparable STA for the HME application and pay a reduced fee. By using the comparability of TWIC and HME STAs to streamline the HME application process, TSA is removing a redundant STA requirement, reducing fees, and saving time and resources for the Government and transportation workers.

III. SPECIFIC EXEMPTIONS AND CONDITIONS

A. Individuals Who Hold a Valid TWIC and Apply for an HME STA Based on Comparability

TSA exempts individuals who hold a valid TWIC that will not expire for a least one year and who are applying for an HME from a State listed in Attachment A from requirements A1 and either A2 or A3 listed below, as applicable, if that State chooses to offer TWIC STA comparability to HME applicants. TSA exempts individuals who hold a valid TWIC that will not expire for a least four years and who are applying for an HME from a State listed in Attachment B from requirements A1 and either A2 or A3, as applicable, if that State chooses to offer TWIC STA comparability to HME applicants. If using the TWIC STA as the basis for the HME, the expiration date of the HME may not exceed the expiration of the TWIC STA.

1. 49 C.F.R. § 1572.11(c) *Submission of Fingerprints*: Individuals applying for an HME in a State listed in Attachment A or Attachment B and who have a valid TWIC are not required to submit fingerprints for an HME application.
2. 49 C.F.R. §§ 1572.405 *Fees for STAs, Procedures for collection by TSA*: Individuals applying for an HME in a TSA Agent State listed in Attachment A or Attachment B and who have a valid TWIC are exempt from paying the full HME STA fees. Once TSA verifies that the individual's TWIC STA is valid, the individual would pay \$29 for the threat assessment fee and no FBI fee. All HME applicants within TSA Agent States must continue to remit the information collection fee of \$38, in accordance with 49 C.F.R. § 1572.405(a)(1). Therefore, such individuals will pay a total of \$67 for an HME STA issued based on TWIC STA comparability.
3. 49 C.F.R. §§ 1572.403 *Fees for STAs, Procedures for collection by States*: Individuals applying for an HME in a TSA Non-Agent State listed in Attachment A or Attachment B and who have a valid TWIC are exempt from paying the full HME STA fees. Once TSA verifies that the individual's TWIC STA is valid, the individual would pay \$29 for the threat assessment fee and no FBI fee. All HME applicants within a TSA Non-Agent State must continue to remit any other fees required by the State.

B. States Listed in Attachment A

TSA exempts the States in Attachment A from the requirements in B1 listed below for HME applicants who hold a valid TWIC that will not expire for at least one year, subject to the conditions and procedures in section IV.

1. 49 C.F.R. § 1572.13(a) *State Responsibilities for issuance of hazardous materials endorsement*: No State may issue or renew an HME for a CDL, unless the State receives a Determination of No Security Threat from TSA. When issuing an HME on the basis of a valid, comparable TWIC STA, the State is exempt from requiring an applicant to undergo a full TSA HME STA to receive a Determination of No Security Threat from TSA. The State may accept a Determination of No Security Threat that TSA issues on the basis of a reduced-fee HME STA application. The State must continue to verify the Determination of No Security Threat in accordance with the procedures set forth in Section IV below prior to issuing the HME.

C. States Listed in Attachment B

TSA exempts the States in Attachment B from the requirements in C1 listed below for HME applicants who hold a valid TWIC that will not expire for at least four years, subject to the conditions and procedures in section IV.

1. 49 C.F.R. § 1572.13(a) *State Responsibilities for issuance of hazardous materials endorsement*: No State may issue or renew an HME for a CDL, unless the State receives a Determination of No Security Threat from TSA. When issuing an HME on the basis of a valid, comparable TWIC STA, the State is exempt from requiring an applicant to undergo a full TSA HME STA to receive a Determination of No Security Threat from TSA. The State may accept a Determination of No Security Threat that TSA issues on the basis of a reduced-fee HME STA application. The State must continue to verify the Determination of No Security Threat in accordance with the procedures set forth in Section IV below prior to issuing the HME.

IV. CONDITIONS AND APPROVED PROCEDURES

A. Individuals Who Hold a Valid TWIC and Apply for an HME STA Based on Comparability

Individuals who have a valid TWIC and are seeking to obtain an HME from one of the States listed in Attachment A or B must comply with all non-exempt requirements of 49 C.F.R. part 1572.

B. States Listed in Attachments A and B

1. The States listed in Attachments A and B must ensure the STA of an individual applying for an HME is verified in accordance with TSA procedures.
2. If a State chooses to offer TWIC STA comparability to HME applicants, the State must verify the TWIC STA expiration date in the TSA State Portal and ensure the HME expiration date it issues does not exceed the TWIC STA expiration date.
3. If a State chooses to offer TWIC STA comparability to HME applicants, the State must revise the notification required in 49 C.F.R. § 1572.13(b) and 49 C.F.R. § 1572.15(b)(1) to provide information to the applicant that he or she will be subject to the security threat assessment described in this part unless the applicant uses a comparable TWIC STA.
4. If a State chooses to offer TWIC STA comparability to HME applicants, the State must collect and document the information described in 49 C.F.R. § 1572.9(a)(15) as part of the application process.
5. TSA reserves the right to cancel an exemption if it determines that a State is not following the requirements of the exemption.



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Attachment A

These States (and the District of Columbia) may offer the capability for applicants to use an existing TWIC STA as a comparable STA for the HME application if there is at least one year remaining on the existing TWIC STA and the validity of the TWIC STA has been verified by TSA. All States listed are TSA Agent States unless otherwise noted.

1. Arizona
2. California
3. Delaware
4. District of Columbia
5. Hawaii
6. Missouri
7. Nebraska
8. Nevada
9. New Mexico
10. North Carolina
11. Oregon
12. South Dakota
13. Utah
14. Virginia (*TSA Non-Agent State*)
15. West Virginia
16. Wyoming

Attachment B

These States may offer the capability for applicants to use an existing TWIC STA as a comparable STA for the HME application if there is at least four years remaining on the existing TWIC STA and the validity of the TWIC STA has been verified by TSA. All States listed are TSA Agent States unless otherwise noted.

1. Alabama
2. Colorado
3. Kansas
4. Minnesota
5. Montana
6. New Jersey
7. North Dakota
8. Oklahoma
9. Vermont