

STATEMENT OF EMERGENCY

502 KAR 10:120E.

This emergency administrative regulation is being promulgated pursuant to KRS 13A.190(1)(a)1., 3. to meet an imminent threat to public health, safety, or welfare and an imminent deadline for the promulgation of an administrative regulation established by federal law related a newly increased federal fee. The United States Congress mandates that the Transportation Security Administration (TSA) collect fees to pay for conducting all portions of a Hazardous Materials Endorsement Security Threat Assessment. Under TSA's regulations, states may collect and transmit fingerprints and applicant information to obtain or renew a hazardous materials endorsement and collect fees on behalf of TSA to process the Security Threat Assessment. On August 29, 2024, the TSA published a Notice to the Federal Register announcing changes to the Hazardous Materials Endorsement Security Threat Assessment fee. Effective December 2, 2024, the Security Threat Assessment fee is increasing from \$34.00 to \$57.25 for a standard hazardous material endorsement applicant. This will result in an increase of the total fee collected by the Kentucky State Police (KSP), which includes other fees in addition to the Security Threat Assessment fee, including a Federal Bureau of Investigation (FBI) fee, an information collection fee, and a KSP fee, from \$115.00 to \$138.25. This administrative regulation is being filed on an emergency basis to ensure that Kentucky collects the fee set by the TSA by federal regulation for conducting a security threat assessment. An ordinary administrative regulation is not sufficient because an ordinary regulation could not become effective within the timeframe allotted with the TSA fee increase, which was published in late August of 2024 and becomes effective December 2, 2024. This emergency administrative regulation will be replaced by an ordinary administrative regulation because the new fee is permanent. The companion ordinary administrative regulation is identical to this emergency administrative regulation. An emergency administrative regulation governing a portion of the same subject matter has not been filed within the previous nine months.

ANDY BESHEAR, Governor

KEITH JACKSON, Secretary

COL. PHILLIP BURNETT, JR., Commissioner

JUSTICE AND PUBLIC SAFETY CABINET
Department of Kentucky State Police
(Emergency Amendment)

502 KAR 10:120E. Hazardous materials endorsement requirements.

RELATES TO: KRS 281A.120, 281A.130, 281A.150, 281A.160, 281A.170, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

STATUTORY AUTHORITY: KRS 281A.040

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281A.040 authorizes any state agency vested with a specific responsibility to have the necessary power and authority to promulgate administrative regulations to reasonably carry out the provisions of KRS Chapter 281A. 49 C.F.R. Part 1572 requires fingerprint verified criminal background checks on all persons obtaining or renewing a hazardous materials endorsement for a commercial driver's license. This administrative regulation establishes the necessary procedures for conducting fingerprint verified criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

Section 1. Definitions.

- (1) "CDL" or "Commercial Driver's License" is defined by KRS 281A.010(5) and 49 C.F.R. 383.5.
- (2) "CDL testing location" means the department's regional CDL testing offices.
- (3) "Determination of no security threat" is defined by 49 C.F.R. 1572.15(d)(1).
- (4) "DOT" means the federal Department of Transportation.
- (5) "Final Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(4).
- (6) "HME" means hazardous materials endorsement.
- (7) "Initial Determination of Threat Assessment" is defined by 49 C.F.R. 1572.15(d)(2).
- (8) "KSP" means the Kentucky State Police.
- (9) "Proper identification" means:
 - (a) A driver's license issued by the applicant's state where they will obtain or have obtained a commercial driver's license; or
 - (b) With respect to non-United States citizens applying for a hazardous materials endorsement for a commercial driver's license, proper identification means valid and unrestricted documentation establishing lawful nonimmigrant alien, asylee, or refugee status.
- (10) "TSA" means the federal Transportation Security Administration.

Section 2. Initial Applications for HME.

- (1) An applicant applying for a hazardous materials endorsement shall first obtain a commercial driver's instruction permit or CDL prior to requesting a security threat assessment from the TSA. The applicant shall submit application information in accordance with 49 C.F.R. 1572.9. The applicant shall further submit to a fingerprint verified criminal background check conducted by KSP.
- (2) To begin the process, an applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655.
- (3) An applicant shall bring proper identification, and a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652.
- (4) An applicant shall pay a \$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, an applicant shall pay a \$138.25 fee for a fingerprint-based background check. The fee may be paid by:
 - (a) Certified check;

- (b) Cashier's check;
- (c) Money order; or
- (d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/hazmat_FP.

(5) An applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(6) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the applicant shall be notified by the Transportation Cabinet that he or she is eligible to take the knowledge test required to qualify for the HME.

(7) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the applicant shall not be issued a HME. The applicant may appeal the TSA's determination in accordance with 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from the TSA in accordance with 49 C.F.R. 1515.7.

(8) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

Section 3. Renewal Applications for HME.

(1) The Transportation Cabinet shall send persons holding a HME notice of renewal at least sixty (60) days prior to expiration.

(2) Persons wishing to renew their HME shall begin the renewal process at least thirty (30) days prior to expiration.

(3) To begin the renewal process, a renewal applicant shall contact KSP at the following phone number to make an appointment: 1-888-655-9655. A renewal applicant shall submit to fingerprinting and further complete the "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027, containing all information necessary for the TSA to complete the required assessment as described in 49 C.F.R. 1572.9 no later than thirty (30) days prior to the expiration of the HME endorsement.

(4) A renewal applicant shall bring to the appointment proper identification, a completed "Transportation Security Administration Application for a Hazardous Materials Endorsement," OMB No. 1652-0027.

(5) A renewal applicant shall pay a \$115 fee for a fingerprint-based background check until December 1, 2024. Beginning December 2, 2024, a renewal applicant shall pay a \$138.25 fee for a fingerprint-based background check. The fee may be paid by:

- (a) Certified check;
- (b) Cashier's check;
- (c) Money order; or
- (d) Electronically before the appointment at https://secure.kentucky.gov/formservices/KSP/Hazmat_FP.

(6) A renewal applicant shall be fingerprinted by KSP at a regional CDL testing location. KSP shall send the fingerprints to the Federal Bureau of Investigation for a fingerprint-verified criminal background check and send the biographical information sheet to the TSA.

(7) If the Commonwealth has not received notification from TSA of the results of the security threat assessment prior to the expiration of the renewal applicant's HME, the Transportation Cabinet may extend the expiration date of the HME for a period of up to ninety (90) days. Any additional extension shall be approved by TSA.

(8) If TSA informs the Commonwealth of a finding of Determination of No Security Threat, then the renewal applicant shall be notified by the Transportation Cabinet that he or she is eligible to take the knowledge test required to qualify for the HME.

(9) If TSA informs the Commonwealth of a finding of Initial Determination of Threat Assessment, the renewal applicant shall not be issued a HME. The renewal applicant may appeal the TSA's determination under the procedures set forth in 49 C.F.R. 1515.5 or 1515.9. Following appeal, if the renewal applicant receives a Final Determination of Security Threat Assessment, the applicant may seek a waiver from TSA in accordance with 49 C.F.R. 1515.7.

(10) Within fifteen (15) days after the TSA has notified the Commonwealth of a Determination of No Security Threat or of a finding of Final Determination of Security Threat Assessment, the Transportation Cabinet shall update the applicant's permanent record to reflect the results of the security threat assessment, the issuance or denial of an HME, and the new expiration date of the HME.

(11) An applicant who has received a passing score on the HME test and is applying for a Class C CDL with a hazardous materials endorsement shall drive a Class C placarded vehicle for the skills test.

Section 4. Transfer Applications For HME. (1) In accordance with 49 C.F.R. 1572.13(e), an applicant who applies to transfer an existing HME from another state to the Commonwealth shall not be required to undergo a new security threat assessment until the security threat assessment renewal period established in the preceding issuing state, not to exceed five (5) years, expires.

COL. PHILLIP BURNETT, JR, Commissioner

APPROVED BY AGENCY: October 28, 2024

FILED WITH LRC: October 30, 2024 at 2:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on December 23, 2024, at 9:00am, at Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goens, Staff Attorney, Justice and Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-8216, fax (502) 564-6686, email Justice.RegContact@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Nathan Goens

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the necessary procedures for conducting fingerprint criminal background checks and establishing the location of the fingerprinting centers where the Kentucky State Police shall take fingerprints and transmit them to the federal government.

(b) The necessity of this administrative regulation:

This regulation is necessary to carry out the provisions of KRS 281A.040 and the federal regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This regulation conforms to the authorizing statute by providing guidance to the promulgated regulations implementing KRS 281A.040 and the applicable federal regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

The regulation assists in the administration of the statutes by clarifying the statutory authority and the initial application and renewal procedures for a Hazardous Materials Endorsement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment increases the total amount of the fee collected from HME applicants at the time of application.

(b) The necessity of the amendment to this administrative regulation:

The increase in the total amount of the fee is necessary because the portion collected by the Transportation Security Administration (TSA) to conduct their Threat Assessment was increased from \$34.00 to \$57.25 per application as published in the Notice to the Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(c) How the amendment conforms to the content of the authorizing statutes:

The federal regulation directs that a state must collect TSA's Threat Assessment fee from the applicant at the time of application.

(d) How the amendment will assist in the effective administration of the statutes:

This increase ensures the fee collected by Kentucky State Police on behalf of TSA recovers TSA's costs to process the HME applications.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

The Department of Kentucky State Police, applicants for Hazardous Material Endorsement, Transportation Security Administration.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Kentucky State Police will not be impacted. The TSA will receive the increased fee in compliance with the Notice to the Federal Register. Applicants will pay the increased fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No additional cost to Kentucky State Police. TSA will collect approximately \$54,637 additional fees per year.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

TSA will recover the cost of processing HME applications.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

None

(b) On a continuing basis:

None

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Not applicable

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

This fee increase is imposed by the Transportation Security Administration. No additional fee or funding is necessary for Kentucky State Police to implement the increased TSA fee.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation directly increases the application fee. The increase is imposed by the Transportation Security Administration and was announced in the Notice to Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(9) TIERING: Is tiering applied?

No. Tiering is not appropriate in this administrative regulation because it applies equally to all those individuals or entities regulated by it.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 281A.040, 49 U.S.C. 5103a, 49 C.F.R. Parts 383, 1515, 1572

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

Department of Kentucky State Police

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Expenditures, revenues, and cost savings will not be impacted.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

(a) Estimate the following for the first year:

Expenditures:None

Revenues:None

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

Expenditures, revenues, and cost savings will not be impacted.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Transportation Security Administration

(a) Estimate the following for the first year:

Expenditures:None

Revenues:\$54,637.50

Cost Savings:None

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

The number of applicants determines the impact to revenues for the Transportation Security Administration.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

Applicant fees increase by \$23.25. The increase is passed through to the Transportation Security Administration in accordance with 49 C.F.R. 1572.

(b) Methodology and resources used to determine the fiscal impact:

The fee increase is directed by federal regulation as announced in the Notice to Federal Register 2024-19412 (89FR 70201) on August 29, 2024.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4).

(\$500,000 or more, in aggregate)

There will be no overall negative or adverse major economic impact to the entities identified in questions (2) – (4).

(b) The methodology and resources used to reach this conclusion:

The average annual number of applicants for a hazardous materials endorsement the last 24 months, multiplied by the amount of the fee increase is \$54,637.50.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

6 U.S.C. 469, 49 C.F.R. 1503 and 1572

(2) State compliance standards.

KRS 281A.040

(3) Minimum or uniform standards contained in the federal mandate.

Under 49 U.S.C. 5103a, a state is prohibited from issuing or renewing a hazardous materials endorsement for a commercial driver's license unless the Transportation Security Administration has first determined that the driver does not pose a security threat. To make this security determination, TSA conducts a Standardized Threat Assessment by comparing applicant biographic and biometric information to criminal, immigration, and security databases, and adjudicating any derogatory information against the standards set forth in 49 C.F.R. 1572. TSA is required to recover its vetting program costs through user fees, in accordance with 6 U.S.C. 469. Under TSA's regulations, Kentucky collects and transmits fingerprint and applicant information and fees from applicants for new or renewed hazardous materials endorsements.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable.