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Subcommittee on Highways, Transit, and Pipelines
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Background Checks For Holders of Commercial Drivers Licenses With Hazardous Materials Endorsements

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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to testify today on the Commercial Drivers License (CDL) program and the new rules governing the hazardous materials endorsement background records check. As we reported in our November 2004 Management Challenge report,¹ a critical post-September 11th issue is the interdependency among the Department of Transportation (DOT) and other Federal agencies to carry out programs that have both safety and security elements. For the DOT, this intersection of safety and security is most pronounced in the area of hazardous materials oversight and enforcement.

There are 702,277 active motor carriers under the jurisdiction of the Federal Motor Carrier Safety Administration (FMCSA), with more than 11 million CDL holders on record and an estimated 2.7 million CDL holders with a hazardous materials endorsement. More than 3 billion tons of regulated hazardous materials are transported nationally in over 292 million shipments each year. Each day there are more than 800,000 hazardous materials shipments, and while more than 95 percent are being transported by highway, the shipments by rail, air, pipelines and ships, as well as the safety standards for containers and packaging, are also part of the Department's responsibilities. The Department has a strong record and commitment to safety. The large truck fatality rate decreased from 2.65 fatalities per million truck miles traveled in FY 1999 to 2.31 in FY 2003. However, significant progress is needed to reach the Department's goal of reducing these numbers to 1.65 fatalities (per million truck miles traveled) by 2008.

As we have been reporting since September 11th, the imperative for the Department and the Congress is to effectively integrate new security measures into the Department's existing safety regimen and to do so in a way that promotes stronger security without degrading transportation safety and efficiency. The requirement for a background records check CDL holders with hazardous materials endorsement is one such effort. Since the Transportation Security Administration (TSA) was transferred to the Department of Homeland Security in March 2003, the background records check for these CDLs holders is now a Department of Homeland Security responsibility. However, processing background records checks is not new to TSA.

When TSA was part of the Department of Transportation, it established a similar program for airport workers and since 2002, over 1.6 million employees working at the Nation's 400-plus commercial airports have had a criminal history records check completed.

¹ OIG Report Number PT-2005-008, "Top Management Challenges, Department of Transportation," November 15, 2004.

While initially a concern, the issue of timeliness turned out to be a non-factor. In these cases, the American Association of Airport Executives² served as a clearinghouse to facilitate the processing of fingerprints for the airports and airlines. While we do not know the details of TSA's system for processing the background records checks for holders of CDLs, based on our observations of the experience with airports and airlines, strong cooperation and coordination with all stakeholders is critical to make the process efficient and effective.

The CDL program and the requirement for hazardous material endorsements represented a significant step forward for transportation safety. Under the CDL program, states are required to check drivers' records to ensure that they have not been disqualified from operating a commercial vehicle and that their non-commercial driving privileges have not been revoked, suspended or canceled. The purpose of the hazardous materials endorsement is to improve the safety of transporting hazardous materials on the Nation's highways by requiring drivers to demonstrate their knowledge of hazardous materials regulations, hazardous materials handling, and operation of emergency equipment and emergency response procedures in the event of an accident.

In 1999, at the request of this Subcommittee, we reviewed the CDL program and made recommendations to strengthen it.³ We also audited the program in 2002, and made recommendations to counter vulnerabilities to fraud.⁴ FMCSA has concurred with our recommendations and is continuing its efforts to strengthen the program.

Curbing CDL fraud is important to highway safety since it helps ensure that only drivers with the requisite skills obtain CDLs. Over the past 5 years we have investigated and prosecuted CDL fraud schemes in 23 states and found over 8,000 CDLs that were issued to drivers through corrupt state or state-approved testing processes. We have found too many cases where, in exchange for a bribe, an examiner will pass applicants without a test or will supply test answers to applicants. For example, a driver who caused a fatal crash in 2003, which killed a family of five in Pennsylvania, had been tested by a third-party examiner who was convicted of fraudulently certifying CDL test results.

The new background records check for holders of CDLs with hazardous materials endorsements, if properly implemented, adds an additional layer of both safety and

² The American Association of Airport Executives is the largest professional organization for airport executives in the world, representing thousands of airport management personnel at public-use airports nationwide.

³ OIG Report Number MH-2000-106, "Disqualifying Commercial Drivers," June 30, 2000.

⁴ OIG Report Number MH-2002-093, "Improving the Testing and Licensing of Commercial Drivers," May 8, 2002.

security because the background records checks (through identity, immigration and fingerprint-based criminal history records checks) ensure we know that the drivers (1) are who they say they are, (2) are legally present in the United States, and (3) can be trusted with the public's safety and security when operating a commercial vehicle transporting hazardous materials.

Given that this critical safety program now intersects with an added security requirement, we encourage the Subcommittee and the Department to take action to ensure that the proper balance between safety and security is reached and that the program continues to receive the Subcommittee's attention.

Today, I would like to discuss:

- The CDL Program as a significant safety initiative and the continued efforts to strengthen its effectiveness.
- The background records checks for hazardous materials endorsements and how they serve both safety and security purposes.
- Areas to watch as the background records check process gets underway.

The CDL Program as a Significant Safety Initiative and the Continued Efforts To Strengthen Its Effectiveness

The CDL program is a key element of the Transportation Department's efforts to ensure the safety of our highways.

Before Congress established the CDL program through the Commercial Motor Vehicle Safety Act of 1986, drivers could obtain a license to operate a large truck or bus in more than a third of the states without obtaining a special license. Moreover, commercial drivers often obtained licenses from several states, making it easy to hide bad driving records.

As a result of the reform measures in the 1986 Act, commercial drivers were prohibited from obtaining more than one license and were required to demonstrate a minimum level of knowledge and driving skills. States were also required to disqualify drivers convicted of serious traffic violations, such as driving a

commercial motor vehicle while intoxicated. See Attachment 1 for a list of disqualifying traffic violations.

According to FMCSA, approximately 880,000 drivers were disqualified at least once from 1992 through 1996 as the program was implemented. The 1986 Act also required a nationwide information system for exchanging data on commercial drivers, the Commercial Driver's License Information System. This system now has more than 11 million CDL holders on record and will become a vital resource in maintaining additional information about CDL holders that transport hazardous materials over the Nation's highways.

Work by our office, initiated at the request of this Subcommittee, has identified successes in the CDL program, as well as areas for improving the program's operations. We found that the program achieved the goal of limiting commercial drivers to one CDL, but improvements in Federal oversight were needed to make sure that unsafe commercial drivers were disqualified. We also reported in 2002 that existing Federal standards and state controls were not sufficient to defend against individuals who seek to fraudulently obtain CDLs.

Well before September 11th, we were investigating schemes whereby corrupt state Department of Motor Vehicle officials or third-party testers would take bribes from CDL applicants to circumvent the requirements for obtaining a CDL. Since 2000, we have investigated and prosecuted CDL fraud schemes in 23 states and found over 8,000 CDLs that were issued to drivers through corrupt examiners, mostly third-party examiners working on behalf of the state. What we have learned through our casework is that people are motivated to pay bribes to circumvent CDL licensing requirements for a variety of reasons. These include (a) the inability of foreign nationals to pass the written examination due to language barriers, (b) unwillingness to wait the time necessary for completion of

the CDL knowledge and skills test and issuance, (c) lack of required legal residency or citizenship, and (d) insufficient training to pass the skills test.

After September 11th, several CDL fraud cases gained the attention of the Joint Terrorist Task Forces (JTTF) because the cases involved foreign nationals. Currently, for example, 2 of the 28 CDL fraud investigations that we are conducting are in conjunction with members of a JTTF. In one case, the JTTF initiated a proactive project to analyze CDL, immigration, and other database records, with particular focus on hazardous materials endorsements. In the other case, the initial allegations of CDL fraud concerned foreign nationals from Eastern Europe with potential links to terrorism that needed to be checked out. To date, our investigations have found that CDL fraud has essentially involved attempts to circumvent the safety regulations through criminal acts but has not involved any terrorist activity.

Our coordination with JTTFs is similar to the work our office did at airports in the wake of September 11th, where we participated in law enforcement sweeps at more than 30 airports nationwide. This effort resulted in the arrest or indictment of more than 1,000 persons who had falsified records about their identities, criminal histories, or immigration status. None of those prosecutions, however, involved terrorism.

In our Report on Top Management Challenges for DOT in 2004, we recognized that FMCSA had taken positive steps to improve its oversight of the CDL program, but we continued to call for further improvements such as establishing a requirement that all CDL applicants demonstrate citizenship or legal presence.

Background Records Checks for Hazardous Materials Endorsements Serve Both Safety and Security Purposes

In our opinion, requiring a background records check for a hazardous materials endorsement has an important deterrent value: individuals that pose both a safety

and security threat are not likely to apply for, renew, or transfer a hazardous materials endorsement, even though they may hold a CDL. If implemented properly, the background records check should provide a higher degree of confidence in the integrity of the CDL program by ensuring that the drivers (1) are who they say they are, (2) are legally present in the United States, and (3) can be trusted with the public's safety and security when operating a commercial vehicle transporting hazardous materials.

What the Rules Require. To implement portions of the law⁵ that mandated the background records check for a hazardous materials endorsement, TSA and FMCSA issued companion interim final rules in May 2003, as amended.

TSA's interim final rule establishes a procedure to conduct a background records check for holders of a CDL who apply for a hazardous materials endorsement. Under TSA's interim final rule, a holder of a CDL applying for a hazardous materials endorsement will be disqualified from holding an endorsement if he or she was:

- convicted or found not guilty by reason of insanity within the past 7 years,
- released from prison within the last 5 years, or
- wanted or under indictment for crimes such as extortion, rape, arson, bribery, smuggling, or immigration violations.

Also, an applicant will be permanently disqualified from holding a hazardous materials endorsement if he or she was ever convicted or found not guilty by

⁵ Responding to September 11, 2001, Congress, on October 26, 2001, passed the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56 known as the USA Patriot Act), mandating that the Department of Transportation require routine background records checks, including reviews of criminal, immigration, and FBI records, for U.S. commercial drivers with hazardous materials endorsements. The Secretary delegated the authority to carry out this mandate to the Under Secretary of Transportation for Security, whose position was later transferred to TSA.

reason of insanity for crimes such as murder, terrorism, espionage and treason. See Attachment 2 for the list of disqualifying crimes.

The rule was effective May 5, 2003 and background records checks were to begin no later than November 3, 2003. TSA extended this deadline given the debate among FMCSA, TSA, the states, and the trucking industry on how the new rules would be implemented, how much it would cost to implement the new rules, and who would pay what and when.

The new deadline for beginning background records checks for new CDL hazardous materials endorsement applicants was January 31, 2005; and May 31, 2005, for CDL holders who wish to renew their existing hazardous materials endorsement when it expires and for CDL holders who wish to transfer their existing hazardous materials endorsement to another state and have not received a background records check. TSA estimates that for each year from 2004 to 2013, 407,000 fingerprint applications will be collected from new applicants, renewals, and transfers.

FMCSA's interim final rule incorporated TSA's rule and prohibits states from issuing, renewing, transferring, or upgrading a CDL with a hazardous materials endorsement unless TSA has first conducted a security threat assessment of the applicant and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. FMCSA shares with TSA the responsibility for implementing the background records check requirements by ensuring the states comply with TSA's rule. FMCSA tied the compliance date for the background records check to the rule issued by TSA and added the background records check requirement to the list of 29 requirements that states must meet to be in substantial compliance with CDL requirements. According to FMCSA, it is conducting compliance reviews of the states every

3 years, or anytime FMCSA receives a complaint that a state is not following proper procedures.

These 29 requirements cover areas such as test standards, notification to other states of traffic violations, and CDL records checks that must be performed on CDL applicants. Under Federal rules, a state that does not meet one or more of the requirements as determined by FMCSA is in non-compliance. The possible consequences of state non-compliance include the withholding of funds and the decertification of that state's CDL program.

How the Hazardous Material Endorsement Process Works. Prior to the new hazardous materials endorsement requirement, the administrative process for issuing a hazardous materials endorsement to a CDL holder was a state responsibility and a process that focused strictly on safety. A holder of a CDL would submit an endorsement application to the appropriate state licensing agency and take a test on hazardous materials regulations, hazardous materials handling, and operation of emergency equipment and emergency response procedures in the event of an accident. If the applicant passed the test, the state licensing agency would then issue the hazardous materials endorsement as part of the CDL. See Attachment 3 for further details on this process.

Under TSA's rule, the administrative process for issuing a hazardous materials endorsement is the same as before but now the applicant must also be fingerprinted and undergo a background records check. If the results of the background records check turns up *no* disqualifying crimes, and other TSA intelligence checks come back clear, TSA approves the issuance of the endorsement by the states. If the results of the background records check identify a disqualifying crime or other disqualifying information, TSA denies the issuance of the endorsement by the states. See Attachment 4 for further details on this process.

Areas To Watch as the Background Checks Requirements Are Implemented

The implementation of background records checks on hazardous materials endorsements is an important step in advancing safety and security, but it will take strong cooperation from FMCSA, TSA, the states, industry groups, and other stakeholders to effectively and efficiently implement the program. TSA estimates that there are 2.7 million U.S. CDL holders authorized to carry hazardous materials. However, criminal history record checks and intelligence checks of these individuals have only recently begun and are far from completed.

Since TSA was transferred to the Department of Homeland Security in March 2003, the background records check for CDL holders is now a Department of Homeland Security responsibility. However, processing background records checks is not new to TSA. In aviation, TSA has statutory authority to conduct background records checks on employees with unescorted access to secure areas of the Nation's commercial airports. When this mandate went into effect in 2000, the aviation industry had concerns about, among other things, whether the background records checks could be processed in a timely manner. While initially a concern, the issue of timeliness turned out to be a non-factor. To illustrate, since 2002, over 1.6 million employees working at the Nation's 400-plus commercial airports had a criminal history records check and turnaround times for those records checks were generally *within 5 days*.

In these cases, the American Association of Airport Executives (AAAE) served as a clearinghouse to facilitate the processing of fingerprints for the airports and airlines. AAAE established the Transportation Security Clearinghouse that, among other things, expedited processing and resolution of fingerprint records through required Federal channels, offered a centralized billing tied to record submittals, and allowed the airports and airlines to submit fingerprints either electronically or on cards.

While we do not know the details of TSA's system for processing the background records checks for CDL holders, based on our observations of the experience with airports and airlines, strong cooperation and coordination with all stakeholders is critical to make the process efficient and effective.

Since TSA is now a component of the Department of Homeland Security, we do not have authority to audit TSA's programs, including its process for implementing the background records checks. We can audit FMCSA's oversight efforts to ensure that states comply with the requirements for issuing, renewing, transferring, or upgrading a CDL with a hazardous materials endorsement, but we have not done so since the background records check requirement is just now getting underway.

Based on our past experience with reviewing FMCSA's oversight of state CDL programs, we would suggest a few areas that the Subcommittee and FMCSA should be aware of as they address state implementation of the background records check requirement.

- Any future oversight reviews of state implementation will need to address the operation of computer systems that are used to communicate information on hazardous materials endorsements among TSA, FMCSA, and the states. This would include ensuring that states comply with any requirements established for reporting hazardous materials endorsement information to the Commercial Driver's License Information System. Tests of the computer systems are important because in the past we have found that systems did not always work properly. For instance, states did not use convictions to disqualify drivers even when the convictions had been received by the states because the state computer systems did not properly identify records that merited disqualification. We recommended that FMCSA conduct tests of the state computer systems during CDL compliance reviews to catch this

problem and it agreed to hire a contractor to conduct these reviews. This example suggests that similar tests of hazardous materials endorsements may be needed to ensure that information is properly communicated and acted upon.

- Our past work also shows that it is useful to monitor data to identify problems. For example, we have found that FMCSA was not routinely monitoring trend data on the operation of states' testing and licensing processes. Thus, one state had not sent data to the central site on 30,000 new commercial drivers over a 20-month period, but no one had noticed the situation. Routine monitoring of reports on hazardous materials endorsements could alert FMCSA and TSA to problems and lead to faster corrective actions.
- While FMCSA's previous experience with conducting reviews of state CDL programs will be a benefit in overseeing the implementation of the hazardous materials endorsement rules, in-depth oversight of states' adherence to these rules may call for additional compliance review steps and added expertise. FMCSA responded to our prior recommendations by expanding its compliance reviews of state CDL programs to include contractor assistance. Such actions could be an option for future reviews that include examining compliance with hazardous materials endorsement requirements.
- Also, FMCSA's experience with conducting regular on-site reviews of state CDL programs would enable it to promote uniformity in the implementation of the hazardous materials endorsement rules. We previously recommended clarifying Federal regulations on residency requirements to correct variations found across the states we visited. Similarly, FMCSA should look into whether the states capture and record the results of CDL holders' background records checks in a consistent and uniform manner.

The new hazardous materials endorsement process is another step in improving the safe transportation of hazardous materials. FMCSA will need to work with the states and TSA to ensure that the new hazardous materials endorsement process is efficiently and effectively implemented. Mr. Chairman, that concludes my statement. I would be happy to answer any questions that you or other members of the Subcommittee might have.

Federal Disqualifying Violations

States must take action to disqualify commercial drivers for specific time periods after a driver commits certain violations. Some violations require disqualification after a single conviction and other violations require more than a single conviction before a disqualification is imposed. The specific disqualifying violations are summarized in the tables that follow. New disqualifying violations addressed in the Motor Carrier Safety Improvement Act of 1999 are provided separately. Under the rule issued by FMCSA on July 31, 2002, states must adopt these new requirements no later than September 30, 2005.

Violations Requiring Disqualification After a Single Conviction			
Violation	First Offense Penalty	Second Offense Penalty	Third Offense Penalty
Driving a CMV under the influence of alcohol—blood alcohol content of 0.04 percent	1 year disqualification if no hazardous material involved, 3 years if hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (not eligible for reinstatement)
Driving a CMV under the influence of a controlled substance	1 year disqualification if no hazardous material involved, 3 years if hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (not eligible for reinstatement)
Leaving the scene of an accident involving a CMV	1 year disqualification if no hazardous material involved, 3 years if hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (not eligible for reinstatement)
Committing a felony while in a CMV but not involving manufacturing, distributing, or dispensing a controlled substance	1 year disqualification if no hazardous material involved, 3 years if hazardous material involved	Life disqualification (eligible for reinstatement after 10 years*)	Life disqualification (not eligible for reinstatement)
Committing a felony while in a CMV involving manufacturing, distributing, or dispensing a controlled substance	Life disqualification (not eligible for reinstatement)	Not applicable	Not applicable
Violating an out-of-service order	90-day minimum disqualification	1 to 5 years disqualification in any 10-year period	3 to 5 years disqualification in any 10-year period
Violating any of six railroad crossing rules (Rule went into effect October 4, 1999)	60-day disqualification	120-day disqualification (if offense within 3 years of first offense)	1-year disqualification (if offense within 3 years of first offense).

* Reinstatement requires successful completion of an appropriate rehabilitation program that meets the standards set by the state-licensing department.

CMV: Commercial Motor Vehicle

Violations Requiring More than a Single Conviction Before a Disqualification is Imposed			
Violation	First Offense	Second Offense Within a 3-Year Period*	Third Offense Within 3 Years of First Offense*
Excessive speeding	Recorded	60-day disqualification	120-day disqualification
Reckless driving	Recorded	60-day disqualification	120-day disqualification
Improper or erratic lane change	Recorded	60-day disqualification	120-day disqualification
Following too closely	Recorded	60-day disqualification	120-day disqualification
Violation in connection with a fatal accident	Recorded	60-day disqualification	120-day disqualification

*Multiple offenses may be a combination of different violations.

Additional Disqualifying Violations Required Under the Motor Carrier Safety Improvement Act of 1999
<ul style="list-style-type: none"> • Driving a commercial vehicle with a revoked, suspended, or canceled CDL or driving while disqualified • Conviction for causing a fatality through the negligent or criminal operation of a commercial vehicle • Driving a commercial vehicle without obtaining a CDL • Driving a commercial vehicle without a CDL in possession • Driving a commercial vehicle when the individual has not met the minimum testing standards for the specific class of vehicle or type of cargo • Being convicted of a serious offense involving a noncommercial vehicle that resulted in license suspension, cancellation, or revocation • Being convicted of a drug or alcohol-related offense involving a noncommercial vehicle

Crimes Disqualifying an Individual from Obtaining a Hazardous Material Endorsement

These crimes are only disqualifying if they are considered felonies in the appropriate jurisdiction, civilian, or military.⁶ An applicant is disqualified from holding a hazardous materials endorsement if he or she was convicted⁷ or found not guilty by reason of insanity within the past 7 years, was released from prison within the past 5 years, or is wanted or under indictment, for any of the following crimes:

- Assault with intent to murder
- Kidnapping or hostage taking
- Rape or aggravated sexual abuse
- Extortion
- Robbery
- Arson
- Bribery
- Smuggling
- Immigration violations
- Racketeer Influenced and Corruption Organizations Act (RICO) violations
- Distribution of, possession with intent to distribute, or importation of a controlled substance (“simple possession” of a controlled substance without an intent to distribute is not considered disqualifying)
- Dishonesty, fraud, or misrepresentation, including identity fraud (e.g., felony-level embezzlement, tax evasion, perjury, and false statements to the Federal Government)
- Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in firearms or other weapons
- Conspiracy or attempt to commit any of these crimes

An applicant will be **permanently disqualified** from holding a hazardous materials endorsement if she or he was ever convicted or found not guilty by reason of insanity of any of the following crimes:

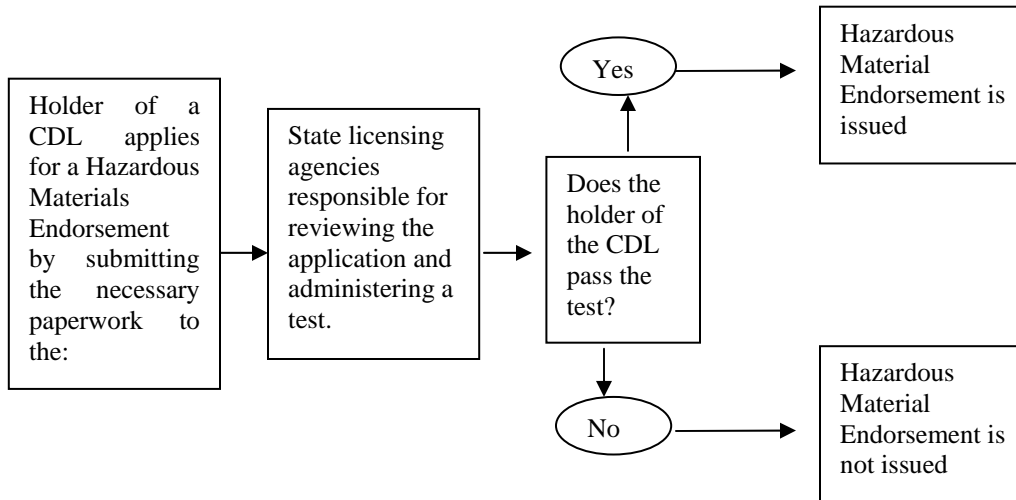
- Murder
- Terrorism
- Espionage
- Sedition

⁶ 49 Code of Federal Regulations §1572.103, “Disqualifying Criminal Offenses.”

⁷ “Convicted” means any plea of guilty or nolo contendere or any finding of guilt.

- Treason
- Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device
- RICO violations (if the crime underlying the RICO conviction is on the list of permanently disqualifying crimes)
- A crime involving a transportation security incident (i.e., security incident involving a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area)
- Improper transportation of a hazardous material (minor infractions involving transportation of hazardous materials will not disqualify a driver; for instance, no driver will be disqualified for minor roadside infractions or placarding violations)
- Conspiracy or attempt to commit any of these crimes

State Licensing Agencies' Hazardous Materials Endorsement Process Before TSA's Rule Requiring a Background Records Check

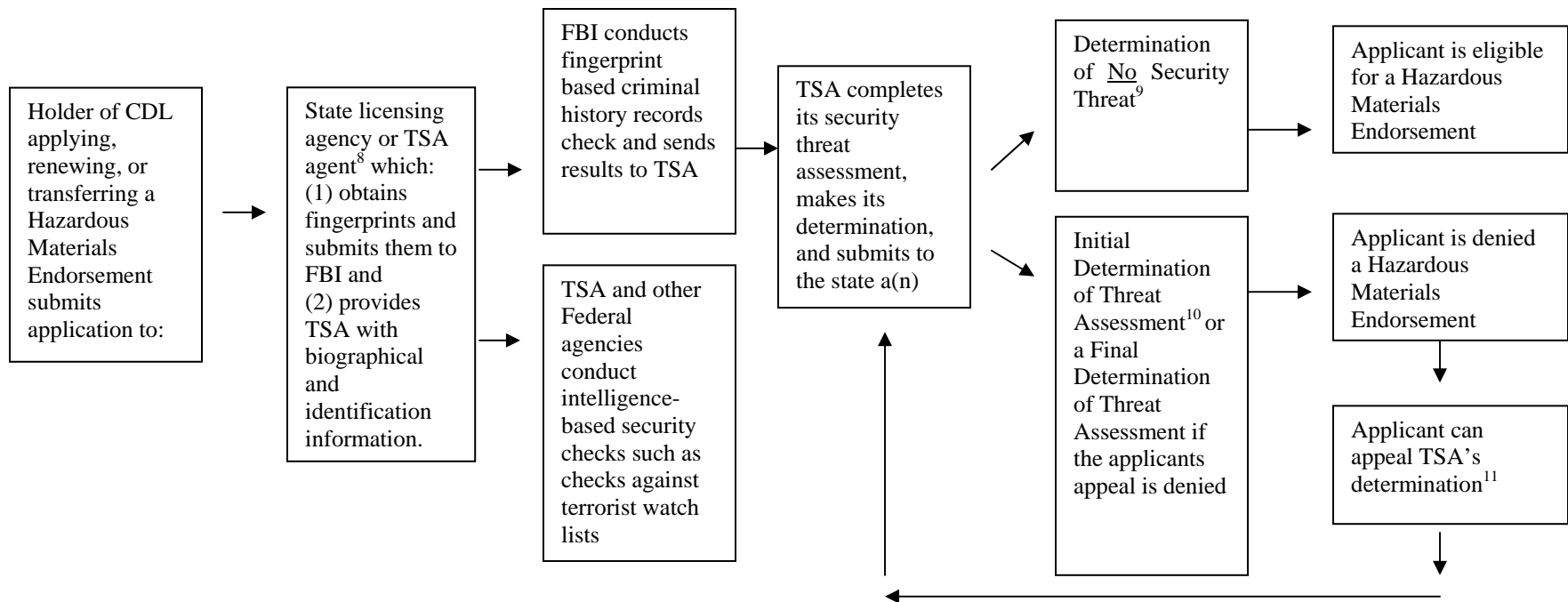


To initiate the process:

- A holder of a CDL would submit an endorsement application to the appropriate state licensing agency.
- The state licensing agency was required to verify that the individual had the requisite general knowledge and skill tests required for a CDL.
- The applicants were then tested on their knowledge of hazardous materials regulations, hazardous materials handling, and operation of emergency equipment and emergency response procedures in the event of an accident.

If the applicant passed the test, the state licensing agency would then issue the hazardous materials endorsement as part of the CDL.

Hazardous Materials Endorsement Process Under TSA's Rule Requiring a Background Records Check



⁸ TSA's rule requires each state to declare whether it wishes to capture and submit fingerprints, applicant information, and fees itself, or alternatively chooses to have TSA complete those tasks.

⁹ If the results of the criminal history records check turn up *no* disqualifying crimes, and other TSA intelligence checks come back clear, TSA sends to the state a Determination of No Security Threat, whereupon the state can issue the endorsement after the applicant passes the hazardous materials knowledge test.

¹⁰ If the results of the criminal history records check identifies a disqualifying crime or other information disqualifies the applicant TSA sends forward to the state an Initial Determination of Threat Assessment notifying the state that the applicant poses or is suspected of posing a security threat warranting denial of the hazardous materials endorsement, or a Final Determination of Threat Assessment if the applicant's appeal is denied.

¹¹ If the applicant chooses to do so, he or she can appeal the TSA's disposition.