

June 3, 2010

Cynthia Hilton
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Ms. Hilton:

Thank you for your letter dated May 3, 2010 in which you responded to the Federal Register Notice regarding our application to the Office of Management and Budget (OMB) for renewal of the Corporate Security Review (CSR) OMB Control Number 1652-0036.

In your letter you stated you would like to endorse comments made by the American Trucking Association (ATA) and the American Bus Association (ABA) in their letter to TSA (dated August 19, 2009), and to lend additional argument to the merit of the ATA/ABA recommendations. As mentioned in our letter to ATA and ABA, Congress has given TSA specific responsibilities to assume oversight and compliance on transportation security. The Department of Homeland Security (DHS) and the Department of Transportation (DOT) have signed agreements to delineate clear lines of authority and responsibility, promote communication and efficiency, and avoid duplication of efforts. Since our response to ATA and ABA, TSA has met with the Federal Motor Carrier Safety Administration (FMCSA) to try to resolve issues of duplication.

It is important to recognize that these programs are part of larger efforts for both agencies. In addition to hazmat transporters, TSA's CSRs are conducted on general freight haulers, motorcoach and school bus companies, and infrastructure entities (i.e., State DOTs, bridges, and tunnels). More than 90% of the 650,000+ carriers holding USDOT interstate operating authority carry no hazmat at all. As such, no federal security regulations currently apply to them. In the non-hazmat community, the CSR and TSA team may be the first and only occasion that they consider security preparedness for their business. By assessing the systemic strengths and vulnerabilities of a company's security measures, TSA also develops an understanding of the current state of security practices for highway modes of transportation - which it then uses in developing policy and programmatic decisions to improve the overall security posture within the surface transportation community. Performed by TSA staff, the CSR process also provides an opportunity for TSA to interact with that carrier to share industry and other carrier best practices and security solutions. Finally, no company is ever compelled to participate; they are always advised the review is voluntary. Those who refuse to participate are removed from the list of potential contacts and there are no consequences associated with their refusal.

It is TSA's understanding that SCRs conducted by FMCSA safety specialists as part of their responsibility to audit for compliance with DOT regulations. On security matters, the SCR seeks "yes or no" answers. It is also TSA's understanding that SCRs are only conducted if FMCSA is on-site for a safety compliance review. Their compliance audit is more focused on whether the requirements are met than on an assessment of the overall strength of a company's security program. Refusal to participate is not an option.

Thus, to the extent duplication occurs, it would primarily be one of a company being contacted by two agencies and perhaps showing some of the same documents to both. But the purposes of the contacts are different (one is a voluntary assessment, the other is an audit); the information collected is different (one is looking at the company's overall transportation security posture and the substance of the measures taken, the other is looking for general compliance with regulatory requirements that may include both safety and security); and the use of the information is different (one uses it to work with the company on strengthening security and for overall agency security program development, the other for enforcement actions).

The likelihood that a carrier and shipper of hazardous materials would undergo a TSA CSR and an FMCSA Security Contact Review (SCR) in the same year is statistically low. It is TSA's understanding that FMCSA completes approximately 1,500 SCRs annually (2% of the total number of hazardous materials carriers nationwide). In the past, TSA's CSRs have affected about 0.6% of this population (in part because TSA focuses its hazmat review on carriers of highway security-sensitive materials - not all hazmat; FMCSA, on the other hand, conducts safety assessments on all hazmat carriers, and adds an SCR if the company is also subject to DOT security requirements). If seen as a venn diagram, the potential overlap is quite small. If duplication should occur, and is unwelcome, the carrier has the option to refuse the TSA request. While some companies have refused, to TSA's recollection, no company has ever refused because they were recently subject to an SCR by FMCSA.

While duplication is unlikely, it is possible. To that end, TSA and FMCSA have gained awareness of the programs of their respective agencies and requirements of the 9/11 Commission Act of 2007. One of the results of these discussions is a policy for TSA to provide FMCSA's Hazardous Materials Division with a list of companies that will be participating in TSA's voluntary CSR. TSA will also provide FMCSA with the findings from the CSR pertaining to en-route, personnel, and unauthorized access. Both TSA and FMCSA continue to discuss other collaborative initiatives.

Regarding the cost burden to the carriers, TSA does not disagree that there is no financial impact to businesses as a result of inspections. However, the Paperwork Reduction Act (PRA) requires agencies to reflect any actual costs as a result of a collection of information, not opportunity costs. The time spent responding to a collection of information under the PRA is accounted for in the agency's hour burden estimate. Calculating opportunity costs would in effect double count the hour burden. Thus, TSA stands by its estimate reported in the Federal Register notice published April 22, 2010.

I appreciate your comments and restate it is our intent to eliminate the duplication of efforts by federal agencies to the extent possible.

Sincerely,

William H. Arrington
General Manager
Highway and Motor Carrier Division
Transportation Security Administration