

STATE OF NEBRASKA

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DAVE HEINEMAN
~~Mike Johanns~~
Governor

March 22, 2005

The Honorable John Gale
Nebraska Secretary of State
2300 State Capitol
Lincoln, NE 68509

RE: Rescission of Executive Order #05-01

Dear Secretary Gale:

I am writing to inform you that, pursuant to the enactment of LB 76e, Executive Order # 05-01, which I executed and provided to your office on January 31, 2005, is rescinded effective as of March 23, 2005.

Section 3 of Executive Order # 05-01 provided that the order would "expire upon the effective date of state law governing the issuance of commercial drivers' licenses with hazardous material endorsements or June 6, 2005, whichever [date] is earlier." On March 17, 2005, LB 76e was approved by the Legislature. Today, I signed the bill, which contains an emergency clause, into law. The law will become effective on March 23, 2005.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Dave Heineman".

Dave Heineman
Governor

DH:/lh

cc: The Honorable Tom Baker
Bev Neth, Director, NE Department of Motor Vehicles
Nebraska Library Commission
Governor's Policy Research Office



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EXECUTIVE ORDER

NO. 05-01

WHEREAS, the U.S. Congress enacted the USA Patriot Act, containing 49 USC §5103a, a provision governing the issuance of commercial drivers' licenses with hazardous material endorsements; and,

WHEREAS, the Transportation Security Administration has issued a regulation found at 49 CFR §1572.13 that requires the State of Nebraska to require new applicants for commercial drivers' licenses with hazardous material endorsements to undergo a security threat assessment including a background check and collection of fingerprints beginning on January 31, 2005, and renewal and transfer licensees to undergo a security threat assessment beginning on May 31, 2005; and,

WHEREAS, the Federal Motor Carrier Safety Administration has issued a regulation found at 49 CFR §384.233 that makes compliance with the Transportation Security Administration's regulations for issuance of commercial drivers' licenses with hazardous material endorsements a matter of substantial compliance with federal law governing commercial motor vehicles and commercial drivers' licenses; and,

WHEREAS, failure of the State of Nebraska to substantially comply with federal law governing commercial drivers' licenses with hazardous material endorsements could be grounds for the Federal Motor Carrier Safety Administration to decertify Nebraska's commercial drivers' license program, or withhold federal highway aid funds, or withhold Motor Carrier Safety Assistance grant funds pursuant to 49 CFR §384.401 and 49 CFR §384.405; and,

WHEREAS, Nebraska has not yet enacted statutes authorizing any state agency to carry out the mandate of 49 CFR §1572.13; and,

WHEREAS, the issuance of commercial drivers' licenses with hazardous material endorsements has statewide impact and affects every person who wishes to apply for a commercial drivers' license with a hazardous material endorsement on or after January 31, 2005; and,

WHEREAS, this situation is of immediate concern to the trucking industry, and all entities in Nebraska dependent on the trucking industry to deliver supplies and products which could contain materials classified as hazardous; and,

WHEREAS, the situation is aggravated because it is unlikely that the situation can be remedied by legislative action prior to the effective dates mandated in 49 CFR §1572.13 for beginning security threat assessments for applicants for commercial drivers' licenses with hazardous materials endorsements, and an emergency exists; and,

WHEREAS, issuance of this Executive Order will authorize the State of Nebraska to comply with federal law until the Legislature shall act, and shall ensure that the federal requirements for commercial drivers' licenses with hazardous material endorsements shall be efficiently and economically administered; and,

WHEREAS, executive authority is given to me to issue an Executive Order to authorize issuance of commercial drivers' licenses with hazardous material endorsements in manner consistent with federal law by Article IV, Section 6 of the Nebraska Constitution;

NOW, THEREFORE, I, Dave Heineman, GOVERNOR OF THE STATE OF NEBRASKA, DO HEREBY, AUTHORIZE cooperation with federal authorities to do all things necessary to assure that the State of Nebraska is in compliance with federal regulations issued by the Transportation Security Administration and Federal Motor Carrier Safety Administration for the issuance of commercial drivers' licenses with hazardous material endorsements beginning on January 31, 2005, and HEREBY PROCLAIM the following orders for the issuance of commercial drivers' licenses with hazardous material endorsements:

1.0 Beginning January 31, 2005, all applicants for commercial drivers' licenses with hazardous material endorsements shall undergo a security threat assessment including fingerprinting and a criminal background check before issuance of such a license.

2.0 Authority to administer the process for issuance of commercial drivers' licenses with hazardous material endorsements is delegated to the Department of Motor Vehicles in a manner that is consistent with the requirements of the Transportation Security Administration and the regulations of that federal agency. The Department of Motor Vehicles shall keep the Governor and Transportation and Telecommunications Committee of the Nebraska Legislature informed of the administration of the security threat assessment process and the requirements of federal law at all times.

3.0 This Executive Order shall expire upon the effective date of state law governing the issuance of commercial drivers' licenses with hazardous material endorsements or June 6, 2005, whichever is earlier.

4.0 This Executive Order shall be effective upon the date I affix my signature.



Given Under My Hand and the Great Seal of the State
of Nebraska in the City of Lincoln, This 31st day
of January, 2005.

Dave Heineman

Dave Heineman, Governor

Attest:

John A. Gale
John A. Gale, Secretary of State