

SEA—Safe Explosives Act
 TSA—Transportation Security Administration
 USA PATRIOT Act—Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act

Background

On September 11, 2001, several terrorist attacks were made against the United States. Those attacks resulted in catastrophic human casualties and property damage. In response to those attacks, Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration (TSA).¹ TSA was created as an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. As of March 1, 2003, TSA became an agency of the Department of Homeland Security (DHS), and the Under Secretary is now the Administrator. TSA continues to possess the statutory authority that ATSA established. ATSA granted to the Administrator responsibility for security in all modes of transportation.²

As part of its security mission, TSA is responsible for assessing intelligence and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies to address such threats.³ The Administrator has an express mandate to identify and coordinate countermeasures to address threats to the transportation system, including the authority to receive, assess, and distribute intelligence information related to transportation security. TSA is charged with serving as the primary liaison for transportation security to the intelligence and law enforcement communities.⁴

This authority includes conducting background checks on individuals in the transportation industries. The background checks may include collecting fingerprints to determine if an individual has a criminal conviction or the use of a name and other identifying characteristics to determine whether an individual has committed international or immigration offenses. In aviation, TSA has statutory authority to conduct background checks on individuals with unescorted access to secured areas of aircraft and airports.⁵ TSA has

implemented this authority through a series of regulations that require fingerprint-based criminal history records checks (CHRC) for flightcrew members, individuals with access to secured areas of airports and aircraft, screeners, and supervisors. If the individual has committed a disqualifying criminal offense within a prescribed time period, the individual is denied unescorted access to secured areas.⁶

The Administrator is uniquely situated as an expert in transportation security, based on his functions, duties, and powers, to determine whether sufficient cause exists to believe that an individual poses a threat to transportation security.

USA PATRIOT Act

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act was enacted on October 25, 2001.⁷ Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by adding a new section 5103a titled "Limitation on issuance of hazmat licenses." Section 5103a(a)(1) provides:

A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license.⁸

Section 5103a(a)(2) subjects license renewals to the same requirements.

FMCSA advised TSA that there is no "hazmat license" *per se* under State or Federal law, and that the "hazmat license" referred to in section 1012 of the USA PATRIOT Act is the hazardous materials endorsement to a commercial drivers license (CDL), which is required by 49 CFR 383.93(b)(4). Section 1012(b) of the Act amended 49 U.S.C. 31305(a)(5), which prescribes fitness and testing standards for individuals operating a commercial motor vehicle carrying a hazardous material, by adding a new paragraph that requires an individual to undergo a background records check before the State issues a CDL to that individual. To qualify for the hazardous materials endorsement, an individual must first pass a specialized knowledge test (49 CFR

383.121) in addition to the requisite general knowledge and skills tests required for a CDL.

Section 5103a(c) requires the Attorney General, upon the request of a State in connection with issuance of a hazardous materials endorsement, to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary (as delegated to the Administrator of TSA) of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The background records check must consist of: (1) A check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

Maritime Transportation Security Act

Congress enacted the Maritime Transportation Security Act (MTSA) on November 25, 2002.⁹ Section 102 of MTSA requires the Secretary¹⁰ to conduct background records checks for individuals with access to a secure area of a vessel or facility. It also requires the Secretary to establish procedures for processing appeals and applications for a waiver to security threat assessment standards.

TSA is including this discussion of the MTSA requirements because the agency plans to harmonize, to the extent possible, all of the various background checks that are required by statute, and so elements of MTSA appear in this rule. For instance, this rule requires a review of records for the preceding seven years in order to determine whether a conviction of a disqualifying criminal offense has occurred. This seven-year period is required by MTSA and is appropriate for use in the context of this rule.

Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.¹¹ Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not

¹ Pub. L. 107–71, November 19, 2001, 115 Stat. 597.

² 49 U.S.C. 114(d).

³ 49 U.S.C. 114(f)(1)–(5), (h)(1)–(4).

⁴ 49 U.S.C. 114(f)(1) and (5).

⁵ 49 U.S.C. 44936.

⁶ 49 CFR parts 1542 and 1544.

⁷ Pub. L. 107–56, October 25, 2001, 115 Stat. 272.

⁸ The Secretary of Transportation delegated the authority to carry out the provisions of this section to the Under Secretary of Transportation for Security/Administrator. 68 FR 10988, March 7, 2003.

⁹ Pub. L. 107–295, November 25, 2002, 116 Stat. 2064.

¹⁰ "Secretary" is defined as the Secretary of the department in which the Coast Guard is operating. Effective March 1, 2003, the Coast Guard was transferred to the Department of Homeland Security under the Homeland Security Act.

¹¹ Pub. L. 107–296, November 25, 2002, 116 Stat. 2280.