

citizenship; (2) is wanted or under indictment for certain felonies; (3) has a conviction in military or civilian court for certain felonies; (4) has been adjudicated as a mental defective or committed to a mental institution; or (5) is considered to pose a security threat based on a review of pertinent databases. The rule establishes conditions under which an individual who has been determined to be a security risk may appeal the determination, and procedures TSA will follow when considering an appeal. The rule also provides a waiver process for those individuals who otherwise cannot obtain a hazardous materials endorsement because they have a conviction for a disqualifying felony, or were adjudicated as a mental defective or committed to a mental institution.

The primary basis for determining whether an individual has committed a disqualifying criminal offense is collecting fingerprints and submitting them to the Federal Bureau of Investigation (FBI) for a criminal history records check. The process of collecting, submitting, and analyzing fingerprints is resource intensive and complex. Under this rule, TSA and the States will consult closely to determine the most efficient and cost-effective means of collecting fingerprints without unduly burdening State resources. TSA must balance the critical need to evaluate and ensure the security of hazardous materials in transportation with the practical need to develop an effective, efficient infrastructure that will support security threat assessments, including collection and analysis of fingerprints, of approximately 3.5 million commercial truck drivers in a very short time period.

TSA will work closely with the Department of Justice (DOJ), the States, and the industry to develop an effective, efficient fingerprinting process. Generally, TSA will provide guidance on where individuals will report to submit fingerprints. This may include local law enforcement offices, State motor vehicle offices, or private collection companies that have been certified to capture fingerprints. The fee for submitting fingerprints to the FBI for a criminal history records check will be collected when the prints are captured and then forwarded to the FBI. The FBI will send the fingerprint submission results to TSA, and TSA will notify the appropriate State if the background records check does not reveal a disqualifying offense. However, if the search discloses an adverse report, TSA will investigate it to determine if the record accurately corresponds to the applicant, if an arrest subsequently

resulted in a conviction, or any other problems the criminal record reveals. TSA will notify the individual and/or the State of the final outcome once this investigation is complete.

For purposes of this rule, TSA provides cost estimates based on the fees that are known (such as the fee the FBI charges to process each set of fingerprints) and our experience with background records checks in the aviation sector. However, there may be challenges to completing this process within the cost estimates provided due to differences in State records, the degree to which a State has electronic records, and the difficulties of locating individual CDL holders. Therefore, the costs set out in the rule are subject to change, but most likely will diminish over time.

In developing these regulations, TSA has and will continue to coordinate with the National Crime Prevention and Privacy Compact Council (Compact Council). The Compact Council was established pursuant to the 1998 National Crime Prevention and Privacy Compact (Compact) (42 U.S.C. 14616). The Compact establishes legal criteria governing criminal history record checks for non-criminal justice purposes.

The Compact Council is composed of 15 members, appointed by the Attorney General, and has the authority to promulgate rules and procedures governing the use of the Federal-State criminal history records system for noncriminal justice purposes. The Council's oversight seeks to ensure uniform application of the statutory requirements, while permitting each State to develop its own dissemination policy within its borders. As a general rule, the Compact requires the submission of fingerprints for purposes of gaining access to the criminal history databases for noncriminal justice purposes. Due to the time it will take to develop a fingerprint collection infrastructure for 3.5 million hazardous materials endorsement holders, the Compact Council has agreed that TSA may obtain criminal history information based on names and other biographical data, so long as fingerprints are subsequently gathered and submitted. TSA will report to the Council periodically to ensure compliance with the Compact.

To ensure the development of an effective infrastructure for conducting security threat assessments, TSA solicits comments and ideas from the States, trucking industry associations, labor organizations, and other interested parties. TSA must use a system that is flexible enough to accommodate all of

the unique characteristics of the State processes, and the mobile nature of the workforce, and that is cost-effective for the drivers, employers, and governmental agencies.

The background check process for individuals applying for or holding hazardous materials endorsements will proceed as follows:

- As of 120 days following publication of the rule, any CDL holder who does not meet the security threat assessment standards prescribed in this rule is not authorized to hold or obtain a hazardous materials endorsement.
- Following publication of the rule, TSA will begin to conduct security threat assessments on individuals who currently hold hazardous materials endorsements, as well as drivers applying for new or transfer endorsements. This assessment will make use of names and biographical data contained in the Commercial Drivers License Information System (CDLIS). Some assessments will include entering names in the National Crime Information Center (NCIC) database, the Interstate Identification Index (III), and other databases, such as terrorism watch lists. If the name and biographical data search discloses that an individual does not meet the security threat assessment standards, TSA will notify the individual and the State in which he or she holds or is applying for a hazardous materials endorsement. If the individual wishes to dispute the results of the search, he or she will submit fingerprints or court records, in a manner prescribed by TSA, to verify or invalidate the individual's identity and criminal background, and the results of the search. If the individual does not contest the initial result or is not able to correct the record, TSA will notify the State to revoke or deny the endorsement.
- If the name-based background check discloses that a driver is the subject of an outstanding felony want or warrant, TSA will ensure that the appropriate law enforcement agency is notified.
- Individuals whose name-based check indicates that they meet the security threat assessment standards must submit fingerprints between 180 days and five years from the effective date of the rule, when applying for a new, renewed, or transferred hazardous materials endorsement. A State may require fingerprint submission prior to the expiration of five years, or on a more frequent basis than once every five years.
- Existing hazardous materials endorsement holders may be subject to fingerprint-based checks prior to