

a psychiatric ward in a general hospital. This definition is taken from standards concerning individuals with a mental disability, which ATF promulgated at 27 CFR 478.11.

“Notification of No Security Threat” is an administrative determination by TSA that an individual does not pose a security threat that merits denial of the authorization to transport hazardous materials.

“Severe transportation security incident” means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. This definition is taken from the MTSA (46 U.S.C. 70101).

“State” means a State of the United States and the District of Columbia. This definition is taken from The Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301(14), which created the CDL program.

Section 1572.5 Security Threat Assessment for Commercial Drivers Licenses with a Hazardous Materials Endorsement

This section applies to State agencies responsible for issuing a hazardous materials endorsement for a CDL, and applicants for such endorsements. However, note that under FMCSA regulations (49 CFR 383.3(c)), individuals who operate commercial motor vehicles for military purposes (essentially uniformed members of the U.S. military) are exempt from CDL requirements. This rule does not apply to individuals exempt under 49 CFR 383.3(c).

Paragraph (b) states that within 120 days of the effective date of the rule, any CDL holder who does not meet the standards listed in this paragraph is not authorized to transport hazardous materials.

This section requires holders of a hazardous materials endorsement to relinquish the endorsement if he or she does not meet the standards set forth in § 1572.5(d). Also, this section requires the individual in possession of a hazardous materials endorsement, who is prohibited from holding the endorsement as a result of the requirements of paragraph (b), to surrender the endorsement to the issuing State²⁰. Both of these

requirements become enforceable as of 120 days from the effective date of the rule. TSA will begin to do security threat assessments on hazardous material drivers shortly after this rule is published. However, the rule places a self-disclosure requirement on affected drivers, regardless of when TSA has completed an assessment on each driver. In addition, each individual with a hazardous materials endorsement has an ongoing responsibility to report if he or she is convicted of, wanted or under indictment in any jurisdiction for, or found not guilty by reason of insanity of, a disqualifying criminal offense to the issuing State entity, within 24 hours of the conviction, indictment, or finding. An individual with a hazardous materials endorsement also has an ongoing responsibility to report to the issuing State entity if he or she is adjudicated as a mental defective or committed to a mental institution, within 24 hours of the adjudication or commitment. Finally, an individual has an ongoing responsibility to report to the issuing State entity if he or she renounces his or her U.S. citizenship. The driver must surrender the hazardous materials endorsement to the issuing State within 24 hours of the conviction, finding, adjudication, commitment, or renunciation.

It is important to note here that any individual, other than an individual who does not meet the standards for a security threat assessment under §§ 1572.105 (Citizenship status) and 1572.107 (Other analyses) may apply for a waiver of these standards in order to obtain or hold a hazardous materials endorsement. Section 1572.143 of the rule describes the process and criteria for obtaining a waiver and is discussed in greater detail below. However, there is no restriction on when an individual may submit a waiver request. Therefore, upon publication of this rule, an individual with a disqualifying criminal offense or who was previously adjudicated as a mental defective or committed to a mental institution may apply for a waiver within the 120-day period set in paragraph (b). If TSA grants the waiver, the individual may continue to lawfully hold the hazardous materials endorsement, and, at the expiration of the 120 days following publication of the rule, would not be required to surrender the endorsement.

As noted above, TSA will begin conducting name checks on hazardous materials endorsement holders upon the effective date of the rule. If a name check of an individual indicates that he or she does not meet the security threat assessment standards, TSA will inform the State that issued the endorsement,

and the State will be required to revoke the endorsement. Paragraph (b)(2) states that, for the first 180 days the rule is in effect, the individual may submit fingerprints to TSA, in a form and manner specified by TSA, when a State revokes his or her hazardous materials endorsement in response to a TSA notification that the individual poses a security threat. TSA will use the individual's fingerprints to conduct additional checks and determine if the notification was made in error.

After 180 days, each individual must submit fingerprints in a form and manner specified by TSA when applying to a State to issue, renew,²¹ or transfer a hazardous materials endorsement for a CDL; and at other times as specified by TSA. A State may require an applicant or a holder of a hazardous materials endorsement to submit fingerprints more frequently than once every five years. When submitting fingerprints under this section, the individual or his or her employer will be responsible for any fee that may be charged by the persons or entities collecting and processing the fingerprints. These fingerprinting fees will be collected when the fingerprint is captured. There are additional fees associated with accessing criminal and other pertinent databases over which TSA has no control. TSA will issue guidance to all affected individuals explaining the pertinent fee and process to forward it to the appropriate party after consulting with the States and other Federal agencies involved.

Paragraph (c) of this section provides that, for the first 180 days after the effective date of the rule, each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the security threat assessment standards. If TSA makes such a notification, the agency will also notify the individual. The individual then may submit his or her fingerprints if he or she believes the determination was made in error. TSA will use the fingerprints to conduct additional checks.

After 180 days following the effective date of the rule, no State may renew, issue, or transfer a hazardous materials endorsement unless TSA has notified the State that the individual does not pose a security threat. The State must notify each affected individual that he or she will be subject to a background

²⁰ It is important to note that section 1012 of the USA PATRIOT Act authorizes TSA to impose requirements on State CDL programs, but not individual CDL holders. However, TSA has authority to impose requirements on transportation workers, including threat assessments and fingerprint-based background checks under ATSA. See 49 U.S.C. 114(f).

²¹ Until now, each State has determined the interval, if any, for renewing a hazardous materials endorsement. The companion rule that FMCSA is publishing requires States to adopt a renewal term of not more than 5 years for all hazardous materials endorsements.