

Section 1572.105 *Citizenship Status*

The USA PATRIOT Act and SEA require a check of the relevant databases to determine the status of aliens under U.S. immigration laws. This rule requires an individual applying for a hazardous materials endorsement to be either a U.S. citizen or a lawful permanent resident of the U.S. As noted above, the SEA does not prohibit lawful permanent residents and other narrow categories of aliens from transporting explosives.²⁴ However, FMCSA's CDL regulations require a CDL holder to have a "State of domicile," which is defined as "that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent."²⁵ Lawful permanent residents of the U.S. are the only aliens who have a State of domicile under this definition. Thus, they are the only aliens who are permitted to have a CDL. In the case of an individual who is a lawful permanent resident, TSA will check relevant databases to determine the status of the individual under the immigration laws of the U.S.

To determine an individual's citizenship status, TSA may check the relevant immigration databases, and may perform other checks, including verifying the validity of the individual's Social Security Number. We note that § 383.71(a)(9) of the companion FMCSA rule requires drivers to provide proof of citizenship or alien status when applying for a hazardous materials endorsement.

Section 1572.107 *Other Analyses*

The USA PATRIOT Act also requires that background checks under section 1012 include a check of relevant international databases through Interpol-U.S. National Central Bureau, or other appropriate means. Therefore, TSA will check these international databases when appropriate. In addition, TSA will check other databases that include information on terrorists, fugitives from justice, renunciants, and individuals who have been declared mental defectives, and, where appropriate, may also check databases that assist in confirming an individual's identity. This rule provides that TSA will check the following databases, and conduct a security threat analysis, before determining that an individual does not pose a security threat: (1) Interpol and other international databases; (2) watchlists; and (3) other databases relevant to determining whether an individual

poses a security threat or that confirm an individual's identity. TSA is not initiating any independent investigation of a CDL holder's activities and affiliations and has no plans to engage in such reviews.

Section 1572.109 *Mental Defects*

The SEA prohibits individuals who have been adjudicated as having a mental defect from transporting explosives. This rule implements that portion of the SEA, by determining that any person who has been determined to be a mental defective does not meet the standards for a security threat assessment. This section adopts terms and standards concerning individuals with mental disabilities that ATF promulgated to implement the Brady Handgun Violence Prevention Act.²⁶ In the notice proposing these standards, ATF stated:

The legislative history of the GCA [Gun Control Act of 1968] makes it clear that a formal adjudication or commitment by a court, board, commission or similar legal authority is necessary before firearms disabilities are incurred. H.R. Rep. 1956, 90th Cong., 2d Sess. 30 (1968). The plain language of the statute makes it clear that a formal commitment, for any reason, e.g., drug use, gives rise to firearms disabilities. However, the mere presence of a person in a mental institution for observation or a voluntary commitment to a mental hospital does not result in firearms disabilities.²⁷

ATF also cited several cases in which courts held that the GCA was designed to prohibit the receipt and possession of firearms by individuals who are potentially dangerous, including individuals who are mentally incompetent or afflicted with a mental illness, and individuals found not guilty by reason of insanity in a criminal case.²⁸ Finally, ATF added to the definition of "adjudicated as mental defective" an element from the Department of Veterans Affairs definition of "mental incompetent"—an individual who because of injury or disease lacks the mental capacity to contract or manage his or her own affairs.²⁹

An individual has a mental defect, for purposes of this rule, if he or she has been committed to a mental institution or has been adjudicated as a mental defective. An individual is adjudicated as a mental defective if a court or other appropriate authority determines that the individual is a danger to him or

herself, or lacks the mental capacity to manage his or her affairs. An individual is "committed to an institution" if formally committed by a court; this term does not refer to voluntary admissions to a mental institution or hospital.

Section 1572.141 *Notification of Threat Assessment and Appeal*

In this rule TSA is establishing an appeals process for individuals found to be ineligible for an authorization. This section provides that if, after conducting the security threat assessment, TSA determines that an individual poses a security threat warranting denial of the hazardous materials endorsement, TSA will provide the individual an Initial Notification of Threat Assessment. The Initial Notification will include: (1) A statement that TSA has determined that the individual poses a security threat, (2) the bases for the determination, and (3) information about the process for appealing the determination.

TSA will provide an individual, upon request, an opportunity for the Associate Administrator/Chief Operating Officer of TSA, or his or her designee, to review the bases of an Initial Notification of Threat Assessment. This review is initiated through the individual appealing the Initial Notification.

As set forth in paragraph (c), an individual may appeal an Initial Notification only if he or she asserts that he or she satisfies the standards for the security threat assessment. For example, if the Initial Notification was based on a conviction for a disqualifying crime, the individual may provide TSA with evidence that the conviction was pardoned, expunged, or overturned on appeal. Evidence of such actions may nullify a conviction for a disqualifying crime, but only if no restrictions are imposed on the individual based on the underlying conviction. If, for example, an individual received an executive pardon for a conviction for a disqualifying crime, but the pardon prohibits the individual from possessing a firearm, or imposes any other restrictions, the pardon will not nullify the conviction.

Pursuant to paragraph (d), an individual may initiate an appeal by providing TSA with a written request for the releasable materials upon which the Initial Notification was based, or by serving TSA with his or her written reply to the Initial Notification.

If an individual wishes to receive copies of the releasable material upon which the Initial Notification was based, he or she must serve TSA with a written request not later than 15 days after the date of service of the Initial Notification.

²⁶ Pub. L. 103-159, November 30, 1993, 107 Stat. 1536, amending the Gun Control Act of 1968. See 27 CFR 478.11.

²⁷ 61 FR 47095, September 6, 1996.

²⁸ *Id.*

²⁹ *Id.*

²⁴ 18 U.S.C. 842(i)(5).

²⁵ 49 CFR 383.5.