

has been shipped or transported in interstate or foreign commerce.” The Act added three new categories to the list of prohibited persons: aliens, persons dishonorably discharged from the armed forces, and former citizens of the United States who have renounced their citizenship. Under the Act, “alien” does not include lawful permanent resident aliens of the United States as defined in 8 U.S.C. 1101(a)(2). *See* 18 U.S.C. 845(a).

Section 845(a)(1) of Title 18, United States Code, provides in part that any aspect of the transportation of explosive materials that is regulated by DOT and that pertains to safety is exempt from § 842(i). Therefore, to the extent that DOT rules address matters in § 842(i) (such as by addressing the security risk posed by aliens), § 842(i) does not apply.

The Department of Transportation has statutory responsibility for the safe and secure transportation of hazardous materials, including explosives, in commerce. *See* 49 U.S.C. 5101 *et seq.* The Secretary of Transportation has delegated to RSPA, an agency within DOT, the authority to issue regulations governing the safe, including secure, transportation of hazardous materials (including explosives) in commerce. TSA has responsibility for security in all modes of transportation regulated under DOT, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States government, and ensuring the adequacy of security measures for the transportation of cargo. 49 U.S.C. 114(d), (f)(4), (f)(10). Because this rule addresses the secure transportation of explosives in commerce, TSA has coordinated this rule with RSPA.

In addition, DOT works closely with other U.S. Government agencies to facilitate efficient international commerce, especially across our borders. Since the passage of the Safe Explosives Act, we have had extensive consultations with the Bureau of Alcohol, Tobacco and Firearms, the United States Customs Service, other interested U.S. Government agencies, and representatives of the Government of Canada.

DOT has evaluated the risk to security posed by aliens who transport commercial shipments of explosives into the United States from Canada and has determined that the requirements adopted in this Interim Final Rule are sufficient to mitigate that risk at this time. The focus of this rule is solely on the addition of aliens to the list of prohibited persons. This rulemaking only addresses the narrow issue

regarding transportation of explosives by commercial motor vehicle carriers and railroad carriers and their drivers and train crew members in commerce crossing the border from Canada into the United States. It is intended as a temporary measure until the completion of consultations with Canada and other U.S. Government agencies, and issuance of more comprehensive regulations requiring background checks of persons transporting hazardous materials in commerce.

DOT is consulting with the Government of Mexico regarding a comparable regulatory regime for the transportation of explosives from Mexico to the United States.

USA PATRIOT Act and Related Rulemakings

Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (115 Stat. 272, 10/26/2001), provides that the States must submit to the Department of Justice (DOJ) for a background records check (including a check of criminal, Immigration and Naturalization Service (INS), and intelligence databases) the names of all commercial motor vehicle drivers applying for a hazardous materials endorsement to a commercial drivers license (CDL). DOJ is directed to report the results of the background check to the Department of Transportation, which will decide whether the driver poses “a security risk warranting denial of the license.” DOT plans to issue regulations in the near future to implement these provisions. The long-term solution will involve background checks of all persons transporting hazardous materials in commerce to help ensure that they do not pose a security risk to the American public.

DOT is considering a number of other regulatory actions to address the issue of security in the transportation of hazardous materials. For example, the Research and Special Programs Administration (RSPA) published a notice of proposed rulemaking (NPRM) on May 2, 2002, under Docket HM–232, to enhance the security of hazardous materials in transportation (67 FR 22028). The NPRM proposed to require shippers and carriers of hazardous material shipments that require placarding (which includes explosives) to adopt and implement security plans that would include measures to address personnel security, unauthorized access, and en route security vulnerabilities. As part of its security plan, a company would have to implement measures to

confirm information provided by job applicants hired for positions that involve access to and handling of the hazardous materials. The NPRM is expected to be the first step in what will likely be a series of rulemakings that will examine the necessity for imposing more stringent security requirements on certain materials or classes of materials deemed to be significant security threats. RSPA expects to publish a final rule under Docket HM–232 in the very near future.

The Interim Final Rule

TSA is establishing temporary requirements applicable to motor carriers, motor private carriers, and railroad carriers transporting explosives in commerce from Canada to the United States using drivers and train crew members who are not United States Citizens or lawful permanent resident aliens. These interim rules will be effective only during the period while DOT develops the standards that will apply on a more permanent basis.

This rule creates a new subchapter in TSA regulations, Subchapter D, which will eventually contain a number of rules covering maritime and land transportation security. This rule also creates new part 1572, which will contain rules related to credentialing and background checks for maritime and land transportation security.

Section 1572.9 Transportation of Explosives From Canada to the United States via Commercial Motor Vehicle

New § 1572.9 covers transportation of explosives from Canada to the United States via commercial motor vehicle. This section provides procedures to ensure that the carrier, offeror of explosives, and driver of the motor vehicle are properly checked.

Under this section carriers must ensure that they are known carriers, and that their offeror of explosives and their driver are known before crossing the border into the United States. They will become known by submitting specified information to Transport Canada in advance. Transport Canada is an agency within the Government of Canada with responsibility to oversee safety and security of transportation. Transport Canada will conduct checks to ensure that the carrier and the shipper are legitimate entities and authorized to do business in Canada. Transport Canada will also check the drivers to ensure there are no known security concerns. Transport Canada will forward to TSA the information on the carriers, offerors, and drivers that it has determined to be known. TSA will make independent additional checks with such other U.S.