

ACTION: Interim final rule; amendment.

SUMMARY: The Transportation Security Administration (TSA) is amending its Interim Final Rule (IFR) that establishes standards for security threat assessments of individuals applying for, renewing, or transferring a hazardous materials endorsement (HME) for a commercial drivers license (CDL). TSA is adding a definition and moving the date on which fingerprint-based criminal history record checks must begin. TSA will not authorize a State to issue HME unless the State is collecting the biographical and criminal history information required with fingerprints and submitting fingerprints by April 1, 2004. If a State is unable to collect this information by April 1, 2004, the State must submit a request for extension to TSA on or before April 1, 2004. TSA may approve the extension request, but will not extend the due date beyond December 1, 2004. If the State cannot begin submitting fingerprints of HME applicants as of April 1, 2004, the State must submit a plan to TSA outlining the fingerprint process that it will deploy and a timeline to ensure that the State will be submitting fingerprints by December 1, 2004. The plan must be submitted by April 1, 2004, and be consistent with Federal Bureau of Investigation (FBI) fingerprint collection and submission procedures. TSA is not changing the provision in the IFR that requires individuals with a HME to surrender their endorsement if they do not meet the threat assessment standards in the rule.

DATES: *Effective Date:* This interim final rule is effective on November 3, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions: John Berry, Credentialing Program Office, Transportation Security Administration Headquarters, East Building, Floor 8, 601 12th Street, telephone: 571-227-1757, e-mail: John.Berry1@dhs.gov. Steve Sprague, Maritime and Land, Transportation Security Administration, West Building, Floor 9, 701 12th Street, telephone: (571) 227-1468, Steve.Sprague@dhs.gov.

For legal questions: Dion Casey, Office of Chief Counsel, Transportation Security Administration Headquarters, West Building, Floor 8, TSA-2, 601 South 12th Street, Arlington, VA 22202-4220 telephone: 571-227-2663; e-mail: Dion.Casey@dhs.gov; or Christine Beyer, same office address as above; telephone: 571-227-2657; e-mail: Christine.Beyer@dhs.gov.

Comments

TSA is not requesting comments to this amended interim final rule. Instead, TSA will publish a notice of proposed rulemaking shortly to address the criminal history background check process for HME applicants, and will solicit comments at that time. With publication of the NPRM, TSA will open a new docket and request comments on the security threat assessment process for HME applicants in its entirety.

Availability of Rulemaking Document

You can get an electronic copy of this interim final rule (IFR) using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

(2) Accessing the Government Printing Office's Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html; or

(3) Visiting the TSA's Laws and Regulations Web page at http://www.tsa.gov/laws_regs/gov_index.shtm.

In addition, copies are available by writing or calling the individuals in the **FOR FURTHER INFORMATION CONTACT** section. Please be sure to identify the docket number when making requests.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding SBREFA on the Small Business Administration's Web page at http://www.sba.gov/advo/laws/law_lib.html.

Background

On May 5, 2003, TSA published an IFR that requires a security threat assessment of commercial drivers who are authorized to transport hazardous materials.¹ The IFR implements several statutory mandates, discussed below, including criminal history record checks, checks against international databases, and appeal and waiver procedures. (Although the statute does not clearly state that the criminal history background check must be based on fingerprinting, the criminal history databases cannot be accessed without

submitting fingerprints, when the check is done for a non-criminal justice purpose as is the case here.) In the IFR, TSA also stated that it would provide guidance on the form and manner fingerprints would be collected and adjudicated.

TSA requested and received comments from the States, labor organizations, and trucking industry associations. In addition, TSA held working group sessions with the States to discuss potential fingerprinting systems that would achieve the statutory requirements, but would not adversely impact the States.

Based on the comments received and our working sessions with the States, it appears that the States are in the best position to develop a plan to ensure that HME holders will be fingerprinted. TSA, however, is best situated to examine whether an individual poses a security threat under the other provisions of the rule, such as alien status, and terrorist connections. Under this scheme, TSA would continue to make the final determination as to whether an individual poses a security threat, combining the criminal history information the State develops with the terrorist-related background information, including alien status and terrorist-related databases, that TSA develops. In addition, TSA would continue to administer appeals of the terrorist-related background information for individuals who believe the records on which TSA's determination is made are incorrect or involve mistaken identity. Finally, TSA would administer the waiver program set forth in the IFR for all HME applicants. Shortly after publication of this amended IFR, TSA is issuing a separate notice of proposed rulemaking (NPRM) to explain and solicit comments on the revised process.

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, 2001.² 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