

security risk warranting denial of the license.³

Section 5103a(a)(2) subjects license renewals to the same requirements.

Section 5103a(c) requires the Attorney General, upon the request of a State in connection with issuance of a HME, to carry out a background records check of the individual applying for the endorsement and, upon completing the check, to notify the Secretary (as delegated to the Administrator of TSA) of the results. The Secretary then determines whether the individual poses a security risk warranting denial of the endorsement. The background records check must consist of: (1) A check of the relevant criminal history databases; (2) in the case of an alien, a check of the relevant databases to determine the status of the alien under U.S. immigration laws; and (3) as appropriate, a check of the relevant international databases through Interpol-U.S. National Central Bureau or other appropriate means.

Safe Explosives Act

Congress enacted the Safe Explosives Act (SEA) on November 25, 2002.⁴ Sections 1121–1123 of the SEA amended section 842(i) of Title 18 of the U.S. Code by adding several categories to the list of persons who may not lawfully “ship or transport any explosive in or affecting interstate or foreign commerce” or “receive or possess any explosive which has been shipped or transported in or affecting interstate or foreign commerce.” Prior to the amendment, 18 U.S.C. 842(i) prohibited the transportation of explosives by any person under indictment for or convicted of a felony, a fugitive from justice, an unlawful user or addict of any controlled substance, and any person who had been adjudicated as a mental defective or committed to a mental institution. The amendment added three new categories to the list of prohibited persons: aliens (with certain limited exceptions), persons dishonorably discharged from the armed forces, and former U.S. citizens who have renounced their citizenship. Individuals who violate 18 U.S.C. 842(i) are subject to criminal prosecution.⁵ These incidents are investigated by the Bureau of Alcohol,

Tobacco, Firearms, and Explosives (ATF) of the Department of Justice and referred, as appropriate, to United States Attorneys.

However, 18 U.S.C. 845(a)(1) provides an exception to section 842(i) for “any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the United States Department of Transportation (DOT) and agencies thereof, and which pertain to safety.” Under this exception, if DOT regulations address the transportation security issues of persons engaged in a particular aspect of the safe transportation of explosive materials, then those persons are not subject to prosecution under 18 U.S.C. 842(i) while they are engaged in the transportation of explosives in commerce. TSA issued the interim final rule in coordination with agencies within DOT, the Federal Motor Carrier Safety Administration and Research and Special Programs Administration, and triggered this exception. For the reasons set forth below, the action TSA takes now does not affect the application of the exception.

The Interim Final Rule

To comply with the mandates of the USA PATRIOT Act, and to trigger the exception in 18 U.S.C. 845(a)(1) for the transportation of explosives, TSA issued the IFR (68 FR 23852). Under the IFR, TSA determines that an individual poses a security threat if he or she: (1) Is an alien (unless he or she is a lawful permanent resident) or a U.S. citizen who has renounced his or her U.S. 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 involuntarily committed to a mental institution; or (5) is considered to pose a security threat based on a review of pertinent databases.

The IFR also establishes conditions under which an individual who has been determined to be a security threat can appeal the determination, and a waiver process for those individuals who otherwise could not obtain an HME because they had a disqualifying felony, or were adjudicated as a mental defective or involuntarily committed to a mental institution. Finally, the IFR prohibits an individual from holding, and a State from issuing, renewing, or transferring, an HME for a driver unless the individual has met the TSA security threat assessment standards.

Summary of the Amended IFR

This amended IFR adds a definition and changes language in the original IFR

(68 FR 23852) regarding the date on which the States cannot issue, transfer, or renew HME unless a fingerprint-based background check has been completed. TSA provides a definition for the term “revoke” in response to comments received from the States. In some States, legislative language does not permit “revocation” of a hazardous material endorsement, but does permit removing authority to transport hazardous materials through disqualification, suspension, cancellation or other similar term. However, the IFR uses “revoke” when referring to individuals who are disqualified from holding a HME. Therefore, as requested by the States, we provide a definition to make clear that revocation is equivalent to cancellation, suspension, annulment, disqualification, or similar term.

TSA is delaying the date on which fingerprint-based criminal history record checks must be underway from November 3 for several reasons. First, TSA received comments from 23 States requesting an extension of time so that they can garner needed State legislative changes, funds, and infrastructure to implement the new background check portion of the HME program. The primary concerns identified by States include the cost of purchasing fingerprinting equipment; time needed to hire and train personnel to operate the fingerprinting equipment; and State legislative changes necessary to collect fees and implement the program. Most of the States requested Federal funding to assist with development of the program.

Second, TSA has worked closely with the States and pertinent nongovernmental organizations since the IFR was published and has determined that a “one size fits all” approach for fingerprint collection and adjudication is impractical. Each State currently has a system in place to license commercial drivers and award hazardous material endorsements. Also, each State currently has a system in place to collect fingerprints for criminal justice purposes and transmit them to the Attorney General. The States’ systems vary widely in terms of size, complexity, automation, and funding. The States have consistently stated that TSA should not prescribe one detailed fingerprinting program, but should set minimum standards so that the States can make use of their current resources and programs. This should minimize costs, take into account unique State legislative requirements, and accommodate the level of automation each State currently possesses. Based on the foregoing, TSA is delaying the date

³ The Secretary of Transportation delegated the authority to carry out the provisions of this section to the Under Secretary of Transportation for Security/Administrator of TSA. 68 FR 10988, March 7, 2003.

⁴ Pub. L. 107–296, November 25, 2002, 116 Stat. 2280.

⁵ The penalty for violation of 18 U.S.C. 842(i) is up to ten years imprisonment and a fine of up to \$250,000.