

on which: (1) The information required in section 1572.5(e) of the IFR is collected; and (2) fingerprints are submitted.

Information Collection

With respect to the first requirement, as of April 1, 2004, the States must be collecting the biographical and criminal history information currently required in section 1572.5(e), with the applicant's certification under penalty of criminal prosecution that the information is correct. This requirement applies only to individuals who are applying for, renewing or transferring a HME. The State is not required to gather this information for all current HME holders as of April 1, 2004; however, it must be collecting the information as drivers become due for renewal or seek to transfer or obtain a HME.

This requirement enhances the State's ability to determine whether individuals with disqualifying offenses continue to transport hazardous materials in violation of the law. The individual's signature on the application required in section 1572.5(e) is a certification under penalty of 18 U.S.C. 1001 that the individual meets the security threat assessment standards set forth in the IFR. If the individual intentionally provides inaccurate information, an enforcement action can be initiated that may include imprisonment of not more than five years or a fine of up to \$250,000, or both. The government believes this adds a deterrent for HME holders who have committed disqualifying offenses but have not surrendered their HME as required by section 1572.5(b). However, it is important to note that nothing in this requirement alters an individual's ability to apply for a waiver under section 1572.143, if they have committed a disqualifying offense.

If the State is unable to collect the information required in section 1572.5(e) by April 2004, the State may submit a written request to TSA to delay the collection requirement. TSA understands that some States may need to seek legislative changes and fee authority, or raise funds in order to accomplish the collection requirement, and it may be impossible to do so by April 2004. However, TSA will not grant any delays beyond December 1, 2004.

Fingerprint Submission

With respect to the second requirement concerning fingerprint collection, the amended IFR provides that the State must be collecting fingerprints from individuals applying for, renewing, or transferring a HME and

submitting them to the FBI as of April 1, 2004. The fingerprint collection must be accomplished in a manner consistent with FBI procedures. If the State is unable to collect fingerprints on or before April 2004, the State must submit a plan to TSA by April 1, 2004 outlining the system it will put in place to capture fingerprints and pertinent information. The States must be collecting fingerprints and the required information for HME applicants no later than December 1, 2004.

As indicated in State comments to the IFR, most if not all States have devoted considerable attention to determining how the fingerprinting of HME applicants can be accomplished and coordinated within the existing hazardous material endorsement and commercial driver licensing programs. In meeting with the States, it has been evident that many States have a clear plan in mind to collect fingerprints and the other information required in section 1572.5(e), including the number of staff needed to administer the program, appropriate training for personnel involved in capturing fingerprints, and electronic upgrades necessary to handle increased data. Therefore, TSA does not anticipate that the States will have to expend significant time on developing the fingerprint collection plans. Many States will submit the plans they have been working with since publication of the IFR.

Also, each State currently has fingerprint collection procedures in place that meet the FBI's collection standards, in order to process fingerprints through the FBI for criminal enforcement. These procedures may include electronic capture, or paper capture that can be digitally transmitted to the FBI. In addition, the procedures require an applicant to present proof of identity when the fingerprints are captured and sign a document certifying that all information provided with the fingerprints is true, under penalty of 18 U.S.C. 1001. The State plan must include these procedures or others that the FBI approves in the collection portion of the program in order to be acceptable to TSA.

Terrorist Checks

Prior to December 2004, pursuant to § 1572.107, TSA will conduct name-based background checks of Federal and international databases relating to terrorist activity. TSA will then conduct (1) checks for wants and warrants for the crimes listed in § 1572.103; (2) checks of an individual's citizenship status under § 1572.105; and (3) checks

utilizing the Interstate Identification Index.

If TSA discovers during the course of these name-based checks that an individual poses a security threat, has committed a disqualifying offense, or is evading law enforcement, consistent with § 1572.5(c)(1), TSA will contact the appropriate law enforcement agency and/or direct the State to revoke the individual's HME. If the individual challenges TSA's assertion, TSA or the State will provide the individual with an opportunity to correct underlying records or cases of mistaken identity by submitting fingerprints or corrected court records.

With an estimated population exceeding 3.5 million drivers, the government must prioritize the background check process. TSA believes that these name-based checks enable the agency to focus on individuals who may pose a more immediate threat of terrorist or criminal activity, such as those who are wanted or under a warrant for one of the disqualifying crimes listed in § 1572.103, those who are not citizens or lawful permanent residents of the U.S., and those who may present a potential terrorist threat.

TSA has assessed the risks associated with the transportation of hazardous materials via commercial vehicle and has determined that in conducting name-based checks prior to December 2004 and initiating fingerprint-based criminal history checks as early as April 1, 2004, the risks are effectively addressed. The terrorist-related information that TSA will search prior to December 2004 is the best indication of an individual's predisposition to commit or conspire to commit terrorist acts. Evidence that an individual has been convicted recently of a felony such as theft or assault is important, and may indicate a security threat; but TSA has determined that the more imminent threat is an individual whose background includes terrorism-related information. This approach is consistent with the Patriot Act and the Safe Explosives Act, and meets the needs of the States.

Also, it is important to note that TSA is not delaying the September 2, 2003 compliance date set forth in § 1572.5(b) for surrendering a HME. This section requires any HME holder who does not meet the security threat assessment standards in part 1572 to surrender the endorsement beginning on September 2, 2003. For instance, an individual who knows that he or she has committed a disqualifying offense within the prescribed time periods, is required to relinquish their HME beginning September 2, 2003. Nothing in this