



USA Patriot Act Analysis/Summary

Background

- To establish process and performance requirements for instituting security threat assessments and background checks on drivers moving certain types of hazardous materials in commerce.
- Implementation of Section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, as well as the Safe Explosives Act of 2002.

Affected regulations

- 49 CFR Parts 107, 171, 176 and 177 (RSPA-03-14982; HM-232C); 383 and 384 (FMCSA-2001-11117); 1570 and 1572 (TSA-2003-14610).
- 42 CFR Part 73 (CDC; RIN 0920-AA08).
- Although all 4 rules are Interim Final Rules and are effective immediately, comments from interested parties are being accepted. Comments on the TSA and FMCSA rules are due by July 7, 2003, June 4, 2003 for the RSPA rule. The CDC rule was effective on February 3, 2003 and the comment period is closed.

Who is subject to the rules?

- Any individual who seeks to obtain, transfer from another state, or renew his/her hazmat endorsement to their Commercial Driver's License.
- State agencies responsible for the administration of the Commercial Driver's License.

What are the rules?

- States are to comply with the requirements as they relate to 49 CFR Parts 383 and 384 by November 3, 2003.
- Federal-aid highway funds can be withheld (5% first year, 10% thereafter) from non-complying states.
- The definition of a Commercial Motor Vehicle as it relates to hazardous materials has been expanded (§383.5) to include, in addition to the current requirements, a vehicle of any type/size transporting a material in any quantity that is listed by the Centers for Disease Control as a select agent or toxin in 42 CFR Part 73.
 - *CDC estimates that there are approximately 1,000 shipments per year of these types of materials.*
- Drivers with a CDL Learner's Permit are not authorized to transport hazardous materials as defined in §383.5. To become eligible for a hazmat

- endorsement, these individuals must pass the general knowledge and skills tests, the specialized hazardous materials knowledge test and the TSA background check.
- Driver licensing applications and state administration procedures will have to be modified for the issuance of hazmat endorsements by requiring:
 - Proof of citizenship or immigration status.
 - 180-day notification by states to individuals, 90-day requirement on endorsement holders (see “implementation” section).
 - Maximum of a 5-year endorsement renewal cycle.
 - Hazmat endorsements will be denied to those individuals who:
 - Are wanted, under indictment and/or have been convicted or found not guilty by reason of insanity in any jurisdiction of one or more of 21 crimes within the past 7 years, or released from incarceration in any jurisdiction for one of these offenses in the past 5 years (§1572.103):
 - Any crime listed In 18 U.S.C. Chapter 113B – Terrorism.
 - Assault with intent to murder.
 - Espionage.
 - Sedition.
 - Kidnapping or hostage taking.
 - Treason.
 - Rape or aggravated sexual abuse.
 - Unlawful possession, use, sale, distribution, or manufacture of an explosive, explosive device, firearm, or other weapon.
 - Extortion.
 - Robbery.
 - Arson.
 - Distribution of, intent to distribute, possession, or importation of a controlled substance.
 - Dishonesty, fraud, or misrepresentation, including identity fraud.
 - A crime involving a severe transportation security incident (defined in §1572.3).
 - Improper transportation of a hazardous material.
 - *On this point, TSA has clarified that they intend for this disqualifying offense to kick in when a felony is associated with the HM transportation.*
 - Bribery.
 - Smuggling.
 - Immigration violations.
 - Violations of the Racketeer Influenced and Corrupt Organizations Act; 18 U.S.C. 1961.
 - Conspiracy or attempt to commit any of the crimes listed above.
 - Are not U.S. Citizens or legal resident aliens (§1572.105).
 - Pose a security threat (§1572.107).
 - Have been found mentally incompetent or committed to a mental institution by a lawful authority (§1572.109).
 - There is a waiver process established in the TSA rule.
 - The TSA rule addresses 18 U.S.C. 842(i) – the Safe Explosives Act of 2002 – which makes it a criminal offense for certain persons to ship or transport explosives in interstate commerce, or to receive or possess any explosive

so shipped or transported. In essence, the prohibition in §842(i) does not apply to the commercial transportation of explosives regulated by U.S.DOT and pertains to safety.

Implementation

- Approximately 3.5 million individuals hold hazmat endorsements.
 - *TSA anticipates that this number may bump up a bit with these new requirements.*
- TSA will work with the Department of Justice, the National Crime Prevention and Privacy Compact Council, States and industry to develop effective, efficient fingerprinting process. There is no specificity in the rules on this, other than the States are responsible for administering the fingerprinting process.
- Fingerprints will be collected by the states and forwarded to TSA. The rule permits the states to charge a fee to recover costs, which they estimate to be \$50 per individual (\$22 for FBI processing, \$7 to Office of Personnel Management, \$16 for personnel costs to administer the print process and forward documentation, and \$5 for cards and material).
- TSA does not have any funding to assist the States with the implementation of these requirements.
 - *We have been advised that TSA is considering encouraging FMCSA to provide any available funds to the States to assist on this.*
- TSA intends to have these requirements help set the “framework” for the Transportation Worker’s Identification Card.
- Starting immediately, TSA will begin conducting background checks using existing data sources (i.e. name and biographical information in CDLIS, NCIC, III, terrorism watch lists, and others) on drivers who already hold hazmat endorsements to their CDLs. Those deemed to be a security threat will have their endorsements revoked (subject to appeals, corrections and waivers).
- Hazmat endorsement renewal notices will be sent to endorsement holders 180 days prior to its expiration date. Endorsement holders will be required to initiate the process for renewing their endorsement 90 days prior to its expiration.
- Beginning September 2, 2003 all individuals holding hazmat endorsements who fail the requirements in 49 CFR Sections 1572.103, 1572.105, 1572.107 or 1572.109 will not be authorized to hold the hazmat endorsement and must surrender the endorsement to the appropriate licensing agency.
- Starting November 3, 2003, individuals seeking a hazmat endorsement will be required to submit fingerprints and certain mandatory information to the licensing agency in their state. The 180 delay for full implementation is to develop the necessary procedures and the infrastructure between the States, DOJ and TSA.
- TSA is setting up a Q& A section on their web site that they intend to maintain and keep current.