

## **Recent Regulations Issued by the Department of Transportation and the Transportation Security Administration on Commercial Transportation of Explosives**

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On May 2, 2003, and on June 9, 2003, the Department of Transportation (DOT) and the Transportation Security Administration (TSA) promulgated three interim final rules and a notice generally exempting from 18 U.S.C. § 842(i) the transporting, shipping, receiving, and possessing of explosives incident to and in connection with the commercial transport of explosives by motor carrier, water, and air and rail. Section 842(i) generally prohibits certain persons (e.g., convicted felons) from transporting, shipping, receiving, or possessing explosives. See ATF's FAQs at interim final rule implementing the Safe Explosives Act [www.atf.gov](http://www.atf.gov).

*As a consequence, to the extent that persons are transporting, shipping, receiving, or possessing explosives incident to and in connection with the commercial transport of explosives by motor carrier, water, air, or rail, those activities are not subject to the provisions of 18 U.S.C. § 842(i).* The DOT and TSA rules were promulgated in part pursuant to the mandates of the USA PATRIOT Act of 2001. See 68 Fed. Reg. 23832 , 23844, 23852 (May 5, 2003); 68 Fed. Reg. 34470 (June 9, 2003).

As reported previously on this website, on February 3, 2003, TSA, then an agency of the DOT, promulgated regulations effectively allowing aliens to transport, ship, receive, and possess explosives incident to and in connection with the commercial transport of explosives by motor carrier or rail into the United States from Canada. This rule generally exempted such persons from the general prohibitions of 18 U.S.C. § 842(i)(5). See 68 Fed. Reg. 6083 (February 6, 2003) (to be codified at 49 C.F.R. pt. 1572). For further information, see <http://www.atf.gov/explarson/safexpact/expltransregs.htm>.

**DOT's Research and Special Programs Administration (RSPA):** This interim final rule incorporates into the Hazardous Materials Regulations a requirement that shippers and transporters of certain hazardous materials comply with Federal security regulations that apply to motor carrier and vessel transportation. In addition, this interim final rule revises the procedures for applying for an exemption from the Hazardous Materials Regulations to require applicants to certify compliance with applicable Federal security laws and regulations. This interim final rule will assure that shippers and carriers are aware of their security obligations. 68 Fed. Reg. 23832 (May 5, 2003).

**TSA:** TSA is amending the Transportation Security Regulations to establish security threat assessment standards for determining whether an individual poses a security threat warranting denial of a hazardous materials endorsement for a commercial drivers license (CDL). TSA is also establishing procedures for seeking a waiver from the standards and for appealing a security assessment determination. TSA is issuing this interim final rule in coordination with a separate interim final rule being issued by the Federal Motor Carrier Safety Administration (FMCSA). The FMCSA rule amends the Federal Motor Carrier Safety Regulations governing commercial drivers licenses to prohibit States from issuing, renewing, transferring, or upgrading a commercial drivers license with a hazardous material endorsement unless the Department of Justice has first conducted a background records check of the applicant and the TSA has determined that the applicant does not pose a security threat warranting denial of the hazardous materials endorsement. These interim final rules implement the background records check requirements of section 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and also establish requirements regarding the transportation of explosives in commerce.

**DOT's Federal Motor Carrier Safety Administration (FMCSA).** The FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to prohibit States from issuing, renewing, transferring or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration (TSA) has first conducted a background records check of the applicant and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. This interim final rule implements part of the requirements of Sec. 1012 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) and certain provisions of the statutes dealing with explosives. 68 Fed. Reg. 23844 (May 5, 2003).

**RSPA and Federal Railroad Administration (FRA).** The RSPA, FRA, and TSA issued a notice explaining that, in light of the extensive regulation of the rail transportation of hazardous materials, including explosives, by the DOT, the protections inherent in railroad operations against improper use of those materials by railroad employees, and the security safeguards taken by the railroads, the transportation of explosives via rail by certain persons described under the Safe Explosives Act does not pose a sufficient security risk warranting further regulations at this time. The notice concludes that, based on the determinations made by the TSA and DOT, to the extent that persons are transporting, shipping, receiving, or possessing explosives incident to and in connection with the commercial transport of explosives by rail, those activities are not subject to the provisions of 18 U.S.C. § 842(i). 68 Fed. Reg. 34470 (June 9, 2003).