

## SEARCH Resolution 04-40

Of the Membership Group of SEARCH, The National Consortium for Justice Information and Statistics

January 25, 2004

### **State Participation in Security Threat Assessments for Hazardous Materials Endorsements**

**WHEREAS**, on May 5, 2003, the Transportation Security Administration (TSA) issued an interim final rule implementing section 1012 of the USA Patriot Act addressing security threat assessments on individuals who currently hold or apply to hold a Hazardous Materials Endorsement (HME) on a Commercial Drivers License (CDL);

**WHEREAS**, effective November 3, 2003, TSA issued an amendment to the interim final rule to provide that TSA will not authorize a state to issue an HME on or after April 1, 2004, unless the state has in place procedures for collecting biographical and criminal history information, as well as fingerprints, on individuals who currently hold or apply to hold an HME, but providing further that a state may seek an extension until December 1, 2004;

**WHEREAS**, the TSA amendment stated that TSA would “shortly” publish a notice of proposed rulemaking to establish requirements concerning the state background check process;

**WHEREAS**, SEARCH supports background checks for HMEs and SEARCH wishes to support TSA in TSA’s initial and continuing efforts to conduct HME security threat assessments;

**WHEREAS**, in the absence of TSA policies and procedures to be promulgated in the promised, but now delayed TSA HME background check rulemaking, it is impossible for the organizations represented by SEARCH Members and other relevant state agencies to assist in providing HME background checks within the timeframe set out in the amended interim final rule;

**WHEREAS**, because of TSA delays it is not possible for relevant state agencies to provide individuals seeking to renew or obtain HMEs with a 180-day notice period regarding April 1, 2004, fingerprint requirements and other new requirements as presented in the May 5, 2003, interim final rule; and

**WHEREAS**, SEARCH Members believe it is an urgent and critical national security issue and imperative that TSA, as soon as practicable, issue a background check rule.

**NOW, THEREFORE, BE IT RESOLVED**, by the Membership Group of SEARCH, The National Consortium for Justice Information and Statistics, that:

(More)

“TSA should, as soon as practicable and consistent with the sensitivity and complexity of the effort, publish a proposed, comprehensive background check rule addressing the concerns and incorporating the information previously provided to TSA by SEARCH and by the Compact Council, and including:

- 1) The process states should use to obtain fingerprints;
- 2) A process to authenticate the identity of the HME applicant from whom prints are obtained;
- 3) The criminal history background check process consistent with the Compact Council’s rules for noncriminal justice checks; and
- 4) Consistent with flexibility for the states in the way in which they conduct (or choose not to conduct) a state check;
- 5) Adjudication and appeal criteria, including relevant time periods for criterion offenses;
- 6) A TSA process for appeal and correction of records, consistent with state standards and processes;
- 7) The process for collecting fees to fully reimburse the states for all of their costs;
- 8) A plan for frequent communication with all appropriate state entities, including SEARCH, SEARCH Members, other law enforcement and criminal justice entities, the American Association of Motor Vehicle Administrators (AAMVA) and AAMVA members, so that these entities may comment and respond to the TSA and, thereby, fully and effectively assist TSA in TSA’s obligation to conduct HME security threat assessments;
- 9) The role of private vendors, if any, in the HME background check process, including specifying standards to protect privacy; and
- 10) The relationship of the HME rule to the background check process and criteria for screening drivers and other individuals given access to secure areas at airports, seaports and other sensitive facilities to assure that this screening is robust and consistent with the emerging HME screening process.”