

part-time basis pursuant to a sentence imposed as the result of a conviction.

*Initial Notification of Threat Assessment* means an initial administrative determination by TSA that an individual poses a security threat warranting denial of the authorization for which the individual is applying.

*Lawful permanent resident* means an individual who has been lawfully admitted for permanent residence to the United States, as defined in 8 U.S.C. 1101.

*Mental institution* means a mental health facility, mental hospital, sanitarium, psychiatric facility, and any other facility that provides diagnoses by licensed professionals of mental retardation or mental illness, including a psychiatric ward in a general hospital.

*Notification of No Security Threat* means an administrative determination by TSA that an individual does not pose a security threat warranting denial of the authorization for which the individual is applying.

*Pilot State* means a State that volunteers to begin the security threat assessment process prior to January 31, 2005.

*Revoke* means the process by which a State cancels, suspends, withdraws, annuls, or disqualifies a hazardous material endorsement.

*Severe transportation security incident* means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

*State* means a State of the United States and the District of Columbia.

[68 FR 23869, May 5, 2003, as amended at 68 FR 63039, Nov. 7, 2003; 69 FR 17973, Apr. 6, 2004]

**§ 1572.5 Security threat assessment for commercial drivers' licenses with a hazardous materials endorsement.**

(a) *Scope.* This section applies to State agencies responsible for issuing hazardous materials endorsements for a commercial drivers license, and individuals who hold or are applying for such endorsements, under 49 CFR part 383.

(b) *Individuals.* (1) *Requirements.* Beginning on September 2, 2003:

(i) *Prohibitions.* No individual may hold a CDL with a hazardous materials endorsement, or exercise the privileges of a hazardous materials endorsement, if:

(A) The individual does not meet the citizenship status requirements in § 1572.105;

(B) The individual has a disqualifying criminal offense, as described in § 1572.103;

(C) The individual has been adjudicated as a mental defective or committed to a mental institution, as described in § 1572.109; or

(D) TSA has notified the individual that he or she poses a security threat warranting denial of the endorsement, as described in § 1572.107.

(ii) *Surrender of endorsement.* An individual who is prohibited from holding a CDL with a hazardous materials endorsement under this section must surrender the hazardous materials endorsement to the issuing State.

(iii) *Continuing responsibilities.* Each individual with a hazardous materials endorsement who is convicted of, wanted, or under indictment in any jurisdiction, civilian or military, for, or found not guilty by reason of insanity of, a disqualifying crime listed in § 1572.103; who is adjudicated as a mental defective or committed to a mental institution as specified in § 1572.109; or who renounces his or her U.S. citizenship; must report the offense, adjudication, or commitment to the State that issued the endorsement, and surrender the endorsement to the State, within 24 hours of the conviction, finding of not guilty by reason of insanity, adjudication, commitment, or renunciation.

(2) *Submission of fingerprints.* (i) If TSA determines that an individual does not meet the security threat assessment standards described in paragraph (d) of this section prior to completing a fingerprint-based criminal history records check and directs the State to revoke the individual's hazardous materials endorsement, the individual may submit fingerprints in a form and manner specified by TSA if he or she believes that the determination is based on mistaken identity.

(ii) When so notified by the State, an individual must submit fingerprints in

a form and manner specified by the State and TSA when the individual applies to obtain, renew, or transfer a hazardous materials endorsement for a CDL, or when requested by TSA.

(c) *States.* (1) Each State must revoke an individual's hazardous materials endorsement if TSA informs the State that the individual does not meet the standards for security threat assessment in paragraph (d) of this section.

(2) Beginning January 31, 2005:

(i) No State may issue, renew, or transfer a hazardous materials endorsement for a CDL unless the State receives a Notification of No Security Threat from TSA.

(ii) Each State must notify each individual holding a hazardous materials endorsement issued by that State that he or she will be subject to the security threat assessment described in this section as part of any application for renewal of the endorsement, at least 180 days prior to the expiration date of the individual's endorsement. The notice must inform the individual that he or she may initiate the security threat assessment required by this section at any time after receiving the notice, but no later than 90 days before the expiration date of the individual's endorsement.

(3) Prior to January 31, 2005, as approved by TSA, a Pilot State may not issue, renew or transfer a hazardous materials endorsement for a CDL unless the Pilot State—

(i) Collects the information required in § 1572.5(e);

(ii) Collects and submits fingerprints in accordance with procedures approved by TSA; and

(iii) Receives a Notification of No Security Threat from TSA.

(4) From January 31, 2005 to June 28, 2005, while TSA is conducting a security threat assessment on an individual applying to renew or transfer a hazardous materials endorsement, the State that issued the endorsement may extend the expiration date of the individual's endorsement until the State receives a Final Notification of Threat Assessment or Notification of No Security Threat from TSA.

(d) *Standards for security threat assessment.* (1) TSA determines that an individual does not pose a security

threat warranting denial of a hazardous materials endorsement for a CDL if:

(i) The individual meets the citizenship status requirements in § 1572.105;

(ii) The individual does not have a disqualifying criminal offense, as described in § 1572.103;

(iii) The individual has not been adjudicated as a mental defective or committed to a mental institution, as described in § 1572.109; and

(iv) TSA conducts the analyses described in § 1572.107 and determines that the individual does not pose a security threat.

(2) In conducting the security threat assessment requirements of this section, TSA uses one or more of the following:

(i) An individual's fingerprints.

(ii) An individual's name.

(iii) Other identifying information.

(3) When reviewing the individual's criminal history records, TSA will not issue a Notification of No Security Threat, and will alert the State(s) and the Federal Motor Carrier Safety Administration (FMCSA) if the records indicate a disqualifying criminal offense listed in the FMCSA's rules for holders of CDLs at 49 CFR 383.51, until the FMCSA or the State(s) informs TSA that the individual is not disqualified under that section.

(4) If TSA determines during the course of conducting a security threat assessment, that it is necessary to revoke a hazardous materials endorsement immediately, TSA will direct the State to revoke a hazardous materials endorsement immediately. The individual may appeal the revocation following surrender of the endorsement, pursuant to the procedures set forth in § 1572.141(i).

(e) *Application form.* (1) When an individual applies to a State to issue, renew, or transfer a hazardous materials endorsement for a CDL, the State must have the individual complete an application that includes the following:

(i) The disqualifying crimes identified in § 1572.103.

(ii) A statement that the individual signing the application:

(A) Was not convicted, or found not guilty by reason of insanity, of any disqualifying crime in any jurisdiction,

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civilian or military, during the 7 years before the date of the individual's application;

(B) Was not released from incarceration in any jurisdiction, civilian or military, for committing any disqualifying crime during the 5 years before the date of the individual's application;

(C) Is not wanted or under indictment in any jurisdiction, civilian or military, for a disqualifying crime;

(D) Has not been adjudicated as a mental defective or committed to a mental institution involuntarily;

(E) Is either a United States citizen who has not renounced his or her United States citizenship, or a lawful permanent resident of the United States;

(F) Has or has not served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(G) Has been informed that Federal regulations under 49 CFR 1572.5(b) impose a continuing obligation to disclose to the State within 24 hours if he or she is convicted, or found not guilty by reason of insanity, of any disqualifying crime, or adjudicated as a mental defective or committed to a mental institution, while he or she has a hazardous materials endorsement for a CDL.

(iii) A statement reading:

*Privacy Act Notice. Authority:* The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. *Purpose:* This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a hazardous materials endorsement for a commercial drivers license. Your Social Security Number (SSN) or alien registration number will be used as your identification number in this process and to verify your identity. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will prevent the completion of your security threat assessment, without which you may not be granted a hazardous materials endorsement. *Routine Uses:* Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in

accordance with law and international agreement.

(iv) A statement reading:

The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.

(v) Lines for the individual's—

(A) Printed name, including first, middle, and last, and any applicable suffix.

(B) Current residential address, and all other residential addresses for the previous seven years.

(C) Date of birth.

(D) Social security number, if the individual is a citizen of the United States, and date of naturalization, if the individual is a naturalized citizen of the United States.

(E) Gender.

(F) City, State, and country of birth.

(G) Citizenship.

(H) Alien registration number, if the individual is a lawful permanent resident of the United States.

(I) Signature and date of signature.

(2) Each individual must complete and sign the application form. The State must forward it to TSA in a form and manner acceptable to TSA.

(3) The State must inform the individual that a copy of the individual's criminal history record will be provided to the individual by TSA, if the individual makes a written request for the record.

(f) *Determination of arrest status.* When a criminal history records check on an individual applying for a hazardous endorsement for a CDL discloses an arrest for any disqualifying crime listed in §1572.103 without indicating a disposition, TSA follows the procedures in §1572.103.

(g) *Notification.* (1) *Notification of No Security Threat.* If, after conducting the security threat assessment, TSA determines that an individual meets the standards described in paragraph (d) of this section, TSA serves a Notification of No Security Threat to the State in

which the individual applied for the hazardous material endorsement.

(2) *Initial Notification of Threat Assessment.* If, after conducting the security threat assessment, TSA determines that an individual does not meet the standards described in paragraph (d) of this section, TSA serves an Initial Notification of Threat Assessment on the individual and the State in which the individual applied for the hazardous materials endorsement, in accordance with §1572.141(b). The individual may appeal this determination under the procedures in §1572.141.

(3) *Final Notification of Threat Assessment.* If, after completing the process in §1572.141, TSA determines that an individual does not meet the standards described in paragraph (d) of this section, TSA serves a Final Notification of Threat Assessment on the individual and the State in which the individual applied for the hazardous materials endorsement, in accordance with §1572.141(e). The individual may not appeal this determination, but may apply for a waiver.

(4) *Waivers.* If an individual does not meet the standards in paragraph (d) of this section, he or she may apply for a waiver under §1572.143.

(5) *State notification requirements.* Within 15 days of the receipt of a Notification of No Security Threat, a Final Notification of Threat Assessment, or a grant of a waiver, the State must:

(i) Update the individual's permanent record to reflect:

(A) The results of the security threat assessment;

(B) The issuance or denial of a hazardous materials endorsement; and

(C) The hazardous materials endorsement expiration date.

(ii) Notify the Commercial Drivers License Information System operator of the results of the security threat assessment.

(iii) Revoke or deny the individual's hazardous materials endorsement, if TSA serves the State with a Final Notification of Threat Assessment.

(iv) Grant or renew the individual's hazardous materials endorsement, if TSA serves the State with a Notification of No Security Threat, or a written decision from TSA to grant a waiver,

and the individual is otherwise qualified.

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**§ 1572.9 Transportation of explosives from Canada to the United States via commercial motor vehicle.**

(a) *Applicability.* This section applies to carriers that carry explosives from Canada to the United States using a driver who is not a United States citizen or lawful permanent resident alien of the United States.

(b) *Terms used in this section.* For purposes of this section:

*Carrier* means any "motor carrier" or "motor private carrier" as defined in 49 U.S.C. 13102(12) and (13), respectively.

*Customs Service* means the United States Customs Service.

*Explosive* means a material that has been examined by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, in accordance with 49 CFR 173.56, and determined to meet the definition for a Class 1 material in 49 CFR 173.50.

*Known carrier* means a person that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Known driver* means a driver of a motor vehicle who has been determined by the Governments of Canada and the United States to present no known security concern.

*Known offeror* means an offeror that has been determined by the Governments of Canada and the United States to be a legitimate business operating in accordance with all applicable laws and regulations governing the transportation of explosives.

*Lawful permanent resident alien* means a lawful permanent resident alien of the United States as defined by 8 U.S.C. 1101(a)(2).

*Offeror* means the person offering a shipment to the carrier for transportation from Canada to the United States, and may also be known as the "consignor" in Canada.