

Attachment 1 to Appendix A
Security Action Items
Guidance for Background Checks for
Motor Vehicle Hazmat Employees other than Motor Vehicle Drivers

The Transportation Security Administration is concerned about the risk posed by the transportation by motor carrier over the nation's highways of Tier 1 Highway Security-Sensitive Materials (Tier 1) and Tier 2 Highway Security-Sensitive Materials (Tier 2) as defined in this guidance. While individuals with a commercial driver's license with a hazardous materials endorsement are the subject of mandatory background checks, other employees involved in the transportation of certain hazardous materials by motor vehicle are not subject to background checks. This document provides guidance on voluntarily conducting background checks for motor vehicle hazmat employees other than motor vehicle drivers holding a valid commercial driver's license with a hazardous materials endorsement. This guidance is not intended to supersede or conflict with Federal or State.

Criminal History Checks

Many highway transportation sector hazmat employers may use criminal background checks to assess the suitability of their employees for positions. To the extent that a highway transportation sector hazmat employer chooses to do so for employees with unmonitored access to company-designated critical infrastructure, they should consider using the federally established list (attached) of disqualifying crimes applicable to hazmat drivers and transportation workers at ports (see 49 CFR 1572.103).¹

Verification of Social Security Number

In addition, the highway transportation sector hazmat employer should consider using the Social Security Number Verification System (SSNVS) that the Social Security Administration (SSA) makes available to all employers. Employers can verify that current employee names and social security numbers match the SSA's records. This reduces the likelihood that an individual who has adopted a false identity.

Verification of Immigration Status

The highway transportation sector hazmat employer should also consider using the Systematic Alien Verification for Entitlements (SAVE) database to determine a non-citizen's immigration status. SAVE is an intergovernmental information-sharing service for agencies and employers to use to ensure that an applicant has lawful presence in the United States. SAVE is nationally accessible and contains selected immigration status information on approximately 50 million individual non-citizens.²

¹ See 72 FR 3492 (January 25, 2007), as corrected by 72 FR 5632 (February 7, 2007)

² For information on accessing SAVE, contact: Director, SAVE Program, USCIS SAVE Program, Douglas Development Building, 2nd Floor, 20 Massachusetts Ave., NW, Washington, DC 20529.

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Redress Procedures

A highway transportation sector hazmat employer should consider establishing an internal redress process for adversely affected applicants and personnel, including an appeal and waiver process similar to the system established for holders of a commercial drivers license and transportation workers at ports (see 49 CFR Part 1515).

An appeal process could be designed to provide an applicant or personnel with the opportunity to show that he or she does not have a disqualifying conviction by correcting outdated underlying court records or proving mistaken identity.

A waiver process could be designed to provide an applicant or personnel with the opportunity to be hired or continue employment by demonstrating rehabilitation or facts surrounding a conviction that mitigate security concerns. The highway transportation sector hazmat employer should consider permitting an applicant or personnel to submit information pertaining to any of the following:

1. Circumstances of the disqualifying offense;
2. Restitution made;
3. Letters of reference from clergy, employers, probation/parole officers; and
4. Other factors the individual believes bear on his or her good character.

The highway transportation sector hazmat employer may elect to incorporate the redress process into the disciplinary procedures already in use as part of its management or labor relations procedures.

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49 CFR Part 1572 Subpart B – Standards, Appeals, and Waivers for Security Threat Assessments (Source: 72 FR 3492, Jan. 25, 2007; 72 FR 5633, Feb. 7, 2007)

Sec. 1572.103 Disqualifying Criminal Offenses.

(a) *Permanent disqualifying criminal offenses.* An applicant has a permanent disqualifying offense if convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of any of the following felonies:

- (1) Espionage or conspiracy to commit espionage.
- (2) Sedition, or conspiracy to commit sedition.
- (3) Treason, or conspiracy to commit treason.
- (4) A federal crime of terrorism as defined in 18 U.S.C. 2332b(g), or comparable State law, or conspiracy to commit such crime.
- (5) A crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area, as defined in 46 U.S.C. 70101. The term “economic disruption” does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.
- (6) Improper transportation of a hazardous material under 49 U.S.C. 5124, or a State law that is comparable.
- (7) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes, but is not limited to, an explosive or explosive material as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f).
- (8) Murder.
- (9) Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.
- (10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq, or a comparable State law that is comparable, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the crimes listed in paragraph (a) of this section.
- (11) Attempt to commit the crimes in paragraphs (a)(1) through (a)(4).
- (12) Conspiracy or attempt to commit the crimes in paragraphs (a)(5) through (a)(10).

(b) *Interim disqualifying criminal offenses.* (1) The felonies listed in paragraphs (b)(2) of this section are disqualifying, if either:

- (i) the applicant was convicted, or found not guilty by reason of insanity, of the crime in a civilian or military jurisdiction, within seven years of the date of the application; or
- (ii) the applicant was incarcerated for that crime and released from incarceration within five years of the date of the TWIC application.

(2) The interim disqualifying felonies are:

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- (i) Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms as defined in 18 U.S.C. 921(a)(3) or 26 U.S.C. 5 845(a), or items contained on the U.S. Munitions Import List at 27 CFR 447.21.
 - (ii) Extortion.
 - (iii) Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to a crime described in paragraphs (a) or (b) of this section. Welfare fraud and passing bad checks do not constitute dishonesty, fraud, or misrepresentation for purposes of this paragraph.
 - (iv) Bribery.
 - (v) Smuggling.
 - (vi) Immigration violations.
 - (vii) Distribution of, possession with intent to distribute, or importation of a controlled substance.
 - (viii) Arson.
 - (ix) Kidnapping or hostage taking.
 - (x) Rape or aggravated sexual abuse.
 - (xi) Assault with intent to kill.
 - (xii) Robbery.
 - (xiii) Fraudulent entry into a seaport as described in 18 U.S.C. 1036, or a comparable State law.
 - (xiv) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a comparable State law, other than the violations listed in paragraph (a)(10) of this section.
 - (xv) Conspiracy or attempt to commit the crimes in this paragraph (b).
- (c) *Under want, warrant, or indictment.* An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in this section, is disqualified until the want or warrant is released or the indictment is dismissed.
- (d) *Determination of arrest status.* (1) When a fingerprint-based check discloses an arrest for a disqualifying crime listed in this section without indicating a disposition, TSA will so notify the applicant and provide instructions on how the applicant must clear the disposition, in accordance with paragraph (d)(2) of this section.
- (2) The applicant must provide TSA with written proof that the arrest did not result in conviction for the disqualifying criminal offense, within 60 days after the service date of the notification in paragraph (d)(1) of this section. If TSA does not receive proof in that time, TSA will notify the applicant that he or she is disqualified. In the case of an HME, TSA will notify the State that the applicant is disqualified, and in the case of a mariner applying for TWIC, TSA will notify the Coast Guard that the applicant is disqualified.