

SUBCHAPTER D—MARITIME AND SURFACE TRANSPORTATION SECURITY

PART 1570—GENERAL RULES

Subpart A—General

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APPENDIX A TO PART 1570—REPORTING OF SIGNIFICANT SECURITY CONCERNS

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§ 1570.1 Scope.

This part applies to any person involved in maritime or surface transportation as specified in this subchapter.

§ 1570.3 Terms used in this subchapter.

In addition to the definitions in §§ 1500.3, 1500.5, and 1503.202 of subchapter A, the following terms are used in this subchapter:

Adjudicate means to make an administrative determination of whether an applicant meets the standards in this subchapter, based on the merits of the issues raised.

Alien means any person not a citizen or national of the United States.

Alien registration number means the number issued by the DHS to an individual when he or she becomes a lawful permanent resident of the United States or attains other lawful, non-citizen status.

Applicant means a person who has applied for one of the security threat assessments identified in this subchapter.

Commercial driver's license (CDL) is used as defined in 49 CFR 383.5.

Contractor means a person or organization that provides a service for an owner/operator regulated under this subchapter consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Convicted means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this subchapter, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent

convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this subchapter.

Determination of No Security Threat means an administrative determination by TSA that an individual does not pose a security threat warranting denial of an HME or a TWIC.

Employee means an individual who is engaged or compensated by an owner/operator regulated under this subchapter, or by a contractor to an owner/operator regulated under this subchapter. The term includes direct employees, contractor employees, authorized representatives, immediate supervisors, and individuals who are self-employed.

Federal Maritime Security Coordinator (FMSC) has the same meaning as defined in 46 U.S.C. 70103(a)(2)(G); is the Captain of the Port (COTP) exercising authority for the COTP zones described in 33 CFR part 3, and is the Port Facility Security Officer as described in the International Ship and Port Facility Security (ISPS) Code, part A.

Final Determination of Threat Assessment means a final administrative determination by TSA, including the resolution of related appeals, that an individual poses a security threat warranting denial of an HME or a TWIC.

Hazardous materials endorsement (HME) means the authorization for an individual to transport hazardous materials in commerce, an indication of which must be on the individual's commercial driver's license, as provided in the Federal Motor Carrier Safety Administration regulations in 49 CFR part 383.

Immediate supervisor means a manager, supervisor, or agent of the owner/operator to the extent the individual:

- (1) Performs the work of a security-sensitive employee; or
- (2) Supervises and otherwise directs the performance of a security-sensitive employee.

Imprisoned or *imprisonment* means confined to a prison, jail, or institution for the criminally insane, on a full-time basis, pursuant to a sentence im-

posed as the result of a criminal conviction or finding of not guilty by reason of insanity. Time spent confined or restricted to a half-way house, treatment facility, or similar institution, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity, does not constitute imprisonment for purposes of this rule.

Incarceration means confined or otherwise restricted to a jail-type institution, half-way house, treatment facility, or another institution on a full or part-time basis, pursuant to a sentence imposed as the result of a criminal conviction or finding of not guilty by reason of insanity.

Initial Determination of Threat Assessment means an initial administrative determination by TSA that an applicant poses a security threat warranting denial of an HME or a TWIC.

Initial Determination of Threat Assessment and Immediate Revocation means an initial administrative determination that an individual poses a security threat that warrants immediate revocation of an HME or invalidation of a TWIC. In the case of an HME, the State must immediately revoke the HME if TSA issues an Initial Determination of Threat Assessment and Immediate Revocation. In the case of a TWIC, TSA invalidates the TWIC when TSA issues an Initial Determination of Threat Assessment and Immediate Revocation.

Invalidate means the action TSA takes to make a credential inoperative when it is reported as lost, stolen, damaged, no longer needed, or when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Lawful permanent resident means an alien lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20).

Maritime facility has the same meaning as "facility" together with "OCS facility" (Outer Continental Shelf facility), as defined in 33 CFR 101.105.

Mental health facility means a mental institution, 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.

National of the United States means a citizen of the United States, or a person who, though not a citizen, owes permanent allegiance to the United States, as defined in 8 U.S.C. 1101(a)(22), and includes American Samoa and Swains Island.

Revocation means the termination, deactivation, rescission, invalidation, cancellation, or withdrawal of the privileges and duties conferred by an HME or TWIC, when TSA determines an applicant does not meet the security threat assessment standards of 49 CFR part 1572.

Secure area means the area on board a vessel or at a facility or outer continental shelf facility, over which the owner/operator has implemented security measures for access control, as defined by a Coast Guard approved security plan. It does not include passenger access areas or public access areas, as these terms are defined in 33 CFR 104.106 and 105.106 respectively. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. Facilities subject to 33 CFR chapter I, subchapter H, part 105 may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

Security-sensitive employee, for purposes of this part, means “security sensitive employee” as defined in § 1580.3, § 1582.3, or § 1584.3 of this title.

Security-sensitive job function, for purposes of this part, means a job function identified in appendix B to part 1580, appendix B to part 1582, and appendix B to part 1584 of this title.

Security threat means an individual whom TSA determines or suspects of posing a threat to national security; to transportation security; or of terrorism.

Transportation Worker Identification Credential (TWIC) means a Federal biometric credential, issued to an individual, when TSA determines that the individual does not pose a security threat.

Withdrawal of Initial Determination of Threat Assessment is the document that TSA issues after issuing an Initial Determination of Security Threat, when

TSA determines that an individual does not pose a security threat that warrants denial of an HME or TWIC.

§ 1570.5 Fraud and intentional falsification of records.

No person may make, cause to be made, attempt, or cause to attempt any of the following:

(a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with the subchapter, or exercise any privileges under this subchapter.

(b) Any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access medium, or identification medium issued under this subchapter or pursuant to standards in this subchapter.

§ 1570.7 Security responsibilities of employees and other persons.

(a) No person may—

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause another person to tamper or interfere with, compromise, modify, or attempt to circumvent any security measure implemented under this subchapter.

(2) Enter, or be present within, a secured or restricted area without complying with the security measures applied as required under this subchapter to control access to, or presence or movement in, such areas.

(3) Use, allow to be used, or cause to be used, any approved access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured or restricted areas in any other manner than that for which it was issued by the appropriate authority to meet the requirements of this subchapter.

(b) The provisions of paragraph (a) of this section do not apply to conducting inspections or tests to determine compliance with this subchapter authorized by—

(1) TSA and DHS officials working with TSA; or

(2) The owner/operator when acting in accordance with the procedures described in a security plan and/or program approved by TSA.