

(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.

[72 FR 3595, Jan. 25, 2007; 72 FR 5633, Feb. 7, 2007; 72 FR 14050, Mar. 26, 2007]

§ 1572.105 Immigration status.

(a) An individual applying for a security threat assessment for a TWIC or HME must be a national of the United States or—

(1) A lawful permanent resident of the United States;

(2) A refugee admitted under 8 U.S.C. 1157;

(3) An alien granted asylum under 8 U.S.C. 1158;

(4) An alien in valid M-1 nonimmigrant status who is enrolled in the United States Merchant Marine Academy or a comparable State maritime academy. Such individuals may serve as unlicensed mariners on a documented vessel, regardless of their nationality, under 46 U.S.C. 8103.

(5) A nonimmigrant alien admitted under the Compact of Free Association between the United States and the Federated States of Micronesia, the United

States and the Republic of the Marshall Islands, or the United States and Palau.

(6) An alien in lawful nonimmigrant status who has unrestricted authorization to work in the United States, except—

(i) An alien in valid S-5 (informant of criminal organization information) lawful nonimmigrant status;

(ii) An alien in valid S-6 (informant of terrorism information) lawful nonimmigrant status;

(iii) An alien in valid K-1 (Fiancé(e)) lawful nonimmigrant status; or

(iv) An alien in valid K-2 (Minor child of Fiancé(e)) lawful nonimmigrant status.

(7) An alien in the following lawful nonimmigrant status who has restricted authorization to work in the United States—

(i) B1/OCS Business Visitor/Outer Continental Shelf;

(ii) C-1/D Crewman Visa;

(iii) H-1B Special Occupations;

(iv) H-1B1 Free Trade Agreement;

(v) E-1 Treaty Trader;

(vi) E-3 Australian in Specialty Occupation;

(vii) L-1 Intracompany Executive Transfer;

(viii) O-1 Extraordinary Ability;

(ix) TN North American Free Trade Agreement;

(x) E-2 Treaty Investor; or

(xi) Another authorization that confers legal status, when TSA determines that the legal status is comparable to the legal status set out in paragraph (a)(7) of this section.

(8) A commercial driver licensed in Canada or Mexico who is admitted to the United States under 8 CFR 214.2(b)(4)(i)(E) to conduct business in the United States.

(b) Upon expiration of a nonimmigrant status listed in paragraph (a)(7) of this section, an employer must retrieve the TWIC from the applicant and provide it to TSA.

(c) Upon expiration of a nonimmigrant status listed in paragraph (a)(7) of this section, an employee must surrender his or her TWIC to the employer.

(d) If an employer terminates an applicant working under a nonimmigrant status listed in paragraph (a)(7) of this

§ 1572.107

section, or the applicant otherwise ceases working for the employer, the employer must notify TSA within 5 business days and provide the TWIC to TSA if possible.

(e) Any individual in removal proceedings or subject to an order of removal under the immigration laws of the United States is not eligible to apply for a TWIC.

(f) To determine an applicant's immigration status, TSA will check relevant Federal databases and may perform other checks, including the validity of the applicant's alien registration number, social security number, or I-94 Arrival-Departure Form number.

[72 FR 3595, Jan. 25, 2007, as amended at 72 FR 55049, Sept. 28, 2007; 73 FR 13156, Mar. 12, 2008]

§ 1572.107 Other analyses.

(a) TSA may determine that an applicant poses a security threat based on a search of the following databases:

(1) Interpol and other international databases, as appropriate.

(2) Terrorist watchlists and related databases.

(3) Any other databases relevant to determining whether an applicant poses, or is suspected of posing, a security threat, or that confirm an applicant's identity.

(b) TSA may also determine that an applicant poses a security threat, if the search conducted under this part reveals extensive foreign or domestic criminal convictions, a conviction for a serious crime not listed in 49 CFR 1572.103, or a period of foreign or domestic imprisonment that exceeds 365 consecutive days.

§ 1572.109 Mental capacity.

(a) An applicant has mental incapacity, if he or she has been—

(1) Adjudicated as lacking mental capacity; or

(2) Committed to a mental health facility.

(b) An applicant is adjudicated as lacking mental capacity if—

(1) A court, board, commission, or other lawful authority has determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetence, condition, or disease, is a danger to himself or her-

49 CFR Ch. XII (10–1–23 Edition)

self or to others, or lacks the mental capacity to conduct or manage his or her own affairs.

(2) This includes a finding of insanity by a court in a criminal case and a finding of incompetence to stand trial; or a finding of not guilty by reason of lack of mental responsibility, by any court, or pursuant to articles 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b).

(c) An applicant is committed to a mental health facility if he or she is formally committed to a mental health facility by a court, board, commission, or other lawful authority, including involuntary commitment and commitment for lacking mental capacity, mental illness, and drug use. This does not include commitment to a mental health facility for observation or voluntary admission to a mental health facility.

§§ 1572.111–1572.139 [Reserved]

Subpart C—Transportation of Hazardous Materials From Canada or Mexico To and Within the United States by Land Modes

§ 1572.201 Transportation of hazardous materials via commercial motor vehicle from Canada or Mexico to and within the United States.

(a) *Applicability.* This section applies to commercial motor vehicle drivers licensed by Canada and Mexico.

(b) *Terms used in this section.* The terms used in 49 CFR parts 1500, 1570, and 1572 also apply in this subpart. In addition, the following terms are used in this subpart for purposes of this section:

FAST means Free and Secure Trade program of the Bureau of Customs and Border Protection (CBP), a cooperative effort between CBP and the governments of Canada and Mexico to coordinate processes for the clearance of commercial shipments at the border.

Hazardous materials means material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of material that listed as a select agent or toxin in 42 CFR part 73.