

to persons with "habits of life and character" that would make the applicant's presence on board a vessel hazardous to marine safety or national security. This would include persons who are fugitives, or have been dishonorably discharged from the military. An applicant for a license must also pass a physical exam, which discloses whether he is physically and mentally competent to serve in the capacity for which he is applying. In addition, relevant data bases are checked; such data base checks will disclose information related to whether an applicant has ever been adjudged insane or otherwise determined by competent authority to be incapable of handling his affairs. If so, the applicant must present evidence of cure in order to be granted a license, and a determination is made based on the record in each such case.

The requirements of 46 CFR 12.02-4, issued under authority of Chapter 73 of Title 46 of the United States Code, provide a similar regime for unlicensed seamen who are required to have a merchant mariners document in order to serve on the crew of a U.S. vessel. The regulations require an extensive application and review process that includes a check of criminal records and the National Driver Register. This ensures that only persons who have been vetted, from a safety and security standpoint, hold licenses or other appropriate documents to sail as officers or unlicensed seamen on U.S. vessels. Although the Coast Guard does not have a strict "no-felon" rule for either licensed or unlicensed mariners, the regulations provide for a regime to evaluate each individual case and determine whether the individual presents a security threat. Further, Coast Guard regulations at 46 CFR 12.02-10, implementing 46 U.S.C. 8103(b)(1) concerning citizenship requirements for unlicensed seamen, state that "No applicant * * * shall be accepted unless the alien presents acceptable documentary evidence from the U.S. Immigration and Naturalization Service that he is lawfully admitted to the United States for permanent residence." Moreover, an application may be denied to persons with "habits of life and character" that would make the applicant's presence on board a vessel hazardous to marine safety or national security. This would include fugitives and persons who have been dishonorably discharged from the military. In addition, a check of the relevant data bases is made; such data base checks will disclose information related to whether an applicant has ever

been adjudged insane or otherwise determined by competent authority to be incapable of handling his affairs. If so, the applicant must present evidence of cure in order to be granted a license, and a determination is made based on the record in each such case. The Coast Guard is currently engaged in amending its licensing and documentation processes in light of the terrorist attacks of September 11, 2001.

Ports. The USCG port security card regulations (33 CFR part 125), codified pursuant to the Espionage Act of 1917, as amended by the Magnuson Act of 1950, 50 U.S.C. 191 *et seq.*, govern who may gain access to a waterfront facility. The USCG has promulgated explosives handling regulations (33 CFR part 126) that allow loading or discharge and handling of explosives at designated waterfront facilities. These regulations restrict these activities to entities that have obtained a permit issued by the Coast Guard. Read together, these regulations provide a comprehensive regulatory regime for the safe and secure transportation, storage, possession, and handling of explosives at the facility. The regulations also provide for the security of the facility and the vessels at the facility from threats presented by terrorists and other prohibited categories of individuals, including felons and drug users, listed in 33 CFR 125.19. On August 7, 2002, the Coast Guard published a notice in the **Federal Register** (67 FR 51082) to: (1) Call attention to these regulations; (2) clarify the identification credentials that are acceptable to the Commandant in order to gain access to waterfront facilities, port, and harbor areas; (3) advise that Coast Guard Captains of the Port are responsible for ensuring that those allowed access to waterfront facilities do not present unacceptable security threats; and (4) note that individuals without proper identification may not gain access to waterfront facilities and vessels if conditions so warrant. These regulations allow the Coast Guard to screen who may safely and securely handle explosives and other hazardous materials on board vessels and at waterfront facilities, including longshoremen, and the truck drivers that drive the container chassis from shipside to and around the container marshalling yard.

The Coast Guard is engaged in ongoing discussions with TSA to implement a regime, based in part on these regulations and in part on the regulations set forth in 33 CFR part 6, to ensure that any person granted access to waterfront facilities, including those designated waterfront facilities that handle explosives, does not present a

security or safety threat. These discussions include TSA implementation of appropriate background screening checks designed to disclose those factors that would lead the Coast Guard to deny access to part or all of a given facility based on security risk and threat assessment. Finally, if the law enforcement and intelligence data bases to which the Coast Guard has access reveal information about an individual that makes that person an unacceptable risk or a threat to a facility, including any information relating to the individual's criminal background or drug use, 33 CFR 6.04-5 authorizes the Captain of the Port to deny access to that person and to prevent that person from taking any article or thing onto the vessel or waterfront facility.

The Coast Guard's comprehensive regulatory regime in 33 CFR 160 subchapter C, as amended by 68 FR 9537 (February 28, 2003), for vessels arriving in the United States; 46 CFR parts 10 and 12, for the licensing and documentation of seamen on commercial U.S. vessels; and 33 CFR parts 125 and 126, regarding access and control of handling of explosives and other hazardous materials on waterfront facilities, adequately addresses the security risks that may be associated with the transportation of hazardous materials, including explosives, by vessel. To assure consistency with these requirements, in this final rule, we are amending part 176 of the HMR, which addresses the transportation of hazardous materials by vessel, to require compliance with requirements in 46 CFR parts 10 and 12. The HMR already require compliance with 33 CFR parts 125, 126, and 160.

VII. Transportation by Air

In response to the September 11, 2001, terrorist attacks, Congress enacted the Aviation and Transportation Security Act (ATSA; Pub. L. 107-71; November 19, 2001; 115 Stat. 597), which established TSA and transferred authority for aviation security from FAA to TSA. FAA continues to have authority to regulate all areas of aviation safety and to enforce the HMR as they apply to air shipments of hazardous materials. Thus, TSA, RSPA, and FAA share responsibility for addressing security issues associated with the transportation of hazardous materials by air.

In summary, only a small number of operators transport explosives in amounts that would require placarding if transported by highway or rail. These air carriers operate pursuant to a security program approved by TSA and