

renewal of their endorsements in a manner prescribed by TSA.

- After 180 days following the effective date of the rule, no State may issue, renew, or transfer a hazardous materials endorsement unless TSA has notified the State that the individual holding or applying for the endorsement does not pose a security threat.

Each State must notify individuals holding a hazardous materials endorsement that he or she will be subject to a security threat assessment, at least 180 days before the endorsement expires. The notice must also inform these individuals that they may initiate the security threat assessment required by this rule at any time after receiving the notice, but no later than 90 days before the expiration date of the endorsement. For the first 180 days the State requirements of this rule are in effect, a State may extend the expiration date of a hazardous materials endorsement, until TSA has notified the State that an individual does or does not pose a security threat. TSA requests comments from the States and industry on the process outlined above. TSA understands that each State has a unique registration system in place, and that there may be significant challenges to collecting fingerprints of all CDL drivers with hazardous materials endorsements. TSA will continue to work closely with all affected entities to develop an efficient and effective system.

Section-By-Section Analysis

PART 1570—LAND TRANSPORTATION SECURITY: GENERAL RULES

Section 1570.1 Scope

This part applies to any person engaged in activities subject to the requirements of this part.

Section 1570.3 Fraud and Intentional Falsification of Records

This section prohibits persons from making, or causing to be made any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with this subchapter, or exercise any privileges under this subchapter. Also, this section prohibits any reproduction or alteration, for fraudulent purpose, of any record, report, security program, access media, or identification media issued under this subchapter or pursuant to standards in this subchapter.

TSA is adding these prohibitions to prevent persons from providing false information on the application for any authorization for which TSA conducts a

security threat assessment, including a hazardous materials endorsement for a CDL. This section is consistent with the prohibition on fraud and intentional falsification in aviation security.¹⁸

PART 1572—CREDENTIALING AND BACKGROUND CHECKS FOR LAND TRANSPORTATION SECURITY

Subpart A—Requirements to Undergo Security Threat Assessments

Section 1572.3 Terms Used in This Part

This section provides definitions for several terms used in Part 1572. These definitions are relevant only to requirements in this part.

“Alien” means a person not a citizen of the U.S. This definition is consistent with the definition of that term provided in the USA PATRIOT Act, which defines “alien” by referring to the definition given that term in section 101(a)(3) of the Immigration and Nationality Act (INA). Section 101(a)(3) of the INA defines “alien” as any person not a citizen or national of the U.S.¹⁹

“Alien registration number” means the number issued by the DHS to an individual when he or she becomes a lawful permanent resident.

The terms “commercial drivers license,” “endorsement,” and “hazardous materials” are used as defined in FMCSA’s regulations at 49 CFR 383.5

A “hazardous material” is defined in FMCSA’s rule as any material that: (1) In accordance with Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*), has been determined to pose an unreasonable risk to health, safety, and property when transported in commerce and that is required to be placarded under subpart F of part 172 of the Hazardous Materials Regulations (49 CFR parts 171–180); or (2) any quantity of any material listed as a select agent or toxin by CDC in 42 CFR part 73.

DOT evaluates materials to determine whether their respective characteristics, properties, and quantities in transportation merit special marking, storage, and handling procedures. DOT has determined that non-placarded shipments do not present a sufficient security risk in transportation to warrant application at this time of the TSA background check requirements to persons who possess or transport these materials, including persons subject to 18 U.S.C. 842(i). Therefore, for purposes of this rule, DOT and TSA believe it is

the appropriate standard to apply. This rule should apply only to the hazardous materials endorsements that are referenced in the FMCSA and RSPA regulations.

“Convicted” means any plea of guilty or *nolo contendere*, or any finding of guilt. Because this rule must be consistent nationally, TSA will apply Federal law to determine whether a conviction has occurred and whether post-conviction remedies should be recognized, as TSA currently does in aviation. Also, it is important to note that for purposes of this rule, a conviction occurs when an individual is convicted of a criminal offense, receives probation, completes the probated sentence, and the individual is then discharged from probation unless the discharge is accompanied by an expungement of the underlying conviction that does not place any restriction on the individual. In most States, completion of probation does not nullify the existence of the underlying conviction.

“Final Notification of Threat Assessment” means a final determination that an individual does not meet the standards required to hold or obtain a hazardous materials endorsement. A Final Notification may not be administratively appealed.

“Incarceration” means confinement to a jail, half-way house, treatment facility, or other institution, on a full or part-time basis pursuant to a sentence imposed due to a conviction. This definition is taken from a statutory definition of “imprisoned” in 22 U.S.C. 2714, which relates to denial of passports due to certain drug offense convictions.

“Initial Notification of Threat Assessment” means an initial administrative determination by TSA that an individual poses a security threat that warrants denial of the authorization to transport hazardous materials. An Initial Notification may be administratively appealed.

“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. In the statute, “lawfully admitted for permanent residence” means “the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.”

“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

¹⁸ 49 CFR 1540.103

¹⁹ 8 U.S.C. 1101(a). Nationals may not obtain a hazardous materials endorsement under FMCSA rules.