

# Know-Your-Rights to the TSA's New Criminal Background Checks of Hazmat Drivers and Port Workers



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# Post- 9/11 Laws Requiring Criminal Background Checks of Truck Drivers & Port Workers

- Hazmat Drivers (began January 2005): To qualify for a “hazmat material endorsement” (HME), the USA Patriot Act requires a TSA criminal background check to identify those who pose a “security risk.”
- Maritime Facilities (beginning March 2007): To qualify for a Transportation Worker Identification Credential (TWIC) regulating unescorted access to a secured area of a port facility or vessel, the Maritime Transportation Security Act (MTSA) requires a TSA criminal background check to identify those who pose a “terrorism security risk.”



# Know-Your-Rights to TSA's “Security Threat Assessment”

- Step 1: Are you working in a job that requires a TSA criminal background check for an HME or TWIC?
- Step 2: Do you have a criminal conviction on TSA's list of disqualifying crimes?
- Step 3: If you received an “initial determination of threat assessment” from TSA due to a disqualifying offense, have you applied for a “waiver” arguing that you are not a security threat?
- Step 4: If you received an “initial determination of threat assessment” due to incorrect or incomplete information generated by the FBI's rap sheet, have you “appealed” TSA's decision?



## Step 1: Who is Covered by TSA's Criminal Background Checks?

- Truck Drivers (2.7 million): All new drivers seeking a hazmat endorsement and all current drivers seeking to renew their HME.
- Port Facilities (750,000): TSA's TWIC regulations cover new hires and current workers who have unescorted access to secured areas, including:
  - Merchant Mariners (205,000)
  - Port Truck Drivers (110,000)
  - Longshoreman (60,000)
  - Management/Administrators (70,000)
  - Contractors (70,000)
  - Rail Workers (10,000)



## Step 2: What Crimes Are on TSA's Disqualification List?

### ■ “Permanent” Disqualifications

Covers 12 security-sensitive felonies, including treason, espionage, murder, any crime involving a “transportation security incident” (not including work stoppages) or explosives.

### ■ “Interim” Disqualifications

Covers a broad list of violent and non-violent crimes, but limited to felonies dating back 7 years from the date of conviction (or 5 years after release from prison).



# What are the Major TSA “Interim” Disqualifications?

- TSA’s hazmat and TWIC regulations cover about half of all state felony convictions handed down each year, including:
  - All drug felonies except simple possession (covering 20% of state felony convictions)
  - “Dishonesty, fraud, or misrepresentation” (“fraud” covers 10% of all state felony convictions, but the disqualification does not include welfare fraud or passing bad checks)
  - Robbery (3.7%)
  - Weapons offenses, including unlawful possession, use, or sale of a weapon (3%)
  - Assault with intent to murder, sexual assault (3.4%)
  - Kidnapping, extortion, racketeering, arson, and smuggling.



## Step 3: Apply for a “Waiver” of TSA’s “Initial Determination of Threat Assessment”

- Who Qualifies? Workers who have certain “permanent” disqualifying crimes and all “interim” disqualifications can apply for a “waiver” from TSA.
- TSA’s Waiver Standard: TSA will waive a disqualifying crime if the applicant “no longer poses a security threat,” especially in cases involving an isolated crime and where workers have a solid work history.
- Proof Required: TSA considers the circumstances surrounding the conviction, the applicant’s history since the conviction, the length of time the applicant has been out of prison if sentenced to incarceration, and references from employers, probation officers, parole officers, clergy and others who know the applicant and can attest to his or her responsibility and good character. TSA has granted waivers to a majority of those who have applied based on support letters, court documents, and evidence of rehabilitation.



## About waivers, TSA says:

“It is important . . . that applicants who are disqualified due to a criminal conviction should make every effort to apply for a waiver, assuming the crime is waiver-eligible. TSA has developed the waiver program to ensure that individuals who have a criminal history but no longer pose a threat are not denied an HME or a TWIC.... TSA grants the majority of waiver applications received.”

- 72 Federal Register 3551 (Jan. 25, 2007) (emphasis added).



## Step 4: “Appeal” Routine Errors Generated by the FBI’s Rap Sheets

- Who Qualifies? Those issued an “initial determination of threat assessment” by TSA based on incomplete or inaccurate information generated by the FBI’s rap sheet should appeal. Workers can request a free copy of the rap sheet on which TSA based its “initial determination.”
- Workers Routinely Granted TSA Appeal:
  - Those whose FBI rap sheets wrongly indicate their cases are still open (50% of the FBI’s records incorrectly indicate that the state arrest record is still open).
  - Those whose FBI rap sheet incorrectly lists a criminal conviction.
  - Those whose FBI rap sheet fails to list the grade of the offense (felony or misdemeanor).
  - Those whose FBI rap sheet fails to indicate that the offense was expunged (depends on the state laws), overturned on appeal, or pardoned.
  - Those whose FBI rap sheet does not reflect the date of discharge from incarceration.



# Know-Your-Rights

## Expert Help is Available

- If you have a criminal record, check with your union before applying for an HME or TWIC to better understand your rights.
- If you need help filing a TSA waiver or appeal, contact the National Employment Law Project's Second Chance Labor Project, a non-profit organization that provides free assistance and legal referrals (contact Laura Moskowitz by phone at 510-663-5705 or e-mail at [Imoskowitz@nelp.org](mailto:Imoskowitz@nelp.org)).