



## Transportation Security Administration

### Statement of Agency Interpretation of Applicability of 6 U.S.C. § 469(a)

#### Summary

This document interprets the term “field of transportation” as it is used in 6 U.S.C. § 469(a). This interpretation does not address the term “field of transportation” as it is used in other laws or contexts.

#### Background

Pursuant to 6 U.S.C. § 469(a), the Secretary of Homeland Security “shall charge reasonable fees for providing credentialing and background investigations in the field of transportation.” It is necessary for the individuals and entities subject to credentialing and background investigations to understand who falls within the scope of the “field of transportation” for purposes of this statute, so that only those intended to be covered by Congress are charged and pay user fees for these services. Moreover, the Transportation Security Administration (TSA) could not retain fees collected under 6 U.S.C. 469 unless they come from individuals or entities in the field of transportation. TSA would be required to deposit fees from individuals beyond the field of transportation under section 469 as miscellaneous receipts in the general fund of the Treasury pursuant to 31 U.S.C. § 3302(b). Thus, TSA would not be able to fund those vetting services.

The complete language pertinent to this interpretation is as follows:

#### FEES FOR CREDENTIALING AND BACKGROUND INVESTIGATIONS IN TRANSPORTATION

(a) Fees. For fiscal year 2004 and thereafter, the Secretary of Homeland Security shall charge reasonable fees for providing credentialing and background investigations in the field of transportation: Provided, That the establishment and collection of fees shall be subject to the following requirements:

- (1) such fees, in the aggregate, shall not exceed the costs incurred by the U.S. Department of Homeland Security associated with providing the credential or performing the background record checks;
- (2) the Secretary shall charge fees in amounts that are reasonably related to the costs of providing services in connection with the activity or item for which the fee is charged;
- (3) a fee may not be collected except to the extent such fee will be expended to pay for the costs of conducting or obtaining a criminal history record check and a review of available law enforcement databases and commercial databases and records of other governmental and international agencies; reviewing and adjudicating requests for waiver

and appeals of agency decisions with respect to providing the credential, performing the background record check, and denying requests for waiver and appeals; and any other costs related to providing the credential or performing the background record check; and

(4) any fee collected shall be available for expenditure only to pay the costs incurred in providing services in connection with the activity or item for which the fee is charged and shall remain available until expended.

## Discussion

Section 469 does not define “transportation” or “field of transportation.” The Merriam-Webster Dictionary defines transportation as “the act or process of moving people or things from one place to another; a way of traveling from one place to another place; or a system for moving passengers or goods from one place to another.” Black’s Law Dictionary defines transportation as “the removal of goods or persons from one place to another, by a carrier.” The U.S. Department of Transportation (DOT) has defined “transportation” in the context of hazardous materials as “the movement of property and loading, unloading, or storage incidental to the movement.” See 49 CFR 107.1. In each of these definitions, the term is considered to be broad with no specific beginning or end point.

TSA currently conducts security threat assessments and collects user fees under Section 469 from workers engaged in the field of transportation including commercial drivers who transport hazardous materials, mariners and dock workers who operate or access certain vessels and maritime facilities, individuals who transport cargo by air, and alien flight students<sup>1</sup> and individuals who apply for the TSA Pre✓® Application Program. It is clear that these workers and individuals fall within the “field of transportation” for purposes of Section 469 by the nature of the activities in which they are engaged. However, there are also individuals and entities engaged in industries that involve transportation, who are unsure as to whether they are considered part of the “field of transportation” for purposes of Section 469.

DOT has regulated the field of transportation in many ways that serve to define who and what functions are part of the transportation system. DOT has a comprehensive regulatory regime that governs the packaging of certain products in transportation; loading and unloading processes for certain products as they enter and exit the transportation system; training for employees who have access to hazardous materials in transportation; recordkeeping and paperwork requirements for materials in transportation; and marking and placarding for certain containers used in transportation. As an example of the detail and breadth of the standards, a “hazmat employee” must complete comprehensive training on all requirements related to the transportation hazardous materials. See 49 CFR part 172, Subpart H. The definition of “hazmat employee” includes an individual who—

- (i) Employed on a full-time, part time, or temporary basis by a hazmat employer and who in the course of such full time, part time or temporary employment directly affects hazardous materials transportation safety;

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<sup>1</sup> See 49 CFR parts 1572, 1540, and 1552.

- (ii) Self-employed (including an owner-operator of a motor vehicle, vessel, or aircraft) transporting hazardous materials in commerce who in the course of such self-employment directly affects hazardous materials transportation safety;
  - (iii) A railroad signalman; or
  - (iv) A railroad maintenance-of-way employee.
- (2) This term includes an individual, employed on a full time, part time, or temporary basis by a hazmat employer, or who is self-employed, who during the course of employment:
- (i) Loads, unloads, or handles hazardous materials;
  - (ii) Designs, manufactures, fabricates, inspects, marks, maintains, reconditions, repairs, or tests a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.
  - (iii) Prepares hazardous materials for transportation;
  - (iv) Is responsible for [the] safety of transporting hazardous materials;
  - (v) Operates a vehicle used to transport hazardous materials.

See 49 CFR 171.8. A similar definition exists for “hazmat employer.” This is just one example of the broad and detailed regulatory regime that delineates the activities and individuals considered part of the transportation system for purposes of Federal oversight. This extensive body of law is longstanding and well-known to those who engage in transportation-related activities. TSA sees no reason to try to develop a ‘separate but equivalent’ regime to define who and what functions are part of the transportation system for purposes of 6 U.S.C. 469. Moreover, TSA sees no reason to deviate from the parameters DOT has already established to define where transportation may begin or end.

### **Conclusion**

TSA interprets 6 U.S.C. 469 to apply to an individual, activity, entity, facility, owner, or operator that is subject to regulation by TSA, DOT or the U.S. Coast Guard (USCG). This includes the standards set forth in Titles 14 and 49 of the Code of Federal Regulations, including those relating to pipelines, highway transportation, aviation, hazardous materials, railroads, and mass transit. This also includes maritime standards codified in Title 46 of the Code of Federal Regulations promulgated by the USCG, formerly part of DOT and now part of the Department of Homeland Security.

This interpretation does not extend to fees for services TSA may collect pursuant to other authorities. For instance, TSA is authorized to provide and accept services from other Agencies, pursuant to 49 U.S.C. 114(m), and this interpretation does not limit funds TSA may collect under that authority to the “field of transportation” as it is interpreted here for purposes of 6 U.S.C. 469. Also, as another example, TSA is authorized to enter into contracts and other transactions and nothing in this interpretation should be read to limit TSA’s ability to collect funds under them.