

with a Notification of No Security Threat or grant of a waiver, and the individual is otherwise qualified. TSA does not require the State to take a specific action if TSA serves an Initial Notification of Threat Assessment for an applicant or holder of a hazardous materials endorsement in the State. TSA is aware that a background records check may incorrectly identify an individual as a convicted felon, or within another prohibited category. Individuals are able to correct inaccurate records and receive clearance to obtain or renew a hazardous materials endorsement. For this reason, TSA does not wish to require revocation of the hazardous materials endorsement based on an initial review, but believes the State should be aware that the individual may be within a prohibited category under this rule. The State may take whatever action it deems appropriate or do nothing unless and until TSA has issued its final determination.

*Subpart B—Standards, Appeals, and Waivers for Security Threat Assessments*

*Section 1572.101 Scope and Definitions*

This subpart applies to individuals who have or are applying for a hazardous materials endorsement for a CDL.

The terms below have the following definitions in this subpart.

“Associate Administrator/Chief Operating Officer” means the Associate Administrator who is also the Chief Operating Officer of TSA, or his or her designee.

“Authorization” means any credential or endorsement for which TSA conducts a security threat assessment under this part, including a hazardous materials endorsement for a CDL.

“Date of service” has the same meaning as the definition of that term in the Rules of Practice in Transportation Security Administration Civil Penalty Actions and TSA’s Investigative and Enforcement Procedures.<sup>23</sup> TSA notes that, while § 1503.211(e) of the Rules of Practice also provides for additional time for a party to act after service by mail, this rule incorporates additional time in the stated timeframes, and no additional time will be added for that purpose under this rule. The rule also provides that the date of service for an electronic-mail is the date in the electronic-mail indicating when it was sent.

“Day” means calendar day.

*Section 1572.103 Disqualifying Criminal Offenses*

Congress did not specify in the USA PATRIOT Act which criminal offenses TSA should use to determine whether a person poses a security risk warranting denial of a hazardous materials endorsement. TSA considered the crimes listed in 49 U.S.C. 44936, which include misdemeanors and felonies, for individuals who have unescorted access to secured areas of airports or aircraft, security screeners, and other aviation personnel.

This rule includes only felonies, which constitute the most serious crimes. The list of disqualifying crimes address the use of weapons of mass destruction, financial assistance to terrorists, and general acts of terrorism, which are codified in 18 U.S.C. Chapter 113B. In addition, the list includes sedition, kidnapping, identity-fraud, improper shipment of a hazardous material; immigration violations, and a crime involving a severe transportation security incident, such as air piracy or train wrecking.

The list also includes crimes that demonstrate the individual is willing to commit violent acts against others for personal reasons, such as murder and robbery. TSA’s standards are designed to prevent persons from committing violence against others in transportation. That an individual has committed criminal violence in the past is inconsistent with the need to ensure that drivers of hazardous materials will not misuse the materials. The list also includes crimes related to transporting or transferring items in an illegal manner, or with others to commit criminal acts. TSA is concerned with the possibility that such an individual could be involved intentionally, or may be used unwittingly by others with malicious intent, in transporting items that could be used to commit terrorist acts. A crime involving a severe transportation security incident could include such things as aircraft piracy, or acts of violence against trains or other transportation systems.

The listed offenses are considered grounds for disqualification whether they were prosecuted by civilian or military authorities. If these individuals have been convicted within the preceding seven years, or incarcerated within the preceding five years, of a criminal offense listed in § 1572.103, they are disqualified.

This rule cannot possibly list all of the offenses or other information that may be relevant to determining whether an individual poses a security threat that merits denial of a hazardous

materials endorsement. Therefore, under § 1572.107, TSA may consider other criminal offenses and information not listed in section 1572.103, if they indicate the individual poses a security threat. On the other hand, even if an individual has a disqualifying criminal offense, but believes that under their particular circumstances they should not be considered to pose a security threat, they may request a waiver under § 1572.143.

Under paragraph (d) of this section, certain listed disqualifying criminal offenses will not be subject to the seven and five year look back periods. These offenses are the terrorism crimes listed in 18 U.S.C. Chapter 113 B; espionage; sedition; treason; arson; improper transportation of a hazardous material; unlawful possession use, sale, distribution, or manufacture of an explosive; crimes involving a severe transportation security incident; and conspiracies or attempts to commit these crimes, where applicable. TSA believes that an individual who has one of these disqualifying criminal offenses poses an ongoing security threat, and should not be allowed to transport hazardous materials.

TSA invites comment from all interested parties concerning this list of disqualifying criminal offenses. TSA must balance its responsibility to ensure the security of hazardous materials transportation against the knowledge that individuals may participate in criminal acts and subsequently become valuable members of the workforce. TSA wishes to minimize the adverse impact this rule may have on individuals who have committed criminal offenses and served their sentences, without compromising the security of hazardous materials in transportation. For this reason, TSA has determined that only crimes committed in the seven years prior to issuance or renewal of the hazardous materials endorsement and incarcerations that ended five years prior to issuance or renewal should disqualify an individual. This is consistent with the requirements in MTSA.

Under paragraph (c), TSA will notify an individual when his or her CHRC discloses an arrest for any disqualifying crime without indicating a disposition. The individual then must provide TSA with written proof that the arrest did not result in a disqualifying criminal offense within 30 days after the date TSA notifies the individual. If TSA does not receive such proof in 30 days, TSA may serve the individual with an Initial Notification of Threat Assessment.

<sup>23</sup> See 49 CFR 1503.211(d).