

TSA will respond to this request not later than 30 days after TSA is served with the individual's request. TSA will not provide any classified information, as defined in Executive Order 12968, or any other information or material protected from disclosure by law, in its response.

If an individual wishes to reply to the Initial Notification, he or she must provide TSA with a written reply not later than 15 days after the date of service of the Initial Notification or the date of service of TSA's response to the individual's request for materials, if the individual made such a request. In an individual's reply, TSA will consider only material that is relevant to whether the individual satisfies the standards for the security threat assessment.

Under paragraph (d)(3) of this section, an individual has the opportunity to correct his or her criminal history record. If an individual's record discloses disqualifying information, TSA will notify the individual of the adverse information and provide a copy of the record, if requested. If the individual wishes to correct the inaccurate information, he or she must provide written proof that the arrest did not result in a disqualifying criminal offense. The individual may contact the local jurisdiction responsible for the information, the FBI, or any other relevant agency to complete or correct the information contained in his or her record. The individual must provide TSA with the revised FBI or other agency record, or a certified true copy of the information from the appropriate court, before TSA determines that the individual satisfies the standards for the security threat assessment.

In considering an appeal, the TSA Associate Administrator/Chief Operating Officer reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, and any other materials or information available to TSA. The Associate Administrator/Chief Operating Officer may affirm the Initial Notification by concluding that an individual poses a security threat. In this case, as set forth in paragraph (e), TSA will serve upon the individual a Final Notification of Threat Assessment. The Final Notification includes a statement that the Associate Administrator/Chief Operating Officer has reviewed the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him and has determined that the individual poses a security threat. There is no administrative appeal of the Associate

Administrator/Chief Operating Officer's decision. However, as explained below, the individual may apply for a waiver. For purposes of judicial review, the Final Notification of Threat Assessment constitutes a final TSA order.

Paragraph (e)(3) sets forth the procedures TSA will follow if, upon review, the Associate Administrator/Chief Operating Officer does not determine that the individual poses a security threat. TSA serves a Withdrawal of the Initial Notification on the individual and provides a notice approving the hazardous materials endorsement to the State in which the individual applied for the endorsement.

If the applicant does not initiate an appeal or waiver request within 30 days of service of the Initial Notification, TSA issues a Final Notification of Threat Assessment. Unless the individual applies for and obtains a waiver, issuance of the Final Notification results in the revocation or denial of the individual's hazardous materials endorsement.

If TSA did not serve the individual with an Initial Notification of Threat Assessment, or grants a waiver, the agency will transmit a Notification of No Security Threat to the individual and the State in which the individual applied for the endorsement.

Under the rule, TSA has the discretion to extend due dates both for an individual and for the agency. An individual must provide, in writing, a statement of good cause for extending the due date, at least two days prior to the due date to be extended. TSA anticipates that if an individual is attempting to correct erroneous records or gathering documents in support of a waiver request, the individual may need additional time because other entities do not produce the documents quickly. So long as the applicant provides an explanation of such problems, TSA will extend the time needed to complete the process.

Paragraph (i) of this section describes the procedure for appealing an immediate revocation of the hazardous materials endorsement. This may occur under rare circumstances where TSA determines during the course of conducting a security threat assessment, that sufficient factual and legal grounds exist to warrant immediate revocation. Under these circumstances, the individual must surrender the endorsement and cease transporting hazardous materials. TSA understands that removing the individual from service without an opportunity to correct the record may have adverse consequences, but TSA anticipates that this mechanism will not be used often.

The individual may appeal this decision within 10 days, and must include all supporting documentation when he or she submits the appeal. TSA will provide a determination on the appeal within 10 days.

The rule provides that in connection with this subpart, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law, such as Sensitive Security Information (SSI); sensitive law enforcement and intelligence information; sources, methods, means, and application of intelligence techniques; and identities of confidential informants, undercover operatives, and material witnesses.

For determinations under § 1572.107, the determination that an individual poses a security threat will be based, in large part or exclusively, on classified national security information, unclassified information designated as SSI, or other information that is protected from disclosure by law.

Classified national security information is information that the President or another authorized Federal official has determined, pursuant to Executive Order 12958, must be protected against unauthorized disclosure in order to safeguard the security of American citizens, the country's democratic institutions, and America's participation within the community of nations.³⁰ Executive Order 12968 prohibits Federal employees from disclosing classified information to individuals who have not been cleared to have access to such information under the requirements of that Executive Order.³¹ If the Assistant Administrator has determined that an individual who is the subject of a threat assessment proceeding poses a threat to transportation security, that individual will not be able to obtain a clearance to have access to classified national security information, and TSA has no authority to release such information to that individual.

The denial of access to classified information under these circumstances is consistent with the treatment of classified information under the Freedom of Information Act (FOIA), which specifically exempts such information from the general requirement under FOIA that all

³⁰ See E.O. 12958, 60 FR 19825, April 20, 1995.

³¹ See E.O. 12968 sec. 3.2(a), 6.2(a)(1), 60 FR 40245, Aug. 7, 1995.