

individual meets the standards for the security threat assessment.

(4) *Reply.* (i) The individual may serve upon TSA a written reply to the Initial Notification not later than 15 days after the date of service of the Initial Notification, or 15 days after the date of service of TSA's response to the individual's request for materials under paragraph (d)(2) of this section, if the individual served such a request.

(ii) In an individual's reply, TSA will consider only material that is relevant to whether the individual meets the standards for the security threat assessment in § 1572.5(d).

(5) *Final determination.* Not later than 30 days after TSA receives the individual's reply, TSA serves a Final Notification of Threat Assessment or a Withdrawal of the Initial Notification in accordance with paragraph (e) of this section.

(e) *Final Notification of Threat Assessment.* (1) *Review.* The Associate Administrator/Chief Operating Officer reviews 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 the agency before making a final decision.

(2) *Issuance.* If the Associate Administrator/Chief Operating Officer determines that the individual poses a security threat, the Associate Administrator/Chief Operating Officer serves upon the individual, and, in the case of a security threat assessment under § 1572.5, the State in which the individual applied for the authorization, a Final Notification of Threat Assessment.

(i) The Final Notification to the individual includes a statement that the Associate Administrator/Chief Operating Officer has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him or her, and has determined that the individual poses a security threat warranting denial of the authorization.

(ii) The Final Notification to the State contains a statement that TSA has determined that the individual poses a security threat warranting denial of the authorization.

(3) *Withdrawal of Initial Notification.* If the Associate Administrator/Chief Operating Officer does not conclude that the individual poses a security threat warranting denial of the authorization, TSA serves upon the individual a Withdrawal of the Initial Notification. In the case of a security threat assessment under § 1572.5 of this part, TSA will also serve a Notification of No Security Threat to the State in which the individual applied for the authorization.

(f) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in section 1.1(d) of Executive Order 12968, and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

(g) *Extension of time.* TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

(h) *Judicial review.* For purposes of judicial review, the Final Notification of Threat Assessment constitutes a final TSA order in accordance with 49 U.S.C. 46110.

(i) *Appeal of immediate revocation.* (1) If TSA directs a State to revoke the hazardous materials endorsement immediately pursuant to § 1572.5(d)(4), the individual may—

(i) Within 10 days of revocation, submit a written request to TSA to appeal the decision on which the revocation was based.

(ii) The written request must include the basis on which the appeal should be granted, including a correction of records, and all supporting documentation.

(2) Within 10 days of receipt of the written request, TSA will serve on the individual and the State in which the individual applied for a hazardous materials endorsement, its final decision and a statement explaining the basis for the decision.

§ 1572.143 Waivers.

(a) *Scope.* (1) Except as provided in paragraph (a)(2), this section applies to individuals who do not meet the standards for a security threat assessment and who are requesting a waiver from those standards.

(2) Individuals who do not meet the standards for a security threat assessment under § 1572.105 or § 1572.107 are not eligible for a waiver.

(b) *Waivers.* (1) An individual who does not meet the standards for a security threat assessment in this part may send a written request to TSA for a waiver at any time but not later than 15 days from the date of service of the Final Notification of Threat Assessment.

(2) In determining whether to grant a waiver, TSA will consider the following factors, if the disqualification was based on a disqualifying criminal offense:

(i) The circumstances of any disqualifying act or offense;

(ii) Restitution made by the individual;

(iii) Any Federal or State mitigation remedies; and

(iv) Other factors that indicate the individual does not pose a security threat warranting denial of the authorization for which he or she is applying.

(c) *Grant or denial of waivers.* TSA will send a written decision to grant or deny a waiver under this section to the individual and, if applicable, the State in which the individual applied for the authorization, within 30 days of the service date of the individual's application for a waiver, or such longer period as TSA may determine for good cause.

(d) *Extension of time.* TSA may grant an individual an extension of time of the limits set forth in this section for good cause shown. An individual's request for an extension of time must be in writing and be received by TSA at least 2 days before the due date to be extended. TSA may grant itself an extension of time for good cause.

Issued in Arlington, VA on April 25, 2003.

J.M. Loy,

Administrator.

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