

(21) Conspiracy or attempt to commit any of the crimes listed in paragraph (b) of this section.

(c) *Determination of arrest status.* (1) When a criminal history records check on an individual discloses an arrest for any disqualifying crime listed in paragraph (b) of this section without indicating a disposition, TSA will notify the individual.

(2) The individual must provide TSA with written proof that the arrest did not result in a disqualifying criminal offense within 30 days after the service date of the notification in paragraph (c)(1) of this section. If TSA does not receive proof in that time, TSA may issue an Initial Notification of Threat Assessment in accordance with § 1572.141.

(d) The time periods specified in paragraphs (a)(1) and (a)(2) of this section do not apply to:

(1) The crimes listed in paragraphs (b)(1), (b)(4), (b)(5), (b)(7), (b)(12), (b)(15), and (b)(16) of this section;

(2) The crime in paragraph (b)(9) of this section involving an explosive; and

(3) Conspiracy or attempt to commit the crimes listed in paragraphs (d)(1) and (d)(2) of this section.

**§ 1572.105 Citizenship status.**

(a) An individual applying for an authorization under this part must be either—

(1) A citizen of the United States who has not renounced his or her United States' citizenship; or

(2) A lawful permanent resident of the United States.

(b) To determine an individual's citizenship status, TSA checks relevant Federal databases, and may perform other checks, including verifying the validity of the individual's social security number or alien registration number.

**§ 1572.107 Other analyses.**

(a) TSA checks the following databases and conducts a security threat analysis before determining that an individual does not pose a security threat warranting denial of an authorization under this part:

(1) Interpol and other international databases;

(2) TSA watchlists; and

(3) Any other databases relevant to determining whether an individual poses a security threat or that confirm an individual's identity.

(b) An individual poses a security threat under this section when TSA determines or suspects him—or her of being a threat—

(1) To national security;

(2) To transportation security; or

(3) Of terrorism.

**§ 1572.109 Mental defects.**

(a) An individual has a mental defect if he or she has been—

(1) Adjudicated as a mental defective; or

(2) Committed to a mental institution.

(b) An individual is adjudicated as a mental defective if—

(1) A court, board, commission, or other lawful authority has determined that the individual, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to him or herself or others, or lacks the mental capacity to contract or manage his or her own affairs.

(2) This includes a finding of insanity by a court in a criminal case; and a finding of incompetency to stand trial or a finding of not guilty by reason of lack of mental responsibility by any court, or pursuant to articles 50a and 76b of the Uniform Code of Military Justice (10 U.S.C. 850a and 876b).

(c) An individual is committed to a mental institution if—

(1) He or she is formally committed to a mental institution by a court, board, commission, or other lawful authority, including involuntary commitment and commitment for mental defectiveness, mental illness, and drug use.

(2) This does not include a commitment to a mental institution for observation or voluntary admission to a mental institution.

**§ 1572.111–1572.139 [Reserved]**

**§ 1572.141 Notification of threat assessment and appeal.**

(a) *Scope.* This section applies to individuals who receive an Initial Notification of Threat Assessment stating that

they do not meet the standards for a security threat assessment and who wish to appeal the notification.

(b) *Initial Notification of Threat Assessment.* (1) If TSA determines that an individual poses a security threat warranting denial of the authorization, TSA serves upon the individual an Initial Notification of Threat Assessment.

(2) The Initial Notification includes—

(i) A statement that TSA has determined that the individual poses a security threat warranting denial of the authorization;

(ii) The basis for the determination; and

(iii) Information about the correction of records and appeals processes.

(c) *Grounds for Appeal.* (1) An individual may appeal an Initial Notification only if the individual is asserting that he or she meets the standards of the authorization for which he or she is applying.

(2) If the Initial Notification was based on a conviction for a disqualifying crime listed in § 1572.103, the individual may present evidence that the underlying criminal record is incorrect, or that the conviction was pardoned, expunged, or overturned on appeal. An executive pardon, expungement, or overturned conviction may nullify a disqualifying conviction if the pardon, expungement, or overturned conviction does not impose any restrictions on the individual. A correction of the record(s) may nullify the disqualifying conviction.

(d) *Appeal.* An individual may initiate an appeal of an Initial Notification by submitting a written request for materials or a written reply to TSA. If the individual does not initiate an appeal within the time periods specified in this paragraph, TSA serves a Final Notification of Threat Assessment under paragraph (e) of this section.

(1) *Request for materials.* Not later than 15 days after the date of service of the Initial Notification, the individual may serve upon TSA a written request for copies of the materials upon which the Initial Notification was based.

(2) *TSA response.* Not later than 30 days after receiving the individual's request for materials, TSA serves copies upon the individual of the releasable

materials upon which the Initial Notification was based. TSA will not include any classified information or other protected information described in paragraph (f) of this section.

(3) *Correction of records.* If the Initial Notification of Threat Assessment was based on an FBI criminal history record that the individual believes is erroneous, the individual may correct the record, as follows:

(i) The individual may contact the local jurisdiction responsible for the information and the FBI or other agency to complete or correct the information contained in his or her record.

(ii) The individual seeking to correct his or her record must provide TSA with the revised FBI criminal history record, or a certified true copy of the information from the appropriate court, before TSA may determine that the 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