

**Security Threat Assessment and Redress Process For Holders of Airport-Approved
and/or Airport-Issued Personnel Identification Media**

I. Applicability

(a) Following is the procedure for Transportation Security Administration (TSA) security threat assessments that are conducted on individuals who hold an airport-approved and/or airport-issued personnel identification media.

(b) For purposes of these procedures the following definitions apply—

Administrative Law Judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105.

Applicant means an individual subject to TSA’s security threat assessment who is applying for, or who currently holds, an airport-approved and/or airport-issued personnel identification media. This includes an individual who previously applied for, and who was found to meet the standards for the security threat assessment, but who TSA subsequently determines poses a security threat or is otherwise ineligible because the individual lacks lawful presence in the U.S.

Airport-Approved means identification approved for use at the airport under the terms of the TSA-approved airport security program. This class includes identification issued directly by the airport operator as well as any identification media issued by entities other than the airport operator, and that are recognized by the airport’s security program under 49 C.F.R. 1542.211(c).

Airport-Issued means any identification media issued directly by an airport operator.

Date of Service means—

- (1) In the case of personal service, the date of personal delivery to the named individual or residential address listed on the application;
- (2) In the case of mailing with a certificate of service, the date shown on the certificate of service;
- (3) In the case of mailing and there is no certificate of service, 10 days from the date mailed to the address designated on the application as the mailing address;
- (4) In the case of mailing with no certificate of service or postmark, the date mailed to the address designated on the application as the mailing address shown by other evidence; or
- (5) The date on which an electronic transmission occurs.

Day means calendar day.

Final Agency Order means an order approved by the TSA Final Decision Maker.

Mail includes U.S. mail, or use of an express courier service.

Operator means an airport or aircraft operator that must comply with TSA regulations, orders, or security directives requiring a security threat assessment for holders of airport-approved and/or airport-issued personnel identification media.

Party means the applicant or the agency attorney.

Personal Delivery includes hand-delivery or use of a contract or express courier service, but does not include the use of Government interoffice mail service.

Properly Addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under these procedures, or any other address shown by other reasonable and available means.

Substantial Evidence means such relevant evidence as a reasonable person might accept as adequate to support a conclusion.

Security Threat Assessment means the threat assessment conducted by TSA for individuals holding or applying for airport-approved and/or airport-issued personnel identification media.

TSA Final Decision Maker means the Administrator or his designee, acting in the capacity of the decision maker on appeal. The TSA Final Decision Maker is the official authorized to issue a final decision and order of the Administrator.

II. Procedures for Security Threat Assessments

(a) Basis for Security Threat Assessment. TSA determines that an applicant poses a security threat if --

(1) The applicant is suspected of posing, or is known to pose

(i) A threat to transportation or national security;

ii) A threat to airline or passenger security; or

(iii) A threat to civil aviation security.

(2) TSA determines that the applicant is not lawfully present in the United States.

(b) Determination of No Security Threat. If TSA determines that an applicant does not pose a threat to security, TSA will notify the operator by posting this information on the secure website of the service provider designated by TSA.

(c) Initial Determination of Threat Assessment.

(1) If TSA determines that an applicant does not meet the eligibility requirements to hold an airport approved and/or airport issued personnel identification media, TSA will notify the applicant by serving an Initial Determination of Threat Assessment.

(2) If TSA determines that the applicant poses an imminent threat to national or transportation security, TSA may provide limited information to the operator.

(3) The Initial Determination of Threat Assessment will include:

(i) A statement that TSA has determined that the applicant does not meet the eligibility requirements to hold an airport approved and/or airport issued personnel identification media;

(ii) The basis for the determination;

(iii) Information about how the applicant may appeal the determination, as described below; and

(iv) A statement that if the applicant chooses not to appeal TSA's determination within 60 days of receipt of the Initial Determination, or does not request an extension of time within 60 days of the date of service of the Initial Determination of Threat Assessment in order to file an appeal, the Initial Determination will automatically become a Final Determination of Threat Assessment (FDTA) without further notification from TSA.

(d) Final Determination.

(1) If the applicant does not appeal the Initial Determination of Threat Assessment within 60 days of the date of service, the Initial Determination will automatically become a Final Determination of Threat Assessment without further notification from TSA and the airport operator will be notified that the applicant is ineligible to hold an airport-approved and/or airport-issued personnel identification media.

(2) If the applicant submits an appeal and TSA upholds the Initial Determination that the applicant does not meet the eligibility requirements to hold an airport approved and/or airport issued personnel identification media, TSA will serve upon the applicant a Final Determination of Threat Assessment and the airport operator will be notified that the applicant is ineligible to hold an airport-approved and/or airport-issued personnel identification media.

(3) If the applicant submits an appeal and TSA determines that the applicant meets the eligibility requirements to hold an airport approved and/or airport issued personnel identification media, TSA will notify the operator by posting this information on the secure website of the service provider designated by TSA.

III. Appeal of security threat assessment

(a) Grounds for appeal. An applicant who does not meet the eligibility requirements to hold an airport approved and/or airport issued personnel identification media may appeal an Initial Determination of Threat Assessment with TSA.

(b) Initiating an appeal.

(1) An applicant initiates an appeal by submitting a written reply to TSA, a written request for materials from TSA, or by requesting an extension of time in accordance with paragraph (h). If the applicant does not initiate an appeal within 60 days of the date of service of the IDTA, the IDTA will

automatically become a Final Determination of Security Threat Assessment without further notification from TSA.

(2) Request for materials. Within 60 days of the date of service of the IDTA, the applicant may serve upon TSA a written request for copies of the materials upon which the Initial Determination was based.

(3) TSA response. Within 60 days of receiving the applicant's request for materials, TSA serves the applicant with copies of the releasable materials upon which the Initial Determination was based. TSA will not include any classified information or other protected information described in paragraph (g) of this section.

(4) Correction of records. If the Initial Determination of Threat Assessment was based on a record that the applicant believes is erroneous, the applicant may correct the record, as follows:

(i) The applicant contacts the jurisdiction or entity responsible for the information and attempts to correct or complete information contained in his or her record.

(ii) The applicant provides TSA with the revised record, or a certified true copy of the information from the appropriate entity, before TSA determines that the applicant meets the standards for the security threat assessment.

(c) Reply.

(1) The applicant may serve upon TSA an appeal, in the form of a written reply to the IDTA within 60 days of date of service of the Initial Determination, or 60 days after the date of service of TSA's response to the applicant's request for materials under paragraph (b)(2) of this section, if the applicant served such request. The reply must include the basis on which the applicant disputes TSA's Initial Determination, and include supporting documentation, if applicable.

(2) If the applicant received an IDTA because TSA determined that the applicant does not have legal presence in the U.S., the applicant should provide proof of legal presence in the reply.

(3) Within 60 days of receiving the applicant's request for materials or written reply, TSA may request additional information or documents from the applicant that TSA believes are necessary to make a Final Determination.

(d) Final determination. Within 60 days after TSA receives the applicant's reply, TSA serves a Final Determination of Threat Assessment on the applicant as provided in paragraphs (e) of this section and the airport operator will be notified that the applicant is ineligible to hold an airport-approved and/or airport-issued personnel identification media.

(e) Final Determination of Threat Assessment.

(1) If TSA concludes that an applicant who has filed an appeal does not meet the eligibility requirements to hold an airport approved and/or airport issued personnel identification media, TSA will serve a Final Determination of Threat Assessment upon the applicant.

(2) The Final Determination includes a statement that TSA has reviewed the Initial Determination, the applicant's reply and any accompanying information, and any other materials or information available, and has determined that the applicant does not meet the eligibility requirements to hold an airport approved and/or airport issued personnel identification media.

(f) Withdrawal of Initial Determination. If TSA concludes that an applicant who has filed an appeal meets the eligibility requirements to hold an airport approved and/or airport issued personnel identification media, TSA will notify the operator by posting this information on the secure website of the service provider designated by TSA.

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

(h) Extension of time. TSA may grant an applicant an extension of time of the limits for good cause shown. An applicant's request for an extension of time must be in writing and be received by TSA within a reasonable time before the due date to be

extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. TSA may grant itself an extension of time for good cause.

(i) Further review.

(1) If TSA denies the applicant's appeal and issues a Final Determination of Threat Assessment on the grounds that the applicant poses a security threat under section (II)(a)(1), the applicant may seek review by administrative law judge and TSA Final Decision Maker as described below. A Final Determination approved under this section does not constitute a final order of TSA as provided in 49 U.S.C. 46110.

(2) If TSA denies the applicant's appeal and issues a Final Determination of Threat Assessment on the grounds that the applicant is not lawfully present in the United States under section (II)(a)(2), the applicant may seek judicial review of the final order of the TSA Final Decision Maker as provided in 49 U.S.C. 46110.

IV. Review by Administrative Law Judge and TSA Final Decision Maker

(a) Scope. This section applies to an applicant who has been issued a Final Determination of Threat Assessment on the grounds that he or she poses a security threat under section (II)(a)(1) after an appeal. This section does not apply to an applicant who has been issued a Final Determination of Threat Assessment and does not meet the

immigration status requirements for lawful presence in the United States under section (II)(a)(2).

(b) Request for review. No later than 30 days from the date of service of the FDTA after an appeal, the applicant may request a review. The review will be conducted by an administrative law judge who possesses the appropriate security clearance necessary to review classified or otherwise protected information and evidence. If the applicant fails to seek review within 30 days of date of service of the FDTA, the Final Determination of Threat Assessment will be final with respect to the parties.

(1) The request for review must clearly state the issue(s) to be considered by the administrative law judge (ALJ), and include the following documents in support of the request:

(i) A copy of the IDTA and FDTA; and a copy of the applicant's appeal, including all materials provided by the applicant to TSA in support of the appeal. The request for review may not include evidence or information that was not presented to TSA in the appeal. The ALJ may consider only evidence or information that was presented to TSA in the appeal. If the applicant has new evidence or information, the applicant must file a new appeal and the pending request for review of the Final Determination will be dismissed.

(2) The applicant may include in the request for review a request for an in-person hearing before the ALJ.

(3) The applicant must file the request for review with the ALJ Docketing Center, U.S. Coast Guard, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202-4022, ATTN: Hearing Docket Clerk.

(c) Extension of Time. The ALJ may grant an extension of the time limits described in this section for good cause shown. A request for an extension of time must be in writing and be received by the ALJ within a reasonable time before the due date to be extended; or an applicant may request an extension after the expiration of a due date by sending a written request describing why the failure to file within the time limits was excusable. This paragraph does not apply to time limits set by the administrative law judge during the hearing.

(d) Duties of the Administrative Law Judge. The ALJ may:

(1) Receive information and evidence presented to TSA in the request for an appeal.

(2) Consider the following criteria to determine whether a request for an in-person hearing is warranted:

(i) The credibility of evidence or information submitted in the applicant's request; and

(ii) Whether TSA's denial was made in accordance with the criteria set forth in these procedures.

(3) Give notice of and hold conferences and hearings;

(4) Administer oaths and affirmations;

(5) Examine witnesses;

(6) Regulate the course of the hearing including granting extensions of time limits; and

(7) Dispose of procedural motions and requests, and issue a decision.

(e) Hearing. If the ALJ grants a request for a hearing, except for good cause shown, it will begin within 60 days of the date of receipt of the request for hearing. The hearing is a limited discovery proceeding and is conducted as follows:

(1) If applicable and upon request, TSA will provide to the applicant requesting a review an unclassified summary of classified evidence upon which the Final Determination was based.

(i) TSA will not disclose to the applicant, or the applicant's counsel, classified information, as defined in E.O. 12968 section 1.1(d).

(ii) TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure by law or regulation.

(2) The applicant may present the case by oral testimony, documentary, or demonstrative evidence, submit rebuttal evidence, and conduct cross-examination, as permitted by the ALJ. Oral testimony is limited to the evidence or information that was presented to TSA during the appeal. The Federal Rules of Evidence may serve as guidance, but are not binding.

(3) The ALJ will review any classified information on an *ex parte, in camera* basis, and may consider such information in rendering a decision if the information appears to be material and relevant.

(4) The standard of proof is substantial evidence on the record.

(5) The parties may submit proposed findings of fact and conclusions of law.

(6) If the applicant fails to appear, the ALJ may issue a default judgment.

(7) A verbatim transcript will be made of the hearing and will be provided upon request at the expense of the requesting party. In cases in which classified or otherwise protected evidence is received, the transcript may require redaction of the classified or otherwise protected information.

(8) The hearing will be held at TSA's Headquarters building or, on request of a party, at an alternate location selected by the administrative law judge for good cause shown.

(f) Decision of the Administrative Law Judge.

(1) The record is closed once the certified transcript and all documents and materials have been submitted for the record.

(2) The ALJ issues an unclassified written decision to the applicant no later than 30 days from the close of the record and serves the decision on the parties. The ALJ may issue a classified decision to TSA.

(3) The ALJ's decision may be appealed by either party to the TSA Final Decision Maker in accordance with paragraph (g).

(i) Unless appealed to the TSA Final Decision Maker, if the ALJ determines that the applicant poses a security threat, TSA will issue a Final Order of Threat Assessment to the applicant.

(ii) Unless appealed to the TSA Final Decision Maker, if the ALJ determines that the applicant does not pose a security threat, TSA will issue a Withdrawal of the Final Determination to the applicant, and will notify the airport operator.

(g) Review by the TSA Final Decision Maker.

(1) Either party may request that the TSA Final Decision Maker review the ALJ's decision by serving the request no later than 30 days after the date of service of the decision of the ALJ.

(i) The request must be in writing, served on the other party, and may only address whether the decision is supported by substantial evidence on the record.

(ii) No later than 30 days after receipt of the request, the other party may file a response.

(2) The ALJ will provide the TSA Final Decision Maker with a certified transcript of the hearing and all unclassified documents and material submitted for the record. TSA will provide any classified materials previously submitted.

(3) No later than 60 days after receipt of the request, or if the other party files a response, 30 days after receipt of the response, or such longer period as may be required, the TSA Final Decision Maker issues an unclassified decision and serves the decision on the parties. The TSA Final Decision Maker may issue a classified opinion to TSA, if applicable. The decision of the TSA Final Decision Maker is a final agency order.

(i) If the TSA Final Decision Maker determines that the applicant poses a security threat, TSA will issue a Final Order of Threat Assessment to the applicant.

(ii) If the TSA Final Decision Maker determines that the applicant does not pose a security threat, TSA will issue a Withdrawal of the Final Determination to the applicant, and to the operator, where applicable.

(h) Judicial Review of a Final Order of Threat Assessment. A person may seek judicial review of a final order of the TSA Final Decision Maker as provided in 49 U.S.C.

46110.