

**HAZMAT DRIVER TSA BACKGROUND CHECK REGULATIONS  
(PROPOSED REGULATIONS EXTEND THE HAZMAT REQUIREMENTS TO PORT WORKERS)  
DISQUALIFYING OFFENSES, APPLICATION & WAIVER PROCEDURE**

**TSA CONTACT ON WAIVERS/APPEALS  
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**Sec. 1572.103 Disqualifying criminal offenses.**

(a) Permanent disqualifying criminal offenses. An applicant has a permanent disqualifying offense if convicted or found not guilty by reason of insanity in a civilian or military jurisdiction of any of the following felonies:

- (1) Espionage.
- (2) Sedition.
- (3) Treason.
- (4) A crime listed in 18 U.S.C. Chapter 113B--Terrorism, or a State law that is comparable.
- (5) A crime involving a transportation security incident.
- (6) Improper transportation of a hazardous material under 49 U.S.C. 5124 or a State law that is comparable.
- (7) Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device.
- (8) Murder.
- (9) Conspiracy or attempt to commit the crimes in this paragraph (a).
- (10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a State law that is comparable, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the offenses listed in paragraphs (a)(4) or (a)(8) of this section.

(b) Interim disqualifying criminal offenses. The **felonies** listed in paragraphs (b)(1) through (b)(14) of this section are disqualifying if either of the following factors is true: the applicant was convicted or found not guilty by reason of insanity of the crime in a civilian or military jurisdiction, within the 7 years preceding the date of application; or the applicant was released from incarceration for the crime within the 5 years preceding the date of application.

- (1) Assault with intent to murder.
- (2) Kidnapping or hostage taking.
- (3) Rape or aggravated sexual abuse.
- (4) Unlawful possession, use, sale, manufacture, purchase,

distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon.

(5) Extortion.

(6) Dishonesty, fraud, or misrepresentation, including identity fraud.

(7) Bribery.

(8) Smuggling.

(9) Immigration violations.

(10) Violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961, et seq., or a State law that is comparable, other than the violations listed in paragraph (a)(10) of this section.

(11) Robbery.

(12) Distribution of, possession with intent to distribute, or importation of a controlled substance.

(13) Arson.

(14) Conspiracy or attempt to commit the crimes in this paragraph (b).

(c) Under want or warrant. An applicant who is wanted or under indictment in any civilian or military jurisdiction for a felony listed in this section is disqualified until the want or warrant is released.

(d) Determination of arrest status. (1) When a fingerprint-based check discloses an arrest for a disqualifying crime listed in this section without indicating a disposition, TSA will so notify the applicant and provide instructions on how the applicant must clear the disposition, in accordance with paragraph (d)(2) of this section.

(2) The applicant must provide TSA with written proof that the arrest did not result in a disqualifying criminal offense within 45 days after the service date of the notification in paragraph (d)(1) of this section. If TSA does not receive proof in that time, TSA will notify the applicant and the State that the applicant is disqualified from holding an HME.

#### Sec. 1572.143 **Waiver procedures.**

(a) Scope. This section applies to an applicant who--

(1) Has a disqualifying criminal offense described in Sec. 1572.103(a)(5) through (a)(9), and paragraph 1572.103(a)(10) if the underlying criminal offense is in paragraphs 1572.103(a)(5) through (a)(9); or

(2) Has a disqualifying criminal offense described in Sec. 1572.103(b); or

(3) Lacks mental capacity as described in Sec. 1572.109.

(b) Waivers. (1) An applicant initiates a waiver request by sending a written request to TSA for a waiver at any time, but not later than 30 days after the date of service of the Final Determination of Threat

**Assessment.**

(2) In determining whether to grant a waiver, TSA will consider the following factors:

- (i) The circumstances of the disqualifying act or offense;
- (ii) Restitution made by the applicant;
- (iii) Any Federal or State mitigation remedies;
- (iv) Court records or official medical release documents indicating that the individual no longer lacks mental capacity;
- (v) Other factors that indicate the applicant does not pose a security threat warranting denial of the HME.

(c) Grant or denial of waivers. The Director will send a written decision granting or denying the waiver to the applicant and a Determination of No Security Threat to the State in which the applicant applied for the HME, within 30 days after service the applicant's request for a waiver, or longer period as TSA may determine for good cause.

(d) Extension of time. TSA may grant an applicant an extension of time of the limits described in paragraph (b) and (c) of this section 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. TSA may grant itself an extension of time for good cause.

**Sec. 1572.9 Applicant information required for a security threat assessment for a hazardous materials endorsement.**

(a) For TSA to complete a security threat assessment, an applicant must supply the information required in this section when the applicant applies to obtain or renew a hazardous materials endorsement. When applying to transfer a hazardous materials endorsement, Sec. 1572.13(g) applies.

(b) The application must include the following identifying information:

- (1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.
- (2) Current mailing address and residential address if it differs from the mailing address; and the previous residential address.
- (3) Date of birth.
- (4) Social security number.
- (5) Gender.
- (6) Height, weight, hair and eye color.
- (7) City, state, and country of birth.
- (8) Immigration status and date of naturalization if the applicant is a naturalized citizen of the United States.
- (9) Alien registration number.
- (10) State of application, CDL number, and type of endorsement

held.

(11) The name, telephone number, and address of the applicant's current employer(s).

(c) The application must include the disqualifying criminal offenses identified in Sec. 1572.103.

(d) The application must include a statement, signature, and date of signature that the applicant:

(1) Was not convicted or found not guilty by reason of insanity of a disqualifying crime listed in Sec. 1572.103(b) in a civilian or military jurisdiction during the 7 years before the date of the application;

(2) Was not released from incarceration in a civilian or military jurisdiction for committing a disqualifying crime listed in Sec. 1572.103(b) during the 5 years before the date of the application;

(3) Is not wanted or under indictment in a civilian or military jurisdiction for a disqualifying criminal offense identified in Sec. 1572.103;

(4) Was not convicted or found not guilty by reason of insanity of a disqualifying criminal offense identified in Sec. 1572.103(a) in a civilian or military jurisdiction;

(5) Has not been adjudicated as lacking mental capacity or committed to a mental institution involuntarily;

(6) Meets the immigration status requirements described in Sec. 1572.105;

(7) Has or has not served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(8) Has been informed that Federal regulations under Sec. 1572.11 impose a continuing obligation to disclose to the State within 24 hours if he or she is convicted or found not guilty by reason of insanity of a disqualifying crime, or adjudicated as lacking mental capacity or committed to a mental institution, while he or she holds an HME.

(e) The application must include a statement reading:

*Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C. 114, 40113, and 49 U.S.C. 5103a. Purpose: This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a hazardous materials endorsement for a commercial drivers license. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will prevent the completion of your security threat assessment, without which you cannot be granted a hazardous materials endorsement. Routine Uses: Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental*

agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

*The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact, on this application can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code), and may be grounds for denial of a hazardous materials endorsement.*

**Sec. 1572.11 Applicant responsibilities for a security threat assessment for a hazardous materials endorsement.**

(a) Prohibitions. An applicant does not meet the security threat assessment standards if he or she:

- (1) Has a disqualifying criminal offense identified in Sec. 1572.103, unless TSA grants a waiver under Sec. 1572.143; or
- (2) Does not meet the immigration status requirements identified in Sec. 1572.105; or
- (3) Has been notified by TSA that he or she poses a security threat under Sec. 1572.107; or
- (4) Has been adjudicated as lacking mental capacity or committed to a mental institution as described in Sec. 1572.109, unless TSA grants a waiver under Sec. 1572.143.

(b) Surrender of endorsement. If an individual is disqualified from holding an HME under paragraph (a) of this section, he or she must surrender the HME and notify TSA. Failure to surrender the HME and notify TSA may result in immediate revocation under Sec. 1572.13(a) and/or civil penalties.

(c) Continuing responsibilities. An individual who holds an HME must surrender the HME and notify TSA within 24 hours, if he or she:

- (1) Is convicted of, wanted, under indictment, or found not guilty by reason of insanity in a civilian or military jurisdiction for a disqualifying criminal offense identified in Sec. 1572.103; or
- (2) Is adjudicated as lacking mental capacity or committed to a mental institution as described in Sec. 1572.109; or
- (3) Renounces or loses U.S. citizenship; or
- (4) Violates his or her immigration status and/or is ordered removed from the United States.

(d) Submission of fingerprints. (1) An applicant who has not already done so may submit fingerprints in a form and manner specified by TSA when a State revokes the applicant's HME under Sec. 1572.13(a).

(2) When so notified by the State, an applicant must submit fingerprints and the information required in Sec. 1572.9 in a form and manner specified by the State and TSA, when TSA requests it, or when

the applicant applies to obtain or renew an HME. The procedures outlined in Sec. 1572.13(g) apply to HME transfers.

(3) When submitting fingerprints and the applicant information required in Sec. 1572.9, the applicant or the applicant's employer is responsible for the TSA fee and the FBI fee.

U.S. Department of Homeland Security  
Arlington, VA 22202



Transportation  
Security  
Administration

April 17, 2006

[REDACTED]

Re: Initial Determination of Security Threat Assessment, [REDACTED] CDL # [REDACTED]

Dear Mr. [REDACTED]

The Transportation Security Administration (TSA) conducts security threat assessments on persons who hold commercial driver's licenses (CDL) with hazardous materials endorsements (HME). The regulations regarding these security threat assessments may be found at Title 49, Code of Federal Regulations (C.F.R.), Part 1572, a copy of which may be located on TSA's website, [www.tsa.gov](http://www.tsa.gov).

TSA will not authorize a state to issue or renew an HME if TSA determines that an individual does not meet the security threat assessment standards described in 49 C.F.R. Section 1572.5. This letter serves as TSA's initial determination that you pose or are suspected of posing a security threat and may not be eligible to obtain or renew your HME on your CDL.

**BASIS FOR INITIAL DETERMINATION OF THREAT ASSESSMENT**

After a review of certain records, TSA has determined or suspects that you pose a security threat because:

Your criminal history record shows that you were convicted of a disqualifying criminal offense, Perjury, in Redwood City, California, on or about January 8, 2004, and sentenced to 180 days incarceration. In addition, your criminal history record shows that you were arrested, indicted, or otherwise have an open disposition for a potentially disqualifying criminal offense, Perjury, in Redwood City, California, on or about July 2, 2003. Under Section 1572.103, you are disqualified from holding an HME if either the date of your HME application is less than seven years from the date of your conviction or if you were sentenced to a period of incarceration, the date of your application is less than five years since you were released from jail, prison, or other correctional institution.

Please provide TSA with written proof **within 45 days after the date of service of this letter** that the aforementioned legal matters did not result in a disqualifying criminal conviction and/or incarceration. If TSA does not receive proof in that time and you take no further action, TSA's security threat assessment will automatically become final 45 days after the date of service of this letter and you will not be permitted to renew or obtain an HME on your CDL.

Please note, convictions for certain offenses will permanently preclude you from holding an HME, while convictions for other offenses will only preclude you from holding an HME for a period of time. Please refer to TSA's website for a complete list of disqualifying criminal offenses which constitute a permanent ban and those offenses which are a temporary ban from holding an HME.

Prior to TSA directing the state whether to issue or renew your HME, you may seek releasable materials upon which this initial determination of security threat assessment is based, submit an appeal, and/or request a waiver. For information on how to do any of the foregoing, please refer to the insert provided with this letter.

#### INSTRUCTIONS TO SEND CORRESPONDENCE TO TSA


All correspondence to TSA should have the TSA HAZMAT Request Cover Sheet attached to the front of your correspondence. This cover sheet can be found at the end of this letter and includes your full name, mailing address, and CDL number. Please change any information on this cover sheet that is incorrect. You should check one of the request boxes on this cover sheet and attach it to the front of your correspondence.

Correspondence must be mailed to:

Transportation Security Administration  
TSA HAZMAT Processing Center  
P.O. Box 8117  
Fredericksburg, VA 22404-8117

You are not required to obtain an attorney to seek releasable documents, dispute this initial determination, and/or seek a waiver and/or time extension, but may do so at your own expense.

Sincerely,



Frank Skroski  
Program Manager, Adjudication Center

Enclosure



U.S. Department of Homeland Security  
Arlington, VA 22202



Transportation  
Security  
Administration

**HOW TO REQUEST RELEASABLE MATERIALS,  
APPEAL A SECURITY THREAT ASSESSMENT, AND FILE A WAIVER**

**CAN I REQUEST MATERIALS UPON WHICH THE THREAT ASSESSMENT IS BASED?**

You may submit a request (typed or legibly written) to the Transportation Security Administration (TSA) seeking releasable materials within 30 days from the date of service of the letter indicating that you pose or are suspected of posing a security threat. TSA will serve you with copies of the releasable materials no later than 30 days after receiving your request or longer period as TSA may determine for good cause.<sup>1</sup>

**CAN I APPEAL THE THREAT ASSESSMENT?**

You may submit an appeal (typed or legibly written) disputing TSA's initial determination of security threat assessment. This appeal must include the reason(s) why you dispute TSA's determination. You must also provide supporting documents, for example, you must be able to demonstrate that:

- The open disposition referenced in TSA's initial determination of security threat assessment did not result in a conviction for the offense charged;
- The criminal conviction referenced in TSA's initial determination of security threat assessment is incorrect, you received a pardon, or the conviction was expunged or overturned on appeal;
- You are: a) a citizen of the United States who has not renounced or lost his or her United States' citizenship; b) a lawful permanent resident of the United States, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1101); or c) an individual who is: i) in lawful nonimmigrant status and possesses valid evidence of unrestricted employment authorization; ii) a refugee admitted under 8 U.S.C. § 1157, and possesses valid evidence of unrestricted employment authorization; or iii) an alien granted asylum under 8 U.S.C. § 1158, and possesses valid evidence of unrestricted employment authorization; or
- You were not found to be lacking mental capacity or were not committed to a mental institution.

<sup>1</sup> TSA does not disclose 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.

### WHAT IS THE TIME FRAME FOR AN APPEAL?

You must send your appeal to TSA:

- Within 45 days of service of TSA's initial determination of security threat assessment, *if* you are providing written proof that the open disposition identified in the initial determination did not result in a criminal conviction;
- Within 30 days of service of TSA's initial determination of security threat assessment, *if* you are providing proof that the conviction identified in the initial determination is incorrect, you received a pardon, or the conviction was expunged or overturned on appeal; you meet the immigration status requirements; or were not found to be lacking mental capacity or were not committed to a mental institution; or
- Within 30 days after the date of service of TSA's response. *if* you have requested releasable materials.

Within 30 calendar days of receipt of your appeal,<sup>2</sup> TSA will respond and will also notify the state whether you are eligible to receive a hazardous materials endorsement (HME).

### CAN I REQUEST A WAIVER?

The waiver process is designed to permit drivers who are disqualified from holding an HME to demonstrate that they are rehabilitated and no longer pose a security threat. You may be eligible to apply for a waiver if the security threat assessment is based upon a finding that you lack mental capacity, a finding that you were committed to a mental institution, or if the security threat assessment is based upon your conviction for one of the following crimes:

- Arson
- Assault with intent to murder
- Bribery
- Dishonesty, fraud, or misrepresentation, including identity fraud ✓
- Distribution of, possession with intent to distribute, or importation of a controlled substance
- Extortion
- Immigration violations
- Improper transportation of hazardous materials
- Kidnapping or hostage taking
- Murder
- Rape or aggravated sexual abuse
- Robbery
- A crime involving a severe transportation security incident
- Smuggling

<sup>2</sup> Please note that for good cause, TSA may take longer than 30 days to effect notification.

- Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, or storage of an explosive device, firearm, or other weapon
- Unlawful possession, use, sale, distribution, or manufacture of an explosive
- Conspiracy or attempt to commit any of these crimes
- A crime underlying a Racketeer Influenced and Corrupt Organizations Act (RICO) conviction on the above list

#### HOW DO I REQUEST A WAIVER?

You may provide any information in your waiver application that you believe will be helpful to TSA in making a final determination in this matter. In determining whether to grant a waiver, TSA will consider the following:

- The circumstances of the disqualifying act or offense
- Official court documents that show the disposition of your case
- Any Federal or state mitigation remedies
- Official proof of restitution
- Official paperwork demonstrating your completion of all terms of your sentence (time served, probation, community service, etc.)
- A letter from your probation officer and/or a certificate of completion from a rehabilitation program
- A letter of reference from your current supervisor on company letterhead
- Any awards, recognition, or performance appraisals you have received in the past three years that demonstrate your competency or commitment to transportation safety and security
- Court records or official medical release documents indicating that you no longer lack mental capacity
- A letter on official letterhead indicating that you are no longer subject to involuntary commitment and treatment
- Any other information you believe would aid TSA in making a determination on your eligibility for a waiver
- Other factors that indicate that you do not pose a security threat warranting denial of your HME.

To request a waiver, you must send a letter to TSA (typed or legibly written) that includes all of the following information:

- Full name
- Home address
- Phone number
- Date of birth
- Place of birth (city, state, country)
- Social security number or alien registration number
- Driver's license number and issuing state

- An explanation of the circumstances of the disqualifying offense(s) and any factors you believe are mitigating

If you are eligible, you may apply for a waiver no later than 30 days after the initial determination of security threat assessment becomes final. If a waiver is granted, TSA will notify you and the state in which you applied for the HME.

#### CAN I GET AN EXTENSION OF TIME?

If you need additional time in which to submit a request for documents, materials, information, a waiver, and/or an appeal, you may seek an extension of time by submitting a written request to the address below within a reasonable time prior to the date that such is due. An extension of time will be granted if good cause is shown.

#### WHERE DO I SEND MY REQUEST FOR DOCUMENTS, APPEAL AND/OR WAIVER?

All correspondence to TSA should have the TSA HAZMAT Request Cover Sheet attached to the front of your correspondence. This cover sheet can be found at the end of this letter and includes your full name, mailing address, and CDL number. Please change any information on this cover sheet that is incorrect. You should check one of the request boxes on this cover sheet and attach it to the front of your correspondence.

Correspondence must be mailed to:

Transportation Security Administration  
TSA HAZMAT Processing Center  
P.O. Box 8117  
Fredericksburg, VA 22404-8117

#### WHAT WILL HAPPEN IF I DO NOT APPEAL, REQUEST DOCUMENTS, OR A WAIVER?

If you take no further action, TSA's security threat assessment will automatically become final 30<sup>3</sup> days after you were notified that you pose or are suspected of posing a threat and you will not be permitted to renew or obtain an HME. For purposes of judicial review, the final determination constitutes a final TSA order pursuant to 49 U.S.C. § 46110.

<sup>3</sup> If you take no further action, TSA's security threat assessment will automatically become final 45 days after you were notified that you pose or are suspected of posing a threat, if the threat assessment is based upon an open disposition, arrest, warrant, or indictment.

### TSA HAZMAT REQUEST COVER SHEET

FROM: [REDACTED]

CDL #: [REDACTED]

#### DIRECTIONS FOR THE APPLICANT

Please correct any error in the above identifying information about yourself. You should include this cover sheet at the front of your request. Make your selection below to complete this cover sheet.

- APPEAL (Disputing the initial determination)
- WAIVER (Exclusion for extraordinary cause)
- TIME EXTENSION
- RELEASE OF INFORMATION

Correspondence must be mailed to:

Transportation Security Administration  
TSA HAZMAT Processing Center  
P.O. Box 8117  
Fredericksburg, VA 22404-8117

CASE ID #: [REDACTED]

Closely following these directions will help ensure faster processing of your request.