Transportation Security Administration, DHS

§ 1515.9 Appeal of security threat assessment based on other analyses.

(a) Scope. This section applies to an applicant appealing an Initial Determination of Threat Assessment as follows:

(1) TSA has determined that the applicant for an HME or TWIC poses a security threat as provided in 49 CFR 1572.107.

(2) TSA had determined that an air cargo worker poses a security threat as provided in 49 CFR 1540.205.

(3) TSA had determined that an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, indirect air carriers (IACs), certified cargo screening facilities, or validation firms poses a security threat as provided in 49 CFR 1549.109.

(b) Grounds for appeal. An applicant may appeal an Initial Determination of Threat Assessment if the applicant is asserting that he or she does not pose a security threat. The appeal will be conducted in accordance with the procedures set forth in 49 CFR 1515.5(b), (e), and (f) and this section.

(c) Final Determination of Threat Assessment. (1) If the Assistant Administrator concludes that the applicant poses a security threat, following an appeal, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

(i) In the case of an HME, TSA serves a Final Determination of Threat Assessment on the licensing State.

(ii) In the case of a TWIC, TSA serves a Final Determination of Threat Assessment on the Coast Guard.

(iii) In the case of an air cargo worker, TSA serves a Final Determination of Threat Assessment on the operator.

(iv) In the case of a certified cargo screening facilities worker, TSA serves a Final Determination of Threat Assessment on the operator.

(v) In the case of a validator of certified cargo screening facilities, TSA serves a Final Determination of Threat Assessment on the operator.

(2) The Final Determination includes a statement that the Assistant Administrator has reviewed the Initial Determination, the applicant’s reply and any accompanying information, and any other materials or information available to him or her, and has determined that the applicant poses a security threat warranting denial of the security threat assessment for which the applicant has applied.

(d) Withdrawal of Initial Determination. If the Assistant Administrator concludes that the applicant does not pose a security threat, TSA serves a
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Withdrawal of the Initial Determination upon the applicant, and the applicant's employer where applicable.

(e) Further review. If the Assistant Administrator denies the appeal, the applicant may seek review in accordance with §1515.11 of this part. A Final Determination issued under this section does not constitute a final order of TSA as provided in 49 U.S.C. 46110.

(f) Appeal of immediate revocation. If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies—

(1) If TSA directs a State to revoke an HME pursuant to 49 CFR 1572.13(a).
(2) If TSA invalidates a TWIC by issuing an Initial Determination of Threat Assessment and Immediate Revocation pursuant to 49 CFR 1572.21(d)(3).
(3) If TSA withdraws a Determination of No Security Threat for an individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms.


§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.

(a) Scope. This section applies to the following applicants:

(1) An applicant who seeks review of a decision by TSA denying a request for a waiver under 49 CFR 1515.7.
(2) An applicant for an HME or a TWIC who has been issued a Final Determination of Threat Assessment on the grounds that he or she poses a security threat after an appeal as described in 49 CFR 1515.9.
(3) An individual engaged in air cargo operations who works for certain aircraft operators, foreign air carriers, IACs, certified cargo screening facilities, or validation firms who has been issued a Final Determination of Threat Assessment after an appeal as described in 49 CFR 1515.9.

(b) Request for review. No later than 30 calendar days from the date of service of the decision by TSA denying a waiver or of the Final Determination of Threat Assessment, 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 calendar days, the Final Determination of Threat Assessment will be final with respect to the parties.

(i) 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:

(1) In the case of a review of a denial of a waiver, a copy of the applicant's request for a waiver under 49 CFR 1515.7, including all materials provided by the applicant to TSA in support of the waiver request; and a copy of the decision issued by TSA denying the waiver request. The request for review may not include evidence or information that was not presented to TSA in the request for a waiver under 49 CFR 1515.7. The ALJ may consider only evidence or information that was presented to TSA in the waiver request. If the applicant has new evidence or information, the applicant must file a new request for a waiver under §1515.7 and the pending request for review of a denial of a waiver will be dismissed.

(ii) In the case of a review of a Final Determination of Threat Assessment, a copy of the Initial Notification of Threat Assessment and Final Notification of Threat Assessment; and a copy of the applicant's appeal under 49 CFR 1515.9, 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 under §1515.9. 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 under §1515.9 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.