

INFORMATION COLLECTION SUPPORTING STATEMENT

Sensitive Security Information Threat Assessments

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information. (Annotate the CFR parts/sections affected).***

Section 114(s) of title 49, United States Code (U.S.C.) requires the Transportation Security Administration (TSA) to promulgate regulations governing the protection of Sensitive Security Information (SSI). SSI includes information that would be detrimental to transportation security if publicly disclosed. TSA's SSI regulation, 49 CFR part 1520, establishes certain requirements for the recognition, identification, handling, and dissemination of SSI, including restrictions on disclosure and civil penalties for violations of those restrictions. Individuals may only access SSI if they are a covered person with a need to know as defined by the regulation. Section 525 of the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act) provides that in civil proceedings in the U.S. District Courts, where a party seeking access to SSI demonstrates a substantial need for relevant SSI in the preparation of the party's case and an undue hardship to obtain equivalent information by other means, the party or party's counsel shall be designated as a covered person under 49 CFR part 1520.7, provided that the overseeing judge enters an order protecting the SSI from unauthorized disclosure; the individual undergoes a threat assessment like that done for aviation workers, including a fingerprint-based criminal history records check (CHRC); and the provision of access to the specific SSI in question in a particular proceeding does not present a risk of harm to the nation.

TSA is implementing section 525 of the DHS Appropriations Act by establishing a process whereby a party seeking access to SSI in a civil proceeding in federal court that demonstrates a substantial need for relevant SSI in preparation of the party's case may request that the party or party representative be granted access to the SSI. Additionally, court reporters that are required to record or transcribe testimony containing specific SSI and do not have a current clearance required for access to classified national security information as defined by Executive Order 12958 will need to request to be granted access to SSI. In order to determine if the individual may be granted access to SSI for this purpose, TSA will conduct a threat assessment, including a CHRC. TSA is seeking emergency processing of this information collection request to implement sec. 525 of the DHS Appropriations Act and meet ongoing litigation deadlines in pending litigation, including those in *In Re: September 11 Litigation*, 21 MC 97 & 101 (AKH) (S.D.N.Y.).

The Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, sec. 114 (f), authorizes TSA to perform threat assessments. In order to conduct the required threat assessment and determine whether the provision of access to specific SSI would present a risk of harm to the nation, TSA is requiring individuals to submit identifying information, information regarding the litigation, an explanation supporting the party's need for the information, information concerning the individual's bar membership, if applicable, and information concerning sanctions, if any, issued by a court or other judicial body to the

individual or any of the individual's clients. These individuals must also submit fingerprints for purposes of conducting the CHRC.

- 2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.***

TSA will use the information to conduct threat assessments which will include (1) a CHRC; (2) a name-based check to determine whether the individual poses or is suspected of posing a threat to transportation or national security, including checks against terrorism, immigration or other databases TSA maintains or uses; and (3) a professional responsibility check (if applicable) for the purpose of identifying those situations in which providing SSI access to a particular individual would present a risk of harm to the nation. The results of the threat assessment will be used by TSA to make a final determination on whether the individual may be granted access to SSI. TSA will also use the information to determine whether provision of access to specific SSI would present a risk of harm to the nation.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden. [Effective 03/22/01, your response must SPECIFICALLY reference the Government Paperwork Elimination Act (GPEA), which addresses electronic filing and recordkeeping, and what you are doing to adhere to it. You must explain how you will provide a fully electronic reporting option by October 2003, or an explanation of why this is not practicable.]***

Individuals seeking access to SSI in civil proceedings in federal court will be required to submit a questionnaire and certification with personally identifying information and fingerprints at a physical location designated by TSA, such as a government office or a TSA contractor location. TSA or the United States Attorneys Office will likely email the form to individuals. The information will be sent to TSA for use in the threat assessment.

In the future, TSA may provide the form electronically but, at this point, a fully electronic reporting option is not practicable because the certification requires an original signature. However, so as to reduce the travel burden on respondents, individuals can submit the questionnaire and certification coincident with the submission of their fingerprints.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose(s) described in Item 2 above.***

Similar information is not already available to TSA, because the information collected is the personally identifying information of individuals who are involved in pending civil proceedings in federal courts. Also, TSA needs a sworn statement from these individuals

who will potentially receive SSI so it would not be feasible to obtain this information elsewhere.

5. ***If the collection of information has a significant impact on a substantial number of small businesses or other small entities (Item 5 of the Paperwork Reduction Act submission form), describe the methods used to minimize burden.***

This collection does not have a significant impact on a substantial number of small businesses.

6. ***Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.***

If this collection is not conducted, TSA will be unable to implement sec. 525 of the DHS Appropriations Act and meet ongoing litigation deadlines in pending litigation, including those in In Re: September 11 Litigation, 21 MC 97 &101 (AKH) (S.D.N.Y.).

7. ***Explain any special circumstances that require the collection to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.5(d)(2).***

This collection will be conducted consistent with the information collection guidelines.

8. ***Describe efforts to consult persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d) soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.***

In light of ongoing litigation deadlines in pending litigation, TSA is seeking emergency processing of this request, and has published a notice in the Federal Register on November 1, 2006 announcing our intent to do so (71 FR 64288).

9. ***Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.***

TSA will not provide any payment or gift to respondents.

10. ***Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.***

Although there is no assurance of confidentiality to any respondent, TSA will handle all records in accordance with the Privacy Act of 1974 and other applicable laws and regulations.

11. Provide additional justification for any questions of sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

TSA will not ask any questions of a sensitive or private nature.

12. Provide estimates of hour burden of the collection of information.

TSA estimates that approximately 80 individuals will require a threat assessment to determine eligibility to receive SSI on an annual basis. TSA estimates the hour burden per respondent to compile and submit the required information to be one hour, for a total annual hour burden of 80 hours.

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information.

The total annual cost burden to respondents as a result of this collection is \$1,760, which accounts for the cost of processing their fingerprints [\$22 per person X 80 respondents].

14. Provide estimates of annualized cost to the Federal Government. Also, provide a description of the method used to estimate cost, and other expenses that would not have been incurred without this collection of information.

TSA estimates the annual costs to the Federal Government as a result of this collection to be approximately \$2900, which includes the costs for TSA to process threat assessments (\$25 per person x 80) as well as the cost for a TSA employee to review the questionnaire (approximately \$900).

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

This is a new collection of information.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

TSA will not publish the results of this collection.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

TSA will display the expiration date.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

TSA is not seeking any exceptions to the certification statement.