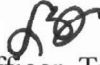




Transportation
Security
Administration

MEMORANDUM FOR: Nathan Lesser
OMB DHS Desk Officer

THROUGH Lisa Dean 
Privacy Officer, Transportation Security Administration

FROM: Scott Charbo
Chief Information Officer, Department of Homeland Security

SUBJECT: Request for Emergency Clearance for the Security Threat
Assessment Questionnaire

TSA is seeking emergency processing of this information collection request to implement Section 525(d) of the Department of Homeland Security Appropriations Act of 2007 (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.).

Section 525(d) 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 Sensitive Security Information (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 criminal history records check and threat assessment; 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.

With passage of section 525(d) in October 2006, Congress directed that, subject to the conducting of appropriate background checks, TSA authorize SSI access in *In Re: September 11 Litigation*, Nos. 21 MC 97 & 101 (S.D.N.Y.), the consolidated tort litigation arising out of the events of September 11, 2001, and other pending federal district court cases, overruling TSA's long-stated policy that access would not be granted to non-regulated parties in civil litigation under any condition. TSA believes use of the normal clearance procedures at this time would frustrate Congressional intent to provide this access in a timely manner, thereby resulting in public harm. TSA is unable to determine whether the relevant individuals can receive SSI access until it receives this clearance from OMB, and without emergency approval, the individuals will be unable to meet ongoing litigation deadlines in pending litigation. By way of example, more than 60 attorneys representing plaintiffs and defendants in the 9/11 litigation currently seek access to SSI for use in the litigation. The parties are heavily engaged in discovery based on pressure by the Court to complete in the near term what already has been many years of discovery. As a result, multiple depositions are scheduled for almost every week for the next several months, and the Court has directed the parties to begin double-tracking depositions in February in order to speed things up. Although the Court has not set a firm discovery cut-off

date, Judge Hellerstein has indicated that March 31, 2007, is his goal. The parties cannot complete discovery without access to SSI and likely will have to recall witnesses for questioning on relevant SSI once they are permitted access to the information. The parties and the Court expect that TSA will complete the clearances as soon as possible, and TSA has represented to the Court that it is working to do so.

While TSA is seeking emergency review of this request, after receiving the OMB control number, TSA will immediately proceed to follow the normal clearance process, which includes publishing the required Federal Register notices soliciting public comment. Your expedited action on this request is appreciated.