

INFORMATION COLLECTION SUPPORTING STATEMENT

Sensitive Security Information Threat Assessments

1652-0042

Exp: 03/31/2021

- 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(r) and 44912(d) of title 49, United States Code (U.S.C.), require 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 safety or security if publicly disclosed. TSA's SSI regulations at 49 CFR part 1520 establish 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 (as defined in 49 CFR 1520.7) with a need to know (as defined in 49 CFR 1520.11). To mitigate the risk of unauthorized disclosure, TSA may also require a security background check before someone may have access to SSI information. See 49 CFR 1520.11(c) and 49 U.S.C. section 114(f)(4).

TSA has also established processes for individuals not defined as "covered persons" under 49 CFR 1520.7 to have access to SSI in certain situations, such as (1) the use of SSI when necessary in federal court proceedings and (2) the sharing of limited SSI for pre-acquisition, procurement, contracting, and other approved purposes. See Section 525(d) of the Department of Homeland Security (DHS) Appropriations Act, 2007, Pub. L. 109-295 (Oct. 4, 2006) (DHS Appropriations Act).¹ Section 525 included a limited expansion of "covered persons." Under this provision, a party in civil proceedings in the U.S. District Courts may seek access to SSI. The request must be limited to SSI relevant to their case and they must demonstrate a substantial need for this information in preparation of the party's case and an undue hardship to obtain equivalent information by other means.

TSA implemented section 525(d) 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. If these requirements are met, 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 adjudication of a fingerprint-based criminal history records check (CHRC) and assessment check of terrorism and related databases; 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. A separate request for access to SSI is required for party-retained experts or

¹ This provision has been consistently reenacted. Most recently in the Consolidated and Further Continuing Appropriations Act, 2013, Pub. L. 113-6, Div. D., Title V., sec. 510 (March 26, 2013).

consultants, as well as court reporters who are required to record or transcribe testimony containing specific SSI who do not have a current security clearance required for access to classified national security information as defined by Executive Order 12958.

Under 49 CFR 1520.11 and 1520.15, TSA has also created a process to authorize the disclosure of SSI to prospective bidders seeking to submit a proposal in response to a request for proposal (RFP) issued by TSA; an individual involved in the performance of contractual agreements (for example, bailments) or other transaction agreements, or an individual receiving access to SSI under 49 CFR 1520.15(e) regarding other conditional disclosures.

TSA is revising the collection to also authorize the disclosure of SSI to individuals who have recently successfully undergone a federal background investigation or hold an active security clearance, as further discussed in the response to question 2.

To determine whether an individual may be granted access to SSI, TSA will conduct a security threat assessment (STA), including adjudication of a CHRC, and/or a name-based check against Federal law enforcement, terrorism, and immigration databases, and/or implement other procedures and requirements for safeguarding SSI that are satisfactory to TSA. Certain individuals will be required to 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 requires individuals seeking access to SSI to submit identifying information to TSA. TSA previously used TSA Form 2211 to capture information from requestors. To address program needs, TSA is revising TSA Form 2211. The form entitled *SSI Access Threat Assessment Questionnaire* will now become two forms: TSA Form 2817A for court proceedings and TSA Form 2817B for standard use. The data points now include identifying information, including, but not limited to, full name (including any aliases), date of birth, place of birth, gender, Social Security Number (optional), employer name (optional); country of citizenship, Known Traveler Number, level of clearance and date granted and information regarding the need for the information (litigant, bidder, etc.).

In addition to the information required for security background checks, TSA requires contract bidders to provide a certification from each company/entity that its employees/personnel who are provided access to SSI are properly trained; a Non-Disclosure Agreement for each individual who is granted access to SSI; and an affirmation that each company/entity will designate a Senior Official who can certify that all appropriate protections will be followed, only authorized individuals will have access to the sensitive information, and that those individuals adequately understand their responsibilities to protect the information. TSA may also require these features for other contractual agreements (*e.g.*, bailments), participants other transaction agreements, or those who receive other conditional SSI disclosures on a case-by-case basis.

In the case of a party seeking access to SSI in a civil proceeding in federal court, TSA will gather the information required for individual vetting and also require these individuals to respond to questions to verify individuals' history in safeguarding sensitive information,

including good standing with bar membership or sanctions; and to agree to abide by TSA instructions concerning the handling of SSI in connection with the court proceeding.

As mentioned in the response to question 1, TSA is also revising the collection to allow individuals who have recently (*i.e.*, within 2 years or as determined appropriate by the program office) successfully undergone a federal background investigation (*i.e.*, Tier 1)² or hold an active security clearance granting access to classified national security information to facilitate the STA to determine whether access to SSI is warranted. TSA previously revised the collection of information to allow the same opportunity to individuals who are members of the TSA PreCheck® Application Program³ to provide a known traveler number (KTN) to facilitate the STA. Under that Program, individuals submit identifying information and fingerprints for a CHRC to help TSA determine eligibility for the Program, very similar to what TSA requires before providing SSI to an individual. TSA will use the information provided as part of the TSA PreCheck® Application Program as part of its determination of an individual's eligibility to be granted access to SSI. TSA has previously disclosed that it will honor comparable STAs an individual may have received from TSA.

TSA uses the information from those seeking access to SSI to conduct threat assessments, which may include adjudication of: (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/or (3) implement other procedures and requirements for safeguarding SSI that are satisfactory to TSA such as a professional responsibility check (for attorneys and court reporters). The results of the threat assessment are used by TSA to make a final determination on whether the individual may be granted access to SSI. TSA also uses the information to determine whether provision of access to specific SSI would present a risk of harm to national or transportation security.

² Beginning in FY 2015, Office of Personnel Management Federal Investigative Standards Tier 1 investigation standards replaced the National Agency Check and Inquiries as the investigation for positions designated as low-risk, non-sensitive. It is also the minimum level of investigation for a final credentialing determination for physical and logical access.

³ TSA is in the process of working with U.S. Customs and Border Protection's to use the KTN received through its Global Entry Program to determine an individual's eligibility to access SSI. TSA is also exploring the use of KTNs received by other DHS Trusted Traveler Programs to determine an individual's eligibility to access SSI. The CBP PASSID is assigned to individuals upon approval for membership in Global Entry, NEXUS, or SENTRI. This nine-digit number usually begins with 98, serves as their known traveler number, and can be found on the back of their NEXUS, SENTRI, or Global Entry card.

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 court proceedings are required to complete a TSA Form 2817A questionnaire and certification and submit it to TSA. If the individual has a KTN, current Federal Background Investigation (*i.e.*, Tier 1), or active security clearance and TSA validates the information, further vetting is not required. If no KTN, current background check, or security clearance is available or the KTN cannot be validated, TSA provides an instruction sheet that informs individuals that they must complete an In-Person Enrollment at a designated Universal Enrollment Services (UES) Center by pre-enrolling online at <https://universalenroll.dhs.gov/> and going in-person to a UES Center for electronic fingerprinting.

Individuals seeking to perfect and submit a bid to TSA, to enter in other contractual performances, or to proceed under other conditional disclosure must either complete and submit the TSA Form 2817B or submit a spreadsheet that contains the required information via email. Either entry shall be encrypted such as by applying password-protection. If the individual has a KTN, current Federal Background Investigation (*i.e.*, Tier 1), or active security clearance and TSA validates the information, further vetting is not required. When collection of biometric information is required, individuals must complete an In-Person Enrollment at a designated Universal Enrollment Services (UES) Center, as noted above.

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.***

TSA is avoiding duplication of efforts and intends to reduce burden by allowing individuals to provide KTNs, current Federal Background Investigation (*i.e.*, Tier 1), or active security clearance to facilitate the STA, or honoring comparable STAs an individual may have received from TSA. In some cases in which an applicant has already received a comparable threat assessment, biographic information may be collected in order to ensure the applicant's identity. In such cases, the previous threat assessment is leveraged and the applicant would not incur a fee since a full assessment does not have to be performed.

For individuals without a KTN, current Federal Background Investigation (*i.e.*, Tier 1), active security clearance, or comparable STA conducted by TSA, the information is not otherwise collected and thus no similar information is available to TSA.

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 is unable to protect critical SSI and implement sec. 525 of the DHS Appropriations Act and meet ongoing litigation deadlines in pending litigation. If this collection is not conducted, TSA is unable to protect critical SSI by managing risk of disclosure in other sharing circumstances not otherwise covered by established vetting procedures (e.g., Federal background investigation for contractors).

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 is 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.***

As required by 5 CFR 1320.8(d), TSA published a 60-day Notice in the Federal Register on May 5, 2020, (85 FR 26709) announcing its intent to renew the OMB control number and solicit public comment, and a 30-day Notice on February 11, 2021, (86 FR 9083). TSA received no comments for either notices.

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

TSA does 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. TSA last published the applicable SORN for this collection, DHS/TSA—002 Transportation Security Threat Assessment System (T-STAS), on August 11, 2014 (79 FR

46862). Privacy Impact Assessment (PIA) coverage for this information collection is provided by DHS/TSA/PIA-008, Sensitive Security Information for Use in Litigation; DHS/TSA/PIA-030 Access to SSI in Contract Solicitations; and DHS/TSA/PIA-045 STA for Conditional Access to SSI.

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 does not ask any questions of a sensitive or private nature.

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

TSA estimates the total number of annual respondents will be 263, including individuals involved as litigants in pending court proceedings, individuals seeking access to SSI to compile and submit bids, individuals seeking access to SSI in contractual, pre-acquisition, or other transaction agreements, and individuals receiving access to SSI under 49 CFR 1520.15(e). The total annual hour burden is 104.53 hours. The following paragraphs provide a summary of each population category, as well as a description of their hourly burden.

TSA estimates that annually, approximately 7 individuals involved in pending court proceedings as litigants will require a threat assessment (including a fingerprint based criminal history record check) to determine eligibility to receive SSI. TSA estimates the time burden per litigant is: 30 minutes to compile and submit the required information, 5 minutes to coordinate the fingerprinting set-up time, 2 minutes to have an identity check, 9 minutes for the fingerprinting, 15 minutes for wait time, and 70 minutes for travel time. The total time burden of 131 minutes (2.183 hours) multiplied by the number of respondents (7) results in a total annual hour burden to litigants of 15.3 hours.⁴ Table 1 displays this calculation.

TSA estimates that annually, approximately 206 individuals seeking access to SSI and submit a bid to TSA will require a threat assessment to determine eligibility to receive SSI. Bidders are asked different questions than litigants, therefore the time burden for these respondents are different from litigant respondents. TSA estimates the time burden for 196 of the 206 estimated bidders is 15 minutes to compile and submit the required information. The total burden of 15 minutes (0.25 hours) multiplied by 196 respondents results in a total annual hour burden to bidders of 49 hours. In some instances, TSA may also require a fingerprint based criminal history record check for bidders, affecting the remaining 10 of the 206 estimated respondents. In those instances, TSA estimates the time burden per bidder is: 15 minutes to compile and submit the required information, 5 minutes to coordinate the fingerprinting set-up time, 2 minutes to have an identity check, 9 minutes for the fingerprinting, 15 minutes for wait time, and 70 minutes for travel time. The total time burden of 116 minutes (1.93 hours) multiplied by an estimated 10 number of respondents results in a total annual hour burden to bidders needing fingerprints of 19.33 hours.⁵ Table 1 displays this calculation.

⁴ As stated in the response to Question 4, individuals who have already received a comparable threat assessment from TSA will not incur this burden.

⁵ As stated in the response to Question 4, individuals who have already received a comparable threat assessment from TSA will not incur this burden.

TSA estimates that annually, approximately 30 individuals seek access to SSI as a result of contractual or pre-acquisition agreements (*e.g.*, bailments, other transaction agreements) and will require a threat assessment to determine eligibility to receive SSI. For 25 of the estimated 30 individuals, TSA estimates the time burden per contractual, pre-acquisition, or other agreements respondents is 15 minutes to compile and submit the required information. The total burden time of 15 minutes (0.25 hours) multiplied by the number of respondents without criminal history records checks (25) results in a total annual hour burden to individuals seeking access to SSI for contractual, pre-acquisition, or other agreements of 6.25 hours. In some instances, affecting 5 of the estimated 30 individuals, TSA may also require a fingerprint based criminal history record check for individuals seeking access to SSI as a result of contractual agreements. In those instances, TSA estimates the time burden per instance is: 15 minutes to compile and submit the required information, 5 minutes to coordinate the fingerprinting set-up time, 2 minutes to have an identity check, 9 minutes for the fingerprinting, 15 minutes for wait time, and 70 minutes for travel time. The total time burden of 116 minutes (1.93 hours) multiplied by an estimated number of respondents (5) results in a total annual hour burden of 9.67 hours. Table 1 displays this calculation.

TSA estimates that approximately 20 individuals annually seek access to SSI under 49 CFR § 1520.15(e) who will require a threat assessment to determine eligibility to receive SSI. TSA estimates the time burden per respondent as follows: 15 minutes to compile and submit the required information. The total burden time of 15 minutes (0.25 hours) multiplied by the number of respondents (20) results in a total annual hour burden for individuals seeking access to SSI under 49 CFR 1520.15(e) of 5 hours. Table 1 displays this calculation.

Table 1: Annual Respondents and Burden

| Respondents | Number of Respondents | Time per Respondent (Hours) | Total Burden (Hours) | Hourly Wage Rate | Total Burden Cost |
|---------------------------------|-----------------------|-----------------------------|----------------------|------------------|-------------------|
| | A | B | C = A × B | D | E = C × D |
| Litigants | 7 | 2.183 | 15.28 | \$34.72 | \$531 |
| Bidders | 196 | 0.25 | 49.00 | | \$1,701 |
| Bidders w/ Fingerprinting | 10 | 1.93 | 19.33 | | \$671 |
| Agreements | 25 | 0.25 | 6.25 | | \$217 |
| Agreements w/ Fingerprinting | 5 | 1.93 | 9.67 | | \$336 |
| 49 CFR 1520.15(e) | 20 | 0.25 | 5.00 | | \$174 |
| Annual Total | 263 | | 104.53 | | |

Totals may not add due to rounding.

The annual cost burden to respondents as a result of this collection is \$3,629 (\$34.72⁶ hourly loaded wage rate × 104.53 hours). Table 1 displays this calculation.

⁶ Bureau of Labor Statistics, Released March 19, 2020. Total employer compensation costs (including wages and benefits) for private industry workers averaged \$34.72 per hour worked in December 2019. Table 4. Employer Costs for Employee Compensation for private industry workers by occupational and industry group (Private industry workers). Accessed on June 2, 2020. http://www.bls.gov/news.release/archives/ecec_03192020.htm.

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

TSA estimates that seven respondents involved in pending court proceedings will require a threat assessment, including a fingerprint-based criminal history record check, and will pay a \$14.50 fingerprint fee. In addition, ten respondents seeking access to SSI to submit a bid, and five respondents seeking access to SSI as a result of contractual agreements will also pay the fingerprint fee. Thus, the annual cost burden to these respondents from this fee is \$319 (\$14.50 fingerprint fee × 22 respondents). As stated in the response to Question 4, individuals who have already received a comparable threat assessment from TSA will not incur a fee.

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 \$8,191. The component costs are as follows: \$78.75 for the CHRC (\$11.25⁷ per CHRC × 7 respondents), \$6,437 for TSA staff to review the SSI requests (\$24.48⁸ hourly loaded D Band wage rate × 1 hour × 263 respondents), and \$1,675 for adjudications (10 minutes of a G/H Band hourly loaded wage rate of \$38.22⁹ × 263 respondents). \$8,191 = \$78.75 + \$6,437 + \$1,675.

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

TSA has updated the cost burden for this collection with the latest available data. There was a decrease in estimated Federal Government costs due to no longer having a \$1,200 enrollment system cost. Also, respondents who have already received a comparable threat assessment from TSA will not incur a fee.

⁷ Federal Bureau of Investigation Criminal Justice Information Services Division User Fee Schedule. September 24, 2018. Accessed on June 8, 2020.

⁸ D Band TSA personnel located at TSA HQ in Arlington, VA. D-Band loaded pay rate is \$51,080.45 per year TSA, Washington DC Metropolitan Area Locality Pay, D-Band \$24.48 = \$51,080.45 annual compensation ÷ 2,087 hours and J-Band \$83.17 = \$173,585 annual compensation ÷ 2,087 hours (Office Personnel Management changed the 2,080 work hours for federal employees to 2,087 by amending 5 U.S.C. 5504(b). Source: Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. Law 99-272, 100 Stat. 82, April 7, 1986)).

⁹ G/H Band TSA personnel located at TSA HQ in Arlington, VA. G-Band loaded pay rate is \$75,118.82 per year TSA, Washington DC Metropolitan Area Locality Pay. G-Band \$35.99 = \$75,118.82 annual compensation ÷ 2,087 hours. H-Band loaded pay rate is \$84,399.33 per year TSA, Washington DC Metropolitan Area Locality Pay. H-Band \$40.44 = \$84,399.33 annual compensation ÷ 2,087 hours (Office Personnel Management changed the 2,080 work hours for federal employees to 2,087 by amending 5 U.S.C. 5504(b). Source: Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. Law 99-272, 100 Stat. 82, April 7, 1986)). G/H-Band loaded rate of \$38.22 = (\$35.99 G-Band loaded rate + \$40.44 H-Band loaded rate) ÷ 2.

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.