

Final Notification includes a statement that the Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, or upon review, the Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

[68 FR 3761, Jan. 24, 2003, as amended at 68 FR 49721, Aug. 19, 2003]

§ 1540.117 Threat assessments regarding aliens holding or applying for FAA certificates, ratings, or authorizations.

(a) *Applicability.* This section applies when TSA has determined that an individual who is not a citizen of the United States and who holds, or is applying for, an airman certificate, rating, or authorization issued by the FAA Administrator, poses a security threat.

(b) *Definitions.* The following terms apply in this section:

Assistant Administrator means the Assistant Administrator for Intelligence for TSA.

Date of service means—

- (1) The date of personal delivery in the case of personal service;
- (2) The mailing date shown on the certificate of service;
- (3) The date shown on the postmark if there is no certificate of service; or
- (4) Another mailing date shown by other evidence if there is no certificate of service or postmark.

Deputy Administrator means the officer next in rank below the Administrator.

FAA Administrator means the Administrator of the Federal Aviation Administration.

Individual means an individual whom TSA determines poses a security threat.

(c) *Security threat.* An individual poses a security threat when the individual is suspected of posing, or is known to pose—

- (1) A threat to transportation or national security;
- (2) A threat of air piracy or terrorism;
- (3) A threat to airline or passenger security; or
- (4) A threat to civil aviation security.

(d) *Representation by counsel.* The individual may, if he or she so chooses, be represented by counsel at his or her own expense.

(e) *Initial Notification of Threat Assessment—(1) Issuance.* If the Assistant Administrator determines that an individual poses a security threat, the Assistant Administrator serves upon the individual an Initial Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Initial Notification includes—

- (i) A statement that the Assistant Administrator personally has reviewed the materials upon which the Initial Notification was based; and
- (ii) A statement that the Assistant Administrator has determined that the individual poses a security threat.

(2) *Request for materials.* Not later than 15 calendar days after the date of service of the Initial Notification, the individual may serve a written request for copies of the releasable materials upon which the Initial Notification was based.

(3) *TSA response.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after receiving the individual's request for copies of the releasable materials upon which the Initial Notification was based, TSA serves a response. TSA will not include in its response any classified information or other information

described in paragraph (g) of this section.

(4) *Reply.* The individual may serve upon TSA a written reply to the Initial Notification of Threat Assessment not later than 15 calendar days after the date of service of the Initial Notification, or the date of service of TSA's response to the individual's request under paragraph (e)(2) if such a request was served. The reply may include any information that the individual believes TSA should consider in reviewing the basis for the Initial Notification.

(5) *TSA final determination.* Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the individual's reply, TSA serves a final determination in accordance with paragraph (f) of this section.

(f) *Final Notification of Threat Assessment—(1) In general.* The Deputy Administrator reviews the Initial Notification, the materials upon which the Initial Notification was based, the individual's reply, if any, and any other materials or information available to him.

(2) *Issuance of Final Notification.* If the Deputy Administrator determines that the individual poses a security threat, the Deputy Administrator serves upon the individual a Final Notification of Threat Assessment and serves the determination upon the FAA Administrator. The Final Notification includes a statement that the Deputy Administrator personally has reviewed the Initial Notification, the individual's reply, if any, and any other materials or information available to him, and has determined that the individual poses a security threat.

(3) *Withdrawal of Initial Notification.* If the Deputy Administrator does not determine that the individual poses a security threat, TSA serves upon the individual a Withdrawal of the Initial Notification and provides a copy of the Withdrawal to the FAA Administrator.

(g) *Nondisclosure of certain information.* In connection with the procedures under this section, TSA does not disclose to the individual classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other in-

formation or material not warranting disclosure or protected from disclosure under law.

[68 FR 3768, Jan. 24, 2003]

Subpart C—Security Threat Assessments

SOURCE: 72 FR 3592, Jan. 25, 2007, unless otherwise noted.

§ 1540.201 Applicability and terms used in this subpart.

(a) This subpart includes the procedures that certain aircraft operators, foreign air carriers, and indirect air carriers must use to have security threat assessments done on certain individuals pursuant to 49 CFR 1544.228, 1546.213, 1548.7, 1548.15, and 1548.16. This subpart applies to the following:

(1) Each aircraft operator operating under a full program or full all-cargo program described in 49 CFR 1544.101(a) or (h).

(2) Each foreign air carrier operating under a program described in 49 CFR 1546.101(a), (b), or (e).

(3) Each indirect air carrier operating under a security program described in 49 CFR part 1548.

(4) Each applicant applying for unescorted access to cargo under one of the programs described in (a)(1) through (a)(3) of this section.

(5) Each proprietor, general partner, officer, director, or owner of an indirect air carrier as described in 49 CFR 1548.16.

(b) For purposes of this subpart—
Applicant means the individuals listed in paragraph (a)(4) and (a)(5) of this section.

Operator means an aircraft operator, foreign air carrier, and indirect air carrier listed in paragraphs (a)(1) through (a)(3) of this section.

(c) An applicant poses a security threat under this subpart when TSA determines that he or she is known to pose or suspected of posing a threat—

- (1) To national security;
- (2) To transportation security; or
- (3) Of terrorism.

[72 FR 3592, Jan. 25, 2007; 72 FR 14049, Mar. 26, 2007]