

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 Under Secretary of Transportation for Security.

FAA Administrator means the Administrator of the Federal Aviation Administration.

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

Under Secretary means the Under Secretary of Transportation for Security.

(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) *Review and Issuance of Final Notification*. If the Deputy Administrator determines that the individual poses a security threat, the Under Secretary 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. If the Under Secretary determines that the individual poses a security threat, the Under Secretary 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 Under Secretary 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 Under Secretary 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.

Issued in Washington, DC on January 21, 2003.

J.M. Loy,

Under Secretary of Transportation for Security.

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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

[Docket No. TSA-2002-13733; Amendment No. 1540-4]

RIN 2110-AA17

Threat Assessments Regarding Alien Holders of, and Applicants for, FAA Certificates

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule establishes the procedure by which TSA will notify the subject individual and the Federal Aviation Administration (FAA) of TSA's assessment that an individual who is an alien and who holds or is applying for an FAA airman certificate, rating, or authorization poses a security threat. This procedure provides such individuals notice and an opportunity to be heard before TSA makes a final decision, while furthering the federal government's important and immediate interest in protecting national security and providing the nation with a safe and secure transportation system.

DATES: Effective on January 24, 2003. Submit comments by March 25, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number TSA-2002-13733 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal