on display 10:09 am 1-22-03
publishes 1-24-03 in part 7

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

[Docket No.: FAA-2003-14293; Amendment Nos. 61-108, 63-32, 65-44]

RIN 2120–AH84

Ineligibility for an Airman Certificate Based on Security Grounds

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule expressly makes a person ineligible to hold FAA-issued airman certificates if the Transportation Security Administration notifies the FAA in writing that the person poses a security threat. This action is intended to reduce the opportunity for persons to carry out terrorist acts in the aviation environment.

DATES: Effective [Insert date ~~of~~ January 24, 2003 publication in the Federal Register]. Submit comments by [Insert date 60 days after March 25, 2003 date of publication in the Federal Register].

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW, Washington, DC 20590. You must identify the docket number FAA-2003-14293 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA 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 9:00 a.m. and 5:00p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. You may also review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Peter J. Lynch, Enforcement Division, AGC-300, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone No. (202) 267-3137.

SUPPLEMENTARY INFORMATION

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without notice. Accordingly, interested persons are invited to participate in the rulemaking by submitting written data, views, or arguments. Comments relating to the environmental, energy, federalism, or economic impact that might result from these amendments also are invited. Comments must include the docket number or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. The final rule may be amended in light of the comments received.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at http://www.faa.gov/avr/armhome.htm or the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official,

or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at our site, http://www.faa.gov/avr/arm/sbrefa.htm. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background

In response to the tragic events of September 11, 2001, Congress enacted and the President signed the Aviation and Transportation Security Act (ATSA), Public Law 107-71. This law created the Transportation Security Administration (TSA) under the direction of the Under Secretary of Transportation for Security. The Under Secretary is charged with responsibility for civil aviation security as well as security in other modes of transportation. Among other responsibilities, the Under Secretary is to receive, assess, and distribute intelligence information related to transportation security and to assess threats to transportation. The ATSA also directs the Under Secretary to establish procedures to notify the FAA Administrator of the identity of persons known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.

The ATSA directs the Administrator to make modifications to the system for issuing airman certification to make the system more effective in serving the needs of officials responsible for enforcing laws related to combating acts of terrorism.

The Under Secretary receives information from intelligence sources that identify specific individuals who pose a security risk. In some cases, these individuals hold airman certificates issued by the FAA. On August 14, 2002, the Under Secretary advised the Administrator of 11 such individuals and asked the Administrator to revoke the

airman certificates held by them. On August 20, the FAA took the requested action by issuing emergency orders of revocation. These orders became effective immediately.

By rulemakings published today in the Federal Register, the TSA has put in place processes for notifying an individual that he or she has been determined to pose a security threat and to advise the FAA of its determination. One process applies to citizens of the United States, the other to aliens. Under both procedures, the individual is served with an Initial Notification of Threat Assessment when the TSA's Assistant Administrator for Intelligence has concluded that the individual poses a security threat. The individual may respond in writing to this notification and provide any information the individual believes the TSA should consider. In the case of an alien, if the TSA's Deputy Administrator finds that the person does pose a security threat, he or she issues a Final Notification of Threat Assessment. If the Deputy Administrator does not determine that the individual poses a security threat, he or she issues a Withdrawal of Initial Notification. In the case of a U.S. citizen, the Under Secretary will also review the matter before a Final Notification of Threat Assessment is issued. If the Under Secretary determines that the individual poses a security threat, the Under Secretary issues a Final Notification of Threat Assessment. If the Deputy Administrator or Under Secretary does not find that the person poses a threat, the TSA issues a Withdrawal of Initial Notification. At the time the TSA issues its notifications, the FAA is advised of the TSA's determinations with regard to individuals who hold or are applying for an airman certificate.

Once the TSA has determined that a person poses a security threat, that person should not hold an airman certificate authorizing him or her to be in a position that could be used to take actions that are contrary to civil aviation security and, therefore, safety in

air commerce. Airmen are in a position to exercise the privileges of their certificates in support of terrorist activities. For example, pilots could drop chemical or biological agents from an aircraft or, as the events of September 11 demonstrated, crash aircraft into buildings. Mechanics could sabotage aircraft, and flight instructors could teach terrorists how to operate aircraft. While a person might attempt to undertake such actions even if he or she does not hold an airman certificate, taking action to deny, suspend, or revoke airman certification is intended to make it more difficult to do so. In any event, persons determined by the TSA to pose a security threat are simply unqualified to hold airman certificates.

The FAA is adding a section to 14 CFR parts 61, 63, and 65 to expressly make individuals who pose a security threat as determined by the TSA ineligible to hold certificates, ratings, and authorizations issued under those parts. This ineligibility means that the FAA will not issue a certificate, rating, or authorization to any applicant who the TSA advises the FAA poses a security threat. If the TSA issues an Initial Notification of Threat Assessment to an applicant, the FAA will hold in abeyance the application pending the outcome of the TSA's final threat assessment review. If an individual is issued a Final Notification of Threat Assessment, the FAA will deny an application for any airman certificate, rating, or authorization.

With regard to certificates already issued, the FAA will suspend an individual's airman certificates after receiving the Initial Notification of Threat Assessment from the TSA. Suspension is appropriate in this circumstance, because the TSA's initial assessment that an individual poses a security threat is still subject to review by the TSA's Deputy Administrator, and, for U.S. citizens, the Under Secretary, and may be

reversed. If a Final Notification of Threat Assessment is issued, the FAA will revoke the certificates; if an Initial Notification is withdrawn, the FAA will withdraw its certificate suspension.

The eligibility standards adopted in this rulemaking rely on the threat assessments made by the TSA. This reliance is based on the broad statutory authority and responsibility that the ATSA placed in the Under Secretary with regard to intelligence information and threat assessments.

The Rule Change

The FAA is adding a new section, § 61.18, Security Disqualification, to 14 CFR part 61. This rule states that a person is not eligible to hold a certificate, rating, or authorization issued under part 61 when the TSA has advised the FAA in writing that the person poses a security threat. The TSA's initial finding that a person poses a security threat is contained in an Initial Notification of Threat Assessment; a final finding is contained in a Final Notification of Threat Assessment. The rule explains the effect of the issuance by the TSA of each document. The FAA will hold in abeyance an application by an individual who has been issued an Initial Notification pending the outcome of the TSA's final threat assessment review. If the TSA withdraws its Initial Notification, the FAA will issue a certificate provided the applicant is otherwise qualified. The FAA will suspend certificates held by any person who is initially found by the TSA to pose a security threat. The FAA will withdraw its certificate suspension if the TSA withdraws its Initial Notification. With regard to issuance of a Final Notification of Threat Assessment, the FAA will deny the application of any person to whom the TSA issues a Final Notification of Threat Assessment, and it will revoke any airman

certificates held by such a person. New sections 63.14 and 65.14 are being added to 14 CFR parts 63 and 65; they are identical to section 61.18.

Justification for Immediate Adoption

This action is being taken without providing the opportunity for prior notice and comment, and it provides for immediate effectiveness upon adoption. The Administrator has determined this action is necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States. The FAA, after consultation with the TSA, has determined that this action is necessary to minimize security threats and potential security vulnerabilities to the fullest extent possible. The FAA, TSA, and other federal security organizations have been concerned about the potential use of aircraft to carry out terrorist acts in the United States since September 11. The FAA now believes it is appropriate to provide expressly by rule that an individual determined by the TSA to be a security threat is ineligible for airman certification. This rule thus codifies the fundamental and inherently obvious principle that a person who poses a security threat should not hold an FAA-issued airman certificate.

The FAA finds that notice and comment are unnecessary, impracticable, and contrary to the public interest, pursuant to section 553 of the Administrative Procedure Act (APA). Section 553(b) of the APA permits an agency to forgo notice and comment rulemaking when "the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." The use of notice and comment prior to issuance of this rule could delay the ability of the FAA to take effective action to keep persons found by the TSA to pose a security threat from holding an airman certificate. Further, the Administrator finds that good cause

exists under 5 U.S.C. 553(d) for making this final rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States.

Paperwork Reduction Act

There are no new requirements for information collection associated with this amendment. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. The FAA has not separately prepared a regulatory analysis or evaluation of this rule. However, the TSA has prepared a regulatory evaluation for its rulemaking and we do not believe that this action adds any separate costs not already covered by that evaluation. Based on that evaluation, the FAA determines that this rulemaking action is a significant rule within the meaning of the

Executive Order and DOT's policies and procedures. Further, the FAA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose no cost on international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Parts 61, 63, and 65

Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 61-CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

2. Add § 61.18 to subpart A to read as follows:

§ 61.18 Security disqualification.

(a) Eligibility standard. No person is eligible to hold a certificate, rating, or authorization issued under this part when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat.

(b) Effect of the issuance by the TSA of an Initial Notification of Threat Assessment. (1) The FAA will hold in abeyance pending the outcome of the TSA's final threat assessment review an application for any certificate, rating, or authorization under this part by any person who has been issued an Initial Notification of Threat Assessment by the TSA.

(2) The FAA will suspend any certificate, rating, or authorization issued under this part after the TSA issues to the holder an Initial Notification of Threat Assessment.

(c) Effect of the issuance by the TSA of a Final Notification of Threat Assessment. (1) The FAA will deny an application for any certificate, rating, or

authorization under this part to any person who has been issued a Final Notification of Threat Assessment.

(2) The FAA will revoke any certificate, rating, or authorization issued under this part after the TSA has issued to the holder a Final Notification of Threat Assessment.

PART 63-CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

4. Add § 63.14 to subpart A to read as follows:

§ 63.14 Security disqualification.

(a) Eligibility standard. No person is eligible to hold a certificate, rating, or authorization issued under this part when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat.

(b) Effect of the issuance by the TSA of an Initial Notification of Threat Assessment. (1) The FAA will hold in abeyance pending the outcome of the TSA's final threat assessment review an application for any certificate, rating, or authorization under this part by any person who has been issued an Initial Notification of Threat Assessment by the TSA.

(2) The FAA will suspend any certificate, rating, or authorization issued under this part after the TSA issues to the holder an Initial Notification of Threat Assessment.

(c) Effect of the issuance by the TSA of a Final Notification of Threat Assessment. (1) The FAA will deny an application for any certificate, rating, or authorization under this part to any person who has been issued a Final Notification of Threat Assessment.

(2) The FAA will revoke any certificate, rating, or authorization issued under this part after the TSA has issued to the holder a Final Notification of Threat Assessment.

PART 65-CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

6. Add § 65.14 to subpart A to read as follows:

§ 65.14 Security disqualification.

(a) Eligibility standard. No person is eligible to hold a certificate, rating, or authorization issued under this part when the Transportation Security Administration (TSA) has notified the FAA in writing that the person poses a security threat.

(b) Effect of the issuance by the TSA of an Initial Notification of Threat Assessment. (1) The FAA will hold in abeyance pending the outcome of the TSA's final threat assessment review an application for any certificate, rating, or authorization under this part by any person who has been issued an Initial Notification of Threat Assessment by the TSA.

(2) The FAA will suspend any certificate, rating, or authorization issued under this part after the TSA issues to the holder an Initial Notification of Threat Assessment.

(c) Effect of the issuance by the TSA of a Final Notification of Threat Assessment. (1) The FAA will deny an application for any certificate, rating, or authorization under this part to any person who has been issued a Final Notification of Threat Assessment.

(2) The FAA will revoke any certificate, rating, or authorization issued under this part after the TSA has issued to the holder a Final Notification of Threat Assessment.

Issued in Washington, DC on JAN 21 2003

Marion Blakey

Marion C. Blakey
Administrator

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Bonnie Fritts
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