

January 25, 2003

This letter is to call your attention to and request your assistance to modify recent rulemaking by the Federal Aviation Administration. On Friday, January 24, 2003, (Federal Register page 3772) the FAA issued final notice of rulemaking which “expressly makes a person ineligible to hold FAA-issued airman certificates if the TSA notifies the FAA in writing that the person poses a security threat.” On the surface this appears to be a reasonable rule. However, upon further reading of the rule, any reasonable person should become very alarmed by the total lack of due process in the rule, by the manner in which the rule was promulgated, and by the potential for abuse of the rule.

Clearly, the rule is intended to thwart potential terrorists. This part of the rule makes sense. My area of concern is that this rule, as published, has absolutely no provision for due process for the accused individual. It has the real potential to deprive innocent individuals of their livelihood as well as thousands of dollars worth of training investment should they wrongly be accused of being a “security threat.” In fact, the rule fails to even define what constitutes a “security threat”. All it says is that “TSA will notify you if you are considered a security threat”. You may write them a letter with your side if you even know what has caused them to consider you such a threat. According to the Federal Register, “the eligibility standards adopted in this rule making rely on the threat assessment make by the TSA”. There is no requirement in the rule as published requiring TSA to provide information as to why they consider you a threat. It will be very easy for them to claim privilege to not disclose confidential intelligence information. How can you possibly defend yourself in such a situation?

The method of promulgation of this rule should make every American Citizen concerned for the very principles that this country was founded on. The Federal Register says, “this final rule is being adopted without prior notice and prior public comment.” The justification for its immediate adoption is that the “FAA finds that notice and comment are unnecessary, impracticable and contrary to the public interest”... That the FAA should use this provision of the administrative procedures act is amazingly arrogant given that it has been over 16 months since 9/11/01, time on this issue has not been of the essence and the FAA already has an administrative method to do emergency suspensions of airman certificates, which it cites in its Federal Register Notice.

The potential for abuse of this rule should be very apparent. What if, in the performance of your duties, you have a legitimate disagreement with a security screener, Federal Air Marshal, FAA Inspector or other individual who has the means to report you as a “security threat”? What if you are acting as a “whistle blower” or as an air safety advocate and displease your employer or the FAA? I believe that we had enough of Senator McCarthy in the 1950s with out inventing a new version of such abuse. The potential implications of such abuse are staggering.

I wish I had the exact request for you to fix this individual rule, which is part of a much larger situation. I would suggest that at a minimum the FAA be convinced (or if necessary, required) to include a provision to insure due process to protect the rights of the accused as well as to compensate those innocent individuals who have suffered monetary loss by having been falsely accused.

**Respectfully submitted,
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