

holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

This final rule is being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations within DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this amendment. The most helpful comments will reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. See **ADDRESSES** above for information on how to submit comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these rules in light of the comments we receive.

**Electronic Access**

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);

(2) Accessing the Government Printing Office's Web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html); or

(3) Visiting the TSA's Laws and Regulations Web page at [http://www.tsa.dot.gov/law\\_policy/law\\_policy\\_index.shtm](http://www.tsa.dot.gov/law_policy/law_policy_index.shtm).

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

**Small Entity Inquiries**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at [http://www.sba.gov/advo/laws/law\\_lib.html](http://www.sba.gov/advo/laws/law_lib.html).

**Background**

Following the terrorist attacks on the United States on September 11, 2001, Congress recognized the need for a fundamental change in the federal government's approach to ensuring the security of civil aviation. The September 11 attacks highlighted the fact that the security of the civil aviation system is critical to national security and essential to the basic freedom of Americans to move in intrastate, interstate, and international transportation. See H.R. Conf. Rep. 107-296, 107th Cong., 1st Sess. 53 (2001).

In order to address the need for heightened security in civil aviation and other modes of transportation, Congress passed the Aviation and Transportation Security Act (ATSA), Pub. L. 107-71, 115 Stat. 597 (November 19, 2001). ATSA established the TSA within DOT, operating under the direction of the Under Secretary of Transportation for Security (Under Secretary). TSA is responsible for security in all modes of transportation regulated by DOT, including civil aviation. Accordingly, ATSA transferred the responsibility for civil aviation security from the FAA to TSA.

**ATSA Requirements**

As part of its security mission, TSA is responsible for assessing intelligence

and other information in order to identify individuals who pose a threat to transportation security and to coordinate countermeasures with other Federal agencies, including the FAA, to address such threats. See 49 U.S.C. 114(f)(1)-(5), (h)(1)-(4). Specifically, Congress required TSA to work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations. 49 U.S.C. 114(f)(13).

In the course of carrying out this responsibility, TSA receives information from other federal agencies and other sources identifying specific individuals who pose security threats. TSA also receives, on a regular basis, copies of the airmen registry from the FAA.<sup>1</sup> In some cases, individuals identified by other agencies as security threats hold or have applied for airman certificates, ratings, or authorizations, such as pilot certificates, mechanic certificates, and special purpose pilot authorizations, issued by the FAA under 49 U.S.C. Chapter 447. Individuals who pose security threats and hold FAA certificates, ratings, or authorizations are in positions to disrupt the transportation system and harm the public.

In ATSA, Congress specifically required the Under Secretary to establish procedures to notify the FAA Administrator, among others, of the identity of individuals known to pose, or suspected of posing, a threat of air piracy or terrorism, or a threat to airline or passenger safety. 49 U.S.C. 114(h)(2). Congress required the FAA Administrator to "make modifications in the system for issuing airman certificates related to combating acts of terrorism." 49 U.S.C. 44703(g).

Based on the Under Secretary's express mandate to identify and coordinate countermeasures to address threats to the transportation system, as well as Congress's express direction for TSA to work with the FAA Administrator with respect to actions that may affect aviation safety or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat, TSA is adopting the procedures set forth herein to notify the FAA when TSA's threat assessment reveals that an alien who is an FAA certificate, rating, or authorization holder or applicant poses a security threat.

Congress has given the TSA broad powers related to the security of civil aviation, including the authority to receive, assess, and distribute intelligence information related to

<sup>1</sup> The registry is formally known as the "Comprehensive Airmen Information System."