

establish procedures to notify the FAA Administrator, among others, of the identities of individuals who are 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). Additionally, in 49 U.S.C. 44703(g), as amended by ATSA section 129, Congress required the FAA Administrator to make modifications to the system used for issuing aviation certificates, ratings, or authorizations in order to make the system more effective in combating acts of terrorism.

The Under Secretary has determined that TSA must notify the FAA when TSA's threat assessment reveals an individual who holds an FAA certificate, rating, or authorization or is an applicant for such certification poses a security threat. This determination is based on the Congressional authorization for the Under Secretary to identify and counter threats to transportation security and Congress's express direction that TSA work with the FAA Administrator in taking actions that may affect aviation security or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat.

#### Cost of Compliance

TSA has performed an expected cost-benefit analysis for the final rule. To date, from a pool of approximately 1.35 million holders of airmen certificates issued by the FAA in the last ten years, TSA has identified 11 persons who are security threats. Estimating the number of FAA certificates that will be issued in the next ten years, from 2003 to 2012, TSA has found that an estimated nine persons out of an estimated 1.11 million airmen certificates over the ten years will be flagged or at least one person per year. If, however, the estimates are off by as much as a factor of ten, TSA estimates that approximately 100 persons may be impacted over the ten-year period. This estimates equates to ten persons per year over the ten-year period.

This rule allows an impacted party to respond to the TSA-issued Initial Notification in order to refute the finding of the security threat assessment. To date, seven individuals or 63.64% from the 11 identified are in the process of responding to a threat assessment notice from TSA. Assuming this percentage will remain relatively constant, TSA calculated a minimum and maximum number of impacted persons who will respond ranging from one person to six persons per year. Using the value of passenger time per hour for general aviation from *Economic Values for Valuation of Federal*

*Aviation Administration Investment and Regulatory Programs (Values)* (FAA-AP0-98-8) as a proxy for the wage rate of the impacted party, TSA estimated the approximate costs to respond to an Initial Notification without legal counsel to be \$31.10 per hour in 2001 dollars. TSA assumed it would take an impacted person five hours to respond to the Initial Notification via a written letter requesting releasable materials upon which the decision was made, review any TSA materials, and write a response based upon these materials. An additional \$20 was added to cover any costs of postage, copying, and stationery costs. Therefore, the total estimated cost for an individual to respond to TSA's Initial Notification equals approximately \$176 per person in 2001 dollars. If an individual chooses to hire legal counsel, the cost rises to approximately \$1000 to \$1500 based on five hours legal time at between \$200–300 per hour.

TSA projected the costs of this rule for impacted parties over the ten-year period of 2003–2012. The range of one person refuting per year without legal counsel to six persons per year refuting with legal counsel was used for analysis. Costs were discounted over the ten-year period using the standard seven percent discount rate as dictated by the Office of Management and Budget (Circular A-94). The total costs for this rule projected over the next ten years ranges from \$1,755 (if one person per year responds on his/her own without legal counsel) to \$71,735 (if six persons per year hire legal counsel to respond to findings) in 2001 discounted dollars.

#### Analysis of Benefits

This rule is intended to enhance aviation security. Congress has mandated that the Under Secretary identify and counter threats to the transportation system and national security, as well as, work with the FAA Administrator to take actions that may affect aviation safety or air carrier operations and to communicate information to the FAA regarding individuals who pose a security threat. The primary benefit of the rule will be increased protection to Americans and others from acts of terrorism. The changes envisioned in this rule are an integral part of the total program needed to prevent a criminal or terrorist incident in the future.

Since the mid-1980s, the major goals of aviation security have been to prevent bombing and sabotage incidents. The individuals covered by this rule hold airman certificates, ratings, or authorizations, such as pilot and mechanic certificates, ratings, or

authorizations, issued by the FAA under 49 U.S.C. Chapter 447. These certificates, ratings, or authorizations allow these individuals access to aircraft while in maintenance and repair, to fly aircraft, or to operate aircraft navigational equipment. These individuals are in unique positions to disrupt the civil air transportation system and harm the public through acts of air piracy, sabotage, or misuse of the aircraft. As such, these individuals could represent a definitive threat to security.

#### Comparison of Costs and Benefits

It is estimated this rule will have insignificant incurred costs when compared to the potential benefits. The potential benefits are huge in the number of lives and amount of property within the United States saved from a catastrophic terrorist act by this rule. As such, the small amount of costs and the large positive value of the cost-benefit analysis support the rule as cost-beneficial.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

TSA has determined that this rule will not have a significant economic impact on a substantial number of small entities, pursuant to the RFA, 5 U.S.C.