

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.