Dated: April 25, 2005.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–9648 Filed 5–13–05; 8:45 am]

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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: Disposition of comments on final rule.

SUMMARY: On January 24, 2003, the FAA adopted eligibility standards that disqualify a person from holding an airman certificate, rating, or authorization when the Transportation Security Administration has advised the FAA in writing that the person poses a security threat. The rule was adopted to prevent a possible imminent hazard to aircraft, persons, and property within the United States. This action is a summary and disposition of comments received on the final rule.

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:

Availability of Rulemaking Documents

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) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing 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.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dms.dot.gov.*

Background

On January 24, 2003, the FAA published new regulations that expressly disqualify persons found by the Transportation Security Administration (TSA) to pose a security threat from holding airman certificates (68 FR 3772). The FAA added new §§ 61.18, 63.14 and 65.14 to 14 CFR.

The FAA explained in the final rule that it was relying on threat assessments made by the TSA based on the broad statutory authority and responsibility that Congress placed in the TSA when it enacted the Aviation and Transportation Security Act (ATSA). ATSA directs the TSA to receive, assess, and distribute intelligence information related to transportation security and to assess threats to transportation. It also charges the TSA with the responsibility to assess intelligence and other information 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. The law specifically directs the TSA to establish procedures for notifying the FAA of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.

Congressional Action

Congress has enacted a law that has largely codified the FAA's rulemaking action. On December 12, 2003, the President signed the Vision 100—Century of Aviation Reauthorization Act. Section 601 of that act contained in section 46111 of Title 49 of the U.S. Code provides, in part:

> The Administrator of the Federal Aviation Administration shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the Administrator is notified by the Under Secretary of Border and Transportation Security of the Department of Homeland Security that the holder poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline and passenger safety.

This statute requires the same result as the FAA's rules—if the Department of Homeland Security notifies the FAA that a certificate holder poses, or is suspected of posing, a security threat, the FAA must take action against the certificate. The new law also provides administrative and judicial review procedures for certificate holders that are U.S. citizens.

Litigation

Several labor associations and two individuals sought judicial review of the rules in the United States Court of Appeals for the District of Columbia Circuit. The following cases were consolidated for consideration by the court: *Coalition of Airline Pilots Associations* v. *FAA and TSA,* No. 03–1074, and *Air Line Pilots Association, International, et al.* v. *FAA and TSA,* No. 03–1076. The cases involving the two individuals were also consolidated: *Jifry and Zarie* v. *FAA and TSA,* No. 03–1085; *Jifry and Zarie* v. *NTSB,* Nos. 03–1144 and 03–1282, which involved certificate action taken by the FAA and reviewed by the National Transportation Safety Board.

In *Jifry and Zarie* v. *FAA et al.,* 370 F.3d 1174 (June 11, 2004), the court addressed the FAA's and TSA's rules as applied to non-resident aliens. It rejected Jifry and Zarie's challenges to the rule, including their contentions that the rules were invalid because they were promulgated without prior notice and violated the due process clause of the Fifth Amendment to the U.S. Constitution. On February 22, 2005, the Supreme Court declined to review the court of appeals' decision.

In *Coalition of Airline Pilots Associations, et al.* v. *FAA and TSA,* 370 F.3d 1184 (D.C. Cir. June 11, 2004), the court dismissed as moot the challenge to the FAA's and the TSA's rules posed by several unions representing aviation workers. The court explained that the new section 46111 directs the FAA to take certificate action when notified by the Under Secretary of Border and Transportation of a security threat—the same result that occurred under the FAA's rules. Furthermore, as to citizens the new law provides a more robust set of procedural protections than available under the FAA's and the TSA's rules. With regard to resident aliens, the court noted that the Government had represented that the agencies would not be enforcing their rules and would be undertaking notice-and-comment rulemaking.

Summary of Comments

General

The FAA received about 700 comments on the final rule. Most

commenters opposed the rule. The opposition is mostly based on four major categories of objections: Due Process; Ineffectiveness against Terrorists; TSA/Government Will Become Too Powerful; and Adoption of Rule without Prior Comment.

Due Process

About 300 commenters based their objection to this rule solely on a perceived due process violation. In total, about 500 commenters cited due process as a factor in their opposition to this rule. Most seemed to think that revoking an airman's certificate was similar to a criminal conviction, and accordingly felt that they were being denied due process as discussed in the Fifth and Fourteenth Amendments to the United States Constitution. One commenter said that the TSA must prove before a judge that the pilot is a security risk. Several individuals expressed concerns over the inability to confront their accusers and see the evidence against them. Many commenters were unhappy about the lack of an independent appeals process to guarantee that TSA mistakes and abuses were checked.

The major theme throughout these comments, including those of the Cessna Aircraft Company and the Independent Pilots' Association, was that there was no meaningful recourse for a wrongly accused pilot. Numerous individuals asserted that pilots can make honest mistakes in interpreting restricted zones, bureaucratic errors can occur, and TSA officials can spitefully abuse their power, so there must be some sort of meaningful recourse.

Another major issue raised by numerous commenters was that the principle of innocent until proven guilty was being violated. Commenters felt that the TSA should have the burden of proof in all cases, rather than have the pilot try to prove his or her innocence, based on evidence he or she might not have access to, in front of a partial judge, the TSA.

Many commenters also found it unacceptable that the TSA seemed to be playing multiple roles within the legal system, simultaneously as accuser, advocate, judge, jury, appellate body, and enforcer. This issue is related to the third major category, the expansion of government power, and the potential for abuse of power.

Other commenters recommended that the TSA submit evidence before a judge to determine whether there is probable cause, based on the criminal standard, in labeling an individual as a security risk. The Airline Dispatchers Federation felt that this rule lowers the standard of proof to hearsay. Some others felt that there were other Constitutional violations such as an illegal seizure without probable cause (Fourth Amendment) or lack of a fair trial (Sixth Amendment). In order to ensure due process, one commenter suggested that the Department of Homeland Security clear all levels of access for a select group of individuals to serve as an airman's advocate during an appeal before the NTSB. Another commenter suggested that there should be a regional board of review available to each accused pilot.

Ineffective Against Terrorists

About 180 commenters objected to this rule based on the notion that this rule would not help in our fight against terrorism, which is the underlying reason for this rule. About 40 commenters objected to this rule solely based on this type of reasoning. The commenters who made this point generally felt that since terrorists by nature are not law-abiding citizens and are quite dedicated to their cause, the lack of proper certification to fly a plane would not deter their plans. Many cited the September 11, 2001, attacks as an example of how unlicensed pilots or even passengers could take control of a plane, without any official certification. Commenters overwhelmingly felt that revoking a pilot certificate does not remove the knowledge of how to fly a plane.

Some commenters stated that if the government really did have evidence proving that an individual is a terrorist, they would hope that much more could be done. Commenters specifically mentioned detention and a criminal trial, rather than revoking a pilot certificate. Commenters felt that revoking a pilot certificate was meaningless. One commenter felt that if the FAA were to revoke an airman certificate, it would then lose all power and authority over that individual. Additionally, several pilots and organizations claimed that certificates are very rarely checked before one flies an airplane, and thus it is conceivable that an unlicensed pilot would still be able to fly a plane. The resounding tone of this type of objection was that only innocent, law-abiding citizens would be hurt by this rule, and terrorists would not be affected.

TSA/Government Will Become Too Powerful

Many of the about 170 people who voiced this type of objection felt that if this rule remains in effect, the terrorists have ultimately won. They will have forced Americans to give up hard-earned rights to the government. Numerous individuals echoed concerns of governmental abuse related to due process based on the view that the TSA seemed to play numerous roles in the process.

Most commenters also mentioned some loss of freedom. Many felt that pilots would not be able to freely express their opinions, security-related and otherwise, because of the fear of being unjustly deemed a security risk by the TSA. Others felt that, in general, we should not sacrifice personal freedoms to make up for the government's inability to do its job.

One of the most pressing concerns of many commenters was that experienced, professional pilots could be judged by TSA screeners. Commenters felt the screeners were young, inexperienced, and unqualified. Many of these commenters were pilots, and were deeply concerned that a mistake-prone screener or one with a personal vendetta could ruin their lives. Some commenters stated that government, as an institution, has many natural advantages over individuals, especially those accused of being security risks. Commenters felt supplementing those advantages with this essentially absolute power could forever punish a wrongly-accused individual. They were concerned that these individuals would face a tremendous challenge trying to defend themselves without seeing the evidence or having the ability to cross-examine witnesses.

The Experimental Aircraft Association and the Airline Professionals Association/Teamsters Local 1224 demanded a meaningful opportunity for the accused to be heard. They were very concerned about the inability of the accused to challenge TSA evidence due to its non-disclosure rules and autonomy throughout the process. Furthermore, several commenters were troubled because of their belief that there are no checks and balances in this rule because there is no oversight or ability to appeal a TSA decision to another authority. Many of these individuals and organizations demanded the right to an appeal. They suggested that a newly created independent review board or the NTSB oversee the decisions of the TSA, since the TSA has the convenient ability to shield information under the guise of national security.

Adoption of Rule Without Prior Comment

More than 40 commenters were frustrated by the rulemaking process for this final rule. The lack of an NPRM

followed by an opportunity for public comment, before issuing the final rule, bothered many individuals because they felt that public feedback was a vital part of the democratic process. Some also questioned the stated emergency that prevented normal public comment. They pointed out that this rule was issued more than 16 months after the September 11th attacks, the event cited in the final rule as the underlying cause for the rule. Others claimed that this rule would have been revised or withdrawn had the FAA gone through the normal process.

Miscellaneous Objections

Many commenters worried about both the financial implications for wrongly accused pilots and for the airline industry, as many pilots, in their view, could be blacklisted for minor infractions. The Southwest Airlines Pilots' Association commented that the little evidence the TSA needs to accuse a pilot could have a large financial impact on the pilot. One commenter felt that besides the lack of compensation for wrongly accused ''victims,'' the individual does not have enough time to make a proper appeal. Another was troubled by the lack of a time frame for each part of the process.

Several individuals demanded the standards used by the TSA to determine security risks be clearly and openly stated, to prevent racial profiling and other forms of abuse by TSA. Many commenters felt that this rule was disrespectful to pilots and could alienate them. Among these, many felt that pilots were unfairly being singled out for extra scrutiny. They pointed out that terrorists could just as easily seize trucks or ships and could conceivably do more damage with a large truck than a small plane. They maintain that it would seem absurd to allow the government to immediately revoke drivers' licenses based on mere suspicion, and pilots' licenses deserve that same level of respect. One commenter stated that the lack of a driver's license hardly prevents many otherwise lawful citizens from driving, yet this rule unreasonably expects an unlawful citizen to be deterred by revoking his or her pilot's license. Some pilots felt insulted by this rule. They said that pilots are often former members of the armed services, who have risked their lives for America, yet are being treated like terrorists by their own government. Two commenters said that this was unfair because pilots of foreign airlines who operate in American airspace would not be scrutinized as thoroughly as American pilots, when it should be the other way around.

Some commenters also claim that they are the good guys in the fight against terrorism, by using their unique vantage point, high in the air, to help law enforcement officials. Also, one commenter said it was frustrating that thousands of innocent airmen will be classified as security risks, when they are the ones most vulnerable to terrorists. Others joined this sentiment and said that instead of targeting innocent American aviators, the government should focus its national security efforts on tighter national borders and better enforced immigration laws. One commenter felt that pilots were less of a threat to national security than maintenance workers who have ample access to the aircraft. One commenter said that it was unconstitutional to allow secret testimony to be used in any FAA determination. Several commenters also mentioned that restricted flying zones change so often that a pilot could make an honest mistake, and without any due process protections, could lose his or her license to fly, thus deterring many potential aviators.

Several commenters, including the Aircraft Mechanics Fraternal Association (AMFA), the Professional Aviation Maintenance Association, the International Brotherhood of Teamsters Airline Division, and the American Electronics Association (AEA), claimed that a pilot has certain property rights associated with his or her pilot certificate and is constitutionally guaranteed due process before revocation. The AEA and Air Line Pilots Association (ALPA) also mentioned that since the TSA was not making its criteria for assessing security risks publicly available, this rule was unconstitutionally vague and overbroad, and gave the TSA unchecked power. The Transportation Trades Department pointed out there are no standard criteria for deeming individuals a security risk, and that there is no independent check on the TSA at any point in the process.

The AEA also asserted that the FAA did not follow proper procedures in adopting this rule. ALPA and the Aircraft Owners and Pilots Association felt that the rule was beyond the scope of the ATSA. Furthermore, a few individuals and the Aviation Policy Institute claimed that the FAA already has emergency powers to revoke a pilot's license, making this rule completely unnecessary. The National Business Aviation Association and the National Air Transportation Association would like the FAA to revert to its policies prior to this rule, feeling that this rule is unnecessary and unconstitutional, because the FAA already has emergency revocation powers and does not have statutory authority for this type of rule.

AMFA asserted that certified mechanics already have to go through a ten-year security background check, and that this new rule would discriminate against them in favor of non-certified mechanics. Also, a few commenters expressed concern over the a diminution of the FAA's role because of this rule, and felt that by giving the TSA the decision-making authority over the revocation of pilots' licenses, the FAA was neither fulfilling its mission to oversee aviation safety nor using its aviation expertise through conducting its own independent investigations.

Fourteen commenters did not clearly express opposition to this rule, and their comments were usually either a recommendation to the FAA or off-topic. Some of the recommendations were that this rule does not cover: pilots who fly public use aircraft, air traffic controllers, cleaners, technicians, refuelers, and vendors. One commenter said that the FAA overlooked the fact that convicted felons can still become licensed commercial pilots. Another suggested a complete background check. Two other commenters wanted the courts to step in. One suggested that a federal court confirm that there is probable cause before the security risk claim is made by the TSA. The other wanted the Supreme Court to review the constitutionality of this rule. Finally, one commenter wondered about the application of this rule to FAA inspectors and NTSB investigators.

Support for the Rule

Four commenters supported the rule. They felt that this rule is a worthwhile deterrent in the fight against terrorism because of current safety concerns. One commenter said that national security is more important than the possibility of a pilot's losing his or her license for a period of time. Another emphasized that an airman certificate is a privilege not a right.

FAA response: Congress has enacted a law that has largely overtaken the FAA's rulemaking action and the challenges to the FAA's and TSA's rules have been decided by the U.S. Court of Appeals for the District of Columbia Circuit. Based on these developments, a detailed response to the comments is not warranted. In addition, many of the comments addressed the TSA's rules, and it would be inappropriate for the FAA to address these comments.

Conclusion

The FAA is working with TSA to determine if additional rulemaking is necessary to reflect the statutory requirements of 49 U.S.C. 46111. In this new rulemaking action, the public will have an opportunity to comment before the adoption of a final rule.

Issued in Washington, DC, on May 10, 2005.

Marion C. Blakey,

Administrator.

[FR Doc. 05–9704 Filed 5–13–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30445; Amdt. No. 3122]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 16, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 16, 2005.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).