[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 3, 61, 63, and 65

Docket No.: FAA-2018-0656; Amendment Nos. 3-2, 61-143, 63-42, and 65-59

RIN 2120–AL04

Security Threat Disqualification Update

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is amending and consolidating the security threat disqualification regulations. This final rule establishes the FAA's procedures in regulation for amending, modifying, suspending, and revoking FAA-issued certificates and any part of such certificates issued to individuals based on written notification by the Transportation Security Administration (TSA) that a certificate holder poses a security threat. The final rule also clarifies the FAA's process for denying or holding in abeyance applications for certificates and any parts of such certificates when the TSA notifies the FAA that an applicant poses a security threat.

DATES: Effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this action, contact Courtney Freeman, Office of the Chief Counsel, AGC-200, Federal Aviation Administration,

800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-3073; email Courtney.Freeman@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for this Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C). Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; and 49 U.S.C. 44701(a)(5), which requires the Administrator to promote safe flight of civil aircraft in air commerce by prescribing regulations and setting minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

This rulemaking is also promulgated pursuant to 49 U.S.C. 46111, which requires the Administrator to amend, modify, suspend, or revoke any certificate or any part of a certificate issued under Title 49 when the TSA notifies the FAA that the holder of the certificate poses or is suspected of posing a risk of air piracy or terrorism or a threat to airline or passenger safety.

Additionally, this rulemaking is promulgated pursuant to 49 U.S.C. 44903(j)(2)(D)(i), which requires that TSA coordinate with the Administrator of the FAA to ensure that individuals are screened before being certificated by the FAA. Thus, the FAA will not issue a certificate to a screened individual identified by TSA as a security threat.

I. Executive Summary

A. Purpose of the Regulatory Action

This rulemaking amends the current FAA security threat disqualification regulations in title 14 of the Code of Federal Regulations (14 CFR) §§ 61.18, 63.14, and 65.14 and consolidates them into part 3 of 14 CFR. Those regulations provide, in sum, that no person is eligible to hold a certificate, rating, or authorization issued under each corresponding or respective part when the TSA notifies the FAA in writing of an adverse security threat determination.

Since 2004, the FAA has not applied these regulations to United States (U.S.) citizens or resident aliens, instead relying on the statutory authority in 49 U.S.C. 46111, Pub. L. 108-176 (December 12, 2003), and 49 U.S.C. 44903(j)(2)(D)(i), Pub. L. 108-458 (December 17, 2004), enacted after the FAA issued its security threat disqualification regulations. Section 46111 directs the FAA to take action against "any part of a certificate" issued under Title 49 in response to a security threat determination by the TSA and also provides a hearing and appeal process for U.S. citizens. Section 44903(j)(2)(D)(i) provides that individuals will be screened against the consolidated and integrated terrorist watchlist maintained by the federal government prior to being certificated by the FAA. This final rule is necessary to conform the previously-cited FAA regulations to 49 U.S.C. 46111 and 44903(j)(2)(D)(i) and to clarify the FAA's process for preventing the issuance of certificates to applicants that the TSA finds to be security threats.

Consistent with 49 U.S.C. 46111 and 44903(j)(2)(D)(i), the security threat regulations in this final rule describe the actions the FAA will take on a certificate or certificate application when it receives notification from the TSA that an individual is a security threat. The FAA will not issue a certificate or any part of a certificate when the TSA has notified the FAA in writing that the individual poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety. For certificates already issued, the FAA will amend, modify, suspend, or revoke any FAA-issued certificate or part of such certificate upon written notification from the

TSA that the certificate holder poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety.[1]

B. Costs and Benefits

The final rule provides similar requirements found in the existing security threat disqualification regulations. Thus, the final rule will not impose any new costs to the industry.

II. Background

A. Current Statutory and Regulatory Structure Governing Security Threat Disqualification

In response to the attack on the U.S. on September 11, 2001, the FAA issued the current security threat disqualification regulations to prevent a possible imminent hazard to aircraft, persons, and property within the United States. Specifically, in 2003, the FAA, in consultation with the TSA, determined that security threat disqualification regulations were necessary to minimize security threats and potential security vulnerabilities to the fullest extent possible. The FAA, the TSA, and other federal security agencies were concerned about the potential use of aircraft to carry out further terrorist acts in the United States. Accordingly, the FAA issued a final rule, Ineligibility for an Airman Certificate Based on Security Grounds, 68 FR 3772 (January 24, 2003). This 2003 final rule provides that an individual determined by the TSA to be a security threat is ineligible for airman certification and thus cannot hold an FAA-issued airman certificate. The FAA took this action because a person who poses a security threat should not be in a position that could be used to take actions that are contrary to civil aviation security and, therefore, safety in air commerce. These security threat disqualification regulations are found in current §§ 61.18, 63.14, and 65.14.

[1] The TSA directs the specific action the FAA should take on the certificate and includes that information in the letter notifying the FAA of the security threat determination.

Subsequent to the issuance of the current FAA security threat disqualification regulations, the President signed into law 49 U.S.C. 46111[2] and 49 U.S.C. 44903(j)(2)(D)(i).[3] Section 46111 requires the FAA to amend, modify, suspend, or revoke certificates or any part of a certificate issued under Title 49, when the TSA informs the FAA that the holder "poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety." Under § 44903(j)(2)(D)(i), the TSA and the FAA must work together to "ensure that individuals are screened before being certificated by the [FAA]."

After the enactment of these statutory provisions, the FAA did not update its regulations. However, the FAA did publish in the Federal Register its disposition of comments to the 2003 final rule.[4] In the comment disposition, the FAA noted that, if additional rulemaking was necessary to reflect the statutory requirements of § 46111, the FAA would utilize notice and comment rulemaking. In addition, the FAA summarized two D.C. Circuit cases from 2004 that sought judicial review of the FAA and the TSA security threat disqualification regulations. In one of those cases, *Coalition of Airline Pilots Associations v. FAA*, 370 F.3d 1184 (D.C. Cir. 2004), the FAA, the TSA, and the Department of Justice pledged that they would not apply existing regulations to U.S. citizens or resident aliens. This case is further addressed in the Discussion of Final Rule section of this preamble.[5]

B. Summary of the Notice of Proposed Rulemaking

[2] Vision 100 – Century of Aviation Reauthorization Act, Pub. L. 108-176, 117 Stat. 2490 (Dec. 12, 2003).
[3] Intelligence Reform and Terrorism Prevention Act, Pub. L. 108-458, 118 Stat. 3638 (Dec. 17, 2004).
[4] Ineligibility for an Airman Certificate Based on Security Grounds, 70 FR 25761 (May 16, 2005).
[5] Memorandum to the Dockets, TSA Rulemaking Dockets Nos. TSA–2002–13732 and TSA–2002–13733, Transportation Security Administration, U.S. Department of Homeland Security (Mar. 16, 2004).

The FAA published the Notice of Proposed Rulemaking (NPRM) on July 23, 2018.[6] Generally, the proposal would establish in regulation the security threat disqualification requirement mandated in 49 U.S.C. 46111 and 44903(j)(2)(D)(i). In the NPRM, the FAA proposed to establish in regulation the FAA's process for amending, modifying, suspending, and revoking FAA-issued certificates and any part of such certificates issued to individuals under Title 49 based on the TSA's written notification that a certificate holder poses a security threat. The FAA also proposed to clarify the FAA's process for denying or holding in abeyance applications for certificates and any parts of such certificates when the TSA notifies the FAA that an applicant poses a security threat.

C. General Overview of Comments

The FAA received one comment on the NPRM, and it was not within the scope of the proposal.

III. Discussion of Final Rule

A. Scope

The final rule codifies, in 14 CFR, the FAA's authority to amend, modify, suspend, and revoke FAA-issued certificates and any part of such certificates issued to individuals under Title 49 of the United States Code based on the TSA's written notification that a certificate holder poses a security threat. The final rule also clarifies the FAA's authority to deny or hold in abeyance applications for certificates and any parts of such certificates when the TSA notifies the FAA that an applicant poses a security threat. The final rule also codifies the security threat disqualification requirement mandated in 49 U.S.C. 46111 and 44903(j)(2)(D)(i).

[6] 83 FR 34795 (July 23, 2018)

Both 49 U.S.C. 46111 and 44903(j)(2)(D)(i), on which this rule relies, refer to certificate holders and applicants in terms of individuals, rather than entities.[7] Accordingly, this final rule addresses only individuals who hold or are applying for certificates issued under Title 49. There is separate statutory authority for FAA certificate action against entities based on TSA security threat determinations.[8]

B. Certificate Applicants

While 49 U.S.C. 46111 sets out a mechanism by which the FAA handles the amendment, modification, suspension, or revocation of an individual's certificate, it is silent as to how the FAA should handle security threat determinations at the certificate application stage. This final rule codifies the FAA's current process for preventing the issuance of any certificate to an individual at the application stage when the TSA finds the individual to be a security threat. The FAA's authority to deny or hold in abeyance an individual's certificate application based on the TSA's written notification that an individual poses a security threat is necessary to implement 49 U.S.C. 44903(j)(2)(D)(i), which requires the FAA to coordinate with the TSA to ensure that certificate applicants are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government before being certificated by the FAA.

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[7] *See, e.g.*, 49 U.S.C. 46111(b) (allowing "individuals" who are U.S. citizens to have a hearing on the record); § 46111(f) ("An *individual* who commences an appeal"); § 46111(g)(3) ("upon request of the *individual* adversely affected by an order of the [FAA] Administrator"); 49 U.S.C. 44903(j)(2)(D)(i) (requiring screening of "individuals"); *Cf. Transportation Security Administration (TSA) Vetting of Airmen Certificates and General Aviation Airport Access and Security Procedures*, DHS OIG (July 2011), https://www.oig.dhs.gov/assets/Mgmt/OIG_11-96_Jul11.pdf; Memorandum To The Dockets, TSA Rulemaking Dockets Nos. TSA-2002-13732 and TSA-2002-13733, Transportation Security Administration, U.S. Department of Homeland Security (Mar. 16, 2004).

[8] For example, 49 U.S.C. 44924, provides for FAA suspension or revocation of a repair station's certificate based on a TSA determination regarding the repair station's security measures and security risk.

The FAA must not issue certificates to any individual who the TSA finds to be a security threat. This final rule provides that, upon notification from the TSA, the FAA would hold in abeyance the individual's application(s) during an appeal to the TSA of its security threat determination. The FAA will deny an application only upon the TSA's notification of a final security threat determination. Alternatively, if the TSA notifies the FAA that it has withdrawn its security threat determination, the FAA will continue processing the application.

C. Application of Regulations to U.S. Citizens and Resident Aliens

The FAA will apply the security threat disqualification regulations to all individuals, including U.S. citizens and resident aliens, who hold FAA-issued certificates or are applying for these certificates. This approach will conform the security threat disqualification regulations with 49 U.S.C. 46111 and 44903(j)(2)(D)(i). It will also close a gap in the FAA's security threat disqualification regulations which are currently not applied to U.S. citizens and resident aliens pursuant to a pledge made by the FAA and the TSA as a result of *Coalition of Airline Pilots Associations v. FAA*, 370 F.3d 1184 (D.C. Cir. 2004). In *Coalition of Airline Pilots Associations*, unions representing aviation workers raised various challenges to the current TSA and the FAA security threat disqualification regulations. The D.C. Circuit never reached the merits of the unions' claims. Instead, the Court dismissed the unions' petition for review, finding that intervening events had mooted their claims, specifically the new laws enacted by Congress. Both the TSA and the FAA pledged that the existing security threat regulations would no longer be applied to U.S. citizens or resident aliens as a result of the enactment of 49 U.S.C. 46111, which provides a different mechanism for TSA security threat determinations and appeal procedures for

U.S. citizens. [9] The agencies also noted that, when they issued new security threat disqualification regulations, they would do so pursuant to notice and comment rulemaking. Another D.C. Circuit decision, decided on the same day as *Coalition of Airline Pilots Associations*, upheld the application of the same FAA security threat disqualification regulations to non-resident aliens because the regulations provide sufficient due process for non-resident aliens. *Jifry v. FAA*, 370 F.3d 1174 (D.C. Cir. 2004).

This final rule establishes regulations that apply equally to all certificate holders and applicants.

D. TSA Security Threat Determinations and Appeals

In the case of a security threat disqualification, the certificate action or application denial will be based solely on the TSA's applicant vetting and security threat determinations, as mandated under 49 U.S.C. 46111 and 44903(j)(2)(D)(i). TSA's vetting and security threat determination authority is provided for in the Aviation and Transportation Security Act, Pub. L. 107-71 (115 stat. 597, November 19, 2001). The FAA relies on TSA to make these security threat determinations and is not privy to the evidentiary basis for them. Therefore, the FAA's certificate actions and application denials are based solely on written notification by the TSA of a security threat determination against an individual. Accordingly, appeals of the security threat determinations made by the TSA are made through the TSA's administrative appeal process.[10]

The FAA's certificate denials are generally covered under 49 U.S.C. 44703 and, therefore, are appealable to the National Transportation Safety Board (NTSB). In cases of security threat

[9] Memorandum to the Dockets, TSA Rulemaking Dockets Nos. TSA–2002–13732 and TSA–2002–13733, Transportation Security Administration, U.S. Department of Homeland Security (Mar. 16, 2004).

[10] See 49 U.S.C. 46111. TSA currently is using interim redress procedures for U.S. citizens, U.S. non-citizen nationals, and lawful permanent resident certificate holders. While § 46111 does not require that TSA provide review by an Administrative Law Judge (ALJ) to U.S. non-citizen nationals and lawful permanent residents, TSA has chosen to do so in its interim procedures. TSA also provides U.S. non-citizen nationals and lawful permanent residents with review by the TSA Final Decision Maker if those individuals choose to appeal an ALJ's decision.

disqualifications, if the certificate action is appealable to the NTSB, the FAA does not anticipate that the scope of these appeals will extend beyond an examination of the procedural ground for the certificate action or application denial because an affected individual will be provided the opportunity to challenge the substance of TSA's security threat determination under TSA's appeal process.[11]

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of

[11] The appropriate venue for appealing a certificate action based on a security threat determination was also discussed substantially in *Jifry v. FAA*, 370 F.3d 1174 (D.C. Cir. 2004). The court stated that "Section 46111 makes no provision for NTSB review even for citizens, and the Conference Report states that non-resident aliens 'have the right to the appeal procedures that [TSA] has already provided for them.' H.R. Conf. Rpt. 108–334 at 152 (2003). In addition, § 46111(a) requires the FAA to respond automatically to TSA threat assessments . . .if these pilots retain any right to NTSB review at all, it is no broader than the review for procedural regularity that they have received . . ." *Jifry* at 1180.

$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

The existing security threat disqualification regulations in 14 CFR §§ 61.18, 63.14, and 65.14 disqualify any person who the TSA has found to be a security threat from obtaining an FAA certificate. These regulations went into effect on January 24, 2003. A year later, the authority in 49 U.S.C. 46111 and 49 U.S.C. 44903(j)(2)(D)(i) became law. Section 46111 directs the FAA to take action against the holder of any part of a certificate in response to a security threat determination by the TSA and also provides an appeal process for U.S. citizens. Section 44903(j)(2)(D)(i) directs TSA to coordinate with the FAA to ensure that individuals are screened against a consolidated and integrated terrorist watchlist maintained by the Federal Government prior to being certificated by the FAA. The existing regulations and the statutory authority are virtually identical, and the FAA has been relying on the statutory authority, not the existing regulations, to prevent individuals who are security threats from obtaining or holding a certificate. The FAA has not updated its regulations since the enactment of statutory authority 49 U.S.C. 46111 and 49 U.S.C. 44903(j)(2)(D)(i). Since there are no new requirements in the final rule, the expected outcome will be a minimal cost, if any.

The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives 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 this

principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. 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 rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a 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.

The final rule provides requirements based on the existing statutory authority located at 49 U.S.C. 46111 and 49 U.S.C. 44903(j)(2)(D)(i). Thus, the final rule will not impose any new costs to the industry. The expected outcome would be a minimal economic impact on any small entity affected by this rulemaking action.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the U.S., so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that the objective of the rule is for the safety of the American public and is therefore not considered an unnecessary obstacle to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The

FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this final rule.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5-6.6 and involves no extraordinary circumstances.

H. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. § 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a 'major rule', as defined by 5 U.S.C. § 804(2).

V. Executive Order Determinations

A. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States.

B. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct

effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

C. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet —

1. Search the Federal eRulemaking Portal (http://www.regulations.gov);
2. Visit the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies/or
3. Access the Government Printing Office's Web page at

http://www.gpo.gov/fdsys/.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9677.

B. Comments Submitted to the Docket

Comments received may be viewed by going to http://www.regulations.gov and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the FOR FURTHER INFORMATION CONTACT heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 3

Aviation safety.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airman, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter 1 of title 14, Code of Federal Regulations as follows:

PART 3 – GENERAL REQUIREMENTS

1. The authority citation for part 3 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44704, and 46111.

2. Add a new subpart A to part 3 to read as follows:

Subpart A – General Requirements Concerning Type Certificated Products or Products, Parts, Appliances, or Materials that May Be Used On Type-Certificated Products

3. Redesignate §§ 3.1 and 3.5 to subpart A.

4. Add new subpart B to read as follows:

Subpart B – Security Threat Disqualification

Sec.
3.200 Effect of Transportation Security Administration notification on a certificate or any part of a certificate held by an individual.
3.205 Effect of Transportation Security Administration notification on applications by individuals for a certificate or any part of a certificate.

§ 3.200 Effect of Transportation Security Administration notification on a certificate or any part of a certificate held by an individual.

When the Transportation Security Administration (TSA) notifies the FAA that an individual holding a certificate or part of a certificate issued by the FAA poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety, the FAA will issue an order amending, modifying, suspending, or revoking any certificate or part of a certificate issued by the FAA.

§ 3.205 Effect of Transportation Security Administration notification on applications by individuals for a certificate or any part of a certificate.

(a) When the TSA notifies the FAA that an individual who has applied for a certificate or any part of a certificate issued by the FAA poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety, the FAA will hold the individual's certificate applications in abeyance pending further notification from the TSA.

(b) When the TSA notifies the FAA that the TSA has made a final security threat determination regarding an individual, the FAA will deny all the individual's certificate applications. Alternatively, if the TSA notifies the FAA that it has withdrawn its security threat determination, the FAA will continue processing the individual's applications.

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

5. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701-44703, 44707, 44709-44711, 44729, 44903, 45102-45103, 45301-45302; Sec.2307 Pub. L. 114-190, 130 Stat. 615 (49U.S.C. 44703 note).

§ 61.18 [Removed and Reserved]

6. Remove and reserve § 61.18.

PART 63- CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

7. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

§ 63.14 [Removed and Reserved]

8. Remove and reserve § 63.14.

PART 65 – CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

9. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g). 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

§ 65.14 [Removed and Reserved]

10. Remove and reserve § 65.14.

Issued, under the authority provided by 49 U.S.C. 106(f), 46111, and 44903(j) in

Washington, DC, on August 1, 2019.

Daniel K. Elwell,

Acting Administrator.

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