



Transportation
Security
Administration

MEMORANDUM TO THE DOCKETS

From: Pamela Hamilton
Director of Aviation Initiatives

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Date: March 16, 2004

Re: TSA Rulemaking Docket No. TSA-2002-13732, Threat Assessments
Regarding Citizens of the United States Who Hold or Apply for FAA
Certificates

TSA Rulemaking Docket No. TSA-2002-13733, Threat Assessments
Regarding Aliens Holders of, and Applicants for, FAA Certificates

On January 24, 2003, the Transportation Security Administration (TSA) adopted rules that established procedures by which TSA would notify the Federal Aviation Administration (FAA) of TSA's assessment that an individual who is a citizen of the United States and holds or is applying for an FAA airman certificate, rating, or authorization poses a security threat.¹ On the same date TSA adopted similar rules that apply to aliens who hold FAA airman certificates, ratings, or authorizations.² On January 24, 2003, the FAA adopted regulations that expressly make a person ineligible to hold an FAA-issued airman certificate if TSA notifies the FAA in writing that the person poses a security threat. Under this rule, the FAA will deny a new airman certificate, rating, or authorization, or suspend or revoke one that has been issued, when TSA advises the FAA that the individual poses a security threat.³

At the time these rules were issued TSA was within the Department of Transportation. TSA now is part of the Department of Homeland Security (DHS), and is in the Directorate of Border and Transportation Security, which is headed by the Under Secretary for Border and Transportation Security.⁴ The FAA has remained in the Department of Transportation.

¹ 68 FR 3756, 49 CFR 1540.115.

² 68 FR 3762, 49 CFR 1540.117.

³ 68 FR 3772.

⁴ Sections 402 and 403 of the Homeland Security Act, Pub. L. 107-296 (Nov. 25, 2002).

On December 12, 2003, the President signed into law the Vision 100-Century of Aviation Reauthorization Act,⁵ which, in part, governs security-based airman certificate actions. This section immediately went into effect and, in part, commands FAA to amend, modify, suspend, or revoke immediately any airman's certificate if the FAA "is notified by the Under Secretary for Border and Transportation Security of the Department of Homeland Security 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," and if the Under Secretary requests that the order be effective immediately.⁶ This provision also establishes new administrative and judicial appellate procedures for citizens whose certificates have been revoked for security reasons.⁷

Although new implementing regulations have not been promulgated, the existing regulation governing certificate-suspension and revocation procedures for citizens⁸ is no longer effective as to citizens. This regulation has not been applied by TSA, nor will it be applied by TSA, to citizens because it does not comport with Congress's new statutory directive.

Although the new statute requires the FAA to take immediate certificate action when requested to do so by the Under Secretary, it does not specify what appellate procedures apply when TSA determines that a resident alien who holds an FAA airman certificate poses a security threat. Nevertheless, the FAA and TSA will develop new procedures that govern resident aliens. The new procedures will contain an agency review process, followed by judicial review based on the entire record. In the meantime, TSA will not apply 49 CFR 1540.117 to resident aliens.

⁵ Pub. L. 108-176, 117 Stat. 2490, section 601 (codified at 49 U.S.C. § 46111).

⁶ 49 U.S.C. § 46111(a).

⁷ 49 U.S.C. § 46111(b)-(g).

⁸ 49 CFR 1540.115.