

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 107 and 108**

[Docket No. 26763; Notice No. 92-3]

RIN 2120-AE14

Unescorted Access Privilege**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to establish regulations for employment investigations and criminal history record checks. This proposal will affect individuals who have, or who may authorize others to have, unescorted access privileges to security identification display areas of U.S. airports. The regulations proposed in this NPRM implement requirements of the Aviation Security Improvement Act of 1990. The proposed regulations are intended to enhance the effectiveness of U.S. civil aviation security systems by disqualifying individuals convicted of certain enumerated crimes from having, or being able to authorize others to have, unescorted access privileges to security identification display areas of U.S. airports.

DATES: Comments must be received on or before March 16, 1992. However, late filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26763, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: "Docket No. 26763." Comments may be examined in room 915G on weekdays except on Federal holidays between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Andrew V. Cebula, Office of Civil Aviation Security Policy and Plans, Policy and Standards Division (ACP-110), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, telephone (202) 267-8293.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to comment on the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or international trade impacts that might result from

adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket at the address specified above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with their comments a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26763." When the comment is received, the postcard will be dated, time stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice or docket number of this NPRM.

Persons interested in being placed on a mailing list for future proposed rules should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

Throughout the last decade, the FAA has recognized the need to investigate the backgrounds of individuals authorized to have unescorted access to security-restricted areas at U.S. airports. On November 26, 1985, the FAA undertook emergency action with respect to the aviation security programs of U.S. airports and U.S. air carriers. Individuals with unescorted access to airport security areas were made subject to a background check. The check requires the verification of such individual's employment history and references for the previous five years to the extent allowable by law.

The December 21, 1988, destruction of Pan American World Airways Flight 103 by a terrorist bomb while in flight over Lockerbie, Scotland was the worst disaster of its kind in U.S. civil aviation history. In response to this tragedy, on August 4, 1989, President Bush established the President's Commission on Aviation Security and Terrorism (Commission) (E.O. 12686). The Commission was given the task of assessing the overall effectiveness of the U.S. civil aviation security system.

The Commission's May 15, 1990, report presented a series of recommendations intended to improve the U.S. civil aviation security system, which is administered by the FAA's Office of Civil Aviation Security. The Commission recommended that airport operators deny employment to individuals convicted of certain crimes to be specified by Congress. The Commission's recommendations formed the basis of the Aviation Security Improvement Act of 1990, Public Law 101-604 (the Aviation Security Improvement Act or the Act).

Section 105(a) of the Aviation Security Improvement Act amends section 316 of the Federal Aviation Act of 1958 (FAA Act) by adding a new subsection "(g)," captioned "Air Carrier and Airport Security Personnel." This subsection directs the FAA Administrator to promulgate regulations that subject individuals with unescorted access to U.S. or foreign air carrier aircraft, or to secured areas of U.S. airports served by air carriers, to employment investigations and criminal history record checks. The Act requires the Administrator to prescribe procedures for taking fingerprints and establish requirements to limit the dissemination of criminal history information received from the Federal Bureau of Investigation (FBI).

While the Act did not specify an implementation deadline, the Department of Transportation Appropriation Act of 1992 (Pub. L. 102-143) directs the FAA to issue regulations on the investigation requirement within 180 days after its enactment. The Congressional deadline for issuing the final rule is April 24, 1992. This law requires that processing of these investigations begin no later than 60 days after the issuance of final regulations.

The FAA proposes to implement the legislative mandate of the Aviation Security Improvement Act by amending parts 107 and 108 of the Federal Aviation Regulations (FAR), 14 CFR parts 107 and 108. The proposed regulations add a requirement for

investigation into the background of individuals with unescorted access to the security identification display area (SIDA) of U.S. airports. The SIDA is "any area identified in the airport security program as requiring each person to continuously display on their outermost garment, an airport-approved identification medium unless under airport-approved escort" (14 CFR 107.25(a)). This proposal takes into account recommendations provided by the Policy and Procedures Subcommittee of the FAA's Aviation Security Advisory Committee (ASAC).

Discussion of Proposed Rule

General

Part 107 of the FAR contains security requirements for airport operators. Part 107 addresses access control, law enforcement support, and submission of airport security programs for FAA approval. Part 108 prescribes security rules for U.S. air carriers. In the preamble to this Notice, the use of the term "air carrier" refers to U.S. air carriers only. As discussed below, employees of foreign air carriers would be addressed through requirements proposed under part 107. Throughout the preamble, references to "airport operator" apply to "air carrier" unless otherwise specified, since both operators and carriers would be authorized to conduct the investigations.

The Act does not prohibit employment of disqualified individuals. Rather, the Act prohibits any individual convicted of specified crimes from unescorted access to secured areas of a U.S. airport or U.S. and foreign air carrier aircraft.

The FAA proposes to amend Parts 107 and 108 to require criminal history record checks to determine whether an individual may be authorized to have unescorted access to the SIDA. This proposal, like the Act, also applies to individuals permitted to authorize others to have unescorted access to the SIDA. The requirement is limited to individuals directly responsible for authorizing unescorted access. This includes individuals performing the required investigations and individuals issuing the credentials for unescorted access privileges.

The proposed rule also codifies into regulatory requirement pre-existing airport operator and air carrier security program language on the conduct of employment verifications for individuals with unescorted access privileges.

Under the terms of the Act, both the airport operator and air carrier may be granted authority to perform criminal history record checks. The FAA proposes that the airport operator be

responsible overall for ensuring that such checks have been performed for all individuals who have, or who may authorize others to have, unescorted SIDA access. This does not mean that the airport operator must perform the checks in all cases. Section 107.31(e) of the proposed rule permits the airport operator to accept certification from an air carrier that the carrier has performed a criminal history record check for carrier employees. Under this section, the airport operator would be responsible for having certification on file that the carrier has performed the check. The airport operator's acceptance of this certification would be deemed to be compliance with its obligations. The air carrier could be subject to FAA enforcement action if it falsely certified that it had performed the checks.

There are two situations where an air carrier would certify to an airport operator that it has performed the record check. In the first case, the carrier must perform the check for employees (such as flight crew members) who are issued identification by the air carrier that is accepted by an airport operator for access to the SIDA. The carrier would certify to each airport operator who accepts the identification that the check had been performed as part of the program for issuing such identification. One certification would cover the entire program and would not include individual names.

In the second case, for air carrier employees issued identification by an airport operator, the carrier could certify to the airport operator that the check had been performed for named individuals. These individuals could then receive airport-issued identification authorizing SIDA access at that airport. However, the proposed rule would permit the air carrier and the airport operator to determine which one of them would perform the checks for air carrier employees issued airport identification. Whichever one performs the check would be responsible for ensuring that it is done in accordance with these proposed rules.

Section-by-Section Analysis

Section 107.31 Unescorted Access Privilege

Section 107.31(a) Applicability

The FAA is proposing that individuals who have, or who may authorize others to have, unescorted access to the security identification display area (SIDA) identified in the airport security program as required by FAR § 107.25 would be subject to the investigation process.

The SIDA generally would include the secured area of an airport as defined under § 107.14, and the portions of an airport where U.S. and foreign air carrier aircraft operate. For airports which may not be required to define a SIDA, the investigation requirement would apply to areas identified in the airport security program that are controlled for security purposes.

The use of the term "SIDA," an area which the airport operator is required to define in its security program, would facilitate implementation of the Act's investigation requirements. Because individuals with unescorted access to the SIDA must display an airport-approved identification, the background check requirements can be incorporated into the review process for approval and issuance of such identification. The issuance or denial of identification media would serve as a control on the implementation of the requirement from a practical and enforcement standpoint.

Section 107.31(b) Types of Checks Required

Two types of investigations are proposed: (1) A 5-year employment and reference verification; and (2) a 10-year criminal history record check. The existing employment and reference verifications would now be required by regulation.

The 10-year criminal history record check is mandated by the Aviation Security Improvement Act. Individuals whose record shows a conviction during the previous 10 years for a crime listed in the regulations would not be permitted to have, or authorize others to have, unescorted access to the SIDA. The 10-year period covered by the investigation is measured from the date the investigation was initiated by the airport operator, *i.e.*, the date the fingerprints were taken.

As contemplated in the Act, the FAA's proposal limits the criminal history record check to the FBI's national criminal history record filing system. However, there is a concern that the FBI's records may not be complete and current in all cases. The FAA seeks comments on the desirability of augmenting the proposed FBI checks. For example, the FAA could require routine checks of law enforcement records in the State or local area where the individual resides, or has resided for a specific time, or the area where employment is being sought. Comments on the necessity, practicality, cost and additional benefit, if any, of such a requirement are invited.

The FAA is proposing that mandatory disqualifying convictions under the

regulation be limited to the crimes listed in the Aviation Security Improvement Act. The crimes are: forgery of certificates, false marking of aircraft and other aircraft registration violations; interference with air navigation; improper shipment of a hazardous material; aircraft piracy; interference with flight crew members or flight attendants; commission of certain crimes aboard aircraft in flight; carrying weapons or explosives aboard aircraft; conveying false information and threats; aircraft piracy outside the special aircraft jurisdiction of the United States; lighting violations in connection with transportation of controlled substances; unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; destruction of an aircraft or aircraft facility; murder; assault with intent to murder; espionage; sedition; kidnapping; treason; rape; unlawful possession, sale, distribution, or manufacture of an explosive or weapon; extortion; armed robbery; distribution of, or intent to distribute, a controlled substance; and conspiracy to commit any of these criminal acts.

The FAA invites comments on the possible expansion of the list of disqualifying crimes to include, for example, those related to arson, possession or use of controlled substances, or any other crimes not named in the Act that may be relevant to the determination process. The FAA also seeks comments on whether a person found not guilty by reason of insanity for any of the disqualifying crimes should not be authorized for unescorted SIDA access.

The Act does not address the discretion of airport operators or air carriers to consider convictions or arrests for crimes other than those listed in the Act. The FAA does not propose to require that the criminal history records received from the FBI be screened to delete all information other than convictions for the enumerated crimes. Airport operators may find the complete record relevant to the access determination. Employers frequently require job applicants to disclose all criminal convictions on application forms. In addition, they may already obtain criminal history records from state or local sources for their employees. The FAA's proposed rule would not limit the discretion of airport operators and air carriers to review an individual's complete FBI criminal history record, and take appropriate action in accordance with applicable law and labor agreements.

However, the FAA recognizes the argument that the records could be screened to delete information other than convictions for the enumerated crimes. Individuals who will be affected by the proposed rule, especially those who are currently employed in positions that require unescorted SIDA access, may assert a privacy interest in limiting the basis of the access determination to the specific crimes Congress has determined should result in mandatory disqualification. Comments are invited on the effect this would have on security, along with the methods, procedures and costs that would be associated with developing a system to limit the criminal record information provided to the airport operator. Comments are also invited on whether the list of disqualifying crimes would have to be expanded if screening were required.

Section 107.31(c) Escorted Access

An individual who is not permitted unescorted access to the SIDA would have to be under escort to be present in the SIDA. The FAA proposes to define "escorted access" generally as continuous surveillance by an individual who has unescorted access privileges. Because of the confidential nature of escorting procedures, and the specific layout and operational considerations at each airport, the airport operator will be required to define the specific escort procedures that are acceptable for continuous surveillance in the SIDA in its FAA-approved security program.

Section 107.31(d) Exceptions to the Investigation Requirements

Government Employees

Under the proposed rule, no additional background checks would be required for Federal, state and local government employees who have been subject to a check of the FBI's criminal history file records as a condition of employment. For example, the airport operator could accept previous criminal history record checks of U.S. Customs Service officers and local law enforcement officers. Accepting previous criminal history checks from government employees avoids a redundant check. In addition, the checks performed for many Federal, state and local government employees may exceed those proposed in this rule.

Foreign Air Carrier Employees

The Act applies to individuals with authority for unescorted access to foreign aircraft. Thus, the FAA is proposing that foreign nationals and U.S. citizens working in the United

States for a foreign air carrier would be subject to investigation under this rule prior to receiving airport issued identification for SIDA unescorted access. The airport operator or its designee will be responsible for these investigations pursuant to the proposed amendments to Part 107.

However, the FAA is proposing an alternate security arrangement for foreign air carrier flight crewmembers (*i.e.*, captain, second-in-command, flight engineer, or company check pilot) who are not otherwise issued airport identification. Alternate security arrangements are permitted by the Act and the FAA contends that there is a low probability of finding a disqualifying conviction for a foreign national through a check of FBI records, which routinely include only convictions entered in the U.S.

Under an alternate system, foreign air carrier flight crewmembers could be excluded from the investigation requirements of the proposed rule, provided that their access is restricted under an approved airport security program. An acceptable alternate access limitation under an airport security program could be to permit foreign air carrier employees who are performing the duties of a flight crewmember to have unescorted access limited to the footprint of their aircraft (*i.e.*, the aircraft and the immediate surrounding ramp area). To access any other aircraft or areas of the airport, the foreign air carrier flight crewmember would require an escort.

Transfer of Privileges

The FAA proposes that an individual who has been investigated and has unescorted access privileges may transfer that privilege to another airport by obtaining certification that the checks were performed. This proposal addresses flight crewmembers or other employees of airport tenants with unescorted access privileges who change their duty station or employer and require unescorted access. In such instances, the individual must have been continuously employed in a position requiring unescorted access since being qualified for unescorted SIDA access under this proposed rule.

No Area Exceptions

In its proposal, the FAA has chosen not to exclude any areas of SIDA from the criminal history check requirement. While the FAA is concerned about the confusion that may result from excluding any portions of the SIDA from this requirement, and the practical implementation of any such exclusion.

comments are invited on this issue; comments are specifically invited on the methods and procedures that could be used if exceptions were permitted for some portions of the SIDA. For instance, should the FAA approve alternate security systems for individuals whose unescorted access is limited to portions of the SIDA separated from the operations of air carriers? The criteria that the FAA could use to analyze the effectiveness of an alternate system (e.g., a physical separation of an air cargo carrier facility from an air carrier passenger area by distance, by a barrier or by the use of access controls required by § 107.14) should also be included in any comments on an allowable exclusion.

Section 107.31(e) Investigations by Air Carriers and Airport Tenants

The FAA is proposing that an airport operator may accept written certification from an air carrier that the investigations were performed for its employees. Receipt of certification would satisfy the airport operator's obligation under the proposed rule.

The airport operator may accept a general certification that the checks were performed as part of the process when an air carrier issues identification media to its employees. When an air carrier employee is investigated by the carrier for receipt of airport-issued identification media, the airport operator must receive certification for each employee prior to issuing identification media.

The proposal also includes a provision permitting an airport operator to accept written certification from airport tenants that the 5-year reference and employment investigation has been performed. In many cases, these airport tenants currently perform the 5-year employment verification, and the FAA proposes that this practice continue. However, the criminal history record check would be the responsibility of the airport operator for all airport tenants other than U.S. air carriers. Under the Act, only airport operators and air carriers have the authority to conduct criminal history record checks. (Tenants, other than U.S. air carriers, may include employees of airline food service companies, employees of fixed base operators and employees of foreign air carriers receiving airport identification.)

Section 107.31(f) Appointing Contact

Under the proposal, the airport operator would appoint a person responsible for reviewing the results of the criminal history record check, and determining an individual's eligibility for

unescorted access privileges. The designated person would also serve as the liaison in situations where the individual disputes the results of the criminal history record check that revealed information that would disqualify him or her from unescorted access. The FAA seeks comments on the appropriateness of assigning this responsibility to the Airport Security Coordinator.

Section 107.31(g) Designating an Entity and Individual Notification

The FAA proposes to allow the airport operator to designate an outside entity to conduct the criminal history record check required by the rule. The FAA has chosen not to develop or require the use of a single entity to batch requests from airport operators and be the designee. Rather, the FAA proposes to require the airport operator to be responsible for compliance with this section, even when the airport operator designates an outside entity to perform the check. The FAA expects that airport operators will choose to act jointly to improve efficiency in processing requests for criminal history checks.

The FBI has indicated the possibility of a fee differential for airports that submit relatively few requests. Currently, the FBI charges more for non-batched requests than batched requests. In addition, an entity batching requests can process a large number of requests for criminal history record checks more efficiently than multiple operators. To take advantage of the economies of scale, the FAA anticipates that many airport operators will utilize the services of entities able to batch their respective requests for criminal history record checks. In any case, the airport operator will be responsible for ensuring that the check is performed in accordance with the regulations.

Individuals covered by the proposed rule would be notified of the requirement for the investigations prior to the initiation of the checks.

Section 107.31(h) Fingerprint Processing

The proposal includes procedures for collecting fingerprints and requires that one set of legible fingerprints be taken on a card acceptable to the FBI. The airport operator or its designee could choose to have the airport law enforcement officers take the fingerprints or have another entity perform the function. The FAA also proposes to require that the identity of the individual be verified at the time the fingerprints are taken. The individual would present two forms of identification, one of which would have

to bear the photograph of the individual. A current driver's license, military identification and passport are examples of acceptable identification. There is also a proposed requirement that the fingerprint cards be handled and shipped in a manner that would protect the privacy of the individual.

Section 107.31(i) Making the Access Determination

The FAA is concerned about individuals whose record shows an arrest for which there has been no disposition (e.g., the case is pending). The FAA is proposing that the airport operator or its designee investigate arrests for any of the enumerated offenses for which no disposition has been recorded in the FBI's records. This investigation would be conducted with the affected individual and the jurisdiction where the arrest took place in order to determine whether a disposition has been recorded in that jurisdiction but not forwarded to the FBI.

In determining whether to grant unescorted access to an individual with an arrest for one of the disqualifying crimes but no disposition, the airport operator should weigh all relevant information available on the individual, including the results of the 5-year employment and reference verification. The employer should then apply its own personnel decision guidelines in making the determination for unescorted access; the FAA does not propose to require specific action under these circumstances.

Section 107.31(j) Availability and Correction of FBI Records and Notification of Disqualification

The proposed rule requires the airport operator or its designee to notify an individual at the time the fingerprints are taken that he or she would be provided, upon written request, a copy of the results from the FBI criminal history record check, prior to rendering the access decision. All individuals subject to an unescorted access determination have the option to receive a copy of the results from the criminal history record check.

In instances where an individual's criminal history record check reveals information that would disqualify him or her from unescorted access, the FAA is proposing that the airport operator or its designee would be required to advise the affected individual of the presence of disqualifying information. The airport operator or its designee would also be required to provide the individual with a copy of the FBI criminal history check

results. The individual has the right to contact the FBI, not the airport operator, to challenge the accuracy of the record. Since the FBI maintains the records and has established procedures to address possible inaccuracies, it is appropriate to direct any requests for correction solely to the FBI. The proposed rule does, however, require the individual to notify the airport operator or its designee within 30 days of receipt of the record of the intent to correct any information believed to be inaccurate. If the airport operator or its designee is not notified by the individual within the 30 day period, the airport operator may make the final access decision.

The affected individual would be given one year from the date the individual was notified of the presence of disqualifying information to provide a revised FBI criminal history record information to the airport operator or its designee. This process protects the individual's right to correct information that would affect the determination for unescorted access privileges.

If an individual is disqualified for unescorted access privileges based on the findings of the criminal history record check, the FAA is proposing that the individual be notified that the determination has been made.

Section 107.31(k) Individual Accountability

The Act does not require a recurrent check, and the FAA does not propose to require such checks by regulation. The FAA solicits comments on the need, utility and expense associated with a recurrent check requirement.

Instead of a requirement for recurrent checks, the FAA proposes to require that each affected individual report to the airport operator convictions for any disqualifying crimes that may occur after the completion of the 10-year criminal history record check. The individual would also be required to surrender his or her SIDA identification media to the airport operator. Any individual violating this provision by failing to report a disqualifying crime or surrendering SIDA identification media under this section would be subject to possible FAA enforcement action, including civil penalty liability. The FAA is also exploring with the FBI other systems that may be developed to communicate convictions for individuals with authority for unescorted access.

Section 107.31(l) Limits on Dissemination of Results

As required under the Act, the criminal history record check results should be used only to determine whether to grant unescorted access

privileges to the SIDA. The proposed rule also includes limits on the dissemination of the criminal history information, as required by the Act. The FAA proposes to limit distribution of such information to:

- (1) The individual to whom the record pertains or someone authorized by that person;
- (2) The airport operator or entity designated by the airport operator; and
- (3) Individuals designated by the Administrator (e.g., FAA special agents).

Section 107.31(m) Record Keeping

The proposed rule requires the airport operator to establish a record indicating that a criminal history record check was performed for individuals covered by the requirement. To protect the privacy of the individual and limit the use of criminal history record information, the FAA is proposing that the results of the check received from the FBI be destroyed after the determination has been made. The procedures for destroying the results must be acceptable to the Administrator. This would include shredding, burning or other acceptable means of destroying confidential personnel records.

The airport operator would be required to maintain a written record for all individuals permitted unescorted access. The FAA proposes that this record should be retained for 180 days after termination of that individual's authority. The record should be correlated to payment records for specific groups of individuals checked by the FBI and must include, at a minimum, the following:

- (1) The date the fingerprints were taken;
- (2) The date the fingerprints were sent to the FBI;
- (3) The date the results of the fingerprint check were received back by the airport operator;
- (4) The outcome and the date when the determination was made; and
- (5) Any other information that the Administrator determines is necessary.

Section 107.31(n) Schedule for Implementation

The FAA is proposing two phase-in schedules for the proposed regulatory requirements. The implementation schedules would apply to both airport operators and air carriers.

For airports where at least 25 million persons are screened annually or airports that have been designated by the Assistant Administrator of Civil Aviation Security:

No later than 60 days after the effective date of the final rule, these airports would be required to implement

§ 107.31 for all new requests for unescorted access privileges. Until the investigation process is complete, individuals newly requiring access to the SIDA would be escorted by an individual who is authorized to have unescorted access.

By December 31, 1992, the fingerprints of at least 50 percent of all individuals who have, or may authorize others to have, unescorted access privileges would have to be submitted to the FBI. By June 30, 1993, the fingerprints of all individuals who have, or may authorize others to have, unescorted access would have to be submitted to the FBI.

For individuals who were authorized to have unescorted access prior to the effective date of the final rule, the 5-year employment and reference verification would not need to be repeated if it has already been performed. Individuals who were hired before the effective date of the security program amendment requiring employment verification (November 1, 1985), and who have been continuously employed since that date, also would not be subject to this investigation.

The deadline for completing the checks for all covered individuals would be January 1, 1994, unless otherwise specified in the airport security program. From that date forward, only individuals who have undergone the 5-year employment and reference check and 10-year criminal history record check could have, or could authorize others to have unescorted access to the SIDA.

For all other airports covered by the requirement:

The FAA is proposing that one year after the effective date of the final rule the airport operator must implement the 5-year employment and reference verification and 10-year criminal history record check for all new requests for unescorted access privileges. The existing 5-year employment and reference verification in the airport and air carrier security programs would remain in effect. Until the investigation process is complete, individuals newly requiring access to the SIDA would have to be escorted by an individual who is authorized to have unescorted access.

By December 31, 1993, the fingerprints of at least 50 percent of all individuals who have, or may authorize others to have, unescorted access would have to be submitted to the FBI. By June 30, 1994, the fingerprints of all individuals who have, or may authorize others to have, unescorted access would have to be submitted to the FBI.

For individuals who were authorized to have unescorted access prior to the

effective date of the final rule, the 5-year employment and reference verification would not have to be repeated if it has already been performed. Individuals who were hired before the effective date of the security program amendment requiring employment verification (November 1, 1985), and who have been continuously employed since that date, also would not be subject to this investigation.

The deadline for completing the checks of all covered individuals would be January 1, 1995, unless otherwise specified in the airport security program. From that date forward, only individuals who have undergone the 5-year employment and reference verification and 10-year criminal history record check could have, or could authorize others to have, unescorted access to the SIDA.

Section 108.33 Unescorted Access Privilege (Air Carrier Employees)

The FAA is proposing that air carriers be authorized to perform for their employees the background investigations required of airport operators under proposed § 107.31. The air carrier may provide a general certification to an airport operator pursuant to § 107.31(e) that the checks were performed as part of the program when an air carrier issues identification media to its employees. When an individual air carrier employee is investigated by the carrier for receipt of airport-issued identification media, the air carrier must provide the airport operator with certification for each employee. For identification issued to an air carrier employee by the airport operator, the investigation may be performed by either the air carrier or airport operator. However, since the air carrier is responsible for performing a 5-year employment and reference check for its employees, it is logical that in most cases the 10-year criminal history record check would also be performed by the air carrier.

The proposed requirements for performing the checks by an air carrier are identical to those required of an airport operator in all major respects.

The FAA is proposing that the investigations for which the air carrier is responsible be phased-in according to the airport operator's implementation schedule.

Discussion of Issues Related to U.S. Customs Service

Since 1985, the U.S. Customs Service has required a background investigation of individuals with access to the Customs security areas of U.S. airports 19 CFR 122.181-188. This investigation

includes a FBI criminal history record check and further background investigation by Customs to determine whether the individual should be issued a seal by Customs allowing access to the Customs security area. The Customs Service requires denial of access authority for any individual convicted of a felony or convicted of a misdemeanor involving theft, smuggling or any theft connected crime, or evidence of a pending or past investigation which establishes criminal or dishonest conduct, or a verified record of such conduct. In addition, when, in the judgment of the Customs District Director an individual would endanger the revenue or security of the Customs security area, he or she will also be denied access authority. The Customs Service regulation also specifies conditions for the revocation or suspension of access, which are the same conditions under which an individual will be denied initial access authority.

On December 11, 1991, the Customs Service issued a notice of proposed rulemaking (56 FR 64580) in which it proposed to charge \$19.55 per person for the FBI fingerprint processing required to obtain access authority for Customs security areas at U.S. airports. Currently, Customs does not charge for FBI fingerprint processing.

The FAA invites comments on whether and what methods the criminal history record check required by Customs can be coordinated with the requirements of this proposed rule to minimize the burden on the individual, the airport operator and the air carrier.

Specifically, the FAA invites comments on whether the criminal history record check performed by Customs should be treated as acceptable under the proposed rule for SIDA access. If this concept were adopted, the airport operator could accept the previous criminal history record check of the Customs Service and authorize the individual for unescorted access. Accepting the previous background investigation by Customs would avoid an arguably redundant check because the investigation performed by Customs includes a review of the individual's FBI criminal history record and is based on more restrictive disqualifying criteria (*i.e.*, any felony convictions, or misdemeanor convictions for theft) than the FAA has proposed in this NPRM. Failure to obtain access authority to the Customs area would not preclude an individual from obtaining unescorted access to the SIDA under the FAA proposed rule. The Customs check is relevant to the determination for SIDA access only in

cases where access was granted by Customs. If the FAA decides that individuals having existing Customs access authority meet the requirements of FAA's proposed criminal history record check, how should it be documented? Approximately what percentage of individuals requiring SIDA access authority currently have been approved for Customs security area access authority?

For individuals subject to the FAA required criminal history record check who are not currently authorized for access to Customs security areas, should the FAA establish procedures to permit the release of the FBI criminal history record from the airport operator or air carrier to the Customs Service? The limitations on the use of the criminal history record check results contained in the Act would require the consent of the individual applying for unescorted access authority to permit the results to be transmitted to Customs. Providing the criminal history record to Customs generally would preclude the need for an individual to be subject to a duplicative FBI criminal history record check by the Customs Service. If such a release to Customs is permitted with the individual's consent, the FAA would consider the physical release of the FBI criminal history check results as an acceptable disposal of the record as required under the proposed rule.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the Agency has prepared a more concise document termed a "regulatory evaluation," which analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination required by the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) and an international trade impact assessment. Any person who desires more detailed economic information than this summary contains should consult the regulatory evaluation contained in the docket.

Costs of the Proposed Amendment

The costs associated with this proposed rule consist of administrative and processing costs for airport operators and air carriers and the amount charged by the FBI for criminal history record checks for individuals covered by the investigation requirements. Various options are available to the aviation industry to implement this proposal. This analysis estimates a range of costs based on the type of processing selected by the affected entities. The discounted costs of this proposal vary from a low of \$46 million under a fully-centralized system to a high of \$66 million under a decentralized system over the period from 1992 through 2001.

The variation in costs reflects the differences in administrative processing methods. Centralized processing imparts economies of scale due to the division of labor, specialization of equipment, and reduced fixed costs.

Number of Affected Individuals

The FAA estimates that in 1991, 475,000 persons had authority for unescorted access at the 443 airports covered by part 107. The FAA assumes a 4 percent growth rate per year of individuals with unescorted access privileges to the SIDA based on the forecasted growth in passengers and subsequent need for additional employees. The estimated number of total badges and turnover rate are based on data from three sources: Airport Operators Council International, American Association of Airport Executives, and an FAA econometric estimate of airport employment.

According to data supplied by the aviation industry, the turnover rate for individuals authorized for unescorted

access to the SIDA is estimated to be 35 percent per year. Based on the current total SIDA unescorted access population of 475,000, the estimated turnover rate would be approximately 165,000 individuals per year. Assuming a 4 percent growth in airport and air carrier employment per year over the 10-year period and a constant turnover rate, the annual number of individuals with new authority for unescorted access privileges will grow to 235,000 by the year 2001. Over the decade, the average annual number of criminal history record checks for new authorizations for SIDA access will be 198,000 per year.

Adding the individuals who will be seeking new authority to the current population of individuals holding unescorted access authority to the SIDA (individuals currently holding SIDA unescorted access will be phased-in under the requirement of the proposed rule) results in an average number of record checks over the next 10 years of 214,000 per year.

Processing Methods

The estimated total cost per record consists of three components: The average per record cost of any processing system, the amount charged by the FBI for criminal history record checks, and the cost of airport and air carrier staff time.

Fully-Centralized Processing

A fully-centralized processing system means that one entity completes most aspects of the criminal history records check except for making the final unescorted access determination and maintaining the FAA-mandated records. An entity providing full central processing would receive requests from airports and air carriers for background checks. The entity would verify the quality of the fingerprints and batch those requests, and route the fingerprint cards to the FBI. After the FBI completes the search of its index system, the results would be returned to the entity providing the central processing, which, in turn, would screen the results and forward the results to the airport operator or air carrier. Under a fully-centralized system, an entity providing the service would also follow up on arrests for disqualifying convictions for which there is no disposition. Economies of scale lower the average cost per record in a fully-centralized processing system since one staff person can deal with many background checks. In addition, the start up and other administrative costs can be distributed over the large number of record checks.

The average cost per record for a fully-centralized processing system is

\$34. This is calculated based on the following:

(1) The average record costs for a fully-centralized processing system is calculated as its annual cost (\$895,000, which includes staffing and overhead) divided by the average number of record checks each year (214,000), resulting in an average \$4 cost per record.

(2) The amount charged by the FBI for criminal history record checks is \$21 per record for batched requests.

(3) The average regulated party staff time (airport operator and air carrier) per record is 20 minutes at an average cost of \$9 per record.

The discounted cost for a fully-centralized processing system from 1992 to 2001 is \$46 million.

Partially-Centralized Processing

A partially-centralized system would reduce some of the administrative duties for airport operators and air carriers. Under this arrangement, one or more entities could provide partially centralized processing and would verify the quality of the fingerprints and batch the requests for FBI criminal history record checks. The FBI would send the results of the record check to the entities providing partially-centralized processing, which would in turn mail the record to the airport operator or air carrier.

The average cost per record for a partially-centralized processing system is \$41. This is calculated based on the following:

(1) The average record costs for a partially-centralized processing system is calculated as its annual cost (\$296,000, which includes staffing and overhead) divided by the average number of record checks each year (214,000), resulting in an average \$1 cost per record.

(2) The amount charged by the FBI for criminal history record checks is \$21 per record for batched requests.

(3) The average regulated party staff time (airport operator and air carrier) per record is 40 minutes at an average cost of \$19 per record.

The discounted cost for a partially-centralized processing system from 1992 to 2001 is \$52 million.

Decentralized System

In a decentralized system, each airport operator and air carrier would perform all administrative duties related to the criminal history record check. The requests would be mailed directory to the FBI and the FBI would send the results of the criminal history record check directly to the airport operator or air carrier. This analysis assumes that without a fully or partially-centralized

processing system, airport and air carrier officials would use a total of one hour to fingerprint the applicant, to complete the appropriate form, to record the application, to evaluate the FBI report and follow-up on arrests for disqualifying convictions with no record of disposition.

The average cost per record for a decentralized processing system is \$51. This is calculated based on the following:

(1) This is a decentralized system, thus, there are no central system processing costs.

(2) The amount charged by the FBI for criminal history record checks is \$23 per record for unbatched requests.

(3) The average regulated party staff time (airport operator and air carrier) per record is 60 minutes at an average cost of \$28 per record.

The discounted cost for a decentralized processing system from 1992 to 2001 is \$66 million.

Escorting Costs

The proposed rule provides for escorted access to the SIDA for individuals not authorized for unescorted access. The FAA has included this provision in the proposal to provide a method for employers to utilize the services of individuals while the criminal history record check is being completed. Based upon an FBI statement of its ability to process the checks and administrative handling and processing times, the FAA estimates that it may take from 30 to 60 days (or more) from the time the fingerprints are taken until a final determination can be made. However, in instances where an individual's FBI criminal history record check reveals information that would disqualify him or her from unescorted access, and the affected individual challenges the accuracy of the record to the FBI, the processing time would increase.

The cost estimates for the proposed regulations do not attach a cost for escorting individuals whose criminal history record check is not yet complete. The FAA does not anticipate additional hiring costs associated with escorting individuals while the criminal history record check is pending. The proposal would allow an individual to be escorted by an individual previously authorized for unescorted access privileges.

In most, if not all, situations where an individual is awaiting completion of the criminal history record check, the individual will be in training, working under a closer degree of supervision or working with others who have unescorted access authority so that the

task of escorting can be incorporated into the work environment. The proposed regulation does not require an air carrier or airport operator to appoint individuals whose sole function would be to serve as dedicated escorts. The FAA solicits comments on any costs for providing escorted access until the criminal history record check is completed.

The incremental costs of the rule could be reduced if the FAA decides in the final rule that individuals who currently have access to Customs security areas of U.S. airports meet the requirements of the FAA's proposed criminal history records check. Customs estimates that it submits to the FBI about 60,000 fingerprint cards annually for its airport security program. Depending on the proportion of these employees who have unescorted SIDA access but for whom the criminal history record check has not been completed, the number of individuals who require FAA checks could be correspondingly reduced.

The costs could also be reduced if the FAA determines that it would be appropriate to exclude any portion of the SIDA from the criminal history check requirement. As noted in the Section-by-Section Analysis (Section 107.31(d)), comments are invited on the methods and procedures that could be used if any such exclusions were permitted.

Finally, air carriers and airport operators could reduce the costs of implementing the final rule by deciding that some proportion of employees who currently have unescorted access to the SIDA will not require such access after the final rule takes effect.

Benefits of the Proposed Amendment

This proposed rule would augment other recent FAA security regulations by ensuring that individuals with unescorted SIDA access authority are investigated for records of conviction for certain disqualifying crimes. Each improvement of this network further enhances security in the U.S. civil aviation system.

The FBI estimates that approximately 10 percent of criminal history record checks result in a "hit," *i.e.*, a record of arrest. A recent FAA sample of 120 FBI criminal records of individuals would be covered by the proposed rule indicated that 16 percent (of the 10 percent that resulted in a "hit") had been convicted of crimes that would disqualify them for unescorted SIDA access privileges under the proposed rule. The remaining 84 percent had been arrested for or convicted of other crimes not considered to be disqualifying under the Act, such

as possession of a controlled substance, driving while intoxicated, and petty theft. These data suggest that an estimated 1.5 percent, or approximately 3,000 individuals a year, would be disqualified from unescorted SIDA access under the proposed rule.

The U.S. aviation industry has not experienced incidents in which there was a direct relation between disqualifying offenses and serious security incidents, such as a terrorist bombing or hijacking. However, the legislation indicates Congress' concern that an individual's criminal history could show a disposition to engage in such conduct in the future, which could result in a serious security incident.

United States-registered air carrier operations have experienced 234 terrorist or other criminal events over the past 30 years resulting in a loss of 403 lives. These terrorist and other criminal acts included 221 hijackings and 13 bombings. At this level of criminal activity, the loss of one airplane within a 10-year period due to criminal activity is probable.

The potential value of avoiding a loss of this type is measured by the value of avoided fatalities and aircraft replacement costs. The FAA currently uses a value of \$1.5 million to represent statistically a human fatality avoided.

The FAA has estimated that the destruction of a Boeing 727 would, on average, result in a death toll of 91 persons. The estimated benefit of avoiding these deaths is \$137 million (excluding the possible loss of life on the ground). The replacement value of a Boeing 727 in 1990 dollars is approximately \$6 million. The present value of such a disaster is valued at \$92 million from 1992 through 2001. On the other end of the scale, the loss of a DC-10 would have a present value of \$198 million over the same time period.

Comparison of Cost and Benefits

At the 443 airports in the U.S. aviation security network, nearly 500,000 individuals have unescorted access to airport SIDAs. The proposal would require airports and air carriers to perform an employment history verification and a criminal history record check for individuals with unescorted access to the SIDA. These checks would cost, on average, between \$34 and \$51 each. The total cost over the next decade including the phase-in for individuals currently holding unescorted access authority ranges from \$46 to \$66 million. The cost of this rule would be exceeded by the benefit of preventing the destruction of one airplane.

International Trade Impact Assessment

The proposed rule would exempt foreign air carrier flight crewmembers from the employment and criminal history background checks provided they are covered by acceptable alternate access limitations. This exemption is proposed, in part, because the FBI does not routinely have records of convictions for crimes committed outside the United States. However, foreign nationals and U.S. citizens working in the United States for foreign air carriers who require unescorted SIDA access would be subject to these checks. Thus, the proposal could impose a slight trade disadvantage on domestic air carriers since they would have to incur the cost of the records check for flight crewmembers but foreign air carriers would not. However, the FAA believes that this extra cost is negligible. The additional annual cost per enplanement would be at most one half of one cent. Hence, domestic firms would not incur a discernible competitive trade advantage or disadvantage in the sale of United States aviation products or services in foreign countries.

Initial Regulatory Flexibility Analysis

Section 603(b) and 603(c) of the Regulatory Flexibility Act of 1980 (RFA) ensure that government regulations do not needlessly and disproportionately burden small businesses. The RFA requires FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

FAA criteria set a "substantial number" as not less than 11 and more than one-third of the small entities subject to the amendment. About 220 small airports will be affected by this rule. The threshold for small airports are those operated by towns, cities, or counties whose populations are each less than 50,000. The criteria define a threshold value for "a significant economic impact" as \$6,950 for these airports.

Of the 220 airports which qualify as small entities, only four would incur costs that exceed the threshold. These costs are incurred because of personnel turnover. Thus, the proposed rule would not impose significant costs on a substantial number of small airports.

Air carriers will also incur some additional costs as a result of the proposed rule. The threshold size for air carriers is nine aircraft owned, but not necessarily operated, by the certificate holder, and the cost threshold ranges from \$51,000 for scheduled operators with at least one airplane in their fleet

having fewer than 60 seats to \$107,900 for scheduled carriers whose entire fleet has a seating capacity of more than 60 seats.

The record checks of new employees would result in additional costs to small entities in these two groups. To exceed the threshold, a scheduled Part 135 operator with 9 or fewer aircraft would have to employ about 3,000 employees (assuming a 35 percent turnover rate); a Part 121 operator would have to employ 6,400 employees. However, small operators do not employ even a tenth of these numbers, and many large operators do not employ this threshold number. For example, Iowa Airways, which operates 5 aircraft (and is therefore a small entity) employs only 60 persons.

Hence, FAA has determined that this proposal will not have a significant impact on a substantial number of small entities.

Federalism Implications

The proposed rule would not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Most airports covered by the NPRM are public entities (state and local governments). However, relatively few of the covered individuals are actually employed by the airport operator, and it is anticipated that most of the costs for the required investigations would be borne by the airport tenants. Thus, the overall impact is not substantial within the meaning of Executive Order 12612. Therefore, in accordance with that Executive Order, it is determined that this proposal would not have sufficient Federal implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The reporting and recordkeeping requirement associated with this rule is being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. 35 under *Dot No: 3603; OMB No: New; Title: Unescorted Access Privilege; Need for Information: To record employment, reference and criminal history record check as required by Public Law 101-604; Proposed Use of Information: To determine eligibility for unescorted access; Frequency: Recordkeeping; Burden Estimate: 49,500 hours annually; Respondents: Airport operators and air carriers; Form(s): None; Average Burden Hours Per Respondent: 86—The annual hours per recordkeeper depends on the number of employees in each operation.*

The estimate is 15 minutes per employee.; *For Further Information Contact: The Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4735, or Edward Clarke, Office of Management and Budget (OMB), New Executive Office Building, room 3228, Washington, DC 20503, (202) 395-7340.*

Comments on these information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for FAA. Comments submitted to OMB should also be submitted to the FAA docket.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Initial Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Initial Regulatory Flexibility Act. This Proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Parts 107 and 108

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 107 and 108 of the Federal Aviation Regulations (14 CFR parts 107 and 108) as follows:

PART 107—(AMENDED)

1. The authority citation for part 107 is revised to read as follows:

Authority: Sec. 101, et seq., Pub. L. 101-604, 104 Stat. 3066; 49 U.S.C. 1354, 1358, 1357, 1358 and 1421; 49 U.S.C. 106(g).

2. Part 107 is amended by adding a new § 107.31 to read as follows:

§ 107.31 Unescorted access privilege.

(a) This section applies to all individuals who have, or may authorize others to have, unescorted access to the following areas:

(1) The security identification display area (SIDA) that is identified in the airport security program as required by § 107.25 of this chapter; or

(2) At airports that are not required to identify a SIDA under § 107.25, that portion of the airport where access is controlled for security purposes in accordance with the airport security program.

(b) Except as provided in paragraph (d) of this section, each airport operator shall ensure that no individual has, or may authorize others to have, unescorted access to the areas identified in paragraph (a) of this section unless:

(1) The individual has undergone verification of references and employment history for the 5 years preceding the date of the verification; and

(2) The individual's fingerprint and criminal history record maintained by the Federal Bureau of Investigation (FBI) establishes that within the past 10 years, ending on the date that the airport operator initiates the record check, there is no record of the individual's having been convicted in any jurisdiction of any of the following crimes enumerated in section 316(g)(3)(A)(ii) of the Federal Aviation Act of 1958, 49 U.S.C. App. 1357(g)(3)(A)(ii):

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violations;

(ii) Interference with air navigation;

(iii) Improper shipment of a hazardous material;

(iv) Aircraft piracy;

(v) Interference with flight crew members or flight attendants;

(vi) Commission of certain crimes aboard aircraft in flight;

(vii) Carrying weapons or explosives aboard aircraft;

(viii) Conveying false information and threats;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States;

(x) Lighting violations in connection with transportation of controlled substances;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements;

(xii) Destruction of an aircraft or aircraft facility;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping;

(xviii) Treason;

(xix) Rape;

(xx) Unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance; or

(xxiv) Conspiracy to commit any of the aforementioned criminal acts.

(c) An airport operator may permit an individual to have escorted access in accordance with the airport security program to the areas identified in paragraph (a) of this section. At a minimum, this escorted access shall consist of continuous surveillance by an individual who is authorized to have unescorted access.

(d) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access to the areas identified in paragraph (a) of this section:

(1) Employees of the Federal government or a State or local government (including law enforcement officers) who, as a condition of employment, have been subject to a FBI criminal history record check;

(2) Flight crew members of foreign air carriers covered by an alternate security arrangement in the approved airport operator security program; and

(3) An individual who has been continuously employed in a position requiring unescorted access since being authorized by another airport operator or air carrier pursuant to the requirements of paragraph (b) of this section.

(e) An airport operator will be deemed to be in compliance with its obligations under paragraphs (b)(1) and (b)(2) of this section, as applicable, when it accepts certification from:

(1) An air carrier subject to § 108.33 that the air carrier has complied with paragraphs 108.33(a)(1) and (a)(2) for named employees referred to an airport operator and for a program accepted by an airport operator; and

(2) An airport tenant other than a U.S. air carrier that the tenant has complied with paragraph (b)(1) of this section for its employees.

(f) The airport operator shall designate an individual to—

(1) Review the results of each criminal history record check and identify any disqualifying convictions; and

(2) Serve as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.

(g) The airport operator may designate an entity to perform the investigation required by paragraph (b)(2) of this section. Prior to commencing any investigation, the airport operator or its designee shall notify affected individuals of the requirement to undergo a criminal history record check.

(h) The airport operator or its designee shall collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints shall be recorded on fingerprint cards approved by the FBI;

(2) The fingerprints shall be obtained from the individual under direct observation by the airport operator or its designee;

(3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two acceptable forms of identification media, one of which must bear his or her photograph; and

(4) The fingerprint cards shall be forwarded to the Identification Division of the Federal Bureau of Investigation in a manner that protects the confidentiality of the individual's record.

(i) In conducting the criminal history record check required by this section, the airport operator or its designee shall investigate arrest information for the crimes listed in paragraph (b) of this section for which no disposition has been recorded.

(j) The airport operator or its designee shall:

(1) At the time the fingerprints are taken, notify the individual that a copy of the criminal history record received from the FBI will be made available if requested in writing.

(2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the criminal history record received from the FBI discloses information that would disqualify him or her from unescorted access authority and shall provide each affected individual with a copy of his or her record received from the FBI. The individual may contact the FBI to complete or correct the information contained in the record before any final access decision is made regarding the check, subject to the following conditions:

(i) The individual must notify the airport operator or its designee, in writing, within 30 calendar days after being advised that the criminal history record received from the FBI discloses disqualifying information, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30

calendar days, the airport operator may make a final access decision.

(ii) The individual has one year from the date the airport operator or its designee notified him or her of information that would be disqualifying for unescorted access authority to provide a corrected record received from the FBI before the airport operator may make a final access decision.

(3) Shall notify an individual that a final decision has been made to deny authority for unescorted access.

(k) Any individual authorized to have unescorted access privileges to the areas identified in paragraph (a) of this section who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section shall report the conviction and surrender SIDA identification media within 24 hours to the airport operator.

(l) Criminal history record information provided by the FBI shall be used solely for the purposes of this section, and no person shall disseminate the results of a criminal history record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) The airport operator or its authorized representative; or

(3) Others designated by the Administrator.

(m) After completing the investigations required by paragraph (b) of this section, the airport operator shall retain a written record that the investigation was conducted for the individual until 180 days after the termination of the individual's authority for unescorted access. The airport operator or its designee shall dispose of the FBI criminal history record check information in a manner acceptable to the Administrator. The written record shall be correlated to payments for FBI criminal history record checks for specific individuals, and shall include, at a minimum, the following information for each individual:

(1) The date the fingerprints were taken;

(2) The date the fingerprints were sent to the FBI;

(3) The date the criminal history record was received from the FBI;

(4) The date outcome and the date the determination for unescorted access privileges as identified in paragraph (a) of this section was made; and

(5) Any other information as required by the Assistant Administrator for Civil Aviation Security.

(n) Each airport operator shall implement the requirements of paragraph (b) of this section in accordance with the following schedule:

(1) For airports screening at least 25 million persons, or an airport that has been designated by the Assistant Administrator of Civil Aviation Security:

(i) After June 24, 1992, each airport operator shall implement the requirements of paragraph (b) of this section for all individuals who apply for authority to have, or authorize others to have, unescorted access to the areas identified in paragraph (a) of this section.

(ii) By December 31, 1992, each airport operator shall perform the functions required under paragraph (h) of this section for at least 50 percent of the individuals identified in paragraph (a) of this section.

(iii) By June 30, 1993, each airport operator shall perform the functions required under paragraph (h) of this section for all individuals identified in paragraph (a) of this section.

(iv) No later than January 1, 1994, unless otherwise approved by the Administrator in the airport security program, each airport operator shall not authorize any individual to have, or authorize others to have, unescorted access privileges to the areas identified in paragraph (a) of this section unless the individual has been authorized under paragraph (b) of this section.

(2) For all airports except those identified in paragraph (n) (1) of this section:

(i) After June 30, 1993, each airport operator shall implement the requirements of paragraph (b) of this section for all individuals who apply for authority to have, or authorize others to have, unescorted access to the areas identified in paragraph (a) of this section.

(ii) By December 31, 1993, each airport operator shall perform the functions required under paragraph (h) of this section for at least 50 percent of the individuals identified in paragraph (a) of this section.

(iii) By June 30, 1994, each airport operator shall perform the functions required under paragraph (h) of this section for all individuals identified in paragraph (a) of this section.

(iv) After January 1, 1995, unless otherwise approved by the Administrator in the airport security program, each airport operator shall not authorize any individual to have, or authorize others to have, unescorted access privileges to the areas identified in paragraph (a) of this section unless the individual has been authorized under paragraph (b) of this section.

PART 108—[AMENDED]

1. The authority citation for part 108 is revised to read as follows:

Authority: Sec. 101, et seq., Pub. L. 101-604, 104 Stat 3066; 49 U.S.C. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g).

2. Part 108 is amended by adding a new § 108.33 to read as follows:

§ 108.33 Unescorted access privilege

(a) For each employee covered under a certification made to an airport operator pursuant to § 107.31(e), the certificate holder shall ensure that:

(1) The individual has undergone verification of references and employment history for the 5 years preceding the date of the verification; and

(2) The individual's fingerprint and criminal history record maintained by the Federal Bureau of Investigation (FBI) establishes that within the past 10 years, ending on the date that the certificate holder initiates the check, there is no record of the individual's having been convicted in any jurisdiction of any of the following crimes enumerated in section 316 (g) (3) (A) (ii) of the Federal Aviation Act of 1958 (the Act), 49 U.S.C. App. 1357 (g) (3) (A) (ii):

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violations;

(ii) Interference with air navigation;

(iii) Improper shipment of a hazardous material;

(iv) Aircraft piracy;

(v) Interference with flight crew members or flight attendants;

(vi) Commission of certain crimes aboard aircraft in flight;

(vii) Carrying weapons or explosives aboard aircraft;

(viii) Conveying false information and threats;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States;

(x) Lighting violations in connection with transportation of controlled substances;

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements;

(xii) Destruction of an aircraft or aircraft facility;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping;

(xviii) Treason;

(xix) Rape;

(xx) Unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

- (xxi) Extortion;
 - (xxii) Armed robbery;
 - (xxiii) Distribution of, or intent to distribute, a controlled substance; or
 - (xxiv) Conspiracy to commit any of the aforementioned criminal acts.
- (b) The certificate holder shall designate an individual to—
- (1) Review the results of each criminal history record check and identify any disqualifying convictions; and
 - (2) Serve as the contact to receive notification from an individual applying for unescorted access of his or her intent to seek correction of his or her criminal history record with the FBI.
- (c) The certificate holder may designate an entity to perform the investigation required under paragraph (a)(2) of this section. Prior to commencing any investigation, the certificate holder or its designee shall notify affected individuals of the requirement to undergo a criminal history record check.
- (d) The certificate holder or its designee shall collect and process fingerprints in the following manner:
- (1) One set of legible and classifiable fingerprints shall be recorded on fingerprint cards approved by the FBI;
 - (2) The fingerprints shall be obtained from the applicant under direct observation by the certificate holder or its designee;
 - (3) The identity of the individual must be verified at the time fingerprints are obtained. The individual must present two acceptable forms of identification media, one of which must bear his or her photograph; and
 - (4) The fingerprint cards shall be forwarded to the Identification Division of the Federal Bureau of Investigation in a manner that protects the confidentiality of the individual's record.
- (e) In conducting the criminal history record check required by this section, the certificate holder or its designee shall investigate arrest information for the crimes listed in paragraph (a)(2) of this section, if no disposition has been recorded.

(f) The certificate holder or its designee shall:

- (1) At the time the fingerprints are taken, notify the individual that a copy of the criminal history record received from the FBI will be made available if requested in writing.
- (2) Prior to making a final decision to deny authorization for unescorted access, advise the individual that the criminal history record received from the FBI discloses information that would disqualify him or her from unescorted access authority and shall provide each affected individual with a copy of his or her record received from the FBI. The individual may contact the FBI to complete or correct the information contained in the record before any final access decision is made regarding the check, subject to the following conditions:
 - (i) The individual must notify the certificate holder or its designee, in writing, within 30 calendar days after being advised that the criminal history record received from the FBI discloses disqualifying information, of his or her intent to correct any information believed to be inaccurate. If no notification is received within 30 calendar days, the certificate holder may make a final access decision.
 - (ii) The individual has one year from the date the certificate holder or its designee notified him or her of information that would be disqualifying for unescorted access authority to provide a corrected record received from the FBI before the certificate holder may make a final access decision.
- (3) Shall notify an individual that a final decision has been made to deny authority for unescorted access.
- (g) Any individual authorized to have unescorted access privileges as identified in paragraph (a) of this section who is subsequently convicted of any of the crimes listed in paragraph (a)(2) of this section shall report the conviction and surrender SIDA identification media within 24 hours to the airport operator.
- (h) Criminal history record information provided by the FBI shall be

used solely for the purposes of this section, and no person shall disseminate the results of a criminal history record check to anyone other than:

- (1) The individual to whom the record pertains or that individual's authorized representative;
- (2) The certificate holder or its authorized representative; or
- (3) Others designated by the Administrator.

(i) Upon reaching a determination of an individual's eligibility for unescorted access to the areas identified in paragraph (a) of this section, the certificate holder shall retain a written record that the investigation was conducted for the individual until 180 days after the termination of the individual's authority for unescorted access privileges. The certificate holder or its designee shall dispose of the FBI criminal history record check information in a manner acceptable to the Administrator. The written record shall be correlated to payments for FBI criminal history record checks for specific individuals, and shall include, at a minimum, the following information for each individual:

- (1) The date the fingerprints were taken;
 - (2) The date the fingerprints were sent to the FBI;
 - (3) The date the criminal history record was received from the FBI;
 - (4) The outcome and the date the determination for unescorted access privileges as identified in paragraph (a) of this section was made; and
 - (5) Any other information as required by the Assistant Administrator for Civil Aviation Security.
- (j) Each certificate holder shall implement these requirements in accordance with the airport operator's schedule in § 107.31(n).

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Bruce R. Butterworth,

Director, Office of Civil Aviation Security Policy and Planning, ACP-1.

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