

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

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

RIN 2120-AE14

Unescorted Access Privilege**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Unescorted Access Privilege; Notice of public meetings.

SUMMARY: This notice announces three public meetings pertaining to the Unescorted Access Privilege Notice of Proposed Rulemaking (NPRM) (57 FR 5352; February 13, 1992), in which 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 the requirements of the Aviation Security Improvement Act of 1990. The public meetings will provide the affected parties an opportunity to make oral presentations on the NPRM. This notice includes specific issues for public comment, but comments at the meetings are invited on any aspects of the proposed rule.

DATES: The public meetings will be held on April 28, 1992, in Los Angeles, California; April 30, 1992, in Fort Worth, Texas; and May 12, 1992, in Washington, DC.

ADDRESSES: The public meetings will be held at the following times and locations:

(1) April 28, 1992, from 9 a.m. to 4 p.m., Sheraton Los Angeles Airport Hotel, 6101 West Century Boulevard, Los Angeles, CA 90045.

(2) April 30, 1992, from 9 a.m. to 4 p.m., Federal Aviation Administration, Southwest Region Headquarters, 4400 Blue Mound Road, Building 3, Training Room, Fort Worth, TX 76193-0017.

(3) May 12, 1992, from 9 a.m. to 4 p.m., Quality Hotel Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001.

Registration will begin at 8 a.m. on the day of the meeting at each location.

Persons who are unable to attend the meetings may mail their comments, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC-10), Docket 26763, 800 Independence Avenue, SW., Washington, DC 20591.

These comments must be received on or before May 15, 1992. Comments may be inspected at room 915G between 8:30 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Requests to present a statement at a meeting or questions about the logistics of the meetings should be directed to Florence Hamn, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267-9822.

Questions concerning the subject matter of the meetings should be directed to Andrew V. Cebula, Office of Civil Aviation Security Policy and Plans, Policy and Standards Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267-8293.

SUPPLEMENTARY INFORMATION:**Participation at a Meeting**

Requests from persons who wish to present oral statements at the public meetings should be received by the FAA no later than April 20, 1992, for the California and Texas meetings and no later than May 5, 1992, for the Washington, DC, meeting. Such requests should be submitted to the person listed above in the section titled "**FOR FURTHER INFORMATION CONTACT**" and should include a written summary of oral remarks to be presented, the date of the meeting the requester wishes to address, and an estimate of time needed for the presentation. Requests received after the dates specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers which will be available at the meeting. In order to accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Background

On February 13, 1992, the FAA published Notice No. 92-3, titled Unescorted Access Privilege (57 FR 5352). This proposal is intended to implement the requirements of section 105(a) of the Aviation Security Improvement Act of 1990, which requires the FAA Administrator to issue regulations that subject individuals with unescorted access to U.S. or foreign air carrier aircraft, or to secured areas of U.S. airports, to employment investigations and criminal history records checks. The Act also requires

the Administrator to prescribe procedures for taking fingerprints and to establish requirements to limit the dissemination of criminal history information received from the Federal Bureau of Investigation. The proposed rule sets forth regulations for employment investigations and criminal history records checks. The proposed rule affects individuals who have, or who may authorize others to have, unescorted access privileges to security identification display areas (SIDA) of U.S. airports.

On March 12, 1992, the FAA extended the comment period for this proposal from March 16, 1992, until May 15, 1992 (57 FR 8834). The extension responded to the request of the San Diego Unified Port District and the joint request from the Air Transport Association of America, American Association of Airport Executives, and the Airport Association Council International. The extension permits these organizations, as well as other representatives of the affected parties, additional time to develop comments responsive to the NPRM. It also provides the FAA with sufficient time to hold three public meetings on the proposed rule.

The FAA concluded that the extended comment period and the public meetings will provide an opportunity for the affected parties to submit additional substantive information which will be helpful to the FAA in formulating an effecting final rule.

Specific Issues for Public Comment

There are several specific issues discussed in the following paragraphs on which the FAA seeks comments at the public meetings. The areas addressed were raised generally in the preamble to the NPRM, and are based in part on the FAA's preliminary review of the written comments that have been submitted to the NPRM docket. These key issues are intended to help focus public comments on areas which will be useful in assisting the FAA in developing a final rule. The comments at the meetings need not be limited to these issues, and the FAA invites comments on any other aspects of the proposed rule. Please consult the NPRM for further information.

Temporary Access

In the preamble to the NPRM, under the discussion of § 107.31(c) Escorted Access, the FAA stated:

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.

The issue of temporary access was discussed further in the Regulatory Evaluation Summary in the NPRM, under the heading 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 it may take from 30 to 60 days (or more) from the time the fingerprints are taken until a final determination can be made.

The FAA proposed escorted access as one way to permit access to the SIDA pending receipt of an individual's criminal history record check results, but did not intend to foreclose consideration of other methods of providing temporary access. The FAA seeks comments on alternative systems to provide for an individual's need for access to the SIDA prior to the completion of the check. These alternatives could include measures that an airport operator could undertake to permit temporary unescorted access.

Some commenters have suggested the possibility of using the FBI's National Crime Information Center (NCIC) automated database to perform a "name check" of an individual. However, under published policy established by the NCIC's Advisory Policy Board, the NCIC Interstate Identification Index is not available to check the records of applicants for employment in aviation-related industries. The FAA seeks comments on any alternatives that could be used to grant an individual temporary access authority.

SIDA Exceptions

In the preamble to the NPRM, under the discussion of 107.31(d) *Exceptions to the Investigation Requirements*, the FAA stated:

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 . . . excluding any portions of the SIDA from this requirement, . . . comments are invited on this issue; comments are specifically invited on the methods and procedures that could be used if exemptions were permitted for some portions of the SIDA.

At the public meetings, the FAA seeks comment on whether there are areas within the SIDA that can be excluded from the application of the proposed

unescorted access privilege rule. Specifically, the FAA is interested in comments on whether the criminal history records check should be limited to those individuals with unescorted access to areas of the SIDA which are defined as the secured area under § 107.14 of the FAR.

Several commenters have questioned how the implementation of the proposed rule will apply to the general aviation areas of an airport. The FAA in mind of these and similar concerns. The FAA has recently issued policy guidance to its field offices providing airport operators with flexibility in the treatment of general aviation areas. Under this policy, an airport operator would be able to exclude these areas from the requirement for criminal history records checks, thus minimizing the affect of the proposed rule on individuals with unescorted access to general aviation areas.

Channeling Entity

In the preamble to the NPRM, under the discussion of section 107.31(g) *Designating an Entity and Individual Notification*, the FAA noted that:

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 expects that airport operators will choose to act jointly to improve efficiency in processing requests for criminal history checks.

As noted in the Regulatory Evaluation Summary section of the NPRM, the FAA charges less (\$21) for "batched" requests than it charges for "unbatched" (\$23). After the enactment of the Aviation Security Improvement Act of 1990, but prior to the issuance of the NPRM, several organizations indicated a willingness to channel record requests to the FBI. The FBI, in consultation with the FAA, has indicated its preference that the number of entities be limited in order to facilitate FBI processing procedures. The FAA would like to know if any organizations have an interest in channeling records to the FBI.

The FAA seeks only a general expression of interest at this time. The entity offering this service should be prepared to limit its charge to the amount set by the FBI for unbatched requests and would be permitted to retain the difference between the charge for unbatched and batched requests (\$2 per record).

Meeting Procedures

The following procedures are established to facilitate the meetings:

(1) There will be no admission fee or other charge to attend or to participate in the meetings. The meetings will be open to all persons who have requested in advance to present statements or who register on the day of the meeting subject to availability of space in the meeting room. The meetings may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meetings.

(2) Representatives of the FAA will preside over the meetings. A panel of FAA personnel involved in the rulemaking will be present at each meeting.

(3) Each meeting will be recorded by a court reporter. A transcript of the meetings and any material accepted by the panel during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

(4) The FAA will review and consider all material presented by participants at the meetings. Position papers or material presenting views or arguments related to the Unescorted Access Privilege NPRM may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in a meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

(5) Statements made by members of the meeting panel are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the panel is not intended to be, and should not be construed as, a position of the FAA.

(6) The meetings are designed to solicit public views and more complete information on the Unescorted Access Privilege NPRM. Therefore, the meetings will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, panel members may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on April 7, 1992.

Bruce R. Butterworth,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 92-8303 Filed 4-7-92; 11:20 am]

BILLING CODE 4910-13-M