DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 26763; Amendment Nos. 107–7, 108–12]

RIN 2120-AE14

Unescorted Access Privilege

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is issuing final regulations requiring airport operators and air carriers to conduct an employment investigation and disqualify individuals convicted of certain enumerated crimes from having, or being able to authorize others to have, unescorted access privileges to a security identification display area (SIDA) of a U.S. airport. This rule implements the employment investigation provisions of Section 105 of the Aviation Security Improvement Act of 1990. The rule will enhance the effectiveness of the U.S. civil aviation security system by ensuring that individuals applying for unescorted access privileges do not constitute an unreasonable risk to the security of the aviation system.

FFECTIVE DATE: January 31, 1996. **FOR FURTHER INFORMATION CONTACT:** Robert Cammorroto (202–267–7723) or Linda Valencia (202–267–8222), Office of Civil Aviation Security Policy and Planning, Policy and Standards Division, (ACP–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Availability of Document

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the amendment number or docket number. Persons interested in being placed on a mailing list for future rules should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

Background

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 amended airport and air carrier security programs to require 5-year background checks for individuals applying for unescorted access authority to the security controlled areas of an airport. The check requires the verification of such individual's employment history and references for the previous 5 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) to assess 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. The Commission recommended that Congress enact legislation requiring a criminal history records check for airport employees. The Commission further recommended that the legislation identify certain crimes that indicate a potential security risk, and enable airport operators to deny employment in positions requiring access to security sensitive areas on that basis. The Commission's recommendations formed the basis of the Aviation Security Improvement Act of 1990, Pub. L. 101-604 (the Act).

Section 105(a) of the Aviation
Security Improvement Act (the Act)
now codified as 49 U.S.C. 44936, added
a new provision to the statute. This
provision 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 serving air carriers, to such
employment investigations, including a
criminal history records check, as the
Administrator determines necessary to
ensure air transportation security.

In March 1991, the aviation industry provided suggestions for implementing Section 105 of the Act through the Aviation Security Advisory Committee (ASAC). These recommendations assisted the FAA in developing its initial notice of proposed rulemaking (NPRM) published in the Federal Register on February 13, 1992 (Notice No. 92–3; 57 FR 5352). In that notice the FAA proposed to require a criminal history records check, using the Federal Bureau of Investigation's (FBI) fingerprint-based national criminal history record filing system, for all

individuals (including current employees) with SIDA unescorted access privileges. In that proposal, the FAA used the broad authority delegated to the FAA Administrator in the Act to require an employment investigation, including a criminal history records check.

On March 12, 1992, responding to requests from airport operators and air carriers, the FAA extended the comment period for that proposal from March 16 until May 15, 1992 (Notice No. 92-3A; 57 FR 8834), and announced a series of public meetings. The FAA published the notice outlining the details of the public meetings on April 9, 1992 (Notice No. 92–3B; 57 FR 12396). Public meetings were held in Los Angeles, California on April 28; Ft. Worth, Texas on April 30; and Washington, D.C. on May 12, 1992. The FAA received over 270 written comments to the docket and 66 commenters made oral presentations at the public meetings.

The overwhelming majority of commenters opposed FAA's proposal to require a criminal history records check for all individuals having unescorted access to the SIDA, and the proposal to require escorts for anyone inside the SIDA who did not have such a records check. Specifically, commenters argued that individuals with existing unescorted access privileges should be excluded from the criminal history records check requirement, and that the proposed escorting requirements were neither practical nor cost-effective. Some commenters questioned whether any benefit would result from requiring a criminal history check. Because of these concerns, commenters strongly recommended that the FAA exercise more flexibility in implementing the employment investigation provision of the Act.

Discussion of the SNPRM

In response to comments received during the public meetings and the FAA's re-evaluation of the NPRM, the FAA issued a supplemental notice of proposed rulemaking (SNPRM) (Notice No. 92-3C; 57 FR 43294) on September 18, 1992. The SNPRM focused more broadly on the employment investigation process for individuals applying for unescorted access privilege. The SNPRM proposed an expanded employment application form, an enhanced 5-year employment history verification and, only where appropriate, a criminal history records check. Under this approach, a criminal history records check would be required only when the employment application process, including the history verification, "triggers" a need for one.