

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 107 and 108****[Docket No. 28859; Notice No. 97-4]****RIN 2120-AG32****Employment History; Verification and Criminal Records Check.****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend the regulations that require an access investigation, including a fingerprint-based criminal history record check in certain cases, for unescorted access privileges to security areas at airports. This proposal would extend the requirement for an access investigation (which would be renamed "employment background investigation") to persons who perform checkpoint screening functions at airports and their supervisors. The proposal also would require airport operators and air carriers to audit employment background investigations. The FAA proposes these changes in response to the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104-264). This proposed rule is intended to improve the security of the airport environment.

**DATES:** Comments must be received on or before May 19, 1997.

**ADDRESSES:** Comments on this notice may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-200), Docket No. 28859 Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: "Docket No 28859." Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Linda Valencia, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division, ACP-100, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3413.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket 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 the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 28859." The postcard will be date stamped and mailed to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339), the Federal Register's electronic bulletin board service (telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 202-267-5948).

Internet users may reach the FAA's web page at <http://www.faa.gov> or the Federal Register's webpage at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs) for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A,

Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

**History**

The final rule on Unescorted Access Privilege was published in the Federal Register on October 3, 1995 [60 FR 51854], and was responsive to the Aviation Security Improvement Act of 1990. The rule initiated the 10-year employment background investigation with the potential for a Federal Bureau of Investigations (FBI) fingerprint-based criminal history records check for those individuals who are granted unescorted access to a security identification display area (SIDA) and those who may authorize others to have unescorted access. (See 14 CFR section 107.25.) In that rulemaking, the FAA stated that it would continue to evaluate the civil aviation security system to determine if further changes were warranted.

The bombings of the Federal Building in Oklahoma City and the World Trade Center Building in New York, along with information provided by the U.S. intelligence community since those incidents occurred, indicate that terrorists activities are no longer limited to the "overseas" arena. Intelligence information indicates that terrorists are in the United States, working alone, developing ad-hoc groups, or as members of established terrorist groups. The White House Commission on Aviation Safety and Security identified a further need to enhance the security at our nation's airports. In its final report, it recommended that "Given the risks associated with the potential introduction of explosives into these areas, \* \* \* screeners and employees with access to secure areas be subject to criminal background checks and FBI fingerprint checks."

In Section 304 of the Federal Aviation Reauthorization Act of 1996, Public Law 104-264 (hereafter "the Act"), the Congress directed the FAA to expand the use of both employment background investigations and fingerprint-based criminal history records checks. Section 304 of the Act directs the Administrator to issue regulations requiring the application of the employment background investigation and, when triggered by specific criteria, criminal history record checks to individuals who screen passengers and property that will be carried in a cabin onboard aircraft in air transportation or intrastate air transportation and the supervisors of those individuals. It also provides the Administrator with the discretionary authority to apply those procedures to individuals who exercise security functions associated with cargo and

baggage. In addition, Section 306 of the Act directs the Administrator to provide for the periodic audit of the effectiveness of the criminal history record checks. The FAA believes that the measures mandated by Congress will help ensure the integrity of the airport environment.

#### General Discussion of the Proposal

##### *General*

Title 14 of the Code of Federal Regulations (CFR) Part 107 prescribes security requirements for airport operators in the areas of access control, law enforcement support, and the submissions of airport security programs for FAA approval. Title 14 CFR Part 108 prescribes security rules for U.S. carriers. As applied to this proposal, the term "air carrier" refers to U.S. air carriers conducting passenger-carrying operations.

This proposal would extend the requirement for an access investigation (which would be renamed "employment background investigation") to persons who perform checkpoint screening functions at airports and their supervisors. Consistent with the statute and the current rule, it also proposes that if any of four "triggers" is alerted, the employment background investigation would not be considered complete unless the individual is subject to a fingerprint-based criminal history records check. The proposal would not bar all individuals with a criminal history from performing checkpoint screening functions. However, it would prohibit an individual convicted of specific crimes from performing the identified security functions. All other qualifications and training requirements remain in effect for checkpoint security screeners and their supervisors.

As noted above, section 306 of the Act directs the FAA to provide for the periodic audit of the effectiveness of the criminal history records checks. The FAA in its oversight capacity has audited and will continue to audit these checks. However, the FAA believes that self-auditing is a valuable tool that assists effective rule implementation. Therefore, this proposal also would require air carrier and airport operators to audit their employment background investigations. In this context, the FAA uses the term audit to indicate the use of random sampling to review and evaluate the continuing compliance with the regulatory requirements related to employment background investigations. The proposed language addressing the audit is general in nature because the specific details of the audit

process will be contained in security program amendments of each regulated party.

As noted before, section 304 of the Act provides the Administrator with discretionary authority to require employment background investigations for other individuals who exercise security functions associated with baggage or cargo. The proposed rule does not include language to expand the requirement for such investigations beyond checkpoint screeners and their supervisors. In large part this is because most air carrier baggage and cargo personnel currently have unescorted access to the SIDA and thus already are subject to the current background check rule. The FAA has considered whether to include in this proposal those who perform security functions related to cargo and baggage outside of the security identification display area, and the FAA requests comments on which, if any, additional cargo or baggage personnel should be included. Should those who perform other security functions at the cargo facilities of indirect air carriers and all-cargo carriers located at the airport be subject to the rule? How far up the "cargo handling process" should the background employment investigations apply? Should any cargo company on airport property or just those companies adjacent to the air operations area be included? Should a rule include cargo facilities not at the airport? Should office workers be included? Commenters also should include cost estimates for the recommendations in their comments. The final rule may expand the scope of application based on the comments received.

Further, the FAA is proposing several other minor changes to the rule. The first is applicable to air carriers and clarifies the obligation of the air carriers to do employment background investigations on persons who receive air carrier issued media that are accepted by one or more airports for unescorted access within a SIDA. Second, the proposed rule would require that a completed employment background investigation file accompany the certification made by the airport tenant to the airport operator under section 107.31(n)(2). Third, the proposed rule spells out in more detail the requirements for the maintenance and control of employment background investigation files.

Readers familiar with the current sections 107.31 and 108.33 language will note a change in the arrangements of the paragraphs in addition to the proposed language. The sequence of some paragraphs and the addition of

descriptive paragraph headings are proposed for clarification.

##### *Section-by-section analysis*

##### *Sections 108.33(a) and 107.31(a), Applicability*

The FAA is proposing to clarify the applicability of the rule to individuals who hold only air carrier issued media that permits unescorted access within a SIDA. Proposed section 108.33(a)(2) would require that an employment background investigation be completed for each individual who is issued an air carrier identification that authorizes such unescorted access, typically flight crews. The proposed change addresses a situation not anticipated at the time the rule was originally issued. It has come to the attention of the FAA that not every flight crewmember is being issued an airport access media at their "home base," which would have required a certification be made indicating that an employment background investigation had been completed.

Additionally, the FAA is also proposing to expand the applicability of the employment background investigation in § 108.33 to require that individuals performing screening functions associated with persons and property entering the cabin of an aircraft be subjected to the same investigative requirements for their employment history investigation. The employment background investigation requirement also would apply to those individuals holding the two immediate supervisory positions above the screeners. These positions are commonly known as checkpoint security supervisors (CSS's) and shift or site supervisors. These generally are the only supervisors at the airport who have direct control over the screening process. Under proposed paragraph (a)(3), the employment background investigation requirement would apply beginning on the effective date to all persons hired to perform the identified function. Under paragraph (a)(4), all screeners and supervisors hired before the effective date would have to have an employment background investigation completed by 1 year after the effective date.

##### *Sections 108.33(b) and 107.31(b), Employment History Investigation Required*

These paragraphs describe the current 10-year employment background requirement, which includes the verification of the most recent 5 years of employment.

Sections 108.33(c) and 107.31(c),  
*Investigative Steps*

These paragraphs specify the steps which must be followed to complete an employment background investigation. The responsibility remains with the regulated party to determine when a fingerprint-based criminal history record check has been triggered. Should the regulated party make a determination to no longer consider the individual for a position that requires a completed employment background investigation, a criminal history record check would not be required. When a criminal record is returned to the regulated party, that party must make a comparison of the record to the list of disqualifying crimes. A conviction of any of the listed crimes, in any jurisdiction, is disqualifying.

An editorial change is proposed to the list of "triggers" that determine when an individual will be fingerprinted. This proposal reflects the four criteria as they are listed in the Act. There are no additions to the current criteria; only the format is changed.

Sections 108.33(d) and 107.31(d),  
*Individual Notification*

A minor change is proposed that would require the regulated party to identify a point of contact when it notifies the affected individual that a criminal history record check will be conducted.

Sections 108.33(e) and 107.31(e),  
*Fingerprint Processing*

These paragraphs essentially match the current regulation with a few points of clarification added. One clarification is proposed because some airport operators and air carriers are now submitting fingerprint cards obtained through local police departments and not cards which have been provided by the FAA. The current regulation states that an approved FBI fingerprint card may be used. Although many cards are approved by the FBI, only those cards issued by the FAA are intended to be utilized for this program. This clarification is in keeping with the agreement made between the FAA and the FBI regarding the processing of the fingerprint cards, and will facilitate the entire process.

Questions have been raised about whether individuals being fingerprinted may be allowed to submit their own cards with money orders to the FAA. Paragraph (e)(2) clarifies that individuals may not handle or possess the fingerprint card on which their prints have been taken.

The last point of clarification addresses the cost of processing

fingerprints, which have increased from the time the Final Rule was issued in October 1995. The difference between the total current processing cost of \$28.00, and the fee found in the current regulations, \$24.00, is being paid by the FAA. Upon the effective date of a final rule, the entire cost of processing the fingerprint cards will be assessed to both airport operators and air carriers. In anticipation of future changes in the cost of processing, the FAA proposes that the applicable fee will be provided through the local FAA security offices to air carriers and airport operators.

A point worth reiterating here is that if the first, or subsequent, set of fingerprints is not classifiable, another set of prints must be submitted. The employment background investigation is not considered complete until the regulated party either receives and follows upon the information contained in the criminal history record or has received a "no record" transmittal.

Sections 108.33(f) and 107.31(f),  
*Determination of Arrest Status*

No changes have been made.

Sections 108.33(g) and 107.31(g),  
*Availability and Correction of FBI Records and Notification of Disqualification*

These paragraphs contain some of the elements in current sections 108.33(g) and 107.31(k), respectively. The proposal consolidates the regulated parties' responsibilities regarding notification based on an individual's criminal record. No substantive changes have been made.

Sections 108.33(h) and 107.31(h),  
*Corrective Action by Individuals*

These paragraphs set out in the process by which an individual may challenge information that they believe to be incorrectly contained in their criminal history record. Some of the information was previously contained in sections 108.33(g) and 107.31(g). No substantive changes have been made.

Sections 108.33(i) and 107.31(i), *Limits on Dissemination of Results*

No changes have been made.

Sections 108.33(j) and 107.31(j),  
*Employment Status*

These new paragraphs clarify the status of those persons awaiting the results of their fingerprint card submissions. They restate the current requirement to escort those who are seeking, but have not cleared for, unescorted SIDA access. Section 108.33(j) proposes that those individuals applying for screening

functions and for screening supervisory positions may not make independent judgments until their employment background investigation is completed.

Sections 108.33(k) and 107.31(k),  
*Recordkeeping*

The proposal clarifies the intent of the responsibilities of the regulated parties under the current unescorted access rule. This proposal reinforces the responsibilities related to the maintenance and control of the entire employment background investigative file. Special emphasis has been placed, due to previous confusion, on the handling and destruction of the criminal history records. A discussion of the rules governing who may access, maintain, and destroy the FBI criminal record was included in the preamble to the unescorted access final rule. The FBI has advised the FAA of its strict interpretation of the responsibilities and obligations regarding the handling and destruction of the criminal history records provided to regulated parties. As a result, the FAA is proposing that only direct employees of airport operators or air carriers may carry out responsibilities related to the request, receipt, review, maintenance, and destruction of the information contained within the criminal history record, as well as the criminal history record itself. Contract employees are not considered direct employees. This proposal is consistent with current FBI requirements in 28 CFR 20.33.

Sections 108.33(l) and 107.31(l),  
*Continuing Responsibilities*

Under these paragraphs those individuals who are granted unescorted SIDA access and those who have been given the responsibility to perform the listed screening functions or supervisory duties would be obligated to report themselves to their employer should they subsequently be convicted of any disqualifying crime. The FAA also proposes that the tenant employer or contractor employer must report to the airport operator or the air carrier, as appropriate, either while the employment investigation is ongoing or afterwards, that an individual may have a possible conviction of a disqualifying crime. Should this information be obtained after the individual has been cleared for unescorted access or to perform screening or supervisory functions in §§ 107.31(a) or 108.33(a), the tenant or contractor employer would be required to report it. The FAA proposes that once this information becomes available to airport or the air carrier, the regulated party would have to determine the status of the conviction

and take appropriate action if the conviction is confirmed.

#### Section 108.33(m), Air Carrier Responsibilities

This proposal clarifies air carrier's responsibility regarding the location of employment background investigation files that may not have been adequately addressed in the unescorted access privilege rule. It was the intent of the FAA under that rule to have the employment background investigation files available for inspection by the FAA at the airport where the air carrier has made a certification to the airport operator under § 107.31 for the issuance of airport media. Paragraph (m)(1) of the proposal would make this an explicit obligation and require the air carrier to designate an individual at each airport to control and maintain the files.

Under paragraph (m)(2) of the proposed rule, the air carrier also would be required to designate an individual to oversee the control of the employment background investigation files of individuals covered by section 108.33(a)(2), (3), or (4). This would include screeners and their supervisors, as well as individuals issued air carrier identification media, for whom no certification was made to an airport operator under section 107.31(n).

Paragraph (m)(3) would add a requirement for the air carrier to audit the accuracy and completeness of the employment background investigations being conducted on both its employees and contractor employees. The depth of this audit should be specific enough to provide the regulated party with information regarding the level of thoroughness being applied to the investigations. This review should be completed with enough sufficiency to allow the regulated parties to make determinations on any needed improvements required to maintain compliance with the regulation. This proposed audit may serve as a management tool for the regulated party; however, it does not relieve the party of the responsibility to review each employment background investigation for compliance with the regulation, to include reviewing determinations made to initiate a criminal history records check and requisite resolutions. The details of the audit will be further defined in the regulated party's security program. Regulated parties may anticipate that the FAA will develop minimum audit standards to be applied to air carriers and airport operators as part of their security programs.

#### Section 107.31(m), Exception

Based on information the FAA has obtained regarding the processing of U.S. Customs Service (USCS) background investigations, it has been determined that the exception provided for in the current 107.31(e)(4) should no longer be recognized. It has been determined that current USCS background investigations no longer meet the requirements of the FAA employment background investigation. Therefore, the FAA proposes to remove this exception.

#### Section 107.31(n), Investigations by Air Carrier and Tenants

The FAA proposes that when the airport operator chooses to accept a certification from a tenant under section 107.31(n)(2), to include foreign air carriers, the operator must also collect and maintain the entire employment background investigation file upon which the certification is based. This will help ensure that the investigations are properly completed and assist the airport operator in documenting the information needed for an effective oversight and audit process.

#### Section 107.31(o), Airport Operator Responsibility

It remains the airport operator's responsibility to designate the airport security coordinator (ASC) responsible for reviewing and controlling the results of the employment background investigations, which will now include employment background investigation files submitted with tenant certifications. If criminal history records are requested, the ASC will continue to serve as the contact to receive notification, if necessary, from individuals of their intent to correct their criminal history record. A new paragraph 107.31(o)(3) proposes to require the airport operator to audit the accuracy and completeness of the background investigations being conducted on its employees and tenant employees. The details of the audit process will be included under the security program, similar to the proposal for air carriers under section 108.33(m).

#### Economic Summary

The FAA has determined that this proposed rule is not a "significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below. (A detailed discussion of costs and benefits is contained in the full

evaluation in the docket for this proposed rule.)

In 1995, the FAA issued a final rule to perform a 10-year employment review, with a potential for the conduct of a criminal history records check, of all individuals with unescorted access to the SIDA. This check was instituted as a measure to ensure that all individuals with such unescorted access privileges could account for all their time in the previous 10 years and that they had not been convicted of enumerated criminal offenses during that time. Specific standards, if met, would require the performance of a criminal background check in order for the individual to be further considered for unescorted access to the SIDA. Convictions for certain crimes could provide an indication of an individual's predisposition for criminal or terrorist acts; such individuals could pose threats to aviation security.

Certain key individuals are not covered under the current rule, and these include screening personnel. In the wake of an increased terrorism threat to Americans in general and American aviation in particular, the U.S. Congress authorized and mandated that the FAA extend these employment background checks to a new set of aviation employees. These include persons responsible for the screening of passengers and property and their supervisors. This Notice of Proposed Rulemaking (NPRM) proposes to implement this specific portion of the legislation.

In order to avoid duplication of employment background checks by entities involved at the airports, the FAA originally granted exceptions to the requirements for a 10-year employment review. One such exception was to allow the airport operators to accept the U.S. Customs Service (USCS) seal or hologram which was granted to an individual after a USCS background check is conducted. It has been determined that USCS background checks do not meet the requirements of FAA regulations. The FAA is proposing this exception no longer be recognized.

The Office of Civil Aviation Security Operations conducted an audit of employment background checks required to be maintained by airport operators and air carriers. The FAA is proposing that airport operators and air carriers audit employment background investigations that are conducted in compliance with the regulations to ensure that they are in compliance.

### Cost of Compliance

The FAA has performed an analysis of the expected costs and benefits of this regulatory proposal. In this analysis, the FAA estimated costs for a 10-year period, from 1997 through 2006. As required by the Office of Management and Budget (OMB), the present value of this stream, was calculated using a discount factor of 7 percent. All costs in this analysis are in 1995 dollars.

There are currently 18,000 screeners and screener supervisors filling 12,000 full time equivalent (FTE) positions. Industry estimates break this down into 16,818 screeners filling 10,818 positions, 1,082 full time checkpoint security supervisors (CSS's), and 100 full time shift supervisors. The analysis assumes loaded hourly wages of \$5.70 for screeners, \$6.75 for CSS's, and \$11.00 for shift supervisors. Industry sources report, on average, annual turnovers of 115% for all screeners, 90% for CSS's, and 20% for shift supervisors. This turnover rate, of course, will vary by airport and location. Given the difficulty of discerning the actual turnover rates at individual airports, the FAA has opted to perform this analysis using a macro approach and will use these turnover rates for the entire industry. In addition, this analysis assumes that the number of screeners will grow at an annual rate of 1.5%.

There are three cost components that need to be considered when an employee's application triggers the necessity of a criminal history records check. These involve the fee for processing fingerprints; the time for a paperwork/clerk specialist to take the fingerprints, do the requisite paperwork, and mail the forms; and the need for this employee to be supervised.

Currently, a fingerprint check takes, on average, 54 days to be processed. During this time period, this particular employee, if hired, would need to be supervised. This employee's productivity would be low for he or she would not be able to exercise any independent judgment; all screened baggage would also need to be checked by this employee's supervisor, and this employee would not be able to do tasks such as using the metal detector or hand wand, or perform a physical search. On the other hand, at times, this employee might be doing tasks that do not need 100% attention from a supervisor, such as placing bags on the belt. Accordingly, the FAA will use a 15% productivity rate in this analysis, but calls for comment.

The alternative would be not to hire the employee until the results of the

fingerprint check come back. Given the high turnover rate of screeners, there is a good likelihood at many airports that this person could then be hired based on another job opening.

The FAA examined the cost of both of these alternatives. The lower cost alternative would be not to hire this person until the fingerprint check results return; in such a situation, the only costs would be the costs of fingerprinting the employee. The higher cost alternative would be to hire this person and pay them even though their productivity would be low. Screeners would be supervised by another screener, at a total cost of about \$1,850. CSS's would be supervised by another CSS, at a total cost of about \$2,180.

The current processing fee for a fingerprint investigation is \$28; the FAA has been paying the difference between that and the current published fee of \$24. Under the proposal, the cost of fingerprinting would remain the same; there would be no additional costs to society from these changes. Employers and/or employees would pay the entire cost (with employees proscribed from handling the fingerprint cards), while the FAA would no longer pay the \$4 difference. Hence these incremental changes cancel each other out.

The FAA collected data on the results of the first eight months of the current rule. Of the applications that were processed 0.4% of applicants needed to be fingerprinted and because a negligible amount had a prior criminal conviction which disqualified them, this analysis will use 0%. In the absence of other information, the FAA will use these percentages in estimating the costs of this proposed rule. Due to both the growth rate in screeners and the annual turnover rates, the FAA estimates that the 10-year costs would range from \$41,000 (net present value, \$29,000) to \$1.31 million (net present value, \$916,000) with the latter including the cost of supervision.

The FAA anticipates that there would be cost in removing the USCS exemption in the current § 107.31, but does not have the information necessary to calculate it, so calls for comment on the number of airport employees who currently were granted unescorted access due to a background check from the USCS. Domestic airports that have a USCS operations present have the option, for specific employees, of granting SIDA access by conducting the employment background checks itself or they may accept the USCS' background check. Using the latter option would cost the airport nothing while using the former would have the potential for significant cost.

The FAA believes that at some of the larger airports, there may be several hundred employees that would be affected by the proposed rule change; given future employee growth and replacement, the costs would not be negligible. However, there is no definitive source as to how many such employees exist. It is important to note that no employee who received unescorted access based on an employment check from USCS would have to undergo a new check.

This proposal would add a new requirement that would require the airport operators and air carriers to review the employment background documentation of their own employees as well as any appropriate contractors or, in the case of airports, tenants. Reviewing the results of employment background investigations would be a new requirement for both airports and air carriers. They would need to develop and carry out processes by which they would examine the accuracy and completeness of the employment background investigations being accomplished on all of its employees.

The actual percentage to be audited may vary by airport and air carrier and would be included in each individual security program. This analysis will estimate costs on the assumption that, on average, 5 percent of all employment background investigations would be checked. The average check would involve a paperwork/clerk specialist going through the employee's application and checking to make sure that all items were accurate. The FAA estimates that the average investigation would cost approximately \$55.

Based on the number of employees at airports with unescorted access privileges, specific employee growth rates, and annual attrition rates, the FAA calculates 10 year costs for the airports to be \$3.50 million (net present value, \$2.41 million). Meanwhile, the air carriers would need to run checks on the screeners and screener supervisors that are hired during this time period. The 10-year costs for the airports sum to \$618,500 (net present value, \$430,800).

The 10-year cost of this proposed rule would range from \$4.16 million (net present value, \$2.87 million) to \$5.44 million (net present value, \$3.76 million).

### Analysis of Benefits

The proposed rule to amend parts 107 and 108 is intended to enhance aviation safety. The primary benefit of the proposed rule would be to strengthen airport and air carrier security. Aviation security is achieved through an intricate set of interdependent requirements. It

would be difficult to separate out any current existing requirement or any proposed change and identify to what extent that requirement or that change, alone, would prevent a criminal or terrorist act in the future. Certainly, it would be difficult to show that this proposal, alone, would be solely responsible for preventing future such incidents.

President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation is a national threat. The U.S. Congress recognized this threat in the Act by: (1) Authorizing money for the purchase of specific anti-terrorist equipment, and the hiring of extra security personnel; and (2) requiring the FAA to promulgate additional security-related regulations. This proposal seeks to establish one of these security-related regulations.

Since the mid-1980's, the major goals of aviation security have been to prevent bombing and sabotage incidents. Preventing an explosive or incendiary device from getting on board an airplane is one of the major lines of defense against an aviation-related criminal or terrorist act. The individuals covered by this proposed rule play a major role in preventing such occurrences. Requiring an employment background check, and as needed the subsequent criminal history record check of a person covered under this proposed rule, could reveal information which could point out a susceptibility of the individual to be involved or to become involved in criminal or terrorist activity. Such individuals could definitely be a threat to aviation security.

The most deadly and expensive example of the type of explosion that aviation security is trying to prevent is the Pan Am 103 tragedy over Lockerbie, Scotland. A conservative estimate of the costs associated with this catastrophe yields \$1.4 billion. While the specific proposals in this proposed regulation may not, by themselves, have prevented this tragedy, this cost underscores the consequences of not taking prudent security-related steps.

Some benefits can be quantified—prevention of fatalities and injuries and the loss of aircraft and other property. Other benefits are no less important, but are probably impossible to quantify—the perception of improved security on the part of the traveling public, and general gains for the U.S. attributable to the commitment to enhance aviation security.

#### Comparison of Costs and Benefits

The 10-year cost of this proposed rule would range from \$4.16 million (net present value, \$2.87 million) to \$5.44

million (net present value, \$3.76 million). This cost needs to be compared to the possible tragedy that could occur if a bomb or some other incendiary device were to get onto an airplane and cause an explosion. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to twelve American airplanes being blown up in Asia in early 1995. While the specific proposals in this proposed regulation may not, by themselves, have been factors in the occurrence of Pan Am 103 or the prevention of the culmination of the conspiracy in Asia, these potential devastating costs emphasize the consequences of not taking sensible security-related steps.

Congress has mandated that the FAA promulgate these proposed regulations. Congress, which reflects the will of the American public, has determined that this proposed regulation is in the best interest of the nation. Because this proposed regulation reflects the will of the American people, and because its cost is low compared to the potential catastrophe of a single bomb explosion on an airplane, the FAA finds this proposed rule cost-beneficial.

#### Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

The FAA's criterion for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For operators of aircraft for hire, a small operator is not that owns, but not necessarily operates, nine or fewer aircraft. The FAA's criteria for "significant impact" are \$4,900 or more per year for an unscheduled operator, \$124,000 or more per year for a scheduled operator whose entire fleet is made up of airplanes with over 60 seats, and \$69,000 or more per year for other scheduled carriers.

Meanwhile, a small airport is one owned by a country, city, town or other jurisdiction having a population of 49,999 or less. If two or more towns, cities, or counties operate an airport jointly, the population size of each is totaled to determine whether that airport is categorized as a small entity. The threshold annualized cost level of \$8,000.

Only scheduled carriers and public charters are required to conduct

screening. The total cost for a screener or a CSS whose application triggers a background check, and who is hired for the 54 day investigatory process, would be \$1,758.86 and \$2,082.86, respectively. An investigation would cost \$55.28, so the highest possible annual cost for a screener would be \$1,862.24 and for a CSS would be \$2,186.24. A scheduled air carrier would need to have either 38 new screeners or 32 new CSS's in a single year, needing a background check, to exceed \$69,000. The analysis that no more than 91 screeners would need an employment background check in any given year. It is extremely unlikely that one individual air carrier would decide to hire, through screening companies, 42% of those screeners, especially given the low productivity of these employees for this time period.

Meanwhile, because almost all CSS's move up through the ranks rather than being hired from the outside, they would have already been subject to the requisite investigations, if they were necessary. Based on projected annual growth and turnover rates as well as assumed percentage of employees needing fingerprint checks, this analysis assumes that no CSS would be subject to an employment background check. Hence, no scheduled air carrier would have these costs exceed \$69,000.

The only small entity airports that would have unescorted access privileges would have less than 2 million person screenings per year. At such airports, an average of 554 employees have such access. Hence, in any given year, no more than 28 employees would have their applications checked. At \$55.28 per investigation, the airport operators costs would equal \$1,548, which is less than the threshold cost.

Accordingly, the annual costs expected to be imposed on small operators would not exceed the thresholds for significant impact outlined above. Therefore, the FAA finds that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Statement

In accordance with the Office of Management and Budget memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. Since both domestic and international air carriers use screeners, this proposed rule change would have an equal effect on both. Unlike domestic air carriers that compete with foreign air carriers, domestic airports are not in competition with foreign airports. For

this reason, a trade impact assessment would not be applicable for domestic airports.

#### Unfunded Mandate

Title II of the Unfunded Mandates Reform Act of 1995 (the Reform Act), enacted as Public Law 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Reform Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Reform Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Reform Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any significant Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Reform Act do not apply.

#### Federalism Implications

The regulations proposed herein do not have a 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposed rule does not have federalism implications warranting the preparation of a Federalism Assessment.

#### International Civil Aviation Organization (ICAO) and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International

Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA finds no corresponding International Civil Aviation Organization regulations or Joint Aviation Regulations; therefore, no differences exist.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1955, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule are being submitted to the Office of Management and Budget for review.

The unescorted access privilege requirements for Parts 107 and 108 have been previously assigned Office of Management and Budget (OMB) Control No. 2120-0564. This NPRM, although it has a different title, applies the same recordkeeping requirements for unescorted access to a different population, as required under the Federal Aviation Reauthorization Act of 1996. The additional population affected are those individuals, and their supervisors, who perform screening functions related to the persons and property which are carried aboard the cabin of an aircraft engaged in air transportation. The statute also provides for background checks on those who perform cargo and baggage security related functions, as the Administrator determines is necessary. Comments are requested from the public. Based on those comments, persons or positions may be specifically designated, and may be included in the final rule.

The employment background information is collected from those who apply for positions listed in the previous paragraph. The information is collected by either the airport operator or the air carrier who is seeking to employ persons to perform those functions at any U.S. airport operating under Part 107. The purpose of the employment review is to determine if any one of four standards is met; if so, an FBI criminal history records check must be performed if the person is to be further considered for performing the listed functions. Lacking evidence that such a review was completed, either the airport operator or the air carrier, whomever is the regulated party, may be subject to a violation which could carry a civil penalty. An addition which will be covered under this NPRM is that the airport operators and air carriers conduct a periodic audit on the completed employment background applications. The process implemented by each regulated party will be described and added to their respective security programs. The time needed to

update the security programs with this information is estimated to take 2 hours. Further it is estimated that this addition to the security program will only occur once. The total estimated burden is based on 2 hours times 574 (443 airports + 131 air carriers), for a total of 1,148 hours.

The FAA considers comments by the public on the proposed collection of information in order to evaluate the accuracy of the estimate of the burden of the proposed collection of information, the quality, utility and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

In submitting comments to OMB, commenters should keep in mind that OMB is required to make a decision concerning the collection of information contained in the proposed regulations between 30 and 60 days after publication of this document in the Federal Register.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Aviation Administration, U.S. Department of Transportation. It is requested that comments sent to OMB also be sent to the FAA at the address listed in the comments section.

#### Conclusion

The FAA has determined that this proposed regulation is not a significant rule under Executive Order 12866; and is not a significant proposed rule under Department of Transportation Regulation Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and "Regulatory Flexibility Determination," the FAA certifies that the NPRM will not have a significant economic impact on small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed **FOR FURTHER INFORMATION CONTACT.**

#### List of Subjects in 14 CFR Parts 107 and 108

Air carriers, Air transportation, Airlines, Airplane operator security, Aviation safety, Reporting and record keeping requirements; Security measures, Transportation, Weapons.

#### The Proposed Amendments

For the reasons set forth in the preamble, it is proposed to amend 14 CFR Chapter I as follows:



**PART 107—AIRPORT SECURITY**

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

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44706, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105; Sec. 306, Pub. L. 104–264, 110 Stat. 3213, 49 U.S.C. 44936.

2. Section 107.31 is revised to read as follows:

**§ 107.31 Employment history, verification and criminal history records checks.**

(a) *Applicability.* On or after January 31, 1996, this section applies to all individuals seeking authorization for, or seeking the authority to authorize others to have, unescorted access privileges to the security display area (SIDA) that is identified in § 107.25 of this part.

(b) *Employment background investigations required.* Except as provided in paragraph (m) of this section, each airport operator shall ensure that no individual is granted authorization for, or is granted authority to authorize others to have, unescorted access to the SIDA unless the following requirements are met:

(1) The individual has satisfactorily undergone a review covering the past 10 years of employment history and verification of the 5 years preceding the date the employment background investigation is initiated as provided in paragraph (c) of this section; and

(2) The results of the employment background investigation do not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of a crime involving any of the following crimes enumerated in paragraphs (b)(2) (i) through (xxv) of this section. Where specific citations are listed, both the current citation and the citation that applied before the statute was recodified in 1994 are listed.

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306 [formerly 49 U.S.C. App. 1472(b)];

(ii) Interference with air navigation, 49 U.S.C. 46308 [formerly 49 U.S.C. App. 1472(c)];

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312 [formerly 49 U.S.C. App. 1472(b)(2)];

(iv) Aircraft piracy, 49 U.S.C. 46502 [formerly 49 U.S.C. App. 1472(i);

(v) Interference with flight crew members or flight attendants, 49 U.S.C. 46504 [formerly 49 U.S.C. App. 1472(j)];

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506 [formerly 49 U.S.C. App. 1472(k)];

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505 [formerly 49 U.S.C. App. 1472(l)];

(viii) Conveying false information and threats, 49 U.S.C. 46507 [formerly 49 U.S.C. App. 1472(m)];

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b) [formerly 49 U.S.C. App. 1472(n)];

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315 [formerly 49 U.S.C. App. 1472(q)];

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314 [formerly 49 U.S.C. App. 1472(r)];

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

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

(xxi) Extortion;

(xxii) Armed robbery;

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

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(c) *Investigative steps.* The employment background investigation shall consist of the following steps:

(1) The individual shall provide the following on an application form:

(i) The individual's full name, including any aliases or nicknames.

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 consecutive months, during the previous 10-year period.

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The airport operator shall include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal history records check.

(3) The airport operator shall verify the identify of the individual through the presentation of two forms of identification, one of which must bear the individual's photograph.

(4) The airport operator shall verify the information on the most recent 5

years of employment history required under paragraph (c)(1)(ii) of this section. Information shall be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the following conditions exists, the employment background investigation shall not be considered complete unless it includes a check of the individual's fingerprint-based criminal history record maintained by the Federal Bureau of Investigation (FBI). The airport operator may request a check of the individual's fingerprint-based criminal history record only if one of more of the following conditions exists:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the airport operator or the tenant employer during the investigation indicating a possible conviction for one of the crimes listed in (b)(2).

(d) *Individual notification.* Prior to commencing the criminal history records check, the airport operator shall notify the affected individual and identify the Airport Security Coordinator as the point of contact for follow-up.

(e) *Fingerprint processing.* The airport operator 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, and distributed by the FAA for this purpose.

(2) The fingerprints shall be obtained from the individual under direct observation by the airport operator or a law enforcement officer. Individuals submitting their fingerprints shall not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual shall be verified at the time fingerprints are obtained. The individual shall present two forms of identification, one of which must bear the individual's photograph.

(4) The fingerprint card shall be forwarded to Federal Aviation Administration, 800 Independence Ave, S.W., Washington, D.C. 20591 (ATTN: ACO-300, Fingerprint Processing).

(5) Fees for the processing of the criminal checks are due upon application. Airport operators shall



submit payment through corporate check, cashier's check, or money order made payable to "U.S. FAA," at the prevailing rate for each fingerprint card. Combined payment for multiple applications is acceptable. The prevailing rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal history records check required by this section, the airport operator shall investigate arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded to make a determination on the outcome of the arrest.

(g) *Availability and correction of FBI records and notification of disqualification.*

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

(2) Prior to making a final determination to deny authorization to individuals described in paragraph (a) of this section, the airport operator shall advise individuals that the FBI criminal history record discloses information that would disqualify them from positions covered under this rule and provide each individual with a copy of their FBI record if it has been requested.

(3) The airport operator shall notify an individual that a final determination has been made to grant or deny authority for unescorted access.

(h) *Corrective action by individuals.* Individuals may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in their record before any final determination is made, subject to the following conditions:

(1) Within 30 days after being advised that the criminal history record received from the FBI discloses disqualifying information, individuals must notify the airport operator, in writing, of their intent to correct any information believed to be inaccurate.

(2) Upon notification by an individual that the record has been corrected, the airport operator must obtain a copy of the revised FBI record prior to making a final determination.

(3) If no notification is received within 30 days, the airport operator may make a final determination.

(i) *Limits on dissemination of results.* 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 records check to anyone other than:

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

(2) Airport officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work within the SIDA when under escort by someone who has unescorted SIDA access privileges.

(k) *Recordkeeping.* It is the airport operator's responsibility to make any criminal history records request as appropriate to this regulation, to receive and review the criminal history records of applicants, and to maintain and destroy these sensitive documents. The criminal record responsibilities shall be carried out only by direct airport operator employees. The airport operator shall maintain and control in a manner acceptable to the Administrator the following written records for each individual until 180 days after the termination of the individual's authority for unescorted access or the individuals authority to authorize others to have unescorted access:

(1) A record of each individual subject to an employment background investigation that includes:

- (i) The application;
- (ii) The employment verification information obtained by the employer;
- (iii) The names of those from whom the employment verification information was obtained;
- (iv) The date and the method of how the contact was made; and
- (v) Any other information as required by the Administrator.

(2) A record for each individual subject to a criminal history records check shall include, in addition to the records in paragraph (k)(1) of this section, the results of the record check, or a certification by the airport operator or air carrier that the check was completed and did not uncover a disqualifying conviction.

(l) *Continuing responsibilities.*

(1) Any individual authorized to have unescorted access privileges or who may authorize others to have unescorted access privileges who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section shall report the conviction to the airport operator and surrender the SIDA access medium within 24 hours to the issuer.

(2) If information becomes available to the airport operator or the tenant employer indicating that an individual has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the airport operator shall determine the status of the conviction. If a disqualifying conviction is confirmed the airport operator shall withdraw any authority granted under this section.

(m) *Exceptions.* Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access to the SIDA or perform functions listed 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 an employment investigation which includes a criminal history records check.

(2) Crew members of foreign air carriers covered by an alternate security arrangement in the approved airport security program.

(3) An individual who has been continuously employed in a position requiring unescorted access by another airport operator, airport tenant or air carrier.

(n) *Investigations by air carriers and tenants.* An airport operator will be deemed to be in compliance with its obligation under paragraph (b) of this section, as applicable, when it accepts one of the following:

- (1) certification from an air carrier subject to section 108.33 of this chapter that it has complied with section 108.33 (b)(1) and (b)(2) for the individual, or
- (2) certification from a tenant that it has complied with paragraph (b)(1) of this section for the individual, and the tenant includes the completed employment background investigation file.

(o) *Airport operator responsibility.* The airport operator shall:

(1) Designate the airport security coordinator to be responsible for reviewing and controlling the results of the employment background investigation;

(2) Designate the airport security coordinator to serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their criminal history record with the FBI; and

(3) Audit the employment background investigations performed in accordance with this section, except those employment background investigations subject to certification under paragraph

(n)(1). The audit process shall be set forth in the airport security program.

## **PART 108—AIRPLANE OPERATOR SECURITY**

3. The authority citation for Part 108 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40102, 40113, 40119, 44701–44713, 44901–44915, 44931–44937, 46105; Sec. 306, Pub. L. 104–264, 110 Stat. 3213, 49 U.S.C. 44936.

4. Section 108.33 is revised to read as follows:

### **§ 108.33 Employment history, verification and criminal history records checks.**

#### *(a) Applicability.*

(1) This section applies to each individual covered under a certification made to an airport operator pursuant to section 107.31(n) of this chapter.

(2) This section applies to each individual who is issued identification media that one or more airports approve for unescorted access within a security identification display area (SIDA) that is identified in § 107.25 of this chapter.

(3) This section applies to each individual who, after [insert effective date of rule], is hired to perform the following functions:

(i) Screens passengers or property that will be carried in a cabin of an aircraft of an air carrier required to screen passengers under this part.

(ii) Serves as an immediate supervisor, also known as a security checkpoint supervisor (CSS), to those individuals described in paragraph (a)(3)(i) of this section or, serves at the next supervisory level, commonly referred to as a shift or site supervisor.

(4) This section applies to each individual who was hired before [insert effective date of rule] and who after [insert date 1 year after the effective date of the rule] performs any of the functions identified in paragraph (a)(3) of this section.

(b) *Employment history investigations required.* Each air carrier shall ensure that the following requirements are met for each individual identified under paragraph (a) of this section:

(1) The individual has satisfactorily undergone a review covering the past 10 years of employment history and verification of the 5 years preceding the date the employment background investigation is initiated as provided in paragraph (c) of this section; and

(2) The results of the employment background investigation do not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 year ending on the date of such investigation, of a crime involving any

of the following crimes enumerated in paragraphs (b)(2)(i) through (xxv) of this section. Where specific citations are listed, both the current citation and the citation that applied before the statute was recodified in 1994 are listed.

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306 [formerly 49 U.S.C. App. 1472(b)];

(ii) Interference with air navigation, 49 U.S.C. 46308 [formerly 49 U.S.C. App. 1472(c)];

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312 [formerly 49 U.S.C. App. 1472(b)(2)];

(iv) Aircraft piracy, 49 U.S.C. 46502 [formerly 49 U.S.C. App. 1472(i)];

(v) Interference with flight crewmember members or flight attendants, 49 U.S.C. 46504 [formerly 49 U.S.C. App. 1472(j)];

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506 [formerly 49 U.S.C. App. 1472(k)];

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505 [formerly 49 U.S.C. App. 1472(l)];

(viii) Conveying false information and threats, 49 U.S.C. 46507 [formerly 49 U.S.C. App. 1472(m)];

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b) [formerly 49 U.S.C. App. 1472(n)];

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315 [formerly 49 U.S.C. App. 1472(q)];

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314 [formerly 49 U.S.C. App. 1472(r)];

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

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

(xxi) Extortion;

(xxii) Armed robbery;

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

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(c) *Investigative steps.* The employment background investigation shall consist of the following steps:

(1) The individual shall provide the following information on an application form:

(i) The individual's full name, including any aliases or nicknames.

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12 consecutive months, during the previous 10-year period.

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The air carrier shall include on their application form a notification that the individual will be subject to an employment history verification and possibly a criminal history records check.

(3) The air carrier shall verify the identity of the individual through the presentation of two forms of identification, one of which must bear the individual's photograph.

(4) The air carrier shall verify the information on the most recent 5 years or employment history required under paragraph (c)(1)(ii) of this section. Information shall be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the following conditions exists, the employment background investigation shall not be considered complete unless it includes a check of the individual's fingerprint-based criminal history record maintained by the Federal Bureau of Investigation (FBI). The air carrier may request a check of the individual's fingerprint-based criminal history record only if one or more of the following conditions exists:

(i) The individual does not satisfactorily account for a period of unemployment of 12 months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the air carrier during the investigation indicating a possible conviction for one of the crimes listed in (b)(2).

(d) *Individual notification.* Prior to commencing the criminal history records check, the air carrier shall notify the affected individual and identify a point of contact for follow-up.

(e) *Fingerprint processing.* The air carrier 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,

and distributed by the FAA for this purpose.

(2) The fingerprints shall be obtained from the individual under direct observation by the air carrier or a law enforcement officer. Individuals submitting their fingerprints shall not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual shall be verified at the time fingerprints are obtained. The individual shall present two forms of identification, one of which must bear the individual's photograph.

(4) The fingerprint card shall be forwarded to Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591 (ATTN: ACO-300, Fingerprint Processing).

(5) Fees for the processing of the criminal history record checks are due upon application. Air carriers shall submit payment through corporate check, cashier's check, or money order made payable to "U.S. FAA," at the prevailing rate for each fingerprint card. Combined payment for multiple applications is acceptable. The prevailing rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal history records check required by this section, the air carrier shall investigate arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded to make a determination of the outcome of the arrest.

(g) *Availability and correction of FBI records and notification of disqualification.*

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

(2) Prior to making a final determination to deny authorization to individuals described in paragraph (a) of this section, the air carrier shall advise individuals that the FBI criminal history record discloses information that would disqualify them from positions covered under this rule and provide each individual with a copy of their FBI record if it has been requested.

(3) The air carrier shall notify an individual that a final determination has been made to grant or deny authority for unescorted access, or for performing

functions listed under paragraph (a) (2), (3), or (4) of this section.

(h) *Corrective action by individuals.*

Individuals may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in their record before any final access determination is made, subject to the following conditions:

(1) Within 30 days after being advised that the criminal history record received from the FBI discloses disqualifying information, individuals must notify the air carrier, in writing, of their intent to correct any information believed to be inaccurate.

(2) Upon notification by an individual that the record has been corrected, the air carrier must obtain a copy of the revised FBI criminal history record prior to making a final determination.

(3) If no notification is received within 30 days, the air carrier may make a final determination.

(i) *Limits on dissemination of results.* Criminal history record information provided by the FBI shall be used solely for the purpose of this section, and no person shall disseminate the results of a criminal history records check to anyone other than:

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

(2) Air carrier officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work under the following conditions:

(1) Those seeking unescorted access to the SIDA must be escorted by someone who has unescorted SIDA access privileges;

(2) Those applicants seeking positions covered under paragraphs (a)(2), (3), or (4) of this section shall not exercise any independent judgments regarding those functions.

(k) *Recordkeeping.* It is the air carrier's responsibility to make any criminal history records request as appropriate to this regulation, to receive and review the criminal history records of applicants, and to maintain and destroy these sensitive documents. The criminal record responsibilities shall be carried out only by direct air carrier employees. The air carrier shall physically maintain and control in a manner acceptable to the Administrator the following written records for each individual until 180 days after ceasing to perform the functions identified in paragraph (a) of this section.

(1) A record of each individual subject to an employment background investigation that includes:

(i) The application;

(ii) The employment verification information obtained by the air carrier;

(iii) The names of those from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) A record for each individual subject to a criminal history records check shall include, in addition to the records in paragraph (k)(1) of this section, the results of the records check, or a certification by the air carrier that the check was completed and did not uncover a disqualifying conviction.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privilege to the SIDA or that perform functions covered under paragraphs (a)(2), (3), or (4) of this section, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section, shall report the conviction within 24 hours to the air carrier and surrender the SIDA access medium or any identification medium provided to them related to positions covered under (a)(2), (3) or (4) of this section.

(2) If information becomes available to the air carrier indicating that an individual has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the air carrier shall determine the status of the conviction. If the conviction is confirmed the air carrier shall withdraw any authority granted under this section.

(m) *Air carrier responsibilities.* The air carrier shall—

(1) Designate an individual at each airport to control and maintain the employment background investigation files of individuals for whom the air carrier has made a certification to the airport operator under § 107.31(n)(1) of this chapter.

(2) Designate an individual, in the security program, to oversee the control of employment background investigation files of individuals subject to section 108.33(a) (2), (3), or (4). The files shall be kept in a location or locations acceptable to the Administrator and identified in the security program.

(3) Audit the employment background investigations performed in accordance with this section. The audit process shall be set forth in the air carrier approved security program.

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Anthony Fainberg,

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*Policy and Planning.*

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