

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

[Docket No. 28745; Amendment Nos. 107–9 and 108–14]

RIN 2120–AG27

Falsification of Security Records

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting rules that prohibit fraudulent or intentionally false statements in certain security records. This action responds to recent events indicating that persons may be making such statements in security records. This action is intended to provide a means for the FAA to take legal enforcement action against persons who make such statements, and thereby enhance the security of civil aviation.

DATES: Effective date November 27, 1996. Comments must be received by January 23, 1997.

ADDRESSES: Comments on this rule should be submitted in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Room 915–G, Docket No. 28745, 800 Independence Ave., SW, Washington, DC 20591. Comments must be marked Docket No. 28745. Comments also may be submitted electronically to the following Internet address: nprmcmts@faa.dot.gov. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Cammaroto and Linda C. 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 this rulemaking 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 this rule are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket and be submitted

in triplicate to the Rules Docket address specified above.

Except as noted below, 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. Late-filed comments will be considered to the extent practicable. The rule 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. 28745." The postcard will be date stamped and mailed to the commenter.

Background

It has recently come to the FAA's attention that persons may be submitting fraudulent or intentionally false statements in records used to obtain identification media from an airport operator that provides unescorted access to security identification display areas (SIDA's) on airports, and in other required records.

Part 107 of Title 14, Code of Federal Regulations, sets forth the requirements for airport security. Identification media must be worn at all times in the SIDA by all persons with unescorted access authority. The SIDA includes the most security-sensitive portions of the airport, including the areas immediately next to the terminals in which air carrier aircraft board and off-load passengers.

Section 107.31 requires that an access investigation be conducted for each person applying for unescorted access privileges to the SIDA. This investigation involves the completion of an application by the individual that requires various information, including a ten-year employment history. The most recent five years of employment must be verified. In specified circumstances the applicant's fingerprint must be obtained and an FBI criminal history records check must be conducted. The airport may not grant unescorted access to the SIDA for any person until the access investigation is completed and must deny unescorted access to any person who has one or more of the specified criminal convictions within the previous ten years.

Under § 107.31(f) the airport operator is deemed in compliance with § 107.31

if it accepts a certification from an air carrier that the air carrier has complied with 14 CFR § 108.33. (14 CFR Part 108 contains the security requirements for air carriers.) Section 108.33 provides for the same application, verification, and criminal records check process to be carried out by the air carrier. Air carriers are directly regulated by the FAA, and the FAA monitors their compliance with part 108.

Section 107.31(f) also provides that the airport operator is deemed in compliance if it accepts certification from an airport tenant, other than an air carrier, that the tenant has complied with § 107.31(b)(1) for its employees, unless a criminal history records check is required. Tenants are not directly regulated by the FAA, and the FAA has relied upon good faith adherence to the access investigation process to ensure that the appropriate security measures are carried out.

The FAA has recently determined that some tenants have submitted certifications to airport operators without having performed the required verification of the applicant's employment history. This leads the airport operator to issue identification media that permit unescorted access to the SIDA when the tenant has not verified prior employment or established that the applicants have no prohibited criminal convictions.

Further, the FAA has determined that there may be some fraudulent or intentionally false records of required screener training. These records are essential to the FAA's and the air carriers' monitoring of screener training. This training is essential to the effective detection of weapons and explosive devices to prevent their being placed aboard aircraft. Training and screening may be conducted by air carrier employees, or by a contractor of an air carrier.

Good Cause Justification for Immediate Adoption and No Notice

The FAA finds that good cause exists for issuing this final rule without prior notice and opportunity for comment. Prior notice is impracticable, unnecessary, and contrary to public interest.

It is impracticable to provide prior notice because the FAA would be prevented from adequately and immediately protecting persons traveling in air transportation through prohibiting the submission of fraudulent or intentionally false records for persons who directly carry out required security measures. Prior notice is unnecessary because these rules prohibit practices—fraud and intentional falsification—that

long have been understood by the public and the industry to be improper, and that may constitute criminal violations. No one has a right or justification to intentionally falsify records required by Federal regulation.

Prior notice would be contrary to public interest in that it would delay the FAA's ability to take action against those who make fraudulent or intentionally false statements in security records. Failure of the FAA to act now may cause a continuing security risk. By acting immediately, the FAA is providing additional deterrence to those who may falsify security records. It is in the public interest to make clear that such activities will not be tolerated and may be met with legal enforcement action.

For the same reasons, these rules are effective immediately. It must be clear that no intentional falsification of security records will be tolerated and the additional security afforded the traveling public should not be delayed.

Discussion of the Rules

The FDA is adopting new §§ 107.2 and 108.4. These rules specifically prohibit a person from making any fraudulent or intentionally false statement or entry on any security program, record, application, report, access or identification medium, or any other document that is kept, made, or used to show compliance under parts 107 or 108.

It is important that all such records be accurate. They are used to ensure that all required security measures have been carried out. Fraudulent or intentionally false records may conceal a significant security risk that should be addressed immediately.

Fraud or intentional falsification of required records may also be a violation of certain criminal statutes. These rules provide a civil enforcement remedy where appropriate.

These rules are modeled on similar provisions elsewhere in 14 CFR, such as §§ 21.2, 43.12, 61.59, and 65.20. These provisions have long been in the regulations and have worked well. An intentionally false statement consists of (1) a false representation, (2) in reference to a material fact, (3) made with knowledge of its falsity. A fraudulent statement consists of these three elements, plus (4) it was made with the intent to deceive, and (5) action was taken in reliance upon the representation. *See, Hart v. McLucus*, 535 F.2d 516, 519 (9th Cir. 1976). There have been many cases under the existing rules interpreting these terms, which will assist in understanding these rules.

These rules apply to all "persons." Under 14 CFR § 1.1, "person" means an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. Thus, a company that is a tenant on an airport, or a company that contracts with an air carrier to provide screening services, is a person within the meaning of the rule. In the case of an intentionally false certification made by a tenant, potentially both the tenant and the individual making the certification could be held in violation of § 107.2.

Related Activity

The FAA is investigating the alleged incidents of false records, and in conducting audits to determine the extent of the problem. The FAA intends to raise this issue with airport consortia. The FAA is considering what additional regulatory action may be advisable in the future.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this final rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Airworthiness Authorities requirements and has identified no differences in these amendments and the foreign regulations.

Regulatory Evaluation

Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. In conducting the evaluation reflected in this document, the FAA has determined that this rule is not "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. The FAA invites the public to provide comments, and supporting data, on these determinations. All comments received will be considered.

Air carriers and airports have security programs which are intended to protect the public from the threat of aircraft hijacking and other criminal activities affecting air transportation. The FAA proposes to strengthen the rules against the falsification of security documents. Falsifying the information on such documents can have a detrimental effect on the ability to thwart terrorist and

other criminal activities. The final rule will amend parts 107 and 108 to prevent such activities.

The FAA has not identified any costs with this proposal. The proposal does not obligate a person to take an action that is not otherwise required. Enforcement actions may be taken by the FAA against persons who violate the rules, at a cost to the agency, but the number of cases cannot be determined. In addition, because this final rule will not be included in the airport or the air carrier security programs, affected entities will not incur any costs to implement these proposed requirements.

The primary benefit of this rule is to deter falsification of important security records. It also provides the FAA with a compliance tool in the event that a person intentionally falsifies a security record in violation of the rule. The FAA cannot quantify the security benefits of this rule, but believes that this action will significantly enhance civil aviation security by increasing the reliability and integrity of security records.

Much of the effectiveness of the air carriers' and airports' security programs depends on strictly limiting access to the SIDA. Sophisticated criminal elements are actively seeking ways to gain access to the SIDA, and it is important that the FAA, air carriers, and airports guard against such terrorist activities. The consequences of not protecting such access can be catastrophic. Between 1982 and 1991, terrorist bombings of U.S. air carriers have resulted in 275 deaths and 24 injuries, while hijackings incidents have resulted in 24 deaths and 127 injuries.

Given the lack of cost and given the potential benefits of avoided fatalities and injuries, this evaluation finds this final rule cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule has a significant economic impact on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, established threshold costs and small entity size standards for complying with RFA requirements. As was discussed above, there is no cost associated with this rule. Therefore, the FAA certifies that the rule does not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

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. The FAA finds that this final rule will not have an adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. This finding is based on the fact that this rule will impose no costs on both domestic and foreign air carriers, so neither will have a trade advantage over the other.

Federalism Implications

The regulations herein will not have substantial direct effects 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 rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a "significant regulatory action" under Executive Order 12866. In addition, the FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule is not considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations.

List of Subjects**14 CFR Part 107**

Airports, Arms and munitions, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 108

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 107 and 108 of title 14, Code of Federal Regulations (14 CFR parts 107 and 108) as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for part 107 continues 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.

2. Section 107.1 is amended by removing the "and" after paragraph (a)(2), removing the period and adding in its place "; and" in paragraph (a)(3), and adding paragraph (a)(4) to read as follows:

§ 107.1 Applicability and definitions.

(a) * * *

(4) Each person who files an application or makes entries into any record or report that is kept, made, or used to show compliance under this part, or to exercise any privileges under this part.

* * * * *

3. Section 107.2 is added to read as follows:

§ 107.2 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access

medium, or identification medium issued under this part.

PART 108—AIRPLANE OPERATOR SECURITY

4. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

5. Section 108.1 is amended by removing the "and" after paragraph (a)(2), removing the period and adding in its place a semi-colon in paragraph (a)(3), removing the period and adding in its place a "; and" in paragraph (a)(4), and adding paragraph (a)(5) to read as follows:

§ 108.1 Applicability.

(a) * * *

(5) Each person who files an application or makes entries into any record or report that is kept, made or used to show compliance under this part, or to exercise any privileges under this part.

* * * * *

6. Section 108.4 is added to read as follows:

§ 108.4 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

Issued in Washington, DC, on November 27, 1996.

Linda Hall Daschle,

Acting Administrator.

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