

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 108****[Docket No. 28852; Notice No. 97-3]****RIN 2120-AG31****Certification of Screening Companies****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FAA seeks public comment on issues relating to the certification of screening companies (other than air carriers) by the FAA, and other enhancements to the screening by air carriers of passengers and property that will be carried in the cabin of an aircraft, and of checked baggage. This advance notice responds to a recommendation made by the White House Commission on Aviation Safety and Security, and to a requirement in the Federal Aviation Reauthorization Act of 1996. It is intended to improve the screening of passengers, property, and baggage. After reviewing any comments made in response to this advance notice, the FAA will issue a notice of proposed rulemaking with specific regulatory proposals.

DATES: Comments must be received on or before May 1, 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. 28852, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: "Docket No. 28852." Comments may also be sent electronically to the following internet address: 9-nprm-cmtsfaa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 am. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Penny J. Anderson, Office of Civil Aviation Security Policy and Planning, ACP-100, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-5183.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to submit comments by providing such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism,

or economic impact 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.

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.

The Associate Administrator for Civil Aviation Security has determined that air carrier security programs required by part 108 contain sensitive security information. As such, the availability of information pertaining to air carrier security programs is governed by 14 CFR part 191 and 14 CFR 108.7(b) (4) and (5). Air carriers who wish to comment on this notice should be cautious not to include information contained in the security program in their comments.

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.

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. 28852." The postcard will be date stamped and mailed to the commenter.

Availability of ANPRMs

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 for access to recently published rulemaking documents.

Any person may obtain a copy of this ANPRM 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 ANPRM.

Persons interesting in being placed on the mailing list for future ANPRMs or NPRMs 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.

Background

Following the tragic crash of TWA 800 on July 17, 1996, the President created the White House Commission on Aviation Safety and Security (the Commission). The Commission issued an initial Report on September 9, 1996, with 20 specific recommendations for improving security, one of which was the development of uniform performance standards for the selection, training, certification, and recertification of screening companies and their employees.

On October 9, 1996, the President signed the Federal Aviation Reauthorization Act of 1996, Pub.L. 104-264 (the Act). Section 302 provides:

The Administrator of the Federal Aviation Administration is directed to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services.

The rulemaking initiated by this advance notice is intended to provide an initial response to these mandates. It requests comments on improving the screening system and on the certification of screening companies.

Rulemaking Process

This ANPRM does not propose specific regulatory changes. Rather, it requests comments and suggestions as to what regulatory changes should be made to carry out the Act and the Commission's recommendations. After review of all of the comments submitted in response to his ANPRM the FAA will issue a notice of proposed rulemaking (NPRM), proposing specific regulations. Interested persons will have the opportunity to comment on those proposed changes before a final rule is adopted.

History and Current Requirements

Title 49, United States Code, section 44901, requires the FAA to prescribe regulations requiring air carriers to screen all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. This screening must be done before the aircraft is boarded, using weapon-detecting facilities or

procedures used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier.

Part 108 of Title 14, Code of Federal Regulations, contains rules in §§ 108.9, 108.17, and 108.20 for the conduct of screening operations. These rules, which are available to the general public, provide basic standards for the screeners, equipment, and procedures to be used. In addition, each air carrier that is required to conduct screening has a non-public security program (issued under §§ 108.5 and 108.7) that contains detailed requirements for screening. Essentially all approved air carrier security programs are actually the Air Carrier Standard Security Program (ACSSP). The ACSSP provides identical measures for all air carriers to use in most situations. Individual air carriers may request alternate procedures in specific situations to allow more efficient operations, where the required level of security can be maintained.

There are several means by which an air carrier may conduct screening. It may use its own employees. It may contract with another company to conduct the screening in accordance with the air carrier's security program. It may contract with another air carrier to conduct screening. In each case, the air carrier is required to provide oversight to ensure that all requirements are met. For example, § 108.29 requires that the air carrier's ground security coordinator (GSC) review security-related functions and initiate corrective action for noncompliance, and § 108.31(d) requires that the GSC conduct an annual evaluation of each person assigned screening duties.

In addition to screening persons and property to be carried in the cabin of an aircraft, § 108.9(a) requires air carriers to prevent or deter the carriage of any explosive or incendiary in checked baggage. The ACSSP contains various measures to carry out this duty, including screening of checked baggage.

The term "screening location" refers to any site at which the screening of passengers, property, or baggage is conducted. A "screening checkpoint" is a type of screening location. Specifically, a "screening checkpoint" refers to a screening location at which the screening of passengers and property that will be carried in the cabin of an aircraft is conducted. Another example of a specific type of screening location would be a site at which the screening of checked baggage is conducted.

Some screening locations are used by only one air carrier. However, most locations are used by more than one air

carrier (often referred to as "joint-use checkpoints"), resulting in more than one air carrier having the regulatory responsibility to oversee the operation of the location. The use of the ACSSP ensures that all air carriers using the location are held to the same standards.

Foreign air carriers that operate in the United States are required to have a security program and carry out security procedures under 14 CFR 129.25, 129.26, and 129.27. It is anticipated that foreign air carriers will be subject to the same provisions for the use of certificated screening companies as U.S. air carriers, and comment is specifically invited on this.

General Discussion and Request for Comments

There are a number of issues that arise in connection with certification of screening companies. The FAA requests comments and suggestions on all issues related to the certification of screening companies and the improvement of screening. The FAA will consider all comments and suggestions. The following are issues of particular interest:

1. Oversight by Air Carriers

There has been no change to the requirement in 49 U.S.C. 44901(a) that screening of passengers and property that will be carried in the cabin of an aircraft in air transportation or intrastate air transportation be conducted by an employee or agent of an air carrier. Further, the FAA does not anticipate any change in the air carrier's responsibility for screening of checked baggage. Accordingly, certificated screening companies must be agents of air carriers, and air carriers will remain ultimately responsible for the proper screening of passengers, property, and baggage. However, as certificate holders, the screening companies will be responsible for carrying out their regulatory duties to properly screen passengers, property, and baggage. In the case of a failure to properly screen, both regulated parties, i.e., the air carriers and the certificated screening company, potentially bear responsibility.

This gives rise to questions about how air carriers should select a screening company, and then oversee the operations of that screening company, and the extent to which screening companies should be held directly responsible for the operation of screening locations. The fact that screening companies will have certificates will not relieve air carriers of responsibility for screening. These questions are similar to others that have

been dealt with regarding air carrier oversight of contractors and employees. For example, the FAA recently has emphasized to air carriers the need for stronger oversight of certificated repair stations performing maintenance on their aircraft. As another example, the FAA currently requires pilots to have certificates, yet under Title V of the Act, the air carrier must obtain extensive information on pilots before they are hired.

The FAA anticipates that details of selecting a screening company, and then overseeing the operations of that screening company, will be placed in the security programs. However, the FAA requests comments as to the general rules that should appear in part 108 regarding what guidelines an air carrier should follow with respect to selection and oversight of a screening company. For example, what information should an air carrier collect prior to contracting with a screening company. Of what should air carrier oversight of a screening company consist? Should it include periodic inspections? Training audits? Records audit? Screening surveillance? Unannounced, anonymous testing? Other surveillance?

In addition to substantive comments or suggestions relating to this issue, the FAA requests estimates of the costs of carrying out oversight responsibilities.

2. Joint-Use Screening Locations

The FAA is evaluating how best to address common, or joint-use screening locations. Currently, joint-use screening locations are handled in a number of ways. Some locations have a managing air carrier that has accepted responsibility for administrative functions relating to the location, and for responsibility in the event of certain security violations. At other checkpoints the responsibility for these events may be spread among many air carriers.

The FAA requests comments on the best method of structuring air carrier selection of a screening company for joint use screening locations, and oversight of that screening company's activities. Should there be an agreement between all affected air carriers? What form should this agreement take? How should it be documented? How much involvement should air carriers other than the managing air carrier have regarding the day to day and long-term activities of the location?

3. Screening Security Program

As discussed above, there currently exist requirements for the screening of passengers, property, and baggage to be carried aboard air carrier aircraft, in part

108 and in the ACSSP. The ACSSP provides a uniform standard for screening, which assists in having a coordinated effort when more than one air carrier is using the same screening location. Further, the ACSSP is made available only to those persons with an operational need to know, not to the general public, in order to avoid unauthorized persons from obtaining information that could be used to attempt to defeat the security system. It is evident that large portions of the requirements for screening by screening companies must be in a non-public security program, just as they are for air carriers.

The FAA is considering establishing by regulation a uniform security program for use by all air carriers and screening companies. This screening security program would incorporate the screening standards currently provided in the ACSSP. This screening security program could be incorporated as part of the ACSSP (as it is now) or be developed as a separate security program for screening companies. In this case, all air carriers and certificated screening companies would be subject to the same standards for conducting screening. Screening companies would be made directly responsible for protecting the security program from access by unauthorized persons, similar to the requirement on air carriers under § 108.7(b) (4) and (5). There would be no confusion as to which air carrier's security program a screening company would carry out at a given location.

The FAA requests comments on this approach, and requests suggestions as to any other means that might be used to ensure that uniform standards are used to perform screening, and to ensure that the standards are protected from unauthorized use.

It has long been recognized that screener performance standards must be measurable. Although the FAA intends to begin measuring screener performance using the Threat Image Projection System (TIPS), it remains open to suggestions for other methods of evaluating performance.

In addition to substantive comments or suggestions relating to this issue, the FAA also requests estimates of the costs of implementing and carrying out a uniform security program.

4. Screener Training

The FAA has been working on ways to improve screener training, such as computer-based instruction. We anticipate that the details of most such changes will, of necessity, be placed in the ACSSP. The FAA is also considering a requirement to incorporate into each

security program the specific curriculum to be used to train screeners. This would require the approval of the training curriculum by the FAA.

In addition to substantive comments or suggestions relating to this issue, the FAA requests any cost information that would assist it in evaluating the cost impact of the commenter's suggested changes to training methods or curriculum.

5. Qualifications and Operations of Screening Companies

The FAA is considering what qualifications companies should be required to demonstrate before the FAA issues a screening company certificate. The FAA requests comments on what should be the minimal showings to qualify for a screening company certificate.

Local and National Qualifications

A screening company may carry out its functions at many different locations throughout the country. Each location may have different types of equipment in place to conduct screening and to train screeners. The FAA requests comments on whether screening companies should be qualified on a national basis, or should companies be required to make specific showings of qualification for each location?

Aviation Screening Experience

The screening of passengers, property, and baggage at airports is a unique task. While there are some similarities to security functions performed in other settings (such as security at sports arenas and other public events), there are many differences. The FAA is considering whether a screening company should be required to have management personnel with specialized aviation experience or training, similar to that required for various air carrier management personnel under §§ 119.65 and 119.67.

Screening Equipment

Under current requirements, the equipment used for screening (such as x-ray machines and metal detectors) must be approved by or acceptable to the FAA. Further, the equipment must be checked or calibrated on a specified interval, and taken out of service if it fails to perform as required. Currently, most equipment is owned by air carriers, and that seems likely to remain true in the future. The FAA requests comments on the responsibility the air carriers and the screening companies each should have for both the equipment initially obtained to use at each location and the periodic checking

and testing of the equipment, as well as its continued use after failure.

Training Equipment

Currently training equipment generally is owned by air carriers, and there may be different training programs in use by different air carriers. However, certificated screening companies will be responsible for ensuring that their screeners are properly trained. This raises the question whether each screening company should use whatever program is in place at each airport, or should be responsible for conducting its own training using its own equipment. The use of different training programs at different airports by the same screening company may be hard to manage, and make it difficult to determine to what standard the screening company must comply. The FAA requests comments on how training of screeners should be accomplished. For example, should training programs be approved for each site rather than for the screening company as a whole? Also, how should training for use of new equipment be addressed?

In addition to substantive comments or suggestions relating to this issue, the FAA requests estimates of the costs of meeting any of the qualifications or operational requirements described above.

6. Screeners

There is a concern that screeners should be encouraged to have a stronger sense of professionalism. There are a number of potential ways to accomplish this.

It has been suggested that it should be easier for screeners to switch employment from one screening company to another (screener mobility). Currently, when a screener wishes to switch companies, or one company stops operating a screening location for an air carrier and is replaced by another screening company, the first company does not necessarily transfer the training records to the new company. The screeners then must completely requalify for the new company. The FAA is considering whether there should be a means for certain records to be transferred, at the screener's request, to ease the transition.

Mobility of documentation also raises issues in regard to the accuracy of the documents, screener rights relating to corrections to the documents, and screening company liability in the event an inaccurate document is transferred.

Another means of encouraging professionalism is to provide a special recognition of the screener's successful completion of training.

The FAA requests comments on ways that the regulations could encourage a stronger sense of professionalism in screeners.

In addition to substantive comments or suggestions relating to this issue, the FAA requests estimates of the costs of increasing the professionalism of the screener position through implementation of the measures described above and any recommendation made by the commenter.

7. Screening by Air Carriers

Some air carriers conduct screening with their own employees. They may do so at joint-use locations, and therefore conduct screening on behalf of other air carriers. The FAA is considering whether air carriers that conduct screening should be subject to the same standards as certificated screening companies. These standards would include those issues raised in this document that identify possible screening company requirements, such as the qualification of management and screener training. They might also include oversight by other air carriers for which they screen.

In addition to substantive comments or suggestions relating to this issue, the FAA requests estimates of the costs of imposing the same requirements on air carriers as those that will be imposed upon independent screening companies.

8. New Screening Companies

There are about 70 screening companies (other than air carriers) currently performing passenger, property, and baggage screening at U.S. airports. We assume other companies will be formed in the future. These new companies may have no background or experience in aviation security screening. These screening companies

will be required to have a certificate prior to beginning screening. The FAA invites comments on how to ensure the qualifications of a company that has no aviation screening experience before it begins aviation screening.

The FAA is considering whether there should be a period of provisional certification for new screening companies that have not demonstrated an ability to screen in the aviation environment. This may include additional measures and/or constraints upon such new companies to ensure competence of the screening company. During this provisional period the FAA and the air carrier could provide more monitoring of training, and more testing and surveillance than would normally be provided for established companies. The screening company might also be constrained from beginning screening activities at a new screening location unless advance approval is given by the FAA. The provisional certificate could be limited to a specific period, after which a successful screening company may apply for a standard screening company certificate and be expected to meet only those provisions required of experienced screening companies.

The FAA requests comments as to what measures or constraints, if any, should be placed upon a new screening company. If a provisional certificate were to be issued, for what period of time should it remain in effect? What additional oversight requirements, if any, should be placed upon an air carrier contracting with a new screening company?

In addition to substantive comments or suggestions relating to this issue, the FAA requests estimates of the costs of provisional certification or other possible constraints upon new screening companies.

9. Checkpoint Operational Configuration Deficiencies

The FAA has observed that difficulties with the performance of screening at checkpoints often are caused by a less than optimal physical configuration of the checkpoint. For instance, a screener may have problems reading the x-ray screen because there is a glare on the screen. The FAA is considering clarifying the responsibility of the air carriers and the screening companies to make sure that their checkpoints are configured for effective screening. In some cases an airport operator would have an interest in the correction of operational checkpoint configuration deficiencies. The FAA requests comments on how best to address operational checkpoint deficiencies.

In addition to substantive comments or suggestions relating to this issue, the FAA requests estimates of the costs of correcting operational checkpoint deficiencies.

10. Foreign Air Carriers

The FAA anticipates that this rule will also apply to foreign air carriers required to screen under a security program required by 14 CFR part 129. The FAA requests comments on the impact on foreign air carriers operating in the United States.

In addition to substantive comments or suggestions relating to this issue, the FAA requests estimates of the costs of imposing the same requirements on foreign air carriers.

Issued in Washington, DC, on March 11, 1997.

Quinten T. Johnson,

Acting Director, Office of Civil Aviation Security Policy and Planning.

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