

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: Disposition of comments on final rule.

SUMMARY: On November 27, 1996, the FAA adopted rules with a request for comments establishing penalties for falsifying security records. The amendments provided a means for the FAA to take legal enforcement action against persons who make such statements, and thereby enhance the security of civil aviation. This action is a summary and disposition of comments received on that final rule.

ADDRESSES: The complete docket for the final rule on the Falsification of Security Records may be examined at the 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, weekdays (except federal holidays) between 9 a.m. and 5 p.m.

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:**Background**

Recently, the FAA found that some 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.

Additionally, the FAA recently determined that some airport tenants have submitted certifications to airport operators without having performed the required verification of the applicant's employment history. This led the airport operator to issue identification media that permitted unescorted access to the SIDA when the tenant has not verified prior employment or

established that the applicants have no prohibited criminal convictions.

On November 27, 1996, the FAA adopted new rules for parts 107 and 108 of Title 14, Code of Federal Regulations (61 FR 64242, Dec. 3, 1996). Part 107, Airport Security, sets forth the requirements for airport security. Part 108, Airplane Operator Security, sets the requirements for air carrier security. The new rules prohibit fraud and intentional falsification under these parts and provide as follows:

Section 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.

Section 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.

Because of its effect on airport security, the final rule had good cause justification for immediate adoption, and no advanced notice to the public was offered. These rules were effective immediately, and the immediate action made it 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 Comments

The FAA has received seven comments from eight commenters (one comment was on behalf of two commenters). All comments support the new rules. The FAA has identified no reason to rescind or modify the new rules. There are several issues that should be further addressed, however.

Several comments note that a person could submit information in good faith

believing that it was true and later discover that it was false, and that such person should not be held accountable. This point is well-taken.

As explained in the preamble to the rules, 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. If a person makes a statement in the good faith belief that it is true, then the person has not made a statement with knowledge of its falsity and element (3) of the definition of "intentionally false" is not met. The person would not be in violation of the new rules.

One comment indicates that contractors that perform duties related to security (such as catering and fueling on an airport), and whose employees must have background checks under parts 107 and 108, are not subject to the new rules. This is not correct. The new rules apply to all persons who make an entry in a record or report that is kept, made or used to show compliance with part 107 or 108, whether the person is an air carrier, airport operator, contractor, tenant, or other entity, or is an individual. As specifically pointed out in the preamble to the new rules, persons who contract with air carriers may be held responsible under the new rules.

As noted above, the new rules were adopted in part in response to problems associated with the checks required for unescorted access to the SIDA at airports. Several comments addressed aspects of these rules as well as other provisions in parts 107 and 108. Because the new falsification rules are not intended to deal with the substance of the SIDA access rules or other rules in parts 107 and 108, this disposition does not respond to those comments. Those concerns are being considered in connection with other projects involving the background check rules and other rules.

Several comments suggest that the FAA provide standard language for use on employment application forms that reference the new falsification rules. Such standard language would provide a warning about the penalties for falsifying the information on the forms.

The FAA has considered providing such standard language; however, there is a great diversity in the content and use of such applications in the industry. It is not apparent that the FAA could create a warning notice that easily would be adaptable to all industry

forms. The FAA encourages industry groups to develop language that will work in their particular circumstances.

Conclusion

After consideration of the comments submitted in response to the final rule, the FAA has determined that no further rulemaking action is necessary. Amendments 107-9 and 108-14 remain in effect as adopted.

Issued in Washington, DC on June 2, 1997.

Barry L. Valentine,

Acting Administrator.

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