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September 24, 1999



U.S. Department of Transportation Dockets
Docket No. FAA-19996001 - 19
400 Seventh Street, SW
Room Plaza 401
Washington, DC 20590

**Re: Protection of Voluntarily Submitted Data
(Docket No. FAA-1999-6001)**

42 12 King Street
Alexandria, VA 22302

Phone (703)824-0500

Fax (703)820- 1395

The Airports Council International-North America (ACI-NA) represents local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. ACI-NA Member airports **enplane** more than 97 percent of the domestic and virtually all the international airline passenger and cargo traffic in North America. AAAE is the professional organization for airport management personnel, representing men and women at primary air carrier, commercial service, reliever and general aviation airports which together **enplane** 99 percent of the passengers in the United States.

ACI-NA and AAAE welcome the opportunity to comment on the Notice of Proposed Rulemaking (NPRM) entitled the "Protection of Voluntarily Submitted Information."



**AIRPORTS COUNCIL
INTERNATIONAL**

We are pleased to see that both the Congress and the White House Commission on Aviation Safety and Security have recognized the limitations on free and open disclosure of information to federal agencies, and agree that protection from disclosure will facilitate the goals of increased safety and security.

We agree with the Congressional opinion that information provided could easily be incomplete and therefore easily misinterpreted and in many cases quite sensitive.

However, we feel the NPRM does not go far enough on three points.. .

1775 K Street, NW
Suite 500
Washington, DC 20006
Phone (202)293-8500
Fax (202)333-1-362

1) The Administrator should seek methods to protect safety and security-related information collected by the FAA during the normal administration of its regulatory programs as well as information voluntarily provided by the aviation community. Security information collected by the FAA is often subject to Freedom of Information Act (FOIA) requests. The release of FAA security inspection reports to news agencies under FOIA provisions may render airports' extensive deterrent and detection systems virtually useless. Such information should be treated confidentially wherever possible, as a matter of FAA policy, to prevent unauthorized persons from utilizing information about system failures to more easily gain access to secure areas at airports.

2) Additionally, we think that the Administrator should seek the necessary authority to protect information that is voluntarily disclosed from being used in a subsequent imposition of civil penalties as well as protecting such information from FOIA requests. The NPRM states that information provided under Section 193 (withholding information from disclosure) may lead the FAA to conduct an investigation, and "If the investigation led to additional information, the additional information would not be protected under part 193, but the original information would continue to be protected." Why does the FAA choose to distinguish between voluntarily submitted information, and "additional information" uncovered as the result of an investigation? If the goal of the NPRM is to facilitate free and open disclosure, to assist in the development of data-sharing programs that could help improve aviation safety and security by allowing FAA to spot trends before they result in accidents or security breaches, then there should be no distinction.

If airport operators voluntarily provide information regarding system deficiencies to the FAA, they should be given a reasonable opportunity to provide for alternative means of compliance and/or remedies to the identified system failures. FAA should work with the industry to address the development of safety or security improvements and this cooperative process should be free, not only from FOIA disclosure, but also from the assessment of penalties.

3) The Administrator should assess existing programs and policies within the FAA that would benefit from additional voluntarily supplied information due to concerns with FOIA disclosure. Upon completion of the assessment, the Administrator should designate information related to those program areas and policies as protected, if voluntarily submitted, instead of requiring individuals to submit an application for protection of specific information. For example, when airport security consortia (or industry-sponsored security committees) are convened, consortia members discuss security-related problems that could have system-wide implications. If this information could be conveyed to the FAA without the risk of FOIA or legal action, such information would be brought more often to the attention of the FAA.

In conclusion, ACI-NA and AAAE feel strongly that this NPRM on voluntary disclosure will not have the desired affect of increasing the amount the information that flows to the FAA. The NPRM does not establish adequate safeguards that would help to ensure such information is not open to FOIA or that it would not be used to establish civil penalty actions against regulated parties.

Sincerely,



Bonnie A. Wilson
Senior Director
Airport Facilities and Services
Airports Council **International-**
North America
1775 K Street, N. W.
Washington, DC 20006
(202) 86 1-8092



Carter Morris
Staff Vice President
Regulatory Affairs
American Association of Airport Executives
4212 King Street
Alexandria, VA 22302
(703) 824-0500