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U.S. Department of Transportation Dockets
 Docket No. FAA-1999-6673-19
 400 Seventh Street, SW
 Room Plaza 401
 Washington, DC 20590

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RE: FAA-1999-6673
 Certification of Screening Companies; Proposed Rule

Thank you for the opportunity to provide comments on the notice of proposed rulemaking (NPRM) on the certification of screening companies (Docket No. FAA-1999-6673) .

The Airports Council International – North America (ACI-NA) is a membership organization representing approximately 150 State, regional and local governing bodies that own and operate the principal airports served by scheduled air carriers in the United States and Canada. ACI-NA member airports handle approximately 97 percent of the domestic, and virtually all, of the international air passenger traffic and cargo traffic in North America. The Association also represents a wide variety of businesses that provide products and services to the air transportation industry.

The American Association of Airport Executives (AAAE) is a not-for-profit professional individual association of the airport management industry. AAAE is the world’s largest professional organization representing the men and women who manage airports. AAAE members manage primary, commercial-service, reliever and general aviation airports, which enplane 99 percent of the passengers in the United States.

Section I.D., the advance notice of proposed rulemaking (ANPRM) for the proposed Federal Aviation Regulation (FAR) Part 111, which would govern the certification of screening companies, was published on March 17, 1997. The ANPRM requested comments on certification of companies providing security screening. Approximately one-third of the commenters to the ANPRM stated that certificating individual screeners would have a greater impact on improving security than certificating screening companies. Most of these commenters also stated that certificating individual screeners would improve screener professionalism and performance.

ACI-NA and **AAAE** were two of the **commenters** that advocated this position and continue to do so in response to this **NPRM**. However, the Federal Aviation Administration (FAA) is not proposing to require the certifications for individual screeners stating that it does not have the statutory authority under Title 49 or the Federal Aviation Reauthorization Act of 1996 to require such certification. Therefore, we strongly urge and recommend that the FAA seek the statutory authority that would allow it to certificate individual screeners. It is important to note that the definition of “person” as defined in 14 CFR 1.1 means “an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity.” We ask the FAA to explain why the definition of “person” would not allow it to certificate individual screeners.

Proposed Section II. B. which address the certification of all who perform screening, would require that all companies that perform screening be certificated under proposed FAR Part 111, even if they are air carriers, foreign air carriers, or indirect air carriers. We support this proposal, however, we question the need for self-screening air carriers to be regulated as screening companies in addition to being regulated as airlines. It would seem that including identical performance standards as those required of screening companies under proposed FAR Part 111 into air carrier standard security programs (**ACSSP**'s) would appear to suffice.

Section II. D. in the **NPRM** states that the proposed rule would not shift the responsibility for screening from air carriers, indirect air carriers, and foreign air carriers, rather, certificating screening companies is a way to assist companies in ensuring that those who conduct screening are fully qualified to do so. The **NPRM** continues by stating that certification would also make screening companies directly accountable to the FAA for failures to carry out their screening duties. We understand and support the position of FAA, recognizing that air carriers and screening companies would both be responsible to the FAA. But the FAA needs to address the possibility of “double jeopardy” (multiple punitive measures for same violation) in the final rule.

Further in to Section II.D., the proposal would require that each air carrier or foreign air carrier required by the FAA to implement additional security measures to maintain system performance, notify the public of the increased measures by posting signs at affected screening locations. The FAA goes on to state that specific language and specifications to be required for the signs would be included in the air carriers and screening companies security programs. **ACI-NA** and **AAAE** support this action but with an amendment to the proposal making airports an accessible party to the specific language and specifications of the signs, aiding the airports and screener companies in coordinating sign postings when feasible, thereby limiting the total number of signs posted in an airport.

In Section II.F. of the **NPRM** addressing the screening of cargo, the FAA has requested comments on the issues relating to certificating indirect air carriers. Included in this section is the FAA proposal that inspections of cargo for unauthorized explosives and incendiaries be done only by certificated screening companies, similar to the proposal for the screening of persons, accessible property, and checked baggage. Our concern is that the additional screening of cargo for air carriers and indirect air carriers may occur on airport property resulting in a further strain on already limited airport facilities. We call on the FAA to reconvene the Aviation Security Advisory Committee's (**ASAC**) Cargo Working Group (**CWG**) to review this section of the **NPRM** and provide suggestions of best practices to the FAA.

The FAA in this **NPRM** has also requested comments on consolidating all screening-related program requirements into one screening standard security program (**SSSP**). **ACI-NA** and **AAAE** support this proposal but are disappointed that the final proposed **SSSP** was not available prior to the closing of the comment period. We are reserving the right to comment on the elements of the **SSSP** once the document is made available to impacted parties.

We support the FAA's proposal under Section **II.H.**, screener qualifications, under the **NPRM**. We believe that it is essential that screeners pass X-ray and knowledge based tests. These tests establish a single standard monitored by the FAA and set a baseline, which includes the essential element of threat image projection (**TIP**). **ACI-NA** and **AAAE** support FAA's efforts to further standardize the use of **TIP**.

In the **NPRM** on the certification of screening companies, the FAA considered proposing a shorter duration for the screening company certificates but decided to propose the **60-month** duration as a reasonable option for obtaining the most benefits with the least burden. The FAA also invited comments on the costs and benefits of the proposed duration and of a shorter duration such as 2 or 3 years. We propose that if a new screening company is requesting certification under the proposed FAR Part 111, the FAA should initially offer a 1 year certification. After the end of the first year, the FAA would then conduct an intensive review of the procedures and practices of that screening company and if the review is satisfactory the FAA would then issue the screening company a 5 -year certificate.

Under **III.F. Section 111.10** 1 performance of screening, the FAA states that it appears that the most efficient means for the FAA to issue the security directives (**SD**) and emergency amendments (**EA**) requirements to screening companies would be to continue the practice of issuing them to the carriers, who then provide appropriate information to their screening companies. It is our position that **SD** and **EA** requirements that are applicable to the screening process should be issued by the FAA directly to the screening companies that are providing screening services for air carriers. All other **SD** and **EA** should only be provided to directly impacted regulated parties.

Under proposed Section 111.113, operation specifications, we support the FAA's proposal on the types of information that screening companies would be required to list in their operations specifications. The proposal for the operation specifications would include: the locations at which a company may conduct screening; the types of screening that company is authorized to perform (persons, accessible property, checked baggage, and cargo); the equipment and methods of screening that the company may employ; the name of the company's screening performance coordinator (**SPC**); the procedures for notifying the Administrator and any carrier for which the company is performing screening if an equipment of facility failure makes the performance of adequate screening impracticable; and the curriculum used to train persons performing screening functions. Proposed Section 111.113 (c) would require a screening company to maintain a complete copy of its operations specifications at its principal business office and at each airport where it conducts security screening. **ACI-NA** and **AAAE** support this proposal with an amendment which would require copies of these operations specifications be available to the individual airports where the specific operations are undertaken so that the airport may be prepared to respond.

The **NPRM** states that because the carriers are ultimately responsible for screening and contract with screening companies to perform the service on their behalf, the FAA does not consider it essential from a legal standpoint to include proposed Section 111.117. However, it appears that inclusion of this section may avoid confusion concerning the roles of the carriers and screening companies. **ACI-NA** and **AAAE** agree that Section 111.117 should be included to avoid confusion even though this is not a legal requirement.

The FAA has also requested comments in the **NPRM** on any alternative means for keeping the carriers informed of their screening companies' compliance. The FAA must notify air carriers directly of their screening companies' compliance to ensure that the air carriers are being notified of any failure of compliance on the part of its screening company. The FAA must also notify the airport security coordinator (**ASC**) and airport consortia at an airport where a screening company may be faced with revocation of certification. We offer this as a protection for **ASC**'s and airport security personnel to allow them to prepare for possible screening delays that may occur due to suspension of a security screening companies authority to operate a specific checkpoint.

Under proposed Section 111.201 (b) of the **NPRM**, each screening company would be required to deny entry into a sterile area at a checkpoint to the following: any person who does not consent to a search of his or her person in accordance with the screening system prescribed in paragraph (a) of this section; and any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by paragraph (a) of this section. While **ACI-NA** and **AAAE** support this proposal, it is essential that FAA direct screening companies to work with airports to develop a **pre-coordinated** plan addressing this issue. This would reduce the need to clear a concourse of all individuals to find the one individual who breached the checkpoint, therefore reducing potential for operational disruption to passengers, airlines, and the airport.

The FAA proposes under Section 111.207 of the **NPRM**, that each screening company would be required to ensure that no sensitive security information (**SSI**) is provided to a screener trainee who will be required to have an employment history verification until part 1 of the trainee's check is completed. Under the statute, if a part 2 criminal history records check is needed, an individual may be employed as a screener until his or her check is completed if the person is subject to supervision. This means that the person would be permitted to receive **SSI** unless or until his or her records check reveals a disqualifying crime. We do not support the distribution of **SSI** to any individual screener undergoing a background check and call on the FAA to deny this information to a screener until parts 1 and 2 of the background check are complete. We recognize that under the current statute an individual undergoing a part 2 investigation can screen with supervision but we do not support this as a best practice. Further, with the Federal Bureau of Investigation (**FBI**) now having automated, electronic fingerprint technology we strongly urge the FAA to move to **100%** fingerprint checks for all people granted access to the secure areas of airports, including screeners.

Under the proposed rule, a screening performance coordinator (**SPC**) would be required to have successfully completed the initial security screener trainer course, including the X-ray interpretation portion of the course and the end-of-course FAA exam. The **SPC**'s completion of initial security screener training would ensure that he or she would have formal training in the

screeener's job. The **SPC** would not be required to complete the on-the-job portion of the training, because he or she would not actually perform required screening, and it would not be necessary for the **SPC** to accomplish the same level of proficiency as that required of a screener. We strongly disagree with the FAA's suggestion that it is not necessary for an **SPC** to complete the on-the-job portion of screener training. The **SPC** should be required to complete on-the-job training and should also have recurrent training because a **SPC's** screener skills will go lax since the skills will not be applied on a regular basis. **SPC's** are tasked with monitoring the quality of screener performance and ensuring corrective actions occur for performance deficiencies. The **SPC** must have a working knowledge of the screener's functions. Further, proposed Section 111.205 (a) (5) would require persons with supervisory screening duties to have initial and recurrent training that includes leadership and management subjects. This section, as proposed, is applicable to the functions and mandatory for the performance of a **SPC**.

In the **NPRM**, the FAA also proposes to do away with the hourly training requirements for initial and recurrent training and give screening companies the flexibility to train their screeners using their own FAA-approved training programs. **ACI-NA** and **AAAE** do not support the current requirements concerning hourly training requirements and offer that these requirements do not necessarily have an impact on screener performance. It is more important for screeners to meet performance based standards supplemented by 40 hours of on-the-job training and pass the FAA on-the-job test as prescribed under 111.215 (b) of the **NPRM**.

Proposed Section 111.215 (d) of the **NPRM**, would require that each screening company use an FAA computer-based test to administer the FAA tests for screener readiness, on-the-job training, and recurrent training unless otherwise authorized by the Administrator. We support this proposal as it would prevent instances of cheating and provide a realistic test of screening functions. Proposed Section 111.215 (e) would require each screening company to ensure that each test that it administers under Section 111.215 (a) and (c) is monitored by an employee of the carrier for which it screens. The proposed section further states that each applicable carrier would be responsible for providing a test monitor upon request and ensuring that the test monitor meets the qualifications contained in proposed Section 108.299, 109.205, or 129.25 (p) and the supporting requirements in the screening company's security program. **ACI-NA** and **AAAE** respect the underlying principal of this proposal and agree that air carriers should monitor testing, as they are the regulated party responsible for oversight duties of screening. We offer the following scenario to explain why we disagree with the practical reality of this proposal: an individual screening checkpoint run by a single screening company on behalf of three air carriers that use that checkpoint should expect a test monitor from each of the three air carriers to be present for each test administered to screeners who will be working at the checkpoint shared between the three air carriers. More than one carrier supplying a test monitor in a situation as described is a redundant and wasteful measure. The better alternative is for air carriers sharing a checkpoint to be able to select one test monitor to represent all responsible carriers for the testing of screeners assigned to the shared checkpoint.

Under Section 111.217 which covers training tests: cheating and other unauthorized conduct, the proposal reads that it would be particularly important that the test monitors explain the consequences of cheating on tests to their trainees and be alert to any occurrences of cheating. We agree with the FAA's position on this situation, but are concerned that the FAA has not outlined in this **NPRM** what the consequences are if a trainee is caught cheating on a test. **ACI-NA** and **AAAE** think it best if the consequences were described in detail in the final rule.

Section 111.221 provides guidance on screener and supervisor training records. We support the FAA's position in the NPRM that reads, "... a screening company would be required to forward training records for a screener, screener-in-charge, or checkpoint security advisor to another screening company upon the request of the employee. The other screening company would be able to use the employee without fully retraining him or her if it provides training on the procedures that differ from those of the previous company." We agree that the **re-training** of an individual screener is not necessary unless practices differ between screening companies. A well trained, experienced individual screener is a benefit to the industry and should not be penalized for transferring employment from one screening company to another screening company. None the less, it is essential that the FAA require that employee records reflect the circumstances under which an individual leaves employ with an individual company. Specifically, any company that dismisses an individual for cause, such as failure to meet FAA performance standards, or violation of company rules or standards, should indicate such on the employee's record to alert other companies who may be considering hiring a "**pre-trained**" individual.

Under proposed Section 111.223 (b), each screening company would be required to meet the performance standards set forth in its security program. ACI-NA and AAAE believe strongly that it is important for screening companies to be held to a performance standard as it benefits the entire industry. Therefore, we also support the FAA's measures outlined in proposed new Sections 108.201 (i), 109.203 (b), and 129.25 (l) which would require each carrier to ensure that each screening company performing screening services on the carrier's behalf do so consistent with FAR Part 111, the screening company's security program, and the screening company's operations specifications. And we further support proposed new Sections 108.201 (j), 109.203 (c) and 129.25 (m) which would require each carrier required to conduct screening to oversee each screening company performing screening on its behalf as directed in the carrier's security program. However, we call on the FAA to include in the final rule an amendment to this section that would require air carriers, foreign air carriers, and indirect carriers to notify directly impacted airports and the FAA of any screening companies engaging in unacceptable performance practices.

Corresponding to proposed Section 111.203, proposed new paragraph (h) to existing Section 108.205 would be added to state that unless otherwise authorized by the Administrator, each air carrier shall ensure that each X-ray system that it uses have a functioning threat image projection (TIP) system that meets the standards set forth in its security program. We support this proposal since screening companies and individual screeners are required to meet performance standards based on TIP.

Again, we thank you for the opportunity to comment on the proposed rule for the certification of screening companies.

Sincerely,



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