

March 25, 2002

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590

Dear Sir:

The Regulatory Policies and Procedures of the Department of Transportation (44 FR 1134; Feb. 26, 1979) provides the opportunity for public comment on regulations issued without prior notice. Washington Dulles International and Ronald Reagan Washington National Airports submit the attached comments on Part II 14 CFR Parts 91 et al and 49 CFR Parts 1500 et al, *Civil Aviation Security Rules; Final Rule*, February 22, 2002, Regulatory Docket Number TSA-2002-11602.

Sincerely,

Edward T. Cox
Airport Security Coordinator
Washington Dulles International Airport

March 25, 2002

**Washington Dulles International Airport
Comments on Part II 14 CFR Parts 91 et al
and 49 CFR Parts 1500 et al
*Civil Aviation Security Rules; Final Rule***

Regulatory Docket Number TSA-2002-11602

1542.3 (c)

... no airport operator may use or may it designate and ASC unless that individual has completed subject matter training, as specified in its security program....

Comments:

It is recommended that the TSA develop and provide an official training program for the ASC. Currently, there is no official training or certification program to fully satisfy the subject matter requirement, and that, ASCs with more than 3 years in their current position, be grandfathered.in as satisfying the training requirement.

1542.5 Inspection authority – General requirements

Comments:

It is requested that the TSA provide the airport operator with reasonable notice prior to inspection or testing. This may be in the form of communication with the airport security coordinator (ASC), so that the effectiveness of the inspection is not compromised.

(d) At the request of the TSA...

At the request of the TSA and upon the completion of SIDA training as required in a security program, each airport operator promptly must issue to TSA personnel access and identification media ...

Comments:

It is recommended that in all cases, not by request, that the TSA complete SIDA training and apply for access and identification media.

Section 1542.101 (c) (1)

Subpart B – Airport Security Program – General Requirements

Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know; and (2) Refer all requests for SSI to other persons to TSA.

Comments:

The Airport Security program contains information that is necessary to carry out the security objectives of the airport operator. Some of that content pertains to Sensitive Security Information (SSI, as specified in 1520.7). While “need to know” is defined in section 1520, the section should further define exactly what constitutes the DOT-approved, accepted, or directed security duties or requirements that allow disclosure of the ASP. It is requested that more guidance be given that clarifies permitted disclosure of the ASP, or that the content requirements be modified, so that distribution of the ASP is not overly restricted by SSI.

Section 1542.209 (d) (27) Disqualifying criminal offenses

Comments:

Disqualifying offense number (27), Violence at international airports is somewhat ambiguous and may create confusion for applicants completing the application that lists these crimes. It is recommended that a more specific description be provided that clarifies the nature of this crime. In addition, is section 1540.109, (interference with screening personnel) included in this crime or will it become a separate U.S.C., and if so, it should be added to the criminal offense list in this section.

Section 1542.209 (e)(5)

Fingerprint-based criminal history records checks (CHRC)

The airport operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation of the airport operator or a law enforcement officer.

Comments:

Collecting a set of classifiable fingerprints may not always be possible or reasonable. In many instances, an individual may not be able to produce a verifiable print, because of the effects of chemicals, past injuries, high moisture, and other conditions. Some of these individuals may be employees who have maintained their current positions for a number of years. It is requested that the final rule provide guidance on alternative methods for obtaining these prints or an alternative solution for completing the criminal history record checks, and that that guidance be incorporated in the language of section 1542.209.

Section 1542.209 (e) Fingerprint application and processing

At the time of fingerprinting, the airport operator must provide the individual to be fingerprinted a fingerprint application that includes only the following....

Comments:

It is recommended that the information required for the fingerprint application be included on the airport ID badge application. The fingerprint application, as specified in the rule, is of little use. At a minimum, the form should include the information needed to process the individual's fingerprints, such as social security number, birth date, aliases, sex, race, eye color, hair color, height, weight, place of birth, address, employer address, and check boxes or indicators for verification of two forms of identification. The current applications already include this information, as well as the disqualifying crimes. The three additional required statements could be added with little effort.

Section 1549.209 (g) Determination of arrest status

(2) CHRC discloses an arrest without a disposition

Comments:

It is recommended that the unescorted access authority be immediately suspended for individuals for whom the CHRC discloses an arrest for any disqualifying criminal offense without indicating a disposition. The individual's unescorted access authority should remain suspended until the airport operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense.

Section 1542.209 (m) Exceptions

Notwithstanding the requirements of this section, an airport operator must authorize the following individuals to have unescorted access authority:

Comments:

The language in the previous 107.209 regulatory passage has been changed from *may* authorize unescorted access authority to *must as it pertains to (1)*. It is recommended that the airport operator be allowed to exercise discretion in authorizing unescorted access for individuals listed under this paragraph.

Section 1542.209 (m) (i) and (ii) an individual who has been continuously employed

Comments:

It is recommended that the “continuous employment” exemption be eliminated. All new hires seeking unescorted security identification display area (SIDA) access authority should be fingerprinted regardless of whether they have been fingerprinted and have had unescorted SIDA access at another airport. The continuous employment exemption is confusing and creates a security vulnerability in that the documents used to prove other airport access privileges and criminal history record check results may not be authentic and cannot be validated by the airport operator. In addition, an individual’s criminal history status can change at any time and not be reflected in a continued employment exemption.

Section 1542.211 Identification Systems

(a) (3) (v) revalidation of identification media

Comments:

A portion of access media is ambiguous; it is recommended that the regulation specify the portion of unaccounted for media that constitutes revalidation of the media.

(a) (3) (vi) number of issued identification/access media

Comments:

This paragraph should be changed by omitting the following passage: *except for personnel who are employed with more than one company and require additional identification media to carry out employment duties*. Only one identification medium should be issued to an individual at all times.

(e) Escorting

Comments:

Paragraph (2) states that escorted individuals must be accompanied or monitored within the secured area. Paragraph (5) does not state that the individual be monitored in the sterile area. It is recommended that these two paragraphs be consistent by omitting the option to monitor in lieu of direct escort.

1542.221 Records of law enforcement

Comments:

Since the TSA will assume all responsibility for screening functions including law enforcement presence, it is recommended that the section be changed so that the TSA be responsible for developing and maintaining records of law enforcement response pertaining to screening related incidents.

Section 1542.307 Incident management

Comments:

The Airport Emergency Plan, which is reference in this section, is already covered by 14 CFR 139. The inclusion of this section in CFR 49 Parts 1500 et al is redundant and may create confusion with regard to precedence.