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of Transportation
**Federal Aviation
Administration**

Federal Aviation Regulations

Part 108
Airplane Operator Security

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Part 108—Airplane Operator Security

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Ch. 1 (Amdt. 108-2, Eff. 7/8/85;
* Amdt. 108-3, Eff. 7/11/85)

New Part 108—Airplane Operator Security

Adopted: January 12, 1981

Effective: September 11, 1981

(Published in 46 FR 3782, January 15, 1981)

SUMMARY: These amendments revise and consolidate security regulations for scheduled passenger and public charter operations in a new Part of the Federal Aviation Regulations and extend those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. The consolidation facilitates public access to aviation security regulations. These changes provide an appropriate response to the current threat of criminal violence and air piracy against scheduled and public charter operations of U.S. air carriers, intrastate operators, and foreign air carriers.

FOR FURTHER INFORMATION CONTACT:

Mr. H. E. Smith, Regulatory Projects Branch, (AVS-24)
Safety Regulations Staff
Associate Administrator for Aviation Standards
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, D.C. 20591; Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

On November 1, 1979, the FAA published Notice of Proposed Rule Making No. 79-17 (44 FR 63048), to extend the FAA security regulations applicable to scheduled passenger and public charter operations of U.S. and foreign air carriers and U.S. intrastate operators to certain air taxi operators and small airplane operations conducted by U.S. and foreign operators. It also proposed to simplify these regulations and consolidate them (for U.S. certificate holders) into a new Part of the Federal Aviation Regulations to facilitate public access to security regulations.

All interested persons have been given an opportunity to participate in the making of this new Part 108 and the revisions to Parts 107, 121, 129, and 135. Due consideration has been given to all matters presented. In response to comments received and after further study by the FAA, a number of changes are reflected in the rule as adopted.

Background

Since their inception in 1972, FAA security regulations have been designed to meet threats of hijacking and other crimes against the specific kinds of aircraft operations that have proven to be most attractive to the potential hijacker or saboteur. For the most part these operations have involved large transport type airplanes with scheduled departure times, and generally have been conducted by air carriers under Certificates of Public Convenience and Necessity (CPCN) and other limited economic authority issued by the Civil Aeronautics Board (CAB), as well as by certain wholly intrastate operators who are not air carriers. Operating rules for these operators are set out in Part 121 (14 CFR Part 121) and, for this reason, FAA security regulations were initially placed in that Part.

Scheduled operations with large airplanes also have been conducted under § 135.2 of Part 135 (14 CFR Part 135). Security for these operations has been achieved through voluntary compliance with requirements similar to those in Part 121; however, the number of these operations is increasing.

Recently, and in particular since the passage of the Airline Deregulation Act of 1978 (Deregulation Act), the CAB has liberalized its policies and has granted broad authority to conduct scheduled operations with large aircraft. There now are numerous air carriers referred to in the Deregulation Act as "commuters" operating under Part 135 with authority to conduct operations similar to those that were previously conducted only by CPCN holders under Part 121. While CPCN holders are being allowed to discontinue service at different terminals, commuter air carriers are gaining these terminal and route

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authorizations. As a result, commuter air carriers are now using identical aircraft in scheduled and public charter operations formerly used only by CPCN holders. These airplanes are being operated over routes formerly served by CPCN holders, and the operations are conducted without being subject to full FAA security requirements.

The Deregulation Act carries with it a mandate that there be no diminution in safety in situations where commuter carriers provide substitute service on routes previously served by route carriers. Section 33(c) (3) of the Deregulation Act requires the FAA to "impose requirements upon such commuter air carriers to assure that the level of safety provided to persons traveling on such commuter air carriers is, to the maximum feasible extent, equivalent to the level of safety provided to persons traveling on air carriers which provide service pursuant to certificates issued under Section 401 of this title."

The Proposal

To ensure consistent application of FAA's security rules and to achieve the necessary level of security, Notice 79-17 proposed security requirements based upon airplane complexity instead of CAB authorizations. The proposal called for multilevel security requirements to be equally applicable to all scheduled and public charter passenger operations conducted by air carriers and other FAA certificate holders. The FAA certificate holder would have been required to meet the full security requirements that have been set out in Part 121, including an approved screening system, for operations conducted in airplanes with a seating configuration of 20 or more passenger seats. For operations conducted in airplanes configured for less than 20 passenger seats, the certificate holder would have been subject only to minimal security requirements, including passenger and shipper identification, airplane security, and arrangements for law enforcement response when needed. The proposal also would have retained the existing requirement in Part 135 for crewmember antihijack training.

A number of changes have been made in the final rules, as discussed in this preamble. A table is provided for comparing the major provisions of the proposed rule and the final amendments. It is to assist in understanding the changes that have been made and should not be relied upon as a complete statement of the amendments.

Passenger Seating Configuration

Security Requirements

NOTICE OF PROPOSED RULE MAKING

1-19	Modified airplane and airport operator security program would have been adopted and implemented
more than 19	Full airplane and airport operator security program would have been adopted and implemented, including screening of all passengers and law enforcement presence.

FINAL AMENDMENTS

1-30	No security program is required unless passengers have uncontrolled access to a sterile area and then a screening system and law enforcement presence must be provided for those passengers.
31-60	Airplane and airport operator security program must be adopted, but screening and law enforcement presence must be implemented only when the FAA identifies a security threat or passengers have uncontrolled access to a sterile area.
more than 60	Full security program must be adopted and implemented, including screening of all passengers, law enforcement presence, and other significant safeguards.

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Comments

Approximately 320 public comments were received in response to Notice 79-17. Nearly all of the commenters were against the proposal. The major objections were the cost of implementing the security requirements and the absence of any threat that justified extending screening and other security requirements to commuter operations. The commenters argued that the proposal would place an undue hardship on small communities and inhibit industry growth by causing commuters to avoid use of larger airplanes in order to gain advantage of the minimal security requirements for airplanes with less than 20 passenger seats.

Economic Study

In analyzing financial data provided by the commenters, the security costs per passenger enplanement were found to vary so much that the FAA decided that further economic study was necessary. A sample of typical airports was examined to determine what the actual costs would be to implement the proposed requirements. The results of this small sampling indicated that a comprehensive indepth cost study was needed.

This indepth study identified potentially affected airplane operators (25) and airports (20). The personnel of FAA regional security divisions completed structured interview forms for each potentially affected airline station (90) and for each airport. This information was collected and analyzed by the FAA's Office of Aviation Policy and Plans; and in many cases followup discussions were held with airline and airport personnel. The final regulatory evaluation that resulted from this study is available in the public docket for this rulemaking action.

The study indicates that the FAA estimated costs provided in Notice 79-17 are generally accurate when considered against the total projected enplanements. However, when viewed for a particular airport, or for a particular flight, costs might be unreasonably high because of the limited enplanements at that airport or for that flight.

Considerable reduction in the cost impact of this final rule has been effected through the changes in the proposal. While adoption of Notice 79-17 could have resulted in an estimated maximum annual operating cost of \$8.80 million and maximum capital investments of \$5.30 million (for airplane operators) and \$.36 million (for airports), the maximum annual operating cost for the final rule will not exceed \$3.15 million and no capital investment will be necessary. These changes and their economic impact are discussed below.

Security Threat

The increased security threat to the commuter industry that was expected to result from implementation of the Deregulation Act has not materialized. Only one attempted hijacking of a commuter-operated airplane has occurred since the Deregulation Act was implemented. This attempt was thwarted by skillful FBI negotiations resulting in apprehension of the hijacker.

While the threat of air piracy and sabotage exists for all levels of air transportation, the historical record clearly establishes that the threat is very serious for some levels and less serious for others. Although all sizes of aircraft have been subjected to hijackings, the most severe threat has been against the larger, longer-range, jet airplanes in scheduled passenger operations. Typically these airplanes have more than 60 passenger seats, the smallest being the BAC-111, which may be configured for as few as 65 passenger seats, and the more commonly used DC-9, which is typically configured for approximately 90 passenger seats. The number of U.S. hijackings of such airplanes has continued to rise in relation to worldwide hijackings and, over the past 3 years, the U.S. air transportation system has experienced 40 hijackings of these air carrier airplanes.

Final Rule

Considering the economic burden that could be imposed on the small airport and airplane operators and the fact that the hijacking threat directed against commuters has not significantly increased, it is not appropriate to fully implement the proposed rule

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changes at this time. This final rule requires implementing a full security program only for scheduled and public charter operations with airplanes having a passenger seating configuration of more than 60 seats and for operations providing deplaned passengers access to a sterile area at the next landing when the access is not controlled by another airplane operator's security program.

For operations with airplanes having a passenger seating configuration of more than 30 but less than 61 seats, a full security program need not be implemented. A full program for these operations will have to be implemented only if the FAA notifies the airplane operator that a security threat exists with respect to a particular operation or set of operations.

While the frequency and extent of these threats cannot be predicted, the FAA expects that this contingency seldom will be invoked. If it is, it will probably not involve all airplane operators or all points served by a single operator, nor would all precautions have to be taken in every contingency.

Antihijack security training will continue to be required for all crewmembers of FAA certificate holders operating under Part 121 or Part 135. In addition, throughout Part 108 and the changes to Part 107 and § 129.25 of this chapter, the term "airplane" instead of "aircraft" is used since threatened operations have only involved airplanes and no other aircraft.

Airplane Operator Security Requirements

None of the comments suggest, nor does FAA intend, lessening in any way the current security requirements for U.S. or foreign air carriers utilizing airplanes configured for more than 60 passenger seats or for U.S. airports presently served by these carriers on a regular basis. To ensure that passengers in scheduled or public charter operations with these airplanes benefit from a degree of security commensurate with the existing threat, the rule, as adopted, continues to require the implementation of a full security program for these operations.

For airplanes with a passenger seating configuration of less than 61 seats, the larger the airplane, the more attractive it can be expected to be for the potential hijacker. The great majority of airplanes currently used by commuters are of less than 31 seat configuration. However, a number of larger airplanes are now in production or "on the drawing board" to serve the commuter airline market. The larger airplanes have a greater stage length and fuel capacity and carry many more passengers than those in current use. As a result, potential hijackers are more apt to see them as containing more hostages and having the range to serve their purposes.

Additionally, the FAA's economic study generally reflects significant increases in security costs per passenger as the airplane capacity decreases. The study indicates that for the lower half of the spectrum (the 1- through 30-seat airplanes), the economic hardship far outweighs the security benefit derived from even the minimal security requirements proposed in Notice 79-17 for airplanes configured for less than 20 seats.

For these reasons, the FAA has determined that airplanes with a seating configuration of 31 through 60 should be treated differently from those with 30 or fewer seats. Part 108, as adopted, requires FAA certificate holders conducting scheduled passenger and public charter operations in 31- through 60-seat airplanes to continue to conduct security training for crews, as presently required by §§ 121.417 and 135.331. Further Part 108 and changes to Part 129 require the adoption of a comprehensive security program for operations with 31 through 60 seats comparable to that required for operations with airplanes having more than 60 seats. However, the operator will normally only have to implement for 31- through 60-seat airplanes those portions of the program that call for (1) having procedures for contacting the law enforcement agency identified by the airport operator and arranging for response to an incident when needed; and (2) advising appropriate employees, including crewmembers, of the procedures and instructing them when and how to use them. If the operator also uses airplanes above 60 seats, a full security program must be implemented for these operations.

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Each operator of 31- through 60-seat airplanes must be prepared to implement its full security program for all or part of its operations at a particular station or systemwide upon notification by the FAA that a threat exists. Such a threat would exist, for example, where operations in this category have been subjected to hijacking and a specific threat has been made that more hijackings will be perpetrated. Such a threat might also exist where information has been received or developed concerning airplanes in this category without a prior hijacking.

FAA certificate holders utilizing airplanes with a seating configuration of 1 through 30 seats, under the provisions of this rule, are only required to conduct antihijack crew training currently required by § 135.331. Because of the size, range, and public perception of the capacity and capability of these airplanes, this reactive security measure is considered adequate to meet the level of threat against this type operation.

Law Enforcement Support

When a U.S. or foreign air carrier is required to implement a security screening system at an airport governed by Part 107, the airport operator is required to provide law enforcement support for that screening. When a carrier conducts operations from an airport not governed by Part 107 of this chapter and is required to use a screening system, the carrier continues to be required to provide law enforcement officers to support the screening system.

Access to Sterile Areas

To protect the security of sterile areas, this amendment provides that operators of airplanes of any seating configuration may not discharge scheduled or public charter passengers into a sterile area unless: (1) the passengers and their accessible items are properly screened by the airplane operator; or (2) their access is controlled through surveillance and escort procedures or through the screening procedures of another operator.

Thus, unscreened passengers may have access to a sterile area where the discharging operator has made a prior arrangement with another FAA certificate holder or foreign air carrier, or in some cases the airport operator, having responsibility for the sterile area either for escort of the deplaning passengers into, through, and out of the sterile area or for the screening of those passengers before entry. Without these arrangements, operators not otherwise required by Part 108 or 129 to screen their passengers who wish to deplane their passengers in a particular operation into a sterile area at a particular airport must adopt and implement all the provisions of an appropriate security program with respect to that passenger operation. This requires that: (1) 100 percent screening of the passengers and their accessible items be completed before the last departure; (2) the airplane be protected; and (3) procedures be used to prevent or deter the introduction of explosives and incendiaries into checked baggage and cargo for those flights.

This process currently is being followed by a number of air carriers operating under § 135.2. These air taxi and commuter operators, because of their desire to allow their passengers to have direct and uncontrolled access to a sterile area, have voluntarily elected to amend their operations specifications to adhere to the security requirements of § 121.538. With implementation of Part 108, this will no longer be necessary, and operators requiring direct uncontrolled access to sterile areas for their passengers will follow the security program procedures in § 108.25.

As a result of these amendments, certain FAA certificate holders that operate smaller airplanes and have been required to meet the security provisions of § 121.538 are no longer required to implement full security programs. Under § 108.5 these operators or other operators utilizing 1- through 60-seat airplanes may elect to continue to operate under a full security program in order to discharge passengers into a sterile area, or may elect to operate under a full or modified security program to meet passenger expectations, to fulfill company security policies, or for other reasons. However, when FAA approval is obtained for any security program, § 108.5 requires that the airplane operator carry out the provisions of that program. Operators utilizing smaller airplanes who use their own

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separate facilities at certain airports will now be able, at those airports, to operate without screening passengers or providing law enforcement presence. For these operators this rule may represent a considerable economic savings.

An Air Carrier Standard Security Program meeting the requirements of this rule is available for use by all certificate holders. This program, jointly developed by FAA and industry, has proven very effective in lessening the certificate holder's administrative burden. The FAA encourages adoption of the Air Carrier Standard Security Program to ensure uniform implementation and use of security procedures.

Airport Security Requirements

At U.S. airports regularly serving scheduled passenger operations of FAA certificate holders and foreign air carriers utilizing airplanes with more than 60 seats, this final rule requires the airport operator to adhere to the current provisions of Part 107.

At those airports regularly serving scheduled passenger operations utilizing 31-through 60-passenger-seat airplanes and at which the airplane operator is not required to screen its passengers, the airport operator must only identify the law enforcement agency that will respond to the airplane operator's request for assistance. Responsibility for establishing and implementing the actual arrangements and for obtaining assistance in the case of an incident rests with the airplane operator.

For these operations, the airport operator is required to submit to the FAA for approval a security program that identifies: (1) the law enforcement support available to respond upon request of the airport operator; (2) a description of the procedure to be used by the air carrier to summon support; (3) a description of the training the law enforcement officers have received; and (4) a description of the system of records of law enforcement actions taken in support of aviation security as called for by § 107.23.

If an airplane operator using airplanes with less than 61 passenger seats must adopt and carry out a full security program with a screening system, the airport operator must provide law enforcement support during all required passenger screening operations. The airport operator is required to submit to the FAA for approval a security program identifying the law enforcement support, the training received by law enforcement officers, and a description of the system for recording law enforcement actions taken in support of aviation security. These law enforcement support requirements are the only security requirements imposed on the airport operator for operations with airplanes configured for less than 61 passenger seats where screening is performed under a required security program.

Economic Evaluation

Assessment of the economic impact of these amendments indicates that certain airplane and airport operators not previously required to have a security program may incur some costs in connection with scheduled and public charter passenger operations with airplanes having a passenger seating configuration of 31 through 60 passenger seats. Some additional costs will occur for these operators if they must implement contingency procedures included in security programs because of a threat condition. Most, if not all, of the costs of meeting contingencies would be associated with personnel and would not involve investments in X-ray machines, metal detectors, and alterations to airport terminals as might have been the case if the proposal in Notice 79-17 had been adopted. If a threat situation occurs, the FAA will work closely with the affected parties to ensure adequate, efficient, and cost-effective implementation of contingency procedures.

The only other new cost resulting from this rule may occur when some operators of airplanes with less than 61 passenger seats desire to discharge passengers directly into a sterile area. No additional cost will occur to the many operators already voluntarily providing security for these operations through amendments to their operations specifications. Airplane operators that do not now provide this security, and who desire access to a sterile area, will incur new costs for providing the necessary security safeguards.

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The economic assessment indicates that the final rule may have an impact on 11 Part 135 operators of airplanes seating 31 through 60 passengers at as many as 39 stations. Virtually all of this cost impact would occur if contingency procedures are implemented. Based on the FAA's analysis of the current threat, coupled with the historical record, airplane and airport operators will rarely, if ever, be required to take these heightened precautions and a threat necessitating such action would probably never involve all 11 carriers or 39 stations at a time.

However, in the unlikely event that all operators of 31- through 60-seat airplanes are required to implement contingency procedures at all stations for an entire year because of the greatest hijacking threat, the annual cost could be as high as \$3.15 million. Whatever costs occur may be recovered through fare or temporary subsidy increases.

This \$3.15 million maximum cost contrasts with the possible costs that would have resulted from the proposed rule. The FAA's evaluation indicates that it could have resulted in as much as \$8.8 million in new annual operating costs for the affected airplane operators, \$5.3 million in investments for security equipment and construction by airplane operators and \$360,000 in airport improvements.

Because these amendments impose uniform security requirements on the basis of airplane size and the protection of sterile areas instead of the kind of FAA and CAB operating authority, some Part 121 operators will have an opportunity to reduce security costs at some stations. As is the current case, all Part 135 operators now screening voluntarily under an operations specifications amendment can elect to discontinue screening under this rule if they choose not to continue to have access to a sterile area. While the FAA cannot determine the exact amount of cost savings, it estimates the maximum possible annual operating cost savings of \$13,720,526.

ADOPTION OF THE AMENDMENT

Accordingly Parts 107, 121, 129, and 135 are amended and new Part 108 is added as follows, effective April 1, 1981, or 60 days after a notice of approval of the recordkeeping and reporting requirements of new Part 108 by the Office of Management and Budget is published in the *Federal Register*, whichever is later.

(Secs. 313, 315, 316, 317, 601-610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1356, 1357, 1358, 1421-1430); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

This rule is a final order of the Administrator as defined by Section 1005 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1485). As such, it is subject to review only by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia.

NOTE: The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

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Reference New Part 108—Airplane Operator Security**Adopted: June 15, 1981****Effective: September 11, 1981**

(Published in 46 FR 36053, July 13, 1981)

SUMMARY: This document prescribes the effective date for a new Part of the Federal Aviation Regulations that consolidates security regulations for scheduled passenger and public charter operations and extends those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. At the time this new Part was adopted, its reporting and recordkeeping requirements had not been approved by OMB, and the Part could not be made effective. That approval process has now been completed.

This document also corrects a reference in the words of issuance of Amendment 107-1.

FOR FURTHER INFORMATION CONTACT:

Joseph A. Sirkis, Regulatory Projects Branch, (AVS-24)
 Safety Regulations Staff
 Associate Administrator for Aviation Standards
 Federal Aviation Administration
 800 Independence Avenue, S.W.
 Washington, D.C. 20591; Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

On January 12, 1981, the FAA adopted amendments that added a new Part 108, Airplane Operator Security (46 FR 3782; January 15, 1981), and amended other associated security regulations. The new Part revises and consolidates aviation security regulations for scheduled passenger and public charter operations, and extends those regulations to certain commuter and air taxi operations and small airplane operations conducted by U.S. and foreign air carriers. The consolidation facilitates public access to aviation security regulations. The changes provide an appropriate response to the current threat of criminal violence and air piracy against scheduled and public charter operations of U.S. air carriers, intrastate operators, and foreign air carriers.

Because new Part 108 contains reporting and recordkeeping requirements for which OMB approval is required, the effectivity of the new Part was delayed until April 1, 1981, or 60 days after OMB approval, whichever would be later. On April 29, 1981, OMB approved these requirements. A copy of the approval may be examined at the Federal Aviation Administration, Office of the Chief Counsel, Rules Docket, No. 19726, 800 Independence Avenue, SW, Washington, DC 20591.

Accordingly, this notice prescribes the necessary effective date and, except as noted, provides the 60-day notice referred to at the time these amendments were adopted.

In order to relieve certain airplane operators immediately of an unnecessary financial burden, this notice permits compliance without delay with new Part 108. When issuing Part 108, the FAA considered the economic burden that could be imposed on the small airplane operators and the fact that the hijacking threat directed against commuters has not significantly increased. It was determined that the implementation of a full security program should only be required for scheduled and public charter operations with airplanes having a passenger-seating configuration of more than 60 seats and for operations providing deplaned passengers access to a sterile area at the next landing when the access is not controlled by another airplane operator's security program. Accordingly, Part 108 provides that for operations with airplanes having a passenger-seating configuration of more than 30 but fewer than 61 seats a full security program need not be implemented.

For Part 108 to be effective immediately for any operator, the operator need only advise the Director of Civil Aviation Security of its intention to comply with the Part.

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Correction

In connection with new Part 108, the airport operator security rules in Part 107 were also amended (Amendment 107-1) to relate the airport operator's responsibilities, including law enforcement support, to the level of security required for airplane operators using the airport.

Section 107.7 requires the airport operator to notify the FAA, and appropriately amend its security program, whenever certain changed security conditions occur. Specifically, § 107.7(a)(4) provides that this action must be taken when the law enforcement support, as described in the airport operator's security program, is not adequate to comply with § 107.15. Amendment 107-1 was intended to add references in § 107.7(a)(4) to new security program requirements. However, because that provision is misnumbered in the current bound version of the Code of Federal Regulations (14 CFR 107.7), the amending language erroneously referred to it as § 107.7(a)(3). This amendment corrects the amending language to refer to § 107.7(a)(4). The Code of Federal Regulations will be corrected when it is next published in bound form.

EFFECTIVE DATE AND CORRECTION

Accordingly, Amendments No. 107-1, 108 (New), 121-167, 129-11, and 135-10 will be effective September 11, 1981, or, for a certificate holder to which new Part 108 would apply, on the date that the certificate holder notifies the Director of Civil Aviation Security of its intention to comply with the Part, whichever date is earlier. The words of issuance of Amendment 107-1 are corrected to amend § 107.7(a)(4), instead of § 107.7(a)(3), by inserting the phrase ", (f) (1), or (g) (1)" after the phrase "§ 107.3(b) (7)". (Secs. 313, 315, 316, 317, 601-610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1356, 1357, 1358, 1421-1430); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

NOTE: The FAA has determined that this document pertains to a rulemaking action which is not a major regulation under Executive Order 12291; that it is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and that, under the criteria of the Regulatory Flexibility Act, it will not have a significant impact on a substantial number of small entities. In addition, the FAA has determined that, while a regulatory evaluation was prepared for the final rule, the expected further impact of this notice and correction is so minimal that it does not require an evaluation.

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Amendment 108-1 Use of X-Ray Systems

Adopted: May 28, 1985**Effective: July 22, 1985***(Published in 50 FR 25654, June 20, 1985)*

SUMMARY: This amendment revises the language of signs required to be posted in a conspicuous place that notify passengers that an X-ray system is being used to inspect carry-on baggage in accordance with required security programs. It also adopts a new standard for testing the effectiveness of these X-ray systems. A more realistic standard will result with the adoption of the revisions, one that will enhance overall security by requiring the X-ray systems to comply with a more realistic imaging standard and at the same time protect film and photographic materials.

The incorporation by reference of American Society of Testing and Materials Standard F792-82 listed in the regulations is approved by the Director of the Federal Register as of July 22, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Theofolus P. Tsacouris, Aviation Security Division, (ACS-160), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; telephone (202) 426-4817.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On May 22, 1984, the Federal Aviation Administration (FAA) issued notice of proposed rulemaking (NPRM) No. 84-8 (49 FR 24974; June 18, 1984) pertaining to the use of X-ray systems by domestic, flag, and foreign air carriers and by commercial operators of large aircraft engaging in common carriage. This notice proposed the revision of the language of signs that notify passengers that an X-ray system is being used to inspect carry-on baggage in accordance with required security programs. The NPRM recommended that the signs be changed to read "Remove x-ray, scientific, and high-speed film." The notice also proposed the adoption of a new standard for testing the effectiveness of X-ray systems. The new standard uses a step wedge specified in American Society of Testing and Materials (ASTM) Standard F792-82. In addition, the notice proposed to extend the rule to cover X-ray systems that are used to process checked baggage. Also proposed was a correction to an editorial error in § 108.17(a) (4) in that the dosimeter provided to each operator is a "personnel" dosimeter, not a "personal" dosimeter. Notice 84-8 solicited comments with respect to these proposals. Comments were also requested concerning any increase in the number of searches by hand that might occur and any other burden that might be caused by this proposal.

DISCUSSION OF COMMENTS

In response to Notice 84-8, 12 written and one telephonic comment were received. One manufacturer comments that a sign should be posted advising passengers to remove all X-ray, scientific, and high-speed film from either their carry-on or checked baggage before inspection only if the X-ray system exposes any such item to more than .01 milliroentgen (mR) per inspection. Another manufacturer states that since a majority of X-ray systems used at domestic air terminals at present are scanning-type systems, the rule, as adopted, should state that any X-ray system that can demonstrate that a maximum of not more than 0.15 mR is required per inspection, while meeting all other requirements of the proposed rule, will be permitted to display signs suggesting the removal of X-ray and scientific film only, and that the high-speed film removal language will be deleted. This manufacturer also recommends that the proposed rule be modified so

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that any scanning-type X-ray system currently in use but unable to meet the imaging requirements of the step wedge specified in ASTM Standard F792-82 will be modified so as to meet the imaging requirements or be removed from service.

Another manufacturer expresses concern that requiring advice on signs to "remove X-ray, scientific, and high-speed film" would cause the certificate holders undue hardship. In addition, this manufacturer states that the FAA should distribute or sell the required step wedge to the certificate holders since they believed that a competitor would have an unfair advantage.

One film manufacturer, while expressing gratitude for the positive steps and concern demonstrated by the FAA relative to high-speed film, recommends development of a new sign that is larger and contains bigger and bolder lettering for prominent placement in the entranceways to airport X-ray screening checkpoints. The commenter also recommends development of a special warning decal which would be placed on all X-ray systems in bold, 2-inch-high lettering to state "Remove all X-ray, scientific, and high-speed film (ISO 1000 or higher) from baggage." In addition, the commenter requests that all airport X-ray inspectors verbally ask travelers to remove high-speed film from their baggage. A committee of photographers endorses the comments of this film manufacturer. In addition, the commenter submitted the following recommendations: (1) Checkpoint operator training: have inspectors ask if travelers are carrying high-speed film and have them advise travelers that they should remove any film from hand luggage before passing through X-ray checkpoints if they are going through more than one airport; (2) Public education program: inform travelers that X-ray screening can damage high-speed film and have airlines provide a ticket stuffer telling passengers about X-ray damage to film or disseminate information through travel agencies; and (3) FAA develop a better sign with large, bold lettering.

The FAA has determined that the proposed requirement to advise passengers to remove all X-ray, scientific, and high-speed film from carry-on and checked articles prior to X-ray inspection (without regard to radiation levels) and to remove all film from carry-on and checked articles in the event radiation exposure exceeds 1 mR is adequate to protect photographic film from being adversely affected by radiation. No problems have been encountered with this requirement since the original X-ray rule became effective. Experience since "paste-on" stickers were put into use during May 1983, advising persons to remove "high-speed" film, has not revealed any substantiated incidents of damage to film as a result of its being exposed to an X-ray system utilized under §§ 108.17 and 129.26 of the FAR. Experience has also shown that, since the "paste-on stickers" have been utilized, the additional number of hand searches caused by these signs has not created a significant burden.

In addition, signs advising passengers about X-ray inspections should be as uniform as possible. Under the current rules, all certificate holders may use an identical sign unless a carrier utilizes a system emitting more than 1 mR of radiation. In such case, passengers must be advised to remove *all* film prior to inspection rather than just X-ray, scientific, and high-speed film. Since to our knowledge all systems currently in use in the United States emit less than 1 mR and many are in the 0.15 to 0.30 mR range, virtually all certificate holders use a standard sign supplied to them by the FAA. Even though, as indicated by one commenter, some machines may subject film to as little as .01 mR, industry concerns over damage to X-ray, scientific, and high-speed film warrant a uniform requirement for these signs.

With regard to signs, the FAA intends to study how the sign may be improved so as to properly highlight and prominently display the required information at screening stations that utilize X-ray baggage inspection systems. The FAA will consider the views of such organizations as the Air Transport Association, the American Association of Airport Executives, and the Airport Operators Council International. It is intended that a new sign will be developed that would enhance the notice now being given to the traveling public concerning their photographic equipment and film.

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One individual is concerned that the requirement to inspect physically photographic equipment and film packages upon request be continued. Another individual suggests that the FAA be more specific with the term "high-speed film," while a third individual agreed with the proposal but suggested a change in language to read "Remove X-ray, scientific, and all camera film." A fourth individual commented telephonically that the FAA should not allow the use of any X-ray systems to screen baggage at airports. A municipality suggests that scientific and high-speed film with an ASA/ISO speed of more than 400 should be removed prior to X-ray inspection.

The FAA has determined that film speeds with an ASA/ISO reading of 400 or below are safe for X-ray inspection and need not be subjected to hand search or inspection. Therefore, it would not be appropriate to specify high-speed film as being ASA/ISO 400 and above. In addition, the FAA intends to retain the requirement that photographic equipment and film packages be physically inspected upon request. Thus, each person will determine the proper actions to be taken to safeguard his or her film.

X-ray baggage inspection systems to process carry-on baggage and items have been in use since 1973. The FAA is not aware of any specific instance of any damage to ordinary film caused by X-ray systems used in the United States that is substantiated by factual evidence. Therefore, it is not necessary to remove all camera film before X-ray examination. In addition, the FAA requires that these X-ray systems meet the Food and Drug Administration requirements specified in 21 CFR 1020.40. To our knowledge, there have been no instances where these systems had excessive leakage or the operators received an excessive dose as measured by the dosimeters each operator is required to wear. Therefore, there is no need to remove X-ray systems from all airports.

A trade association representing many of the major film manufacturers suggests that the sign posting requirements be modified so that the signs must be posted not only in a conspicuous place, but also at or near the X-ray systems and at the checked baggage stations as well. The commenter favors adoption of ASTM Standard F792-82. Another association recommends that the term "checked articles" be used in lieu of "checked baggage" and that the FAA should allow the use of X-ray systems at any location as long as they meet the current imaging requirements. An objection was raised concerning the FAA's intention of requiring a step wedge at each station utilizing X-ray baggage inspection systems. This association concurs with the language proposed, namely "Remove X-ray, scientific, and high-speed film," and indicates that the additional number of hand searches caused by this advice had not created a significant burden. A third association suggests removing ambiguous wording such as "ordinary undeveloped film" and "high-speed film" and substituting the phrase "inspection may affect film" to properly inform the traveling public.

The FAA believes the regulation should continue to require only that the sign be "posted in a conspicuous place." It will continue to consider what locations are appropriate and so advise the air carrier. The FAA is adopting the suggestion that "checked baggage" be changed to "checked articles."

One commenter expressed concern that a step wedge would be required at each screening station. However, this is not required by the regulation. Nevertheless, since X-ray systems must meet the specified imaging requirements, it is not unreasonable to expect that carriers will want to have a step wedge at each screening station, so that FAA inspectors and airline representatives can quickly determine if the X-ray system meets these imaging requirements. It is not necessary to substitute the phrase "inspection may affect film" since, as previously stated, the FAA is not aware of any substantiated damage caused by X-ray systems.

DISCUSSION OF THE AMENDMENTS

As proposed in Notice 84-8, §§ 108.17 and 129.26 are being amended to extend their application to checked baggage as well as carry-on items since certificate holders from time to time utilize X-ray imaging systems to inspect checked baggage; to adopt the

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language of previously produced and distributed paste-on stickers stating "Remove X-ray, scientific, and high-speed film;" to adopt a new imaging standard; and to correct an editorial error in § 108.17(a) (4) involving the misuse of the term "personal" dosimeter. Another editorial change is being made by replacing the word "will" in § 108.17(a) (4) with "shall." This will clarify the mandatory nature of the provision and conform to language used throughout the Federal Aviation Regulations.

The FAA proposed in Notice 84-8 to establish a new imaging standard for inclusion in the airline standard security program and included such a standard as part of the proposed rule. Specificity regarding the imaging standard has been eliminated from the rule as adopted to prevent access by persons attempting to frustrate the system. The standard is being placed in the air carrier standard program of domestic and flag air carriers. The same standard will be separately specified in a letter to foreign air carriers.

To reduce any possibility of confusion and to preclude a recurrence of past incidents, the FAA is adopting a suggestion from one of the commenters by inserting the word "individual" in front of "personnel dosimeter" in § 108.17(a) (4). This should make it clear to everyone concerned that the dosimeter must be assigned to one person and should not be given to others.

In response to several comments and to clarify the intent of the FAA, a certificate holder or a foreign air carrier will be permitted to relocate an X-ray system that does not meet the new standard, and has therefore been replaced, to a lower category airport (i.e., an airport with lower screening activity as defined in FAA Order 1650.14, Aviation Security Handbook) or as approved by the Director of Civil Aviation Security and still meet the requirements in effect prior to July 22, 1985.

ECONOMIC IMPACT

The amendment relating to the language content of signs at X-ray system locations has no cost impact and will save passengers the cost of damaged film; therefore, the benefits, although not easily quantifiable, exceed the costs.

The amendment relating to improved testing of X-ray systems will impose an additional cost of about \$100 per new X-ray system for the step wedge device. In addition, the amendment will effectively prohibit the sale of used equipment that does not meet the new performance standards. About 15 percent of the 830 installed X-ray systems might not meet the new test standards, and of those about 25 percent might have been made available for sale as used equipment for up to \$10,000 per system. Therefore, the potential sales loss is estimated to be \$300,000 over a period of 5 to 10 years.

The benefits in terms of improved detection of forbidden items and the resultant reductions in hijackings and attendant casualty loss are difficult to quantify because they require estimating the number of forbidden items that would be detected by the new, but not the old, X-ray machines and the probabilities of such items being used in successful hijackings. Clearly, only one hijacking resulting in an accident need be prevented or, for that matter, only one life saved for the benefits to exceed the costs; therefore, it is the FAA's judgment that, on balance, the rule is beneficial.

There were no comments relating to the costs and benefits of these amendments.

Trade Impact

Since these amendments are applicable only to U.S. airports and both foreign and domestic manufacturers of X-ray systems will have to meet the same requirement, there is no trade impact. There were no comments relating to trade impact.

Recordkeeping/Reporting Requirements

The recordkeeping requirements contained in § 108.17 have previously been approved by the Office of Management and Budget under OMB Control Number 2120-0098.

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Conclusion

This amendment does not impose requirements that would result in any significant burden on the aviation community. Airport signs already contain the proposed language. The improved X-ray systems would impose a small additional cost of about \$100 per new X-ray system, and, in some cases, replaced equipment could not be resold for aircraft baggage inspection. The additional costs are far outweighed by saving passengers the cost of damaged film, improved detection of forbidden items, and the resultant reductions in hijackings and related costs. Further, the cost of an improved X-ray system would not be incurred until a new system is installed or the old system is replaced. For these reasons, and because there are no related cost savings to small entities, I certify that under the criteria of the Regulatory Flexibility Act, this amendment will not have a significant economic impact on a substantial number of small entities. In addition, for the same reasons, it has been determined that the amendment does not involve a major regulation under Executive Order 12291 and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

THE AMENDMENTS

In consideration of the foregoing, §§ 108.17 and 129.26 of the Federal Aviation Regulations (14 CFR 108.17 and 129.26) are amended effective July 22, 1985.

Authority: Secs. 313, 315, 316, 317, 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Amendment 108-2
Transportation of Federal Air Marshals

Adopted: July 3, 1985**Effective: July 8, 1985***(Published in 50 FR 27924, July 8, 1985)*

SUMMARY: This emergency regulation requires each certificate holder to whom the airplane operator security rules apply to carry Federal Air Marshals, in the number and manner specified by the Administrator, on designated scheduled and public charter passenger operations. This regulation is needed to respond to recent terrorist activity against U.S. civil aviation. It is intended to ensure that U.S. civil aviation and U.S. citizens are not impeded by international terrorism.

Comments must be received on or before August 11, 1985.

ADDRESS: Send comments on this proposal in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24714, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Hunter, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 426-8798.

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SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

Because of the emergency need for this regulation, it is being adopted without notice and public comment. However, the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity to comment to the public on such emergency regulations after their issuance. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before August 11, 1985, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 24714." The postcard will be date and time stamped and returned to the commenter.

Background

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulting in the murder and torture of U.S. citizens is the latest of a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe and the Middle East during the 1980's. Accordingly, it has become necessary to undertake certain actions necessary to protect U.S. aviation in addition to those already mandated by Part 108 of the Federal Aviation Regulations. To that end, the Secretary of Transportation has directed the FAA to undertake immediately certain actions necessary to protect U.S. airline flights in high-risk areas and to expand the FAA Federal Air Marshal Program to the extent necessary to ensure safety aboard U.S. air carriers traveling in all threatened areas.

The purpose of this final rule is to ensure that Federal Air Marshals are used effectively and efficiently aboard those high-risk flights that the Federal Aviation Administrator determines should be protected.

Federal officers were first used in the early 1960's to combat the initial spate of hijackings of U.S. aircraft to Cuba. Following the hijacking and destruction of four airliners in the Jordanian desert in 1970, "sky marshals" were used in significant numbers on threatened domestic and international flights. After the implementation of 100 percent passenger screening in 1970, their use in large numbers was considered unnecessary. Since then these Federal officers have been used from time to time when their special understanding of aviation security was needed to fulfill an inflight security function.

There have always been certain critical elements in the effective and efficient use of Federal Air Marshals. They include ensuring that marshals will be carried aboard those flights that intelligence information indicates are seriously threatened. This sometimes requires carriage with very short notice and the "bumping" of a passenger holding a reservation. Also critical to the effectiveness of the marshal is his or her location in the passenger cabin. It is important that the marshal or marshals be able to select their seats so that they may observe and respond to any incident.

This need for access to specific flights was recognized in 1970 when the Civil Aeronautics Board (CAB) adopted a rule requiring the free transportation of these officers. That rule is currently contained in § 223.3 of Title 14 of the Code of Federal Regulations, which has been transferred from the CAB to the Department of Transportation (DOT) (50 FR 451; January 4, 1985). Section 223.3 provides that every air carrier shall carry, without charge, on any aircraft that it operates, among other persons,

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"security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration."

Section 223.3 has not been completely successful in meeting the need to properly position marshals. Some air carriers have denied seating to marshals to accommodate full-fare passengers. "Dead heading" marshals, who need to reposition themselves for immediate reassignment, are not expressly covered by the rule. Finally, it does not require the carrier to assign the marshal the seat he or she selects.

The Final Rule

New § 108.14 provides that each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation and public charter passenger operation specified by the Administrator. In administering the Federal Air Marshal Program, the FAA intends to provide maximum coordination with the air carriers involved. This will be done through a national coordinating center. Consistent with the specific threat to be met, as much notice as possible will be given of the flights on which marshals will be carried. It is expected that only in an extreme emergency will it be necessary to deny a confirmed passenger transportation on a particular flight in order to carry a Federal Air Marshal.

The FAA also plans to carefully coordinate the repositioning of marshals with the air carriers. It may be occasionally necessary, however, to provide priority transportation to a marshal to position him or her for response to a specific threat condition. In such an emergency, it may be necessary to deny transportation to a confirmed passenger. The FAA will make every effort to avoid such a situation.

Sections 108.14(b) and (c) make it clear that on designated flights marshals must be carried on a first priority basis and be assigned a seat selected by the marshal. While the marshal may have some flexibility in accepting certain seating, the final decision as to seat selection must be made by the marshal.

Finally, § 108.14 restates the provision in § 223.3 that transportation of Federal Air Marshals while on duty shall be without charge.

Need for Immediate Adoption

Because of the need to respond immediately to the heightened threat to aviation safety from terrorist hijacking and sabotage of international flights, I find that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

Economic Assessment

Because of the emergency need for this regulation, no regulatory evaluation has been prepared. In accordance with section 11(a) of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), a regulatory evaluation will be prepared and placed in the public docket, unless an exception is granted by the Secretary of Transportation. For this reason and in accordance with section 8(a) (1) of Executive Order 12291, I find that following the procedures of that Executive Order is impracticable.

Because none of the certificate holders affected by this regulation is a small entity, this regulation will not have a significant economic impact on a substantial number of small entities.

CONCLUSION: In accordance with section 8(a) (1) of Executive Order 12291, because of the emergency need for this regulation, the procedures in that Executive Order have not been followed. In view of the substantial public interest in the matter of aviation security as a result of the current threat situation, this regulation is considered significant under

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the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities will be affected by the proposed rule, it is certified that, under the criteria of the Regulatory Flexibility Act, the rule will not have a significant economic impact on a substantial number of entities. A copy of the regulatory evaluation to be prepared for this project will be placed in the public docket, unless an exception is granted by the Secretary of Transportation.

THE AMENDMENT

Accordingly, Part 108 of the Federal Aviation Regulations (14 CFR Part 108) is amended, effective July 8, 1985.

AUTHORITY: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

Amendment 108-3

Aviation Security: Coordination and Training

Adopted: July 11, 1985

Effective: July 11, 1985

(Published in 50 FR 28892, July 16, 1985)

SUMMARY: Because of the current level of threat, this emergency regulation requires each certificate holder to whom the airplane operator security rules apply to have employees identified and trained as Security Coordinators for international and domestic flights, in accordance with its approved security program. It also requires certificate holders to provide security training for all crewmembers to the extent necessary to prepare each crewmember to respond adequately to various levels and types of threats. This regulation is needed to respond to recent terrorist attacks against U.S. civil aviation. It is intended to protect U.S. civil aviation against international terrorism.

Section 108.27 does not become effective until notice of approval of the reporting requirement therein by the Office of Management and Budget is published in the *Federal Register*. Comments must be received on or before August 30, 1985.

ADDRESSES: Send comments on this amendment in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24719, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION: COMMENTS INVITED

Because of the emergency need for this amendment, it is being adopted without notice and public comment. However, the Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity for the public to comment on such emergency regulations after their issuance. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should

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identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, Docket No. 24719, 800 Independence Avenue, SW., Washington, D.C. 20591. All comments submitted will be available in the Rules Docket for examination by interested persons. This amendment may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24719." The postcard will be date and time stamped and returned to the commenter.

Background

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulting in the murder, torture, and kidnapping of U.S. citizens is the latest in a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe, the Middle East, and throughout the world during the 1980's. Accordingly, it has become necessary to undertake certain actions to protect U.S. aviation in addition to those already mandated by Part 108 of the Federal Aviation Regulations. To that end, it is necessary that the FAA immediately undertake certain actions to protect U.S. civil aviation and U.S. citizens in high-risk areas and throughout the world.

Security Coordination

One action effected by this amendment is to enhance the coordination and supervision of the security provided for domestic and international flights. In view of the current level of threat, this amendment requires each certificate holder to whom the airplane operator security rules apply to provide a ground and an inflight Security Coordinator for each international and domestic flight, in accordance with its approved security program. This amendment further requires that the pilot in command (PIC) be designated as the inflight Security Coordinator.

The function of the Security Coordinators will be to ensure that all necessary security requirements are met prior to departure and while in flight. The duties of the ground Security Coordinator will be specified in the certificate holder's approved security program and will include monitoring the security requirements in effect for the following: (1) Screening for the flight; (2) access to the airplane; (3) airplane servicing (including fueling and catering); (4) ground support for inflight emergency response; (5) air operations area security; and (6) baggage and cargo acceptance and loading. The duties of the inflight Security Coordinator will also be specified in the security program and will include: (1) Reviewing, with the ground Security Coordinator, pertinent security information for the specific flight; (2) prior to beginning a flight or a series of flights with a particular crew, briefing the crew on the specific manner in which the PIC wants inflight incidents to be managed; (3) prior to each flight segment, briefing the crew on any significant irregularities or occurrences that may affect the security of the flight; and (4) on completion of a flight or series of flights, briefing the certificate holder on any significant incidents or occurrences, in accordance with the procedures established by the certificate holder.

New § 108.23(a) requires that each designated Security Coordinator satisfactorily complete the training as specified in the certificate holder's approved security program, within the preceding 12 calendar months. New § 108.7(b) (7) requires the curriculum for all required security training for ground and inflight Security Coordinators to be specified in the certificate holder's approved security program which is approved by the Principal Security Inspector. Based on the present level of threat, the air carrier's security program will require a maximum of 40 hours of initial training, as well as a minimum of 8 hours of annual recurrent training, for the ground Security Coordinator.

Pilots in command designated as inflight Security Coordinators will receive substantial training on inflight Security Coordinator duties during initial and recurrent

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training. As with other crewmembers, the pilot in command will be required to receive a minimum of 8 hours of initial training, including training directed at the functions and responsibilities of the inflight Security Coordinators, as well as annual recurrent training.

Crewmember Security Training

The second action considered essential is to provide all crewmembers with expanded security training. In particular, this amendment will result in all air carrier crewmembers having a significantly increased capability of responding to hijack attempts and other criminal acts. To that end, significantly enhanced initial and recurrent training is being required for crewmembers.

New § 108.23(b) prohibits the use by a certificate holder of any person as a crewmember unless, within the preceding 12 calendar months, that person has satisfactorily completed the training as specified in the certificate holder's approved security program. All required security training for crewmembers must be specified in the certificate holder's approved security program and integrated in the certificate holder's approved training program which is approved by the Principal Operations Inspector in coordination with the Principal Security Inspector. For the crewmember training provisions of an air carrier security program to be approved by the FAA, the training program must provide 8 hours of initial security training, as well as annual recurrent training. Where the trainee is to act as pilot in command, this training will include significant emphasis on Security Coordinator duties and responsibilities. Each certificate holder is required to submit a separate curriculum for each type of training.

Evidence of Compliance

In order to ensure effective compliance with these amendments and other provisions, new § 108.27 provides that, on request of the Administrator, each certificate holder shall provide evidence of compliance with this Part and its approved security program. In accordance with the Paperwork Reduction Act of 1980 (P.L.96-511), this new reporting provision will be submitted for approval to the Office of Management and Budget (OMB). New § 108.27 will not become effective until OMB approval has been received and notice of that approval is published in the *Federal Register*. Comments on this provision should be submitted to the Office of Information and Regulatory Affairs (OMB), New Executive Office Building, Room 3001, Washington, D.C. 20503; Attention: FAA Desk Officer (Telephone: 202-395-7313). A copy should be submitted to the FAA Docket.

Need for Immediate Adoption

Because of the need to respond immediately to the heightened threat to civil aviation from terrorist hijackings and sabotage, I find that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

Economic Assessment

Because of the emergency need for this regulation, no regulatory evaluation has been prepared. In accordance with section 11(a) of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), a regulatory evaluation will be prepared and placed in the public docket, unless an exception is granted by the Secretary of Transportation. For this same reason and in accordance with section 8(a) (1) of Executive Order 12291, I find that following the procedures of that Executive Order is impracticable.

CONCLUSION: In accordance with section 8(a) (1) of Executive Order 12291, because of the emergency need for this regulation, the procedures in that Executive Order have not been followed. In view of the substantial public interest in the matter of aviation security as a result of the current threat situation, this regulation is considered significant under

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the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation to be prepared for this project will be placed in the public docket, unless an exception is granted by the Secretary of Transportation.

THE AMENDMENT

Accordingly, Part 108 of the Federal Aviation Regulations (14 CFR Part 108) is amended effective July 11, 1985.

AUTHORITY: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424, 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

Amendment 108-4

Airport and Airplane Operator Security Rules

Adopted: January 3, 1986

Effective: January 10, 1986

(Published in 51 FR 1250, January 10, 1986)

SUMMARY: This final rule makes a number of minor substantive and editorial changes in the airport and airplane operator security rules regarding the carrying of an explosive, an incendiary, or a deadly or dangerous weapon and the entry of persons into sterile areas. They are needed to provide consistency within the rules and to ensure that the rules are given their intended effect. These amendments are being adopted to further enhance airport and air carrier security in response to the current heightened threat to U.S. civil aviation throughout the world.

Comments must be received on or before February 10, 1986.

ADDRESSES: Send comments on this amendment in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24883, 800 Independence Avenue, S.W., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

These regulations are being adopted without notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. Accordingly, interested persons are invited to comment on this final rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, Docket No. 24883, 800 Independence Avenue, S.W., Washington, D.C. 20591. All comments submitted will be available in the Rules Docket for examination by interested persons. This amendment may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24883." The postcard will be date and time stamped and returned to the commenter.

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BACKGROUND

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulted in the torture and kidnapping of U.S. citizens and the murder of one U.S. citizen. It was one of the latest in a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe, the Middle East, and throughout the world during the 1980's. To combat this threat, the FAA undertook certain actions to protect U.S. civil aviation and U.S. citizens in designated areas and throughout the world.

On July 3, 1985, the FAA issued Amendment No. 108-2 (50 FR 27924; July 8, 1985) providing for the transportation of Federal Air Marshals, in the number and manner specified by the Administrator, on designated scheduled and public charter passenger operations. The purpose of that rule is to ensure that Federal Air Marshals are used effectively and efficiently for those high-risk flights that the Federal Aviation Administrator determines should be protected.

On July 11, 1985, the FAA issued Amendment No. 108-3 (50 FR 28892; July 16, 1985) requiring each certificate holder to whom the airplane operator security rules apply to have individuals identified and trained as Security Coordinators for international and domestic flights, in accordance with its approved security program. It also required certificate holders to provide security training for all crewmembers to the extent necessary to prepare each crewmember to respond adequately to various levels and types of threats.

This final rule is being issued to make a number of minor changes to Parts 107 and 108 of the Federal Aviation Regulations (FAR) that will provide consistency within the rules and ensure that they are given their intended effect.

Submission to Screening

For the most part, the general public now accepts the screening of their person and carry-on articles as a minor inconvenience. They view it as a small price to pay for the security of their persons while flying. Nonpassengers entering a sterile area generally understand that they too must be screened in order to ensure the security of the area.

There have been instances, however, in which nonpassengers have refused to be screened and intentionally entered a sterile area. Even when these persons turn out to be unarmed and have no intention of hijacking or sabotaging an aircraft, their presence requires an appropriate security response. That need to respond disrupts the orderly conduct of passenger screening and requires the diversion of security personnel from other duties. Should another incident constituting a genuine security threat occur at the same time, the ability to respond could be seriously compromised.

To prevent such occurrences, Part 107 is being amended to add a new § 107.20 that provides that no person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area by a U.S. air carrier under § 108.9 or a foreign air carrier under § 129.25. Persons violating this prohibition would be subject to a civil penalty of \$1,000 for each violation.

Deadly or Dangerous Weapon

Section 107.21 provides that, with certain exceptions, no person may have a firearm, an explosive, or an incendiary device on or about the individual's person or accessible property when presenting himself or herself for screening or when entering or in a sterile area. It states precisely the point at which a person may not have a prohibited item in his or her possession.

The prohibited items were intended to correspond to those which the certificate holder must keep out of the sterile area in accordance with Part 108 of the FAR and its approved security program. Section 108.9 requires the certificate holder to use the procedures in its security program to prevent or deter the carriage aboard its airplanes of any explosive, incendiary device, or "deadly or dangerous weapon." A similar provision in § 129.25 applies to foreign air carriers.

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The FAA has determined that the term "firearm" in § 107.21 should be replaced with "deadly or dangerous weapon," in order to be consistent with the terminology that is used elsewhere in the security regulations. Accordingly, § 107.21 is being amended to prohibit passengers from presenting themselves for screening with a deadly or dangerous weapon accessible to them. The effect of this amendment will be to broaden the rule to prohibit certain items at the screening point in addition to firearms. They would include such items as mace and certain knives. The passenger, however, already is prohibited from carrying any deadly or dangerous weapon on board the aircraft under § 108.11.

Incendiary Devices

Parts 107 and 108 currently prohibit the possession of an incendiary device while passing through the screening point, in a sterile area, or aboard the airplane. An "incendiary device" is generally considered to be anything which can cause a fire by ignition. An incendiary, such as gasoline, whether or not a means of ignition is attached to it, has been considered an incendiary "device" for purposes of the rule because cigarette lighters and other ignition sources are readily available. To avoid too narrow an interpretation of the rule, "incendiary device" is being replaced by "incendiary" wherever the phrase appears in Part 107 and Part 108.

Applicability of Part 108

A number of provisions in Part 108 apply to passengers and to certain persons on airports. Section 108.11(a) and (b) prohibit the carriage of a deadly or dangerous weapon on or about the person of a passenger aboard an airplane unless certain conditions are met. This prohibition specifically applies to a certificate holder in the conduct of an operation with an airplane for which security screening is required by Part 108. The prohibition applies to passengers aboard airplanes for which screening is required and also to passengers on airplanes for which screening is not required. In the latter case, the rule does not apply to the certificate holder since it does not screen passengers.

Section 108.11(c) prohibits certificate holders from transporting, and passengers from tendering for transport, in checked baggage any explosive, incendiary device, or loaded firearm. An unloaded firearm may be tendered for transport and transported, if the conditions in § 108.11(d) are met.

Section 108.21 prescribes requirements for the carriage of passengers under the control of armed law enforcement escorts. In addition to requirements imposed on the certificate holder, paragraph (c) of the section requires the law enforcement officer at all times to accompany and keep under surveillance the escorted person while aboard the airplane. Paragraph (d) prohibits the law enforcement escort and any passenger under his or her control from drinking any alcoholic beverage while aboard the airplane.

It is clear on the face of these provisions that they apply to persons aboard airplanes being operated by certificate holders, not just to certificate holders themselves, and to persons at airports where operations by certificate holders are being conducted. However, the general statement of the applicability of Part 108 (§ 108.1) does not include reference to these persons. To remedy this editorial oversight, this section is being amended to state that the Part applies not only to certificate holders, but also to persons aboard their airplanes and at airports where certificate holders conduct their operations.

Editorial Correction

This final amendment replaces the reference in § 107.21 to former § 121.585. This reference should have been replaced with § 108.11 when Part 108 was adopted.

NEED FOR IMMEDIATE ADOPTION

These amendments are needed to ensure the overall effectiveness of the aviation security regulations in a time of heightened threat. The minor substantive changes conform to the general public understanding of the meaning and purpose of security screening requirements. The current behavior of the public and certificate holders already conforms to these changes. Other changes are of an editorial nature.

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For these reasons, notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. Moreover, publication for prior comment would not reasonably be expected to result in the receipt of useful information on these changes to the regulations. In accordance with DOT Regulatory Policies and Procedures, an opportunity for public comment after publication is being provided.

ECONOMIC ASSESSMENT

These are minor substantive and editorial amendments. They are not expected to change the behavior patterns of passengers and other persons on airports who comply with them or to impose any additional burdens. For this reason, no economic impact is expected to result. In addition, the amendments would have no impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

CONCLUSION: These amendments are not expected to change the behavior patterns of passengers and other persons on airports who comply with them or to impose any additional burdens. Therefore, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the absence of any costs connected with the proposal, the FAA has determined that the expected impact on the amendment is so minimal that it does not warrant an evaluation.

THE AMENDMENT

Accordingly, Parts 107 and 108 of the Federal Aviation Regulations (14 CFR Parts 107 and 108) are amended effective January 10, 1986.

AUTHORITY: 49 U.S.C. 1354, 1356, 1357, 1358, and 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

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Amendment 108-3A
Announcement of Effective Date of § 108.27
Evidence of Compliance with Security Programs
Adopted: December 3, 1986 **Effective: December 12, 1986**

(Published in 51 FR 44875, December 12, 1986)

SUMMARY: This notice announces the effective date of the Federal Aviation Regulation that requires certificate holders to provide evidence of compliance with the airplane operator security rules and their approved security programs. This new reporting requirement is needed to ensure that all certificate holders provide FAA Security Inspectors access to information that will demonstrate compliance. It can now become effective because approval has been received from the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, Civil Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone: (202) 267-8701.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 16, 1985, a final rule was published, amending Part 108 of the Federal Aviation Regulations (50 FR 28892; Amtd. No. 108-3). This rule adopted a new § 108.27, which provides that, on request of the Administrator, each certificate holder shall provide evidence of compliance with Part 108 and the certificate holder's approved security program. The section seeks to ensure effective compliance with, among other things, the training requirements added to Part 108 by Amendment 108-3. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the new reporting provision was submitted for approval to the Office of Management and Budget (OMB). The Final Rule stated that § 108.27 would not become effective until OMB approval was received and notice of that approval was published in the *Federal Register*.

OMB APPROVAL

OMB approval for the new reporting requirement was received on August 18, 1986. OMB consolidated the approval number for § 108.27 with the previous approval number for the other reporting requirements in Part 108. That number appears in § 11.101.

DISCUSSION OF COMMENTS

Comments were invited on Amendment 108-3. Of the six comments received, only one, from the Air Transport Association of America (ATA), objects to the § 108.27 reporting requirements. The ATA alleges that this requirement is a "profound and fundamental change" in enforcement procedures that is "unprecedented." It contends that the compliance mechanism contemplated by the regulation is not consistent with that "traditionally used by the FAA to enforce certificate holder compliance with other parts of the Federal Aviation Regulations." The ATA suggests that "the potential administrative and paperwork burdens on both certificate holders and the FAA could be enormous without any redeeming compliance benefits."

The FAA has considered ATA's comments on new § 108.27. The FAA continues to believe, however, that in an age of heightened terrorism, this reporting requirement is necessary to ensure the highest level of safety in air transportation for Americans, in accordance with the Federal Aviation Act of 1958. The provision is not intended to be a harbinger of a change in FAA enforcement practice. In the past, the FAA has routinely examined certificate holders' training records and other evidence of compliance with the security requirements of Part 108. For the most part, certificate holders have cooperated with FAA Civil Aviation Security Inspectors, showing their willingness to ensure the effective implementation of required security measures and to demonstrate their own

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dedication to combatting the current threat of terrorism. The size and complexity of the current security effort make this cooperation essential for the FAA's performance of its role in aviation security. Section 108.27 is intended to provide a sanction for the small number of persons who would impede the task of monitoring that effort. It is not expected to result in an increased burden on either Part 108 certificate holders or the FAA.

IMMEDIATE EFFECTIVE DATE

In view of the fact that new § 108.27 was published on July 16, 1985, and that the need to ensure effective compliance with Part 108 continues under the undiminished threat of terrorism to civil aviation, § 108.27 is being made effective December 12, 1986.

Part 108—Airplane Operator Security

§ 108.1 Applicability.

[(a) This Part prescribes aviation security rules governing—

[(1) The operations of holders of FAA air carrier operating certificates or operating certificates engaging in scheduled passenger operations or public charter passenger operations;

[(2) Each person aboard an airplane operated by a certificate holder described in paragraph (a)(1) of this section; and

[(3) Each person in an airport at which the operations described in paragraph (a)(1) of this section are conducted.

[(b) This Part does not apply to helicopter or to all-cargo operations.]

§ 108.3 Definitions.

The following are definitions of terms used in this Part:

(a) "Certificate holder" means a person holding an FAA operating certificate when that person engages in scheduled passenger or public charter passenger operations or both.

(b) "Passenger seating configuration" means the total number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight and includes that seat in certain airplanes which may be used by a representative of the Administrator to conduct flight checks but is available for revenue purposes on other occasions.

(c) "Private charter" means any charter for which the charterer engages the total capacity of an airplane for the carriage of:

(1) Passengers in civil or military air movements conducted under contract with the Government of the United States or the Government of a foreign country; or

(2) Passengers invited by the charterer, the cost of which is borne entirely by the charterer and not directly or indirectly by the individual passengers.

(d) "Public charter" means any charter that is not a "private charter."

(e) "Scheduled passenger operations" means holding out to the public of air transportation service for passengers from identified air terminals at a set time announced by timetable or schedule published in a newspaper, magazine, or other advertising medium.

(f) "Sterile area" means an area to which access is controlled by the inspection of persons and property in accordance with an approved security program or a security program used in accordance with § 129.25.

§ 108.5 Security program: adoption and implementation.

(a) Each certificate holder shall adopt and carry out a security program that meets the requirements of § 108.7 for each of the following scheduled or public charter passenger operations:

(1) Each operation with an airplane having a passenger seating configuration of more than 60 seats.

(2) Each operation that provides deplaned passengers access, that is not otherwise controlled by a certificate holder using an approved security program or a foreign air carrier using a security program required by § 129.25, to a sterile area.

(3) Each operation with an airplane having a passenger seating configuration of more than 30 but less than 61 seats; except that those parts of the program effecting compliance with the requirements listed in § 108.7(b)(1), (2), and (4) need only be implemented when the Director of Civil Aviation Security or a designate of the Director notifies the certificate holder in writing that a security threat exists with respect to the operation.

(b) Each certificate holder that has obtained FAA approval for a security program for operations not listed in paragraph (a) of this section shall carry out the provisions of that program.

§ 108.7 Security program: form, content, and availability.

(a) Each security program required by § 108.5 shall—

(1) Provide for the safety of persons and property traveling in air transportation and intrastate air transportation against acts of criminal violence and air piracy;

(2) Be in writing and signed by the certificate holder or any person delegated authority in this matter;

(3) Include the items listed in paragraph (b) of this section, as required by § 108.5; and

(4) Be approved by the Administrator.

(b) Each security program required by § 108.5 must include the following, as required by that section:

(1) The procedures and a description of the facilities and equipment used to perform the screening functions specified in § 108.9.

(2) The procedures and a description of the facilities and equipment used to perform the airplane and facilities control functions specified in § 108.13.

(3) The procedures used to comply with the applicable requirements of § 108.15 regarding law enforcement officers.

(4) The procedures used to comply with the requirements of § 108.17 regarding the use of X-ray systems.

(5) The procedures used to comply with the requirements § 108.19 regarding bomb and air piracy threats.

(6) The procedures used to comply with the applicable requirements of § 108.10.

(7) The curriculum used to accomplish the training required by § 108.23.

(c) Each certificate holder having an approved security program shall—

(1) Maintain at least one complete copy of the approved security program at its principal business office;

(2) Maintain a complete copy or the pertinent portions of its approved security program or appropriate implementing instructions at each airport where security screening is being conducted;

(3) Make these documents available for inspection upon request of any Civil Aviation Security Inspector;

(4) Restrict the availability of information contained in the security program to those persons with an operational need-to-know; and

(5) Refer requests for such information by other persons to the Director of Civil Aviation Security of the FAA.

§ 108.9 Screening of passengers and property.

[(a) Each certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program to prevent or deter the carriage aboard airplanes of any explosive, incendiary, or a deadly or dangerous weapon on or about each individual's person or accessible property, and the carriage of any explosive or incendiary in checked baggage.]

(b) Each certificate holder required to conduct screening under a security program shall refuse to transport—

(1) 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

(2) 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.

§ 108.10 Prevention and management of hijackings and sabotage attempts.

(a) Each certificate holder shall—

(1) Provide and use a Security Coordinator on the ground and in flight for each international and domestic flight, as required by its approved security program; and

(2) Designate the pilot in command as the inflight Security Coordinator for each flight, as required by its approved security program.

(b) *Ground Security Coordinator.* Each ground Security Coordinator shall carry out the ground Security Coordinator duties specified in the certificate holder's approved security program.

(c) *Inflight Security Coordinator.* The pilot in command of each flight shall carry out the inflight Security Coordinator duties specified in the certificate holder's approved security program.

§ 108.11 Carriage of weapons.

(a) No certificate holder required to conduct screening under a security program may permit any person to have, nor may any person have, on or about his or her person or property, a deadly or dangerous weapon, either concealed or unconcealed, accessible to him or her while aboard an airplane for which screening is required unless:

(1) The person having the weapon is—

(i) An official or employee of the United States, or a State or political subdivision of a State, or of a municipality who is authorized by his or her agency to have the weapon; or

(ii) Authorized to have the weapon by the certificate holder and the Administrator and has successfully completed a course of training in the use of firearms acceptable to the Administrator.

(2) The person having the weapon needs to have the weapon accessible in connection with the performance of his or her duty from the time he or she would otherwise check it in accordance with paragraph (d) of this section until the time it would be returned after deplaning.

(3) The certificate holder is notified—

(i) Of the flight on which the armed person intends to have the weapon accessible to him or her at least 1 hour, or in an emergency as soon as practicable, before departure; and

(ii) When the armed person is other than an employee or official of the United States, that there is a need for the weapon to be accessible to the armed person in connection with the performance of that person's duty from the time he or she would otherwise check it in accordance with paragraph (d) of this section until the time it would be returned to him or her after deplaning.

(4) The armed person identifies himself or herself to the certificate holder by presenting credentials that include his or her clear, full-face picture, his or her signature, and the signature of the authorizing official of his or her service or the official seal of his or her

service. A badge, shield, or similar device may not be used as the sole means of identification.

(5) The certificate holder—

(i) Ensures that the armed person is familiar with its procedures for carrying a deadly or dangerous weapon aboard its airplane before the time the person boards the airplane;

(ii) Ensures that the identity of the armed person is known to each law enforcement officer and each employee of the certificate holder responsible for security during the boarding of the airplane; and

(iii) Notifies the pilot in command, other appropriate crewmembers, and any other person authorized to have a weapon accessible to him or her aboard the airplane of the location of each authorized armed person aboard the airplane.

(b) No person may, while on board an airplane operated by a certificate holder for which screening is not conducted, carry on or about that person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph does not apply to—

(1) Officials or employees of a municipality or a State, or of the United States, who are authorized to carry arms; or

(2) Crewmembers and other persons authorized by the certificate holder to carry arms.

[(c) No certificate holder may knowingly permit any person to transport, nor may any person transport or tender for transport, any explosive, incendiary, or a loaded firearm in checked baggage aboard an airplane. For the purpose of this section, a loaded firearm means a firearm which has a live round of ammunition, cartridge, detonator, or powder in the chamber or in a clip, magazine, or cylinder inserted in it.]

(d) No certificate holder may knowingly permit any person to transport, nor may any person transport or tender for transport, any unloaded firearm in checked baggage aboard an airplane unless—

(1) The passenger declares to the certificate holder, either orally or in writing before checking the baggage, that any firearm carried in the baggage is unloaded;

(2) The firearm is carried in a container the certificate holder considers appropriate for air transportation;

(3) When the firearm is other than a shotgun, rifle, or other firearm normally fired from the shoulder position, the baggage in which it is carried is locked, and only the passenger checking the baggage retains the key or combination; and

(4) The baggage containing the firearm is carried in an area, other than the flightcrew compartment, that is inaccessible to passengers.

(e) No certificate holder may serve any alcoholic beverage to a person having a deadly or dangerous weapon accessible to him or her nor may such person drink any alcoholic beverage while aboard an airplane operated by the certificate holder.

(f) Paragraphs (a), (b), and (d) of this section do not apply to the carriage of firearms aboard air carrier flights conducted for the military forces of the Government of the United States when the total cabin load of the airplane is under exclusive use by those military forces if the following conditions are met:

(1) No firearm is loaded and all bolts to such firearms are locked in the open position; and

(2) The certificate holder is notified by the unit commander or officer in charge of the flight before boarding that weapons will be carried aboard the aircraft.

§ 108.13 Security of airplanes and facilities.

Each certificate holder required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its approved security program to perform the following control functions with respect to each airplane operation for which screening is required:

(a) Prohibit unauthorized access to the airplane.

(b) Ensure that baggage carried in the airplane is checked in by a responsible agent and that identification is obtained from persons, other than known shippers, shipping goods or cargo aboard the airplane.

(c) Ensure that cargo and checked baggage carried aboard the airplane is handled in a manner that prohibits unauthorized access.

(d) Conduct a security inspection of the airplane before placing it in service and after it has been left unattended.

§ 108.14 Transportation of Federal Air Marshals

[(a) Each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled and public charter passenger operation designated by the Administrator.

[(b) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on official duty, including repositioning flights.

[(c) Each certificate holder shall assign the specific seat requested by a Federal Air Marshal who is on official duty.]

§ 108.15 Law enforcement officers.

(a) At airports within the United States not governed by Part 107 of this chapter, each certificate holder engaging in scheduled passenger or public charter passenger operations shall—

(1) If security screening is required for a public charter operation by § 108.5(a), or for a scheduled passenger operation by § 108.5(b) provide for law enforcement officers meeting the qualifications and standards, and in the number and manner specified, in Part 107; and

(2) When using airplanes with a passenger seating configuration of 31 through 60 seats in a public charter operation for which screening is not required, arrange for law enforcement officers meeting the qualifications and standards specified in Part 107 to be available to respond to an incident, and provide to its employees, including crewmembers, as appropriate, current information with respect to procedures for obtaining law enforcement assistance at that airport.

(b) At airports governed by Part 107 of this chapter, each certificate holder engaging in scheduled or public charter passenger operations, when using airplanes with a passenger seating configuration of 31 through 60 seats for which screening is not required, shall arrange for law enforcement officers meeting the qualifications and standards specified in Part

107 to be available to respond to an incident and provide its employees, including crewmembers, as appropriate, current information with respect to procedures for obtaining this law enforcement assistance at that airport.

§ 108.17 Use of X-ray systems.

[(a) No certificate holder may use an X-ray system within the United States to inspect carry-on or checked articles unless specifically authorized under a security program required by § 108.5 of this Part or use such a system contrary to its approved security program. The Administrator authorizes certificate holders to use X-ray systems for inspecting carry-on or checked articles under an approved security program if the certificate holder shows that—]

(1) For a system manufactured before April 25, 1974, it meets either the guidelines issued by the Food and Drug Administration (FDA), Department of Health, Education, and Welfare (HEW) and published in the *Federal Register* (38 FR 21442, August 8, 1973); or the performance standards for cabinet X-ray systems designed primarily for the inspection of carry-on baggage issued by the FDA and published in 21 CFR 1020.4 (39 FR 12985, April 10, 1974);

(2) For a system manufactured after April 24, 1974, it meets the standards for cabinet X-ray systems designed primarily for the inspection of carry-on baggage issued by the FDA and published in 21 CFR 1020.40 (39 FR 12985, April 10, 1974);

(3) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of weapons and other dangerous articles;

[(4) Procedures are established to ensure that each operator of the system is provided with an individual personnel dosimeter (such as a film badge or thermoluminescent dosimeter). Each dosimeter used shall be evaluated at the end of each calendar month, and records of operator duty time and the results of dosimeter evaluations shall be maintained by the certificate holder; and

[(5) The system has a capability of meeting the imaging requirements set forth in an ap-

proved Air Carrier Security Program using the step wedge specified in American Society for Testing and Materials Standard F792-82, except that a system in use prior to July 22, 1985 may meet the requirements of this paragraph in effect on July 21, 1985, in lieu of this requirement until the system is replaced. A system may be relocated to a lower category airport or as approved by the Director of Civil Aviation Security. A relocated system may meet the requirements of this paragraph in effect on July 21, 1985, in lieu of this requirement until the relocated system is replaced.]

(b) No certificate holder may use an X-ray system within the United States unless within the preceding 12 calendar months a radiation survey has been conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40 or guidelines published by the FDA in the *Federal Register* of August 8, 1973 (38 FR 21442).

(c) No certificate holder may use an X-ray system after the system is initially installed or after it has been moved from one location to another, unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40 or guidelines published by the FDA in the *Federal Register* of August 8, 1973 (38 FR 21442) except that a radiation survey is not required for an X-ray system that is moved to another location if the certificate holder shows that the system is so designed that it can be moved without altering its performance.

(d) No certificate holder may use an X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless that Administration has advised the FAA that the defect or failure to comply does not create a significant risk or injury, including genetic injury, to any person.

[(e) No certificate holder may use an X-ray system to inspect carry-on or checked articles unless a sign is posted in a conspicuous place at the screening station and on the X-ray system which notifies passengers that such items are being inspected by an X-ray and advises them to remove all X-ray, scientific, and high-speed film from carry-on and checked articles before in-

spection. This sign shall also advise passengers that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any carry-on or checked articles to more than one milliroentgen during the inspection, the certificate holder shall post a sign which advises passengers to remove film of all kinds from their articles before inspection. If requested by passengers, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

(f) Each certificate holder shall maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and shall make it available for inspection upon request by the Administrator at each of the following locations:

(1) The certificate holder's principal business office; and

(2) The place where the X-ray system is in operation.

(g) The American Society for Testing and Materials Standard F792-82, "Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," described in this section is incorporated by reference herein and made a part hereof pursuant to 5 U.S.C. 552(a) (1). All persons affected by these amendments may obtain copies of the standard from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. In addition, a copy of the standard may be examined at the FAA Rules Docket, Docket No. 24115, 800 Independence Ave., S.W., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

§ 108.19 Bomb or air piracy threats.

[(a) Upon receipt of a bomb threat against a specific airplane, each certificate holder shall attempt to determine whether or not any explosive or incendiary is aboard the airplane involved by doing the following:]

(1) Conducting a security inspection on the ground before the next flight or, if the airplane is in flight, immediately after its next landing.

(2) If the airplane is being operated on the ground, advising the pilot in command to immediately submit the airplane for a security inspection.

(3) If the airplane is in flight, immediately advising the pilot in command of all pertinent information available so that necessary emergency action can be taken.

(b) Immediately upon receiving information that an act or suspected act of air piracy has been committed, the certificate holder shall notify the Administrator. If the airplane is in airspace under other than United States jurisdiction, the certificate holder shall also notify the appropriate authorities of the State in whose territory the airplane is located and, if the airplane is in flight, the appropriate authorities of the State in whose territory the airplane is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

§ 108.21 Carriage of passengers under the control of armed law enforcement escorts.

(a) Except as provided in paragraph (e) of this section, no certificate holder required to conduct screening under a security program may carry a passenger in the custody of an armed law enforcement escort aboard an airplane for which screening is required unless—

(1) The armed law enforcement escort is an official or employee of the United States, of a State or political subdivision of a State, or a municipality who is required by appropriate authority to maintain custody and control over an individual aboard an airplane;

(2) The certificate holder is notified by the responsible government entity at least 1 hour, or in case of emergency as soon as possible, before departure—

(i) Of the identity of the passenger to be carried and the flight on which it is proposed to carry the passenger; and

(ii) Whether or not the passenger is considered to be in a maximum risk category;

(3) If the passenger is considered to be in maximum risk category, that the passenger is under the control of at least two armed law enforcement escorts and no other passengers

are under the control of those two law enforcement escorts;

(4) No more than one passenger who the certificate holder has been notified is in a maximum risk category is carried on the airplane;

(5) If the passenger is not considered to be in a maximum risk category, the passenger is under the control of at least one armed law enforcement escort, and no more than two of these persons are carried under the control of any one law enforcement escort;

(6) The certificate holder is assured, prior to departure, by each law enforcement escort that—

(i) The officer is equipped with adequate restraining devices to be used in the event restraint of any passenger under the control of the escort becomes necessary; and

(ii) Each passenger under the control of the escort has been searched and does not have on or about his or her person or property anything that can be used as a deadly or dangerous weapon;

(7) Each passenger under the control of a law enforcement escort is—

(i) Boarded before any other passengers when boarding at the airport where the flight originates and deplaned at the destination after all other deplaning passengers have deplaned;

(ii) Seated in the rear-most passenger seat when boarding at the airport where the flight originates; and

(iii) Seated in a seat that is neither located in any lounge area nor located next to or directly across from any exit; and

(8) A law enforcement escort having control of a passenger is seated between the passenger and any aisle.

(b) No certificate holder operating an airplane under paragraph (a) of this section may—

(1) Serve food and beverage or provide metal eating utensils to a passenger under the control of a law enforcement escort while aboard the airplane unless authorized to do so by the law enforcement escort.

(2) Serve a law enforcement escort or the passenger under the control of the escort any alcoholic beverages while aboard the airplane.

(c) Each law enforcement escort carried under the provisions of paragraph (a) of this section shall, at all times, accompany the passenger under the control of the escort and keep the passenger under surveillance while aboard the airplane.

(d) No law enforcement escort carried under paragraph (b) of this section or any passenger under the control of the escort may drink alcoholic beverages while aboard the airplane.

(e) This section does not apply to the carriage of passengers under voluntary protective escort.

§ 108.23 Training.

[(a) No certificate holder may use any person as a Security Coordinator unless, within the preceding 12 calendar months, that person has satisfactorily completed the security training as specified in the certificate holder's approved security program.

[(b) No certificate holder may use any person as a crewmember on any domestic or international flight unless within the preceding 12 calendar months that person has satisfactorily completed the security training required by § 121.417(b) (3) (v) or § 135.331(b) (3) (v) of this chapter and as specified in the certificate holder's approved security program.]

§ 108.25 Approval of security programs and amendments.

(a) Unless otherwise authorized by the Administrator, each certificate holder required to have a security program for a passenger operation shall submit its proposed security program to the Administrator for approval at least 90 days before the date of the intended passenger operations. Within 30 days after receiving the program, the Administrator either approves the program or notifies the certificate holder to modify the program to comply with the applicable requirements of this Part. The certificate holder may petition the Administrator to reconsider the notice to modify within 30 days after receiving the notice, and, except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(b) The Administrator may amend an approved security program if it is determined that safety and the public interest require the amendment, as follows:

(1) The Administrator notifies the certificate holder, in writing, of the proposed amendment, fixing a period of not less than 30 days within which it may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Administrator notifies the certificate holder of any amendment adopted or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives the notice, unless the certificate holder petitions the Administrator to reconsider the amendment, in which case the effective date is stayed by the Administrator.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedure in this paragraph impracticable or contrary to the public interest, the Administrator may

issue an amendment, effective without stay, on the date the certificate holder receives notice of it. In such a case, the Administrator incorporates the findings, and a brief statement of the reasons for it, in the notice of the amendment to be adopted.

(c) A certificate holder may submit a request to the Administrator to amend its program. The application must be filed with the Administrator at least 30 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Administrator. Within 15 days after receiving a proposed amendment, the Administrator either approves or denies the request. Within 30 days after receiving from the Administrator a notice of refusal to approve the application for amendment, the applicant may petition the Administrator to reconsider the refusal to amend.

§ 108.27 Evidence of compliance.

On request of the Administrator, each certificate holder shall provide evidence of compliance with this Part and its approved security program, [effective December 12, 1986].