

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 108

[Docket No. 28978; Notice No. 97-12]

RIN 2120-AD-45

## Aircraft Operator Security

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to amend the existing airplane operator security rules. It would revise certain applicability provisions, definitions, and terms; reorganize these rules into subparts containing related requirements; and incorporate some requirements already implemented in air carrier approved security programs. Specifically, this proposal would increase the number of air carriers that must have security programs to include all that enplane from or deplane into a sterile area. Further, it would clarify the following: Training requirements for air carrier security personnel; procedures for transporting passengers under armed escort; procedures for allowing law enforcement personnel to fly armed; and procedures for air carriers to acknowledge receipt of Federal Aviation Administration security directives. It would require air carriers to implement and test security contingency plans. As these rules should apply to operators of rotorcraft as well as fixed-wing aircraft, this proposal would change the title of these rules from "Airplane Operator Security" to "Aircraft Operator Security." This proposal is intended to enhance security for the traveling public, air carriers, and persons employed by or conducting business at public airports by increasing awareness of and compliance with civil aviation security measures.

**DATES:** Comments must be submitted on or before December 1, 1997.

**ADDRESSES:** Comments on this proposed rulemaking should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Room 915-G, Docket No. 28978, 800 Independence Ave., SW., Washington, DC 20591. Comments may also be sent electronically to the following internet address: 9-NPRM-CMTS@faa.dot.gov. Comments may be examined in Room 915-G between 8:30 a.m. and 5 p.m. weekdays except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP-100), Rhonda Hatmaker, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-3413.

## SUPPLEMENTARY INFORMATION:

## Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket (see ADDRESSES). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this document may be changed in light of comments received. Comments received on this proposal will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. However, the Assistant Administrator has determined that air carrier security programs required by part 108 contain sensitive security information. As such, the availability of information pertaining to airport security programs is governed by 14 CFR part 191 (Protection of Sensitive Information). A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28978." The postcard will be date-stamped and mailed to the commenter.

## Availability of NPM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267-9677. Communications must identify the notice number of this NPRM.

An electronic copy of this document may be downloaded using a modem and suitable communications software from

the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703-321-3339) or the **Federal Register's** electronic bulletin board service (telephone: 202-512-1661). Internet users may reach the FAA's webpage at <http://www.faa.gov> or the **Federal Register's** Webpage at [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs) for access to recently published documents.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## Background

This proposed rule was written before the tragic crash of TWA 800 on July 17, 1996. That accident raised concerns about the safety and security of civil aviation, leading the President to create the White House Commission on Aviation Safety and Security, headed by the Vice President. The Commission issued an initial report on September 9, 1996, with 20 specific recommendations for improving security. On February 12, 1997, The Commission issued its Final Report with 57 recommendations, 31 of which deal with improving security for travelers. In addition, the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104-264) was signed on October 9, 1996, and directs the FAA to amend rules to upgrade civil aviation security.

The FAA is working to respond to the recommendations of the Commission and to carry out the legislation, and has issued several proposals. On March 11, 1997, an Advance Notice of Proposed Rulemaking on the certification of screening companies was issued (62 FR 13262, March 19, 1997), and on March 14, 1997, the FAA issued a Notice of Proposed Rulemaking on employment history, verification and criminal records checks (62 FR 13262, March 19, 1997). The rules proposed in this notice were not written in response to these mandates. However, this notice, which proposes to update the overall regulatory structure for airport and air carrier security, is the result of a multi-year effort involving the FAA, airports and air carriers, and the Aviation Security Advisory Committee. The extensive proposed revisions are considered to be consistent with the intentions of the mandates, contain proposals that industry has identified as necessary or appropriate, and outline a new organization for the regulations that would assist in developing future changes to the rules. For these reasons, the FAA is publishing this proposed

rule for comment. The FAA anticipates that any final rule based on this proposal will incorporate responses to these mandates.

#### *Terrorist Incidents*

On January 15, 1981, 14 Code of Federal Regulations (CFR) part 108 was issued to separate air carrier security requirements from part 121, which contain general safety requirements for large transport category aircraft. Historically, the threat of hijacking has been directed toward large passenger-carrying aircraft. The security requirements needed to protect those aircraft were placed in this new part 108 with applicability to scheduled and public charter passenger operations.

Since its inception, part 108 has been amended on several occasions, but the rule has never undergone a comprehensive update. During this same period the threat has expanded beyond hijacking to include methods of introducing bombs aboard aircraft. The following incidents are indicative of this evolution:

- June 14, 1985: Trans World Airlines (TWA) Flight 847 was hijacked from Athens, Greece. The hijacking lasted 17 days before the terrorists released the aircraft and its remaining hostages in Beirut, Lebanon. A U.S. Navy diver was killed by the hijackers.
- April 2, 1986: A bomb placed onboard TWA Flight 840 detonated en route from Rome, Italy. Four passengers were killed but the aircraft made a landing in Athens, Greece.
- May 30, 1986: Conspiracy to bomb an Air India jet. The Federal Bureau of Investigation (FBI) and Canadian authorities uncovered a terrorist conspiracy to bomb an Air India jet departing from JFK International Airport. Five individuals were charged with sabotage, but only two were convicted. These two individuals were sentenced to life imprisonment.
- September 5, 1986: Terrorist assault on Pan American (Pan Am) Flight 73, in Karachi, Pakistan as the aircraft waited to depart. The four terrorists were dressed similar to airport security personnel and drove a van resembling an airport vehicle alongside the aircraft. The flightcrew was able to escape while the terrorists stormed the aircraft. After 17 hours of negotiations, the aircraft's auxiliary power unit failed. Anticipating an attack by security forces, the terrorists opened fire on the massed passengers killing 22 persons and injuring 125 others before security forces could intervene.

- November 29, 1987: Korean Airlines Flight 858. A bomb placed onboard detonated over the Indian Ocean. All 115 persons aboard were killed.
- April 5, 1988: Kuwait Airways Flight 422 was hijacked en route from Bangkok, Thailand. The hijackers finally left the aircraft 15 days later in Algiers, Algeria, after the Kuwait government refused to release prisoners in exchange for hostages. The hijackers had killed two Kuwaiti passengers to emphasize their demands.
- December 21, 1988: The bombing of Pan Am Flight 103. All 243 passengers and 16 crew on board, plus 11 persons on the ground at Lockerbie, Scotland, were killed. Subsequent inspection of the reconstructed aircraft determined that a device consisting of plastic explosives inside a tape cassette player, was concealed in checked luggage. Individuals working for the Government of Libya are responsible for the bombing. One conspirator was the former manager of the Libyan Arab Airlines (LAA) office in Valletta, Malta and retained full access to the airport. Using this access privilege and other knowledge gained as representatives of LAA, the conspirators bypassed security checks at Valletta's Luqa airport and inserted the suitcase containing the bomb into baggage of an Air Malta flight to Frankfurt, Germany.
- September 19, 1989: Union de Transports Aeriens (UTA) Flight 772 was destroyed by an explosion over Niger, 10 months after the Pan Am explosion over Lockerbie. All 171 persons on board were killed.
- November 27, 1989: A bomb placed in the cabin area onboard Avianca Flight 203 detonated over Colombia, destroying the aircraft in-flight. One hundred and seven passengers and crew were killed.
- December 11, 1994: Bombing of Philippine Flight 434. The bomb detonated en route to Tokyo from Cebu. One passenger was killed. Investigation of this act revealed an increased threat in early 1995 to U.S. carriers operating in the Asia-Pacific region. Ramzi Ahmed Yousef has been convicted of bombing Philippine Airline Flight 433 and for conspiracy to bomb U.S. flag aircraft.

Terrorism has been, for the most part, a phenomenon afflicting U.S. interests overseas, and the threat to U.S. civil aviation is assessed to be higher abroad than it is domestically. The World Trade Center bombing in February 1993, however, indicates that terrorism is also

a very real threat in the United States, and may be on the rise.

Ramzi Ahmed Yousef has been convicted of the bombing of Philippine Airline Flight 434 (December 11, 1994) and for conspiring to bomb U.S.-flag aircraft. Authorities believe that Yousef and his co-conspirators, acted on their own volition, in opposition to U.S. foreign policy in the Middle East, and that they were assisted by local radical sympathizers in the Philippines and the United States. Their conspiracies are indicative of an emerging trend in terrorism characterized by terrorist elements operating without traditional organizational structure or state sponsorship.

The Federal Bureau of Investigation (FBI) characterizes such terrorists as seeking a "common political, social, economic, or personal objective which transcends nation-state boundaries." The U.S. Department of State, commenting on global terrorism trends notes that "terrorism by extremist individuals or groups claiming to act for religious motives" continue to dominate international terrorism.<sup>1</sup>

The number of international terrorist attacks against US interests fell between 1995 and 1996, although incidents involving American targets still represented more than 24% of the total attacks worldwide in 1996. Domestically, the FBI asserts that the U.S. is not immune to international terrorism, describing the terrorist threat as "real and potentially lethal." The FAA views these developments as cause for concern.<sup>2</sup>

In addition, individual acts of revenge or criminality must be considered since the consequences of such acts can be just as deadly. For example:

November 15, 1979: The bombing of American Airlines flight 444, en route from Chicago to Washington, DC. An improvised explosive device concealed in a mail package in the baggage compartment malfunctioned and partially detonated. The explosion resulted in damage to the aircraft and treatment of 12 passengers for smoke inhalation. The bombing was attributed to the Unabomber.

—December 7, 1987: The destruction of Pacific Southwest Airlines (PSA) Flight 1771. Flight 1771 crashed after a recently terminated airline employee boarded the Los Angeles-

<sup>1</sup> For further analysis of the terrorist threat, please refer to the following public documents: *Terrorism in the United States*: 1994, U.S. Department of Justice, Federal Bureau of Investigation.

<sup>2</sup> *Patterns of Global Terrorism*: 1995, U.S. Department of State, April 1996. *Patterns of Global Terrorism*: 1996, U.S. Department of State, April 1997.

San Francisco flight with a handgun, shot one passenger (his former supervisor), the flightcrew, flight attendant, and presumably himself. As a result, all 38 passengers and five crew on board were killed. The fired employee retained his airline ID after his dismissal and used it to bypass the passenger screening checkpoint.

June 27, 1995: A letter was received from the Unabomber threatening to blow up an aircraft departing Los Angeles International Airport (LAX) within six days. The FAA responded to the threat by directing additional security countermeasures to be put into effect at LAX. The six days elapsed without incident.

#### *Response to Terrorist Incidents*

The incidents discussed above have led to concerted efforts to strengthen aviation security around the world and to strengthen the security procedures of U.S. air carriers. The FAA has responded to threats to the civil aviation system by issuing extensive amendments, examples of which are described below, to air carrier security programs as prescribed by part 108.

The FAA issued two emergency amendments to part 108 in the aftermath of the 1985 terrorist attack on TWA Flight 847. A new § 108.10 (50 FR 28892, July 16, 1985) required air carriers to use Ground Security Coordinators and In-flight Security Coordinators; a new § 108.14 (50 FR 27924, July 8, 1985) mandated the transportation of Federal Air Marshals (FAM's) on designated flights.

In February 1986, the Secretary of Transportation directed a comprehensive review of aviation security policy and practices. Air carrier security programs were extensively amended to implement the recommendations from this review.

In December 1987, the FAA issued another emergency amendment following the PSA Flight 1771 crash. This amendment limited the application of special procedures that had allowed airline and airport employees to enter sterile area past screening points without inspection.

In 1989, the FAA issued further amendments to air carrier security programs. A new § 108.18 (54 FR 28982, July 10, 1989) required air carrier compliance with Security Directives issued by the FAA in response to a threat; a new § 108.20 (54 FR 36938, Sept 5, 1989) established the framework for the use of Explosives Detection Systems at certain airports.

In addition, the FAA issued two amendments to part 108. One amendment, § 108.19(a), (56 FR 27866,

June 17, 1991) required the notification of flight and cabin crewmembers of threats to the security of their flight. A second amendment, § 108.31 (56 FR 41412, August 20, 1991), established minimum standards for the hiring, continued employment, and contracting for air carrier and airport employees engaged in security-related activities.

The FAA added a new § 108.33 (60 FR 51854, October 3, 1995). This section establishes the FAA's authority and procedures for conducting personnel background investigations as a basis for granting airline industry contractor employees access privileges to restricted operations areas of airports.

On August 4, 1989, former President Bush established the Commission on Aviation Security and Terrorism.<sup>3</sup> The Commission was tasked with making an assessment of the overall effectiveness of the U.S. civil aviation security system.

The Commission's final report of May 15, 1990, made a number of recommendations for improving the U.S. civil aviation security program. The Commission was critical of the domestic U.S. civil aviation security system for failing to provide the proper level of protection for the traveling public and urged major reforms. Specifically, the Commission recommended that the "FAA initiate immediately the planning and analysis necessary to phase additional security measures into the domestic system over time." The Commission's report prompted the Aviation Security Improvement Act of 1990 (Pub. L. 101-604), which was enacted on November 16, 1990. It mandated many changes to air carrier security programs as well as Federal staffing and reporting procedures. The Act required implementation of many of the Commission's recommendations.

The proposed revisions to part 108 respond to Federal reports. In September 1993, the Office of the Inspector General (IG) and the U.S. Department of Transportation issued a report critical of certain aspects of the FAA's oversight of airport security systems.<sup>4</sup> In January 1994, the General Accounting Office (GAO) issued a report suggesting further actions the FAA could take to improve civil aviation security.<sup>5</sup>

<sup>3</sup> *President's Commission on Aviation Security and Terrorism, Report to the President*, Government Printing Office, May 1990.

<sup>4</sup> DOT Office of Inspector General, Audit of Airport Security, Federal Aviation Administration, Report No. RF-FA-3-105, September 20, 1993.

<sup>5</sup> United States General Accounting Office, Report to Congressional Committees, Aviation Security: Additional Actions Needed to Meet Domestic and International Changes, January 1994. Hereafter cited as 'GAO Report.'

The IG report found significant deficiencies in the effectiveness of access control and challenge procedures at five U.S. airports. The report recommended that airport and air carrier implementation of procedures for access control and challenge be strengthened, stressing that the FAA must take steps to increase air carrier employees' awareness and responsibility for those procedures.

In January of 1994, the FAA responded to the report by meeting with representatives of airport, air carrier, and airport tenant management and employee groups and unions to discuss the IG's findings and to emphasize the need for improved employee security awareness.

The response has been an industry-wide commitment to address the identified weaknesses and improve compliance. In particular, many airports and air carriers have improved their training programs and instituted programs to provide individual incentives for compliance and escalating disciplinary action for instances of non-compliance. Compliance at those airports which have instituted such programs improved markedly.

Separately, the GAO issued a report entitled, "Aviation Security-Additional Actions Needed to Meet Domestic and International Challenges" in response to a Congressional inquiry on FAA's efforts to implement the Aviation Security Improvement Act of 1990. GAO found that the FAA has taken important steps in response to the Act and cited additional actions that should be taken to enhance the FAA's security programs and initiatives. These actions include—(1) pilot-testing of new procedures before implementation, (2) strengthening human factors research and its application, and (3) making systematic analytical use of information that the FAA collects during air carrier and airport security inspections.

Similar to the IG report, the GAO report highlighted the need for the FAA to increase industry employee's overall awareness for security measures. The report concluded that the FAA must refine training and procedures for personnel to increase sensitivity to security requirements. The FAA agrees that complacency must be combated, and considers improved employee training and increased accountability to be part of the solution. Specific responses to issues raised by these reports in this notice are discussed below in the "Section-by-Section Analysis."

### *The Role of the Aviation Security Advisory Committee*

The Department of Transportation and the FAA are convinced that the aviation industry and general public should have input into the development of future aviation security measures and issues. On April 3, 1989, the Secretary of Transportation announced the formation of a national aviation security advisory committee under the provisions of the Federal Advisory Committee Act (Title 5 U.S. Code, Appendix II).

The Aviation Security Advisory Committee (ASAC) was formed to examine all areas of civil aviation security and to ensure a higher degree of safety for the traveling public by recommending improvement of aviation security equipment and procedures. The ASAC is chaired by the FAA's Assistant Administrator for Civil Aviation Security and makes recommendations to the FAA Administrator. Committee membership represents a balance of Federal government, aviation industry, and consumer advocacy groups, including:

1. Air Courier Conference by America
2. Air Line Pilots Association International
3. Air Transport Association of America
4. Aircraft Owners and Pilots Association
5. Airport Law Enforcement Agencies Network
6. Airports Council International, Inc.
7. Allied Pilots Association
8. American Association of Airport Executives
9. Association of Flight Attendants
10. Aviation Consumer Action Project
11. Aviation Security Contractors Association
12. Cargo Airline Association
13. Families of PanAm 103 Lockerbie
14. International Airline Passengers Association
15. National Air Carrier Association, Inc.
16. National Air Transportation Association
17. Regional Airline Association
18. U.S. Department of Defense (Policy Board on Federal Aviation)
19. U.S. Department of Justice (Federal Bureau of Investigation)
20. U.S. Department of State
21. U.S. Department of Transportation (Office of Intelligence and Security and Federal Aviation Administration Technical Center)
22. U.S. Department of the Treasury (Customs Service, Immigration and Naturalization Service, and Secret Service)
23. U.S. Postal Service

### 24. Victims of PanAm Flight 103

All ASAC meetings are open to the public and are announced in the **Federal Register**. Meetings are typically held three times a year. Members of the public are permitted to attend and appear before the committee, subject to reasonable limitations of space and time.

The FAA invited the ASAC to comment on the underlying issues and potential solutions associated with the revision of parts 107 and 108. In December 1993, the FAA sought the ASAC's input on a "discussion paper" that presented a broad scope of security issues and concerns. A copy of this paper is filed in the FAA public docket of this Notice of Proposed Rulemaking (NPRM).

To address the issues raised in the discussion paper, the ASAC formed two subcommittees to develop recommendations on airport and air carrier security issues, respectively, and provided the FAA formal recommendations on March 15, 1994. Individual ASAC members also provided comments on issues when their respective organizations differed from the position taken by the committee. The views of the ASAC and of individual committee members were then forwarded to the FAA with an overall recommendation that security regulations should remain flexible and contain only general security performance standards. Specific recommendations are addressed individually in the "Section-by-Section Analysis."

The ASAC's Part 108 Working Group and the ASAC's Carriage of Weapons Task Force recommendations for part 108 covered subjects such as the applicability of security programs to helicopter and all-cargo operations, revised definitions affecting the applicability of security programs for charter operations, clarification of procedures for the transporting of passengers under armed escort, and elimination of confusion surrounding the circumstances allowing law enforcement personnel to fly armed. The contributions of the ASAC are noted in the "Section-by-Section Analysis" portion of this NPRM.

### **Discussion of the Proposed Rule**

This proposed revision of part 108 would comprehensively update air carrier security regulations to more efficiently and effectively address terrorist and other criminal threats to civil aviation. This proposed action would incorporate both procedures currently in air carrier security programs and new security procedures,

in a manner that is intended to allow regulated entities and individuals to understand their responsibilities more readily. Lastly, the proposed revision would incorporate certain new measures that would provide for better security. For example, the proposed revision would make individuals directly accountable to the FAA for violating certain regulations and would require air carriers to include in their security programs specific disciplinary action and penalties to be taken with employees or tenants that do not comply with security requirements. Through these changes, the FAA hopes to create a more effective mixture of individual and corporate responsibility for complying with security regulations.

Security measures needed to counter the changing threat posed by international terrorism are generally implemented through changes to air carrier security programs. These programs are not public documents, which protests the measures from compromise, and they can be changed quickly to respond to threats and improve security as needed. The security requirements that do not need to be protected from disclosure, however, can be placed in this proposed rule to afford interested parties the opportunity to comment on them.

Also, certain proposed changes to the rule, such as expanding part 108 to include private charter operations, which is discussed below in the "Section-by-Section Analysis" of this proposal, can only be changed by amending the applicability of the rule.

Airport security programs required by part 107 also have been amended extensively since 1985. The FAA proposes to revise part 107, which governs airport security, concurrently with this part. The rulemakings will proceed in tandem. All references to proposed part 107 in this preamble are intended to refer to the concurrently proposed revision of part 107.

The proposed revisions of part 108 and part 107 represent a comprehensive approach toward upgrading the security requirements of the civil aviation system. The intent of these proposed revisions is to foster consistency and standardization throughout the national civil aviation security program. Where possible, the revisions of part 108 and part 107 propose nearly identical language to enhance, clarify, or propose security measures for implementation by both air carriers and airport operators.

Changes to definitions in proposed § 108.3 and § 107.3 are intended to promote a common understanding within the aviation community when

used in these respective regulations. Moreover, the proposed definitions for both parts 108 and 107 take into account the need to clarify the division of responsibility between air carriers and airport operators for the implementation of aviation security measures.

Proposed § 108.5 and § 107.7 would clarify the authority of the Administrator to conduct inspections or tests to determine air carrier compliance with 49 U.S.C. Subtitle VII, and the regulations, and the air carrier's and airport operator's obligation to provide FAA Special Agents the necessary access and identification medium to conduct inspections.

Proposed § 108.9 and § 107.11 contain language that would prohibit persons from interfering with or compromising required security methods or procedures. Further, new language proposed in § 108.103 and § 107.103(a) would require the inclusion of a security compliance program within an airport operator's and air carrier's security program.

Proposed § 108.105 and § 107.105 reflect similar procedural language for the approval and amendment of security programs. Proposed § 108.223 and § 107.209 would require the airport operators and air carriers to establish accountability standards for identification media.

Finally, language is proposed in both notices to expand training requirements to include personnel performing security-related duties (proposed § 108.227 and § 107.211), to incorporate similar sections for the implementation of contingency plans (proposed § 108.307 and § 107.301), and to require compliance with Security Directives (proposed § 108.305 and § 107.303).

### Section-by-Section Analysis

#### *Title and Organization of Proposed Part 108*

It is proposed to change the title from Airplane Operator Security to Aircraft Operator Security as this part would apply to operators of rotorcraft as well as fixed-wing aircraft. All references to "airplane" in this part would be changed to "aircraft."

Proposed §§ 108.1 through 108.3 would have revised texts but would retain the same numbers. Subsequent sections would be reorganized to place related requirements into common subparts. To do so would require a change in the current numbering scheme of part 108. For example, current §§ 108.5, 108.7, and 108.25 contain provisions regarding security programs. Under this proposal, these sections would be renumbered as new

§§ 108.101, 108.103, and 108.105 under subpart B entitled "Security Program." In this notice, the FAA has also revised or modified certain sections where necessary, including some changes to titles of some current sections. Many proposed changes are intended only to place related requirements in logical order or reflect requirements previously implemented in air carrier approved security programs. Other changes, discussed below, are based on an FAA review of part 108 and experience with current requirements.

Throughout the proposed rule, references are made to 49 U.S.C. Subtitle VII. This statute is the recodification of FAA's authority to prescribe aviation security regulations previously found in the Federal Aviation Act of 1958, 49 U.S.C. App. 1301 *et seq.*

#### *Subpart A—General*

##### *Section 108.1 Applicability*

As noted above in "Discussion of the Proposed Rule" recent events indicate that terrorism is a credible threat in the U.S. Currently, part 108 does not apply to private charter operations, and excludes helicopter operations from the requirements of part 108. This notice proposes, in § 108.1(a)(1), to extend the application of part 108 to private charter operations when passengers are enplaned from or deplaned into sterile areas, and to remove the exclusion of applicability to helicopter operations. The FAA believes that this proposed notice will enhance the security of the sterile area by minimizing the opportunity for transfer or introduction of dangerous or deadly weapons into the sterile area by unscreened persons disembarking from private charter or helicopter operations into the sterile area.

In response to the FAA's December 1993 discussion paper on air carrier issues and concerns, the ASAC's Part 108 Working Group commented that helicopter operators should be permitted to voluntarily participate in an air carrier security program. The Part 108 Working Group noted that some helicopter activities place operators in direct contact with part 121 operations. This occurs when helicopter passengers disembark in the secure areas of terminals and when helicopter operators interline with larger air carriers. The part 108 Working Group believes that, to expedite the handling of such passengers through secure areas without diminishing the security of the sterile area, part 108 should permit helicopter operators to participate in the security program. The FAA concurs with the

opinion of the part 108 Working Group. Any operators that enter the secured areas, that enplane from or deplane into a sterile area, or that use screening checkpoints, impact the security of all operations, and should have written and approved security programs. Accordingly, this notice proposes extending the applicability of § 108.1 to private charter operations and, under certain specified conditions, helicopter operations to adopt and implement a security program.

Currently, part 108 does not apply to all-cargo operations. However, some all-cargo operators have requested and have been issued security programs. This permits them to take direct responsibility for security measures in some of airports, rather than having the airport carry out the measures. This notice proposes to specifically provide for all-cargo operations to voluntarily adopt and implement security programs as described under § 108.101 below. This proposed language would be advantageous to the operations of the all-cargo operator and would allow the all-cargo operator to directly receive Security Directives from the FAA, thereby increasing the timely implementation of any enhanced security measures required by the FAA.

Part 108 currently refers to the "Director of Civil Aviation Security" as the official who oversees civil aviation security operations and approves airport security programs. Under internal FAA reorganization, the current title of this position is Associate Administrator for Civil Aviation Security; however, the recent recodification of the FAA's statutory authority revised this title to Assistant Administrator for Civil Aviation Security. As such, paragraphs (a)(1) and (b) of this section would use the title "Assistant Administrator for Civil Aviation Security." In addition, paragraph (b) would clarify that the Deputy Assistant Administrator for Civil Aviation Security, or any individual formally designated, could act in the capacity of the Assistant Administrator. The duties of the Assistant Administrator could be further delegated.

##### *Section 108.3 Definitions*

For purposes of part 108, § 108.3 would be revised to include terms commonly used within the aviation community and to update current terms used in existing § 108.3. The introductory text of this proposed section would make the definitions in proposed part 107 also apply to this part.

The following definitions would be added: Accepted security program,

Approved security program, Assistant Administrator, and Principal security inspector. The following definitions would be revised: Passenger-seating configuration, Private charter, Public charter, Scheduled passenger operations, and Sterile area.

The definition for "certificate holder" in existing § 108.3 would be deleted. For purposes of this part all references to "certificate holder" would be replaced with "air carrier." The definition of "air carrier" is defined under 14 CFR part 1, Definitions and Abbreviations. The FAA believes that using the term "air carrier" is necessary in order to simplify intent and to avoid any confusion in terms among the various categories of certificates issued by the FAA.

#### *Section 108.5 Inspection Authority*

Under this proposal, existing § 108.5 entitled "Security Program: Adoption and implementation" would be renumbered as new § 108.101 under new Subpart B, Security Programs. Proposed § 108.5 would be completely revised and placed under new Subpart A, General. This proposed section would combine the evidence of compliance requirements of existing § 108.27 with the FAA's statutory authority to conduct inspections, investigations, and tests.

In this proposed § 108.5, language similar to that found in § 121.81(a) would be included in proposed paragraph (a) to make clear that the Administrator has authority to conduct inspections or tests to determine air carrier compliance with the air carrier security program, part 108, 49 CFR part 175, and 49 U.S.C. Subtitle VII.

The authority for the FAA to conduct inspections necessary to gauge compliance with Federal security requirements has, on occasion, been challenged by air carriers. The proposed new language is intended to resolve any confusion regarding FAA's authority to conduct such inspections under Title 49 U.S.C. Subtitle VII.

Proposed paragraph (b) would restate the language of existing § 108.27.

Proposed paragraph (c) would clarify the operator's obligation to provide FAA Special Agents the necessary access and identification medium to conduct inspections. This proposed requirement would not be extended to any FAA employee other than Special Agents. Special Agents are those FAA employees who are authorized to conduct inspections of airport and air carrier security operations and who must possess and present valid FAA-issued credentials. There are some inspections and investigations that a Special Agent can accomplish only with

unescorted access to the critical security area and restricted operations area. The FAA will provide criteria for ascertaining the validity of Special Agents' credentials in non-regulatory guidance materials. However, air carriers may be required to accept FAA Form 8000-39 as valid identification media.

#### *Section 108.7 Falsification*

Under this proposal, existing § 108.7 entitled "Security program: Form, content, and availability" would be renumbered as new § 108.103 under new Subpart B, Security Programs. Proposed § 108.7 would be completely revised and would be included under Subpart A, General. This section is the same as the current § 108.4 adopted on November 27, 1996 (61 FR 64242, December 3, 1996).

#### *Section 108.9 Security Responsibilities of Persons*

Under this proposal, existing § 108.9 entitled "Screening of passengers and property" would be renumbered as new § 108.201 and retitled "Screening of persons, property, and acceptance of cargo" under new Subpart C, Operations. Proposed § 108.9 would be completely revised and placed under proposed Subpart A, General.

The FAA believes that the contribution of individuals to the success of the civil aviation security system cannot be overestimated and that the regulations must address the responsibility of individuals who work within the security system. Therefore, the FAA is proposing to prohibit persons from tampering, compromising, or modifying any security system, or carrying a deadly or dangerous weapon, explosive, or destructive substance into sterile areas, critical security areas, or restricted operations areas. Although the air carrier is primarily responsible for carrying out statutory and regulatory security responsibilities under this part, the FAA believes that it is critical that persons employed directly by the air carriers or under contract to the air carriers understand the importance of their responsibilities to ensure that security measures within the civil aviation system are properly implemented.

This section proposes specific requirements to make persons aware of regulatory prohibitions against interfering with or compromising security methods or procedures required under this part. Moreover, by including these prohibitions in the regulation, this proposed section would permit the use of civil penalty action as a means to gain compliance under this part by the

persons who are employed by the air carrier and other persons not under the direct authority of the air carrier (such as trespassers).

While there are some instances in which enforcement action against persons may be taken by the FAA, in many cases enforcement action would not be appropriate or necessary. The FAA intends, in proposed § 108.103, to require the air carrier to include in its security program procedures to ensure that persons with unescorted access to critical security areas or restricted operations areas will comply with the requirements of this section. The FAA anticipates that the air carrier would remain the primary party responsible for violations, including those committed by their employees and contractors. However, in appropriate cases, persons who fail to comply would be subject to enforcement action, such as a civil penalty of up to \$1,100 per violation of these rules.

The term "person," used throughout this new section and the proposed rule, is used as defined in § 1.1, General Definitions, which defines person to mean an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity, and includes a trustee, receiver, assignee, or similar representative of any of them.

Proposed paragraph (a) of this new section would prohibit tampering or interfering with an air carrier's security system, including circumventing access control systems and misusing identification media. This proposed paragraph is intended to provide a deterrent which, in turn, would promote the effectiveness of the security control measures required by this part.

For instance, many air carriers have invested in personnel identification systems as a means of satisfying the requirement to control movement under exclusive area agreements. Proposed parts 107 and 108 would require the use of personnel identification systems in both critical security areas and restricted operations areas and would set forth minimum standards for personnel identification systems. Making persons directly responsible for complying with personnel identification media display requirements would significantly promote the effectiveness of such identification systems.

Further, this section would prohibit persons from compromising, or rendering less effective, any system implemented in response to the various requirements of this part. This prohibition includes similar language found in existing § 107.25(f) that prohibits the use of an airport-approved

identification by any person unless it is issued to that person. However, the proposed language would expand the prohibition to encompass any type of intentional misuse, such as tampering, compromise, or modification, of security systems or the unauthorized circumvention of these systems. Such acts would include writing on walls or doors the combination lock numbers that provide access to critical security areas or restricted operations areas, temporarily or permanently disabling electronic access systems, and loaning of access or identification media which would provide access to, and movement within, security sensitive areas of an airport without authorization.

Under part 108, the responsibility rests with the air carrier for ensuring that unauthorized items which may be harmful to civil aviation or to the traveling public do not get into the sterile area. The FAA, accordingly, believes that the current prohibition found in existing § 107.21(a) against persons introducing a deadly or dangerous weapon, explosive, or incendiary into sterile areas is more appropriately located in part 108. The FAA proposes transferring the existing prohibition found in § 107.21(a) to proposed part 108.

The risk to the traveling public presented by the presence of a deadly or dangerous weapon, explosive, or incendiary, or destructive substance should not be underestimated. Paragraph (b) of this section, as proposed, has been drafted to prohibit the unauthorized possession of such weapons or other dangerous items in sterile areas, critical security areas, and restricted operations areas. The current rules refer to the carriage of "explosive, incendiary, or deadly or dangerous weapons" in various paces, including existing § 107.21 and § 108.9. The statute, however, refers to searching persons and property for the presence of a "dangerous weapon, explosive, or other destructive substance." (See 49 U.S.C. 44902) In order to make more clear what items the air carriers search for and what items are controlled in various areas secured for the purposes of part 108, the FAA proposes to refer throughout the revised part to "deadly or dangerous weapon, explosive, incendiary, or other destructive substance." This change is proposed in paragraph (b) of this section as well as proposed §§ 108.103, 108.201, and 108.219. The FAA also will provide guidance on destructive substances to minimize confusion over the applicability of the term "destructive substance."

This section is also intended to prohibit persons from conducting unauthorized "tests" of air carrier security systems by compromising or circumventing any element of the system. Proposed paragraph (c) would allow for individuals authorized by the Federal government, airport operator, and air carrier to conduct tests and inspections of security systems.

Provisions regarding the carriage of firearms by law enforcement officers and other authorized personnel found in existing § 107.21(b) would be included in proposed paragraph (d). Paragraph (d) proposes that provisions of this section that apply to firearms and weapons would not be applicable to law enforcement personnel, Federal Air Marshals, and certain individuals authorized in an airport security program to carry a weapon, such as armed guards protecting currency or valuable shipments. This paragraph would further exempt persons properly transporting declared firearms under proposed § 108.213 or hazardous materials under 49 CFR part 175 from firearms and weapons prohibitions. Proposed paragraph (d)(7) also would exclude from these prohibitions weapons and firearms legally carried aboard non-air-carrier aircraft, such as general aviation pilots operating personal aircraft and transporting firearms in compliance with state and local laws.

The concept of requiring persons to be responsible for complying with security measures was generally supported by the ASAC, particularly the airport operator representatives. Two ASAC members, the Air Line Pilots Association and the National Air Transport Association, however, expressed reservations about the feasibility of enforcing such a requirement and suggested that security resources could be better used elsewhere to achieve the same results. Nevertheless, by promoting awareness of security responsibilities, this proposal also would address the concerns raised by the DOT IG about employee awareness of, and compliance with, access control and challenge procedures. Further, this proposed section parallels efforts to require that persons be accountable for their actions related to the dissemination of sensitive security information (62 FR 13736, March 21, 1997).

Other federal regulations and statutes may also contain applicable security and safety responsibilities of persons, including the following: proposed § 108.221, Access investigation; proposed § 108.201 Screening of persons and property and acceptance of

cargo; proposed § 108.213 of this part, Carriage of weapons; part 191 of this chapter, Protection of Sensitive Security Information; 49 CFR part 175, Transportation of hazardous materials; 49 U.S.C. 46302, regarding false information involving aircraft piracy, interference with flight crew members, carrying a weapon, and other criminal laws; and 49 U.S.C. 46303, regarding carrying a weapon.

#### *Subpart B—Security Program*

##### *Section 108.101 Adoption and Implementation*

As mentioned in the discussion above under proposed § 108.5, proposed § 108.101 would be renumbered from current § 108.5 and included under new Subpart B, Security Program.

As discussed above, proposed § 108.1 would be revised to extend the application of part 108 to include private charter and helicopter operations. The FAA proposes to require helicopter operators to adopt and implement a security program under part 108 for the same type of passenger operations that require an airplane operator to adopt and implement a security program. Private charter operators also would be required to adopt and implement a security program for certain operations.

Currently, not all air carrier passenger operations (including private charters and helicopter operations) either boarding passengers or deplaning passengers through established sterile areas are required to implement the same security requirements to ensure full compliance with security measures protecting the security of the sterile areas. Passengers embarking from, or deplaning through, sterile areas from private charters and helicopter operations are subject to the security program requirements of the air carrier responsible for the security of the sterile area. Security measures of screening passengers from private charters and helicopter operations interlining with large carriers represent, however, only a portion of the scope of security measures needed to maintain the security integrity of the sterile area or the ramp area used by private charters and helicopter operations. Private charters and helicopter operations assisted by large carrier screening and escorting of their enplaning or deplaning passengers through the sterile area do not have to address other security measures such as specialized crew training, aircraft inspection procedures, checked baggage acceptance procedures, or procedures for escorting prisoners, to name a few.



The ASAC's Part 108 Working Group recommended that the exclusion of all-cargo helicopter, and private charter operations from "security program coverage" should be modified. The operations of all-cargo air carriers and helicopter operators should be allowed to participate voluntarily in the security program. The Part 108 Working Group also observed that the original justification for the differing applicability of part 108 to private charter vs. public charter was that passengers traveling on private charters, being brought together in a common association (e.g., corporation, professional sports team), did not generate a security threat to the flight. Accordingly, under the current part 108 definition, the Part 108 Working Group indicated that application of a security program was unnecessary for private charters. The Part 108 Working Group also commented that there have been no "incidents" to generate a change to part 108 applicability to private charters. Other ASAC members commented that private charters do not pose a security concern and that security measures should be commensurate with the security threat.

The FAA believes that the security of the sterile area cannot be compromised. As previously cited above, the Part 108 Working Group noted that some helicopter activities place operators in direct contact with part 121 operations. This occurs when helicopter passengers are disembarked in the secure areas of terminals and when helicopter operators interline with large air carriers. Further, the Part 108 Working Group expressed belief that any operations that use screening checkpoints should have written and approved security programs to accomplish that screening. Accordingly, this notice proposes that all air carriers that enplane or deplane passengers through sterile areas would be required to adopt and implement a security program for those operations.

The flight performance (especially range) of less-than-61 seat aircraft has significantly improved since 1981, which may make them more attractive to hijackers. Further, the threat to U.S. interests outside the U.S. potentially affects the security risk to private charter and less-than-61-seat operations. This notice proposes, therefore, that U.S. operators of private charter flights with greater than 30 passenger seats to any location and all operators regardless of the seating capacity of the aircraft on flights to, from, or between localities outside the U.S. would be required to adopt a security program. This proposal is consistent with the International Civil Aviation Organization's (ICAO) security

standards. The ICAO standards do not differentiate security requirements by aircraft seating capacity, and they require the screening of passengers for all international flights. However, the threat to such flights is not always of sufficient level to require full security measures to be taken. Accordingly, this notice proposes that the requirement for these carriers to screen passengers and to secure aircraft be implemented only when the Assistant Administrator for Civil Aviation Security notifies the carriers that there is a security threat to that operation.

#### *Section 108.103 Form, Content and Availability*

As mentioned in the discussion above under proposed § 108.7, proposed § 108.103 would be renumbered from current § 108.7 and included under new Subpart B, Security Program. This section proposes to modify the list of items required in the security program.

Paragraph (b) proposes the inclusion of procedures and a curriculum to implement an individual accountability compliance program. Through the proposed individual accountability compliance program, the air carrier would ensure that each of its employees and contractors are fully aware of their personal accountability for control and use of airport-approved identification media. The program would enhance the awareness of their employees and contractors of the methods by which the airport operator and the air carrier will monitor compliance of persons with the security requirements of part 108. Additionally, this notice would require that penalties be imposed on persons who are not in compliance, those penalties shall be levied in accordance with the standards contained in the air carrier's approved security program.

This section also would require the air carrier to designate an Air Carrier Security Coordinator and the means by which this person can be contacted on a 24-hour basis. This proposal would ensure that the FAA can contact a responsible security official at the corporate level whenever the need arises.

Paragraph (c) proposes a change from the current requirement that air carriers maintain a copy of security documents at each airport where security screening is being conducted, to a requirement that air carriers ensure the availability of such documents at each airport served. The FAA knows that certain types of operations, such as charter flights, present logistical problems to the air carriers if they have to maintain a copy of their security program at the airport, as currently required under part 108, as

they may not have a station established at that specific airport. Accordingly, the proposed requirement would permit the air carrier to have the necessary documents available for electronic transmission from another location or the necessary documents onboard the aircraft.

#### *Section 108.105 Approval and Amendments*

Under this proposal, existing § 108.25 entitled "Approval of security programs and amendments" would be renumbered as new § 108.105 under new Subpart B, Security Program. Proposed § 107.105 prescribes the same approval and amendment procedures.

To provide for the timely response to a security threat to civil aviation, and in accordance with existing practice, proposed § 108.105 would delegate approval of security programs or amendments to the Assistant Administrator for Civil Aviation Security. To formalize the existing practice, emergency amendments to approved air carrier security programs would also be issued by the Assistant Administrator. The notice proposes to expand this section to include greater specificity and similarity in the procedures for the amendment process for both part 108 and part 107 of this chapter.

In addition to prescribing procedures for approval of security programs required under existing § 108.25, proposed paragraph (a) provides for the Administrator to dispose of any petition within 30 days of receipt.

Paragraph (b) of this new section would prescribe procedures for an air carrier to request an amendment to its air carrier security program now covered under existing § 108.25. Currently § 108.25(c) states that the FAA will either approve or deny the request within 15 days. The proposal extends this time period to provide the FAA with a more realistic period in which to conduct a comprehensive review of the proposed amendment to an air carrier security program. Under this proposal, the FAA would have 45 days after receipt for approval or denial of the proposed amendment. The proposed rule also notes that the amendment process may take longer than 45 days if the proposed amendment is modified or denied. These language changes are intended to allow extra time for the FAA to discuss these changes with the air carriers.

Retention of the FAA's existing procedures to amend an air carrier security program is proposed in paragraphs (c) and (d). Two significant changes, however, are being proposed to



the existing procedures of § 108.25: (1) A new requirement for air carriers to submit petitions for reconsideration no later than 15 days before the effective date of the amendment, and (2) a clarification that a petition for reconsideration does not stay the effective date of an emergency amendment. These changes also are proposed to ensure a timely and efficient exchange of information.

The ASAC recommended that any amendment issued by the FAA to an air carrier security program include an expiration date. The committee was concerned that the FAA may use the amendment process to circumvent the rulemaking process and suggested that the FAA be required to initiate a formal rulemaking if it wished the provisions of the amendment to continue after the expiration date.

When there is information that cannot be discussed in a public forum, amendment of the security program provides a means to impose and implement a new requirement. The FAA does not believe it would be in the best interest of the traveling public to require a rulemaking for every amendment to an air carrier security program, but will establish internal procedures to periodically review amendments to ensure that their inclusion in the security program, rather than part 108, is appropriate.

#### *Subpart C—Operations*

##### *Section 108.201 Screening of Persons and Property, and Acceptance of Cargo*

The White House Commission on Aviation Safety and Security recommended, and the Federal Aviation Reauthorization Act of 1996 required, that the FAA certify screening companies providing security screening. This proposal does not respond to these mandates, however, as noted above, the FAA has issued an Advance Notice of Proposed Rulemaking on certification of screening companies.

Air carriers currently air required to screen all persons entering a sterile area through a screening checkpoint. As mentioned in the discussion above under proposed § 108.9, proposed § 108.201 would be renumbered from current § 108.9 and included under new Subpart C, Operations. It is also proposed to change the title of this section from "Screening of passengers and property" to "Screening of persons and property, and acceptance of cargo" to indicate that all persons, and not just passengers, are required to be screened as they enter the sterile area through a screening checkpoint.

To facilitate the transit of air carrier employees who have already been subjected to other security systems, the proposed section would provide that persons who are authorized unescorted access to an airport critical security area may enter a sterile area from a public area using security procedures proposed in § 107.207, "Access control systems" under the parallel NPRM that revises part 107. The proposed language of § 107.207 would establish performance standards for access control points that are now found in existing § 107.14.

Proposed § 108.201(b) would require the air carrier to "detect and prevent" instead of the current requirement to "prevent to deter," the carriage aboard aircraft or entry into a sterile area of any explosive, incendiary, deadly or dangerous weapon, or destructive substance on or about individuals or their accessible property. The proposed language more definitively describes the air carriers' duties regarding screening of persons and property. It is based on existing procedures under the air carrier approved security programs that basically require the air carrier to "detect and prevent" or be subject to compliance enforcement action.

The requirements proposed in § 108.201(d), (e), and (f) would transfer unchanged from existing §§ 107.20 and 107.21. These existing sections require the individual to submit to screening of their person and property and restrict the carriage of firearms into sterile areas to those persons required to have the weapons in performance of their duties, law enforcement officers traveling armed aboard aircraft, and persons specifically authorized under an approved security program. Since control of the sterile area and screening are the air carriers' responsibilities, these requirements are more appropriate to this part than part 107.

The ASAC's Part 107 Working Group recommended that the part 107 provision not be transferred to part 108 insofar as the "objective of this prohibition is the protection of sterile areas, rather than air carriers. . . ." The Part 108 Working Group did not comment on this issue.

The requirements that are proposed to be moved from part 107 to part 108 apply to individuals. They deal with activity at the screening checkpoint, in the sterile area, and aboard the aircraft. Because the air carriers primarily are responsible for these areas, the FAA believes that it is appropriate to locate the rules applying to individuals along with the rules applying to the air carriers.

Proposed § 108.201(h) would require air carriers to prevent the carriage of any

explosive or incendiary on board an aircraft in any form. Although current security procedures applicable to the acceptance of cargo for transport on board passenger aircraft are contained in the air carriers' approved security program, the basic requirement to apply security measures to cargo is not currently in the rule and this proposal would correct that omission.

##### *Section 108.203 Use of Metal Detection Devices.*

Metal detection devices (MDD's) (such as walk-through metal detectors) have long been an integral part of the passenger screening system. Testing, calibration, and operational requirements for MDD's are currently incorporated in the air carrier's security program. This proposed new section would be included under new Subpart C, Operations, and would require the air carrier to use equipment that meets the calibration standard set by the FAA and to conduct screening with MDD's in accordance with its approved security program. This section would not change the current security program requirements.

##### *Section 108.205 Use of X-ray Systems*

Under this proposal, existing § 108.17 entitled "Use of X-ray systems" would be renumbered to proposed § 108.205 and included under new Subpart C, Operations.

In proposed § 108.205, the FAA would update the technical standards for X-ray systems. The reference incorporating American Society for Testing and Materials (ASTM) Standard F-792-82 would be updated to reflect the current ASTM Standard, F-792-88 (Reapproved with an amendment in 1993). In addition, references to Food and Drug Administration regulations governing cabinet X-ray systems manufactured before April 25, 1974, are no longer necessary and, therefore, would be deleted.

Under this proposal, application of § 108.205 would be extended to X-ray systems under the air carrier's operational control at airports outside the U.S. as currently required in security programs. Air carriers at designated foreign locations are now required to perform X-ray inspection of baggage and suspect items. X-ray systems used for this purpose should meet the same standards as X-ray systems used to inspect baggage in the U.S. to ensure that the prescribed security measures are equally effective. X-ray systems owned and/or operated by government authorities or government-mandated security companies at foreign airports and not

under the operational control of the air carrier would not be subject to the proposed regulation.

The FAA is proposing to omit the current requirement in § 108.17(a)(4) that the air carrier issue to each operator of an X-ray system an individual personal dosimeter to measure exposure to X-rays, and evaluate it every month. In 1975 the FAA first adopted rules regarding the use of X-ray machines to screen carry-on baggage. At that time, the use of X-ray systems for this purpose was relatively new, and the FAA took a number of steps to evaluate the safety and environmental impact of these systems. Although the experts who submitted comments did not find it was necessary for operators of the equipment to wear dosimeters, the FAA's rules included such a requirement. The FAA now proposes to remove this requirement based on the determination of those agencies with the expertise.

The Food and Drug Administration regulates cabinet X-ray machines of the type used under part 108. Those rules, found at 21 CFR 1020.40, do not require that operators use dosimeters. The Occupational Safety and Health Administration has regulations for protection of persons in areas with certain levels of ionizing radiation, but these rules do not apply to low levels involved with the cabinet X-ray systems used under part 108. Some states may have regulations regarding the use of X-ray equipment, and may require the use of dosimeters.

The X-ray machines used under part 108 are required to be tested regularly. Further, the X-ray machines used today use lower levels of radiation than they did when the FAA rules were first adopted. Since 1975 the FAA has been aware of no incident in which a person received excess radiation from X-ray machines used for screening under an FAA-approved program.

Accordingly, it does not appear that there is a need for the FAA to require the operators of X-ray equipment to use dosimeters, and the FAA proposes to remove this requirement. Air carriers would still be required to comply with any requirements of another Federal agency or state government regarding the use of dosimeters.

This notice proposes the deletion of the term "passengers" under § 108.205(e) and substitutes the term "persons" in recognition that, during daily operations, passengers are not the only category of individuals to enter a sterile area through a screening checkpoint with an X-ray system.

#### *Section 108.207 Use of Explosives Detection Systems*

Under this proposal, existing § 108.20 entitled "Use of Explosives Detection Systems" would be renumbered as new § 108.207 and included under new Subpart C, Operations. Other than renumbering this section from § 108.20, replacing the reference to § 108.25 with § 108.105, and replacing "certificate holder" with "air carrier," no further revisions would be made to this section.

#### *Section 108.209 Employment Standards for Screening Personnel*

Under this proposal, existing § 108.31 entitled "Employment standards for screening personnel" would be renumbered as new § 108.209 and included under new Subpart C, Operations.

This section proposes that, in the event the air carrier is unable to implement this section for screening functions outside the U.S., the air carrier shall notify the Administrator of those air carrier stations so affected to facilitate resolution of compliance issues with this section of part 108.

#### *Section 108.211 Law Enforcement Personnel*

Under this proposal, existing § 108.15 entitled "Law Enforcement Officers" would be retitled "Law enforcement personnel," renumbered as new § 108.211, and included under new Subpart C, Operations.

As mentioned in the discussion of proposed § 108.1, this notice proposes to extend the applicability of part 108 to private charter operations when passengers are enplaned from or deplaned into sterile areas, and remove the exclusion of applicability to helicopter operations. Accordingly, part 108 air carriers operating passenger service or charter passenger operations at airports not governed under proposed § 107.217 would be required, in the absence of the part 107 airport operator providing law enforcement support, to provide for law enforcement personnel in a manner adequate to support its security program.

This notice also proposes extending the applicability of proposed § 108.101, under certain circumstances, to scheduled passenger or public charter operations with an aircraft having a passenger seating configuration of less than 61 seats engaged in operations to, from, or outside the U.S.

The FAA is aware that screening is not required for certain operations under proposed § 108.101(a). Nevertheless, in order to implement certain security measures under security

threat conditions, which could include screening, the requirement of the air carrier to provide for law enforcement support under this section would be revised. Under this proposed section, the requirement for air carriers to provide for law enforcement personnel, in a manner adequate to support its security program, would be extended to international passenger services of less-than-61-seat aircraft that operate under proposed § 108.101(a) at airports not governed under proposed § 107.217 of this chapter.

#### *Section 108.213 Carriage of Weapons*

Under this proposal, existing § 108.11 entitled "Carriage of Weapons" would be renumbered as new § 108.213 and would be included under new Subpart C, Operations.

The revised procedure for carrying weapons aboard aircraft by authorized law enforcement personnel proposed in this section is intended to reduce the number of weapons accessible to passengers aboard aircraft. This notice proposes adopting into part 108 the ASAC's recommendations to the FAA on this topic that the number of firearms authorized to be carried should be reduced to the minimum necessary for law enforcement personnel to perform their duties.

Only those persons performing official duties that meet the "need" criteria described below would be permitted to carry firearms aboard the aircraft. The criteria of need to carry firearms aboard aircraft are defined in proposed § 108.213(a)(2) as:

(i) Providing protective escort (assigned to a principal or an advance team).

(ii) Conducting hazardous surveillance operation.

(iii) Providing prisoner escort.

(iv) Status as an FBI Special Agent.

(v) Traveling as an FAA Federal Air Marshal on mission status.

(vi) Traveling as a law enforcement officer on official duties required to report to a new location armed and immediately prepared for duty.

Under proposed § 108.213(a)(4), all such persons flying armed would be required to complete a standard training program. The training program was recommended by the ASAC as a requirement; a standard course of about 2 hours for initial training. Training would cover the basic procedures for flying armed and the concerns associated with carriage of a firearm aboard an aircraft.

Further, all such persons flying armed would be required to be a Federal law enforcement officer or a "full time" municipal, county, or state law

enforcement officer. The term "full time" is taken to mean that the primary source of earned remuneration by the person is for services they have provided in support of law enforcement at the municipal, county, or state level.

The phrase "full-time employee" is used to preclude any person from flying as an "armed law enforcement officer" when that person does not receive remuneration from the government entity represented and does not meet, or is not required to meet, the training standards of a full-time, commissioned law enforcement officer of that department.

To the FAA's knowledge, all full-time, state, and local law enforcement officers are required to have extensive state-approved training. However, some state and local governments have reserve officers, special police, special deputies, or other non-full-time officers who may not be required to have the same extensive training. The FAA believes that armed persons on aircraft should have the extensive training that is required of full-time law enforcement officers to provide the most assurance that they can carry out their duties in the most professional and safe manner.

Persons flying armed also would be required to be "currently trained and certified" and to complete a standard training course. In this regard, "trained and certified" is used to mean that an individual has satisfactorily completed the training required by the employing agency or department and, in the case of state and local officers, completed the training specified by the responsible commission on Peace Officers Standards and Training. Moreover, the individual also should have satisfactorily met all specific continuing education and training requirements to currently enforce the criminal laws of the jurisdiction in which employed.

The process currently used by armed individuals to board flights is made easier when such individuals submit the existing form to the air carrier to indicate that they will be traveling armed. It is proposed to require the air carrier to provide the information contained in this form (e.g., identify of armed individuals, authorization to fly armed, itinerary, completion of the FAA course, "Law Enforcement Officers Flying Armed") to the flight crew of each additional connecting flight on the armed individual's itinerary.

Under proposed § 108.213(a)(4), non-federal law enforcement personnel would also be required to submit an original letter which is signed by an authorizing official from their employer, confirms to the air carrier the need to travel armed, identifies the trip

itinerary, and provides a statement that the person has completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA.

The proposed regulation would also require the air carrier, in proposed § 108.213(a)(7)(ii), to ensure that the armed person has fully completed and signed a form prior to boarding or entering a sterile area which states that the person has completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA.

It is proposed, in § 108.213(b), that for flights where screening is not conducted, an individual cannot carry a deadly or dangerous weapon on board an aircraft. This restriction would not apply to law enforcement personnel of the U.S., or a State or political subdivision of a State, or of a municipality, who are authorized by his or her agency to have the weapon in connection with his or her duties, have completed the training program required by the FAA, and have notified the air carrier of the intent to fly armed prior to boarding the flight.

The FAA believes that a person flying with a weapon should not be under the influence of alcoholic beverages which could impair his or her judgment. Accordingly, this notice, in § 108.213(c), proposes to require that no person who has consumed an alcoholic beverage during the previous 8 hours may fly with a weapon accessible to that person. Similarly, the air carrier would not be permitted to serve alcohol to the person and the armed person would not be permitted to consume it on board.

The notice proposes, in § 108.213(d), that armed individuals would be required to keep their weapon concealed and out of view, either on their person or in their immediate reach if carried in any type of case, pouch, or container. A weapon may not be placed in overhead storage bins. This would ensure that the armed individual would remain in control of the weapon, and keep it out of the hands of unauthorized persons.

This notice also proposes, in § 108.213(f), that firearms tendered for transport in checked baggage shall be carried in a locked container that is hard-sided. The use of a hard-sided container to transport a firearm will protect the firearm from being damaged, inhibit the identification of baggage carrying firearms, and reduce the opportunity for unauthorized access to the firearm.

Proposed paragraphs (e) and (g) are not new and reflect regulatory requirements found under existing § 108.11(f) and (c), respectively.

#### *Section 108.215 Carriage of Passengers Under the Control of Armed Law Enforcement Escorts*

Under this proposal, existing § 108.21 entitled "Carriage of passengers under the control of armed law enforcement escorts" would be renumbered as new § 108.215 under new Subpart C, Operations.

Some confusion has arisen from the existing regulations about escorting prisoners. Air carriers have established their own policies on prisoner transport. Some air carriers require the prisoner to be restrained during the flight; others will not permit this practice. While these varying policies have complied with the requirements of this part, law enforcement officers have not been sure about the various air carrier procedures. The FAA proposes to provide more detailed requirements in part 108. Proposed § 108.213 would apply to armed escorts, of course. Proposed § 108.215 would provide additional requirements for the escort of prisoners.

The number of escorts required for prisoner transport is determined by the risk presented by the person being escorted. Currently, a prisoner considered a "maximum risk" by the agency directing the transportation of the prisoner, requires two escorts. "Maximum risk" has no standard definition. The FAA proposes, in § 108.215(a)(2), to adopt the ASAC's recommendations and replace the term "maximum risk" with the term "high risk." A prisoner is considered a "high risk" if the prisoner is an escape risk, or is charged with, or convicted of, a violent crime. The determination that a prisoner is "high risk" is made by the agency directing the transportation of the prisoner. The FAA believes that this change of definition will lead to consistent interpretation by the law enforcement community.

This section proposes that a person who is a "high risk" shall be under the control of at least two armed escorts. In addition, such individuals' use of hands would be restrained by an appropriate device which is attached to a separately locked waist restraint device. To provide for emergency egress, leg irons would not be permitted.

This section proposes that prisoners not considered "high risk" would be termed "low risk." A "low risk" prisoner would be under the control of at least one armed law enforcement escort. No more than two of these prisoners would be escorted by a single armed law enforcement officer.

Moreover, this section proposes, in paragraph (a)(11)(i), that, as with "high risk" prisoners, "low risk" prisoners

hands would also be restrained with an appropriate device attached to a separately locked waist restraint device, allowing minimum movement of the prisoners' hands. The FAA believes that this type of a restraint, and not leg irons, for the "low risk" prisoner would not compromise the safety of all other passengers on the flight or the requirements of the air carrier to be able to conduct an emergency evacuation without undue interference.

Currently, part 108 requires that the seating of each prisoner under the control of law enforcement personnel must be placed in the rear-most passenger seat when boarding at the airport where the flight originates. Air carrier representatives to the ASAC have noted that, under part 108 requirements, passenger seating assignment problems continue to occur for flights involving the full itinerary of a person under law enforcement escort.

Accordingly, in paragraph (a)(11)(iii), the FAA proposes to change the seating requirement for prisoners under escort and provide for seating the prisoner in the rear-most seat available. This will permit the air carrier latitude in assigning seats to escorts and prisoners under their control throughout the flight itinerary of the escorted prisoner.

To further ease the implementation of the air carrier logistics for the transport of escorted prisoners, and minimize the opportunity or occasion for the prisoner to create a security risk to other passengers, paragraph (a)(4) proposes that the armed law enforcement escorts(s) notify the air carrier at least 24 hours before the scheduled departure, or as far in advance as possible, and notify the air carrier of any preexisting medical conditions of the prisoner generating unusual behavior that could pose a threat to the security of the flight.

#### *Section 108.217 Transportation of Federal Air Marshals*

Under this proposal, existing § 108.14 entitled "Transportation of Federal Air Marshals" would be renumbered as new § 108.217 and included under new Subpart C, Operations.

Existing § 108.14 provides authority for the transportation of Federal Air Marshals (FMA's) on designated flights. This has been a requirement since 1985 following the terrorist attack on TWA flight 847. This notice proposes to prohibit divulging the identity, seating, and purpose of FAM's to any person who does not have an operational need to know.

The FAA believes that the active flight crew should be informed of the presence of FAM's on a designated flight. Moreover, FAM's are made aware

of all other law enforcement personnel flying armed on a designated FAM flight. Proposed § 108.213 (a)(6) and (a)(7) would not require that persons flying armed be informed of the FAM's presence, although FAM's would be informed of the presence of other armed persons. The FAA strongly believes that the protection offered by FAM's is greatly reduced when their presence and location aboard the aircraft is revealed to those who do not have a need to know.

Under the existing authority of the Administrator and consistent with current practice, this notice proposes to require, under § 108.217(b), the transportation of FAM's on another flight designated by the FAA when a previously designated flight is canceled.

To ensure the effectiveness of FAM missions, the proposal would make clear that the FAM's would be permitted to observe the preflight searches of aircraft for weapons and explosives.

#### *Section 108.219 Security of Aircraft and Facilities*

Under this proposal, existing § 108.13 entitled "Security of Airplanes and Facilities" would be renumbered as new § 108.219 and included under new Subpart C, Operations.

Controlling access to proposed critical security areas is essential to security. Under existing § 108.13, the air carrier is required to prohibit unauthorized access to its airplanes. This section proposes to require the air carrier to prevent access to any area it controls for security purposes, in addition to its aircraft.

This notice proposes incorporating in part 108 several requirements previously implemented in air carrier security programs. Accordingly, it is proposed that the air carrier must prevent, rather than prohibit, access to areas controlled by the air carrier under an approved airport security program.

The proposed rule includes language requiring the air carrier to prevent access by unauthorized persons to baggage or cargo tendered for transport aboard a passenger aircraft. Security measures applicable to cargo transported on passenger aircraft are currently contained in the air carrier's approved security program. This proposed requirement to include security measures in air carrier's procedures for the acceptance and transport of cargo reflects current practices and requirements implemented in air carrier security programs in 1994.

The proposed rule would add a new paragraph (g) to proposed § 108.219 to require air carriers to comply with the

vehicle identification procedures contained in the airport operator's approved security program. Vehicle identification procedures are integral to controlling the movement in the restricted operations area. The proposed language in this section will require the air carrier to be in compliance with proposed § 107.211 which regulates the issuance and control of airport operator-approved personnel and vehicle identification systems.

#### *Section 108.221 Employment History, Verification, and Criminal History Records Checks*

The White House Commission on Aviation Safety and Security recommended, and the Federal Aviation Reauthorization Act of 1996 required, that the FAA adopt rules to provide for expanded background checks and criminal history records checks of person with responsibilities for screening passengers and property. On March 14, 1997, the FAA issued a Notice of Proposed Rulemaking to respond to these mandates (62 FR 13262, March 19, 1997). The comments received in response to that notice will be considered in developing a final rule. However, while that notice refers to unescorted access to the SIDA, under this proposal the term SIDA would no longer be used. It is proposed instead that the rule would refer to unescorted access to critical security areas.

#### *Section 108.223 Personnel Identification System*

This new section to part 108 proposes that air carriers establish and implement a personnel identification system.

The problem centers on the lack of standard specific audit and loss control procedures for the identification media used by employees of the air carriers. ASAC members offering comment on the FAA discussion paper agreed that differing methods for control of identification media issued by the air carriers to their employees has the potential to create a security problem. Accordingly, the ASAC members expressed the belief that regulations should require standard and specific audit/loss control procedures for identification issued by the air carrier.

This notice proposes that air carriers establish a personnel identification system mirroring the standards for accountability of airport-issued identification media. This new section to part 108 would require the air carrier to use a personnel identification system for its flight and cabin crewmembers that provides for the following: Issuance of the identification media only after satisfactory completion of background

checks; control and accountability standards for an identification media established in a FAA-approved security program; accurate identification and expiration dating of the identification media which can be readily recognized as current; and the periodic review and recertification of the identification media to determine its status for renewal or forfeiture.

The FAA believes that these proposed requirements for air carrier-issued identification media will meet the same standards as those identification control procedures currently being implemented for airport operators and will minimize the opportunity for a breach of air carrier security procedures.

#### *Section 108.225 Security Coordinators and Crewmembers, Training*

This new section proposes to consolidate into new Subpart C, Operations, elements of existing training requirements for security coordinators and crewmembers found under current §§ 108.23 and 108.29. Sections 108.23 and 108.29 currently govern security training and knowledge of provisions of security-related information and are directed toward flight crewmembers and security coordinators. Proposed § 108.225 would incorporate the regulatory requirements for flight crewmembers and security coordinators currently contained in §§ 108.23 and 108.29 and would not otherwise change the regulatory requirements for security coordinator and crewmember training.

#### *Section 108.227 Training and Knowledge of Persons With Security-related Duties*

The FAA requires extensive training directed in air carrier security programs for personnel who conduct screening, perform extraordinary security procedures, or who supervise screening and extraordinary measures.

This notice proposes to consolidate the training elements for security personnel of existing §§ 108.23 and 108.29 into new Subpart C, Operations, under proposed § 108.227. This new section would expand personnel training requirements in part 108 to require air carriers to train any person performing security functions in accordance with their approved security programs. Any individual performing a security function should have the ability and knowledge to perform that function properly and effective training programs require qualified instructors with thorough knowledge of the subject matter. This notice proposed that required security training be approved by the Administrator.

The FAA proposes to give air carriers some flexibility in establishing security training schedules to facilitate the integration of security training with other required training. A 1-calendar-month grace period would be established to facilitate the scheduling of training. This would permit the air carrier to provide training from 1 month before to 1 month after the calendar month in which that training was due, and the trainee would receive credit for the training as if it has been provided during the month due.

#### *Subpart D—Threat and Threat Response*

##### *Section 108.301 Security Coordinators*

Under this proposal, current §§ 108.10 and 108.29 would be consolidated into new Subpart D, Threat and Threat Response, under proposed § 108.301. This proposed section would consolidate the duties and responsibilities of the Ground Security Coordinator and the In-flight Coordinator from existing §§ 108.10 and 108.29. This section also would require the air carrier to designate an Air Carrier Security Coordinator to ensure that the FAA can contact a responsible security official at the corporate level whenever the need arise.

Currently, § 108.29 (a)(2)(ii) provides for the Ground Security Coordinator to immediately initiate corrective action for noncompliance. At foreign airports, the air carrier may not be performing all security measures and may be unable to achieve corrective action. Under this proposal, where security measures are provided by a host government agency or contractor, the air carrier shall notify the Administrator for assistance in resolving noncompliance issues. The Administrator could then work with the host government to address the issues.

Section 108.29(b) states that the requirements of § 108.29(a), regarding the duties of the Ground Security Coordinator, apply to security functions performed by both direct employees and contract employees of the air carrier. The proposed section would omit this as unnecessary. The air carrier is responsible for carrying out various security duties, and is responsible for managing the employees who do so whether they are direct or contract employees.

##### *Section 108.303 Bomb or Air Piracy Threats*

Under this proposal, existing § 108.19 entitled "Security threats and procedures" would be renumbered as new § 108.303 under new Subpart D, Threat and Threat Response. The title of

proposed § 108.303 would be changed to "Bomb or air piracy threats."

Air carriers are required to conduct a search after receiving a specific and credible bomb threat and the airport operator is responsible for law enforcement support. To ensure proper coordination, this notice would include the existing air carrier security program requirement that the air carrier notify the airport operator immediately of a specific and credible bomb threat to its aircraft or ground facilities.

Additionally, the air carrier would be required, under this proposed section, to deplane all passengers from a specifically threatened aircraft to ensure their safety and a more effective search of the aircraft. The air carrier's security experts, generally in consultation with the FAA and other government entities, evaluate threat information against specific FAA-established criteria to determine specificity and credibility of the threat.

Current rules do not address threats made against a ground facility (other than as part of a threat to a flight). Proposed paragraph (c) would also include requirements for responding to a specific and credible threat against a specific ground facility. This could include informing all other air carriers at the facility and conducting a security inspection.

The FAA recognizes that local, municipal, or State ordinances may impose upon air carriers or airport operators other reporting requirements for dealing with bomb or air piracy threats. The proposed FAA requirement that the air carrier report to the airport operator only specific and credible bomb threats to its aircraft or its ground facility would not absolve any air carrier from its responsibilities regarding the reporting of bomb or air piracy threats under local, municipal, or State regulations or ordinances.

##### *Section 108.305 Security Directives and Information Circulars*

Under this proposal, existing § 108.18 entitled "Security Directives and Information Circulars" would be renumbered to new § 108.305 under new Subpart D, Threat and Threat Response.

The FAA has found that, in some instances, valuable time has been lost by air carriers not receiving Security Directives in a timely manner. Currently the FAA requires air carriers to acknowledge receipt of Security Directives within 24 hours. However, that leaves too large a time within which the FAA may not be aware that air carrier personnel have actually received the security Directive. To

assure that Security Directives are received promptly, the FAA proposes to require air carriers to verbally acknowledge receipt of Security Directives immediately and to follow up with written confirmation within 24 hours. This will ensure that the FAA knows that the timely delivery of critical security information to air carriers has occurred.

Air carriers currently are required to specify the method by which they have implemented the measures in the Security Directive. The FAA proposes that the air carrier also submit to its Principal Security Inspectors copies of written measures/implementing procedures issued to their stations. This proposal will assist the FAA in determining that the air carrier fully understands the security requirements in the Security Directive and that the proposed implementation is correct.

The proposed measures also would modify the existing Security Directive process. Existing part 108 provides that the air carrier shall specify, not later than 72 hours after delivery of a Security Directive, the method by which the measures in the Security Directive "have been implemented," unless the Security Directive provides a different time. This appears to assume that, within 72 hours after receipt of the Security Directive, procedures have, in fact, been implemented. However, if the Security Directive does not require implementation within 72 hours, it is not clear from the existing rule when the implementation methods must be provided to the FAA. The proposed rule would make clear that, unless the Security Directive provides otherwise, within 72 hours after receipt of the Security Directive, the air carrier would provide the FAA the implementation methods that are either in effect or will be in effect when the Security Directive is implemented. In response, the FAA would either approve the air carrier's proposed alternative measures or notify the airport operator to modify the alternative measures to comply with the requirements of the Security Directive within 48 hours after receiving proposed alternative measures.

Moreover, language is proposed regarding those instances when the air carrier is compelled to submit, for approval by the Administrator, alternative measures for compliance with a Security Directive. Under the proposed language, the Administrator would either approve the air carrier's proposed alternative measures or notify the air carrier to modify the alternative measures to comply with the requirements of the Security Directive

within 48 hours after receiving the air carrier's proposed alternative measures.

#### *Section 108.307 Security Contingency Plan*

Contingency plans are an existing part of airport and air carrier security programs. They contain security measures that can be immediately and flexibly applied to counter threats that arise quickly. In the interest of security, the security-sensitive details of the contingency plan cannot be included in a public regulation, but proposed new § 108.307 would include in the proposed rule a 1987 security program amendment (amended in 1994) requiring air carriers and airport operators to have and implement a plan. An amendment to the approved air carrier standard security program (March 1994) required air carriers to also have and implement a plan.

The application of contingency measures in response to the Persian Gulf War provided valuable lessons on contingency planning and the FAA used this information to make changes to air carrier and airport security programs. Recently, the FAA and the air carriers thoroughly reviewed these plans to incorporate changes and "lessons learned" from response to the elevated threat during the Persian Gulf War. The method for implementation of these was modified to allow for a greater degree of flexibility, and new test procedures also were adopted. The ASAC endorsed the final product of this effort and supported the codification of contingency plan requirements for this proposed revision of part 108.

This proposed new section would require air carriers to implement FAA-issued contingency measures contained in their security programs when directed by the Administrator. It also proposes that air carriers test these contingency plans to ensure that all parties involved are aware of their responsibilities and that information contained in the plan is current. Air carriers also would be required to participate in airport operator's tests, to ensure that they understood how to respond to contingencies at each airport.

#### **Cross Reference**

To identify where present regulations would be relocated in this proposed rulemaking, the following cross-reference list is provided:

#### CROSS REFERENCE TABLE

| Old section citation | New section citation |
|----------------------|----------------------|
| 108.1 .....          | 108.1                |

#### CROSS REFERENCE TABLE— Continued

| Old section citation | New section citation |
|----------------------|----------------------|
| 108.3 .....          | 108.3                |
| 108.5 .....          | 108.101              |
| 108.7 .....          | 108.103              |
| 108.9 .....          | 108.201              |
| 108.10/29 .....      | 108.301              |
| 108.11 .....         | 108.213              |
| 108.13 .....         | 108.219              |
| 108.14 .....         | 108.217              |
| 108.15 .....         | 108.211              |
| 108.17 .....         | 108.205              |
| 108.18 .....         | 108.305              |
| 108.19 .....         | 108.303              |
| 108.20 .....         | 108.207              |
| 108.21 .....         | 108.215              |
| 108.23/29 .....      | 108.225/227          |
| 108.25 .....         | 108.105              |
| 108.27 .....         | 108.5                |
| 108.29/23 .....      | 108.225              |
| 108.31 .....         | 108.209              |
| 108.33 .....         | 108.221              |
| N/A .....            | 108.203              |
| N/A .....            | 108.223              |
| N/A .....            | 108.7                |
| N/A .....            | 108.9                |
| N/A .....            | 108.307              |

#### **International Civil Aviation Organization and Joint Aviation Regulations**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. As mentioned in the section-by-section analysis of § 108.101 above, this proposal is consistent with the ICAO security standards. As discussed above in the "Section-by-Section analysis" under § 108.101, the ICAO standards do not differentiate security requirements by aircraft seating capacity and they require the screening of passengers for all international flights. The FAA is not aware of any differences that this proposal would present if adopted. Any differences that may be presented in comments to this proposal, however, will be taken into consideration.

#### **Paperwork Reduction Act**

In this NPRM, Aircraft Operator Security/Part 108 Revision, proposed §§ 108.5, 108.103, 108.105, 108.205, 108.227, 108.303, and 108.305 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

The information to be collected is needed to allow air carriers with

approved security programs to check radiation leakage on X-ray equipment used for property security screening at least annually, to report aircraft piracy as part of the required security program, and to maintain security training records.

The estimated annual reporting and recordkeeping burden hours is estimated to be 8121, and is broken down as follows:

(1) Reporting and recordkeeping requirements for the training records for crewmembers, security coordinators, and individuals performing security-related function—24 hours for each part 108 air carrier operator.

(2) Preparation of necessary air carrier standard security program implementing documentation—6 hours for each part 108 air carrier operator.

(3) Maintaining copies and availability of the security programs for use by civil aviation security inspectors of the FAA upon request—1 hour for each part 108 air carrier operator.

(4) Air carrier preparation of request for security program amendment—1 hour for each part 108 air carrier operator.

(5) Recordkeeping by the air carrier of each X-ray survey conducted for use by FAA officials upon request—.5 hours for each part 108 air carrier operator.

(6) Recordkeeping by the air carriers showing self-evaluation of security functions performed at each air carrier station and training to all personnel performing security functions—.5 hours for each part 108 air carrier operator.

(7) Reporting of acts or suspected acts of aircraft piracy to the FAA. This report is not normally in written form and it determined to be a request for assistance—.2 hours for each part 108 air carrier operator.

(8) Air carrier acknowledgment of receipt of Security Directives—1.1 hours for each part 108 air carrier operator.

It is estimated that this proposal will affect 266 part 108 aircraft operators annually.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 1235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for Federal Aviation Administration. These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the equality, utility, and clarity of the information to be collected can be enhanced; and how the burden of the collection can be minimized. A copy of the comments

also should be submitted to the FAA Rules Docket.

OMB is required to make a decision concerning the collection of information contained in this NPRM between 30 and 60 days after publication in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NPRM.

### Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Notice of Proposed Rulemaking (NPRM) would generate benefits that justify its costs and is "not a significant regulatory action" as defined in the Executive Order. The FAA estimates that the NPRM would not have a significant economic impact on a substantial number of small entities. No part of the proposed rule is expected to constitute a barrier to international trade. In addition, this proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses, available in the docket, are summarized below.

### Costs

The total cost of compliance of the proposed rule over the next 10 years is estimated to be \$42.8 million (1994 dollars). On a discounted basis (7 percent rate of interest), the proposed rule would impose a cost of \$31.3 million. Of the 26 sections amended by the proposed rule, only five sections would result in cost impacts. The other 21 sections would not impose costs because they contain minor definitional, clarification, and procedural changes. They also would codify existing practices as contained in the air carrier standard security program (ACSSP). Those sections that would potentially impose costs are discussed below.

### Section 108.101 Adoption and Implementation

Depending on aircraft seating configuration, current regulations specify the requirements of a security program (full, modified, or none) that is required. The proposed changes to this section would increase the number of aircraft operators that must adopt and maintain security programs. It would also require any private charter operation deplaning or enplaning through a sterile area to adopt and implement a full security program. Specifically, section 108.101 would require that these aircraft operators adopt and implement security programs: (1) Scheduled U.S. passenger and public charter operations using an aircraft having passenger seating configuration of greater than 60 seats; (2) Scheduled U.S. passenger and public charter operations using an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned or deplaned into a sterile area; and (3) A scheduled U.S. passenger, public charter, or private charter operation with an aircraft having a passenger seating configuration of less than 61 seats engaged in operations to, from, or outside the U.S. Section 108.101 would require these aircraft operators to adopt and implement modified security programs.

Because these carriers are not currently required to maintain a security program, the incremental cost of this section would be the cost to adopt and maintain a security program. In addition, any operators seeking certification in these size categories in the future would bear the same incremental cost. Of the estimated 2,970 U.S. certificated air carriers, approximately 51 would be affected by the proposed rule change. Since the major and national air carriers and the large regional carriers already implement security programs, the major impact of this section would be on the small operators.

As the result of this proposal, an estimated 51 existing operators would incur a potential cost of compliance of \$145,503 (or \$105,428, discounted) over the next 10 years. This cost estimate of \$145,503 was derived by multiplying the one-time application cost of \$273 and the recurring staff cost of \$258 times the number of potentially impacted operators of 51 over the 10-year period. Similarly, new applicants would also be impacted. This evaluation assumes that three to four new applicants would file for certification in this carrier group annually. This action would result in an estimated potential



cost of compliance of \$18,585 (or \$13,116, discounted) over the next 10 years. This cost estimate of \$18,585 was derived by multiplying the one-time application cost of \$273 and the recurring staff cost of \$258 times the number of potentially impacted new applicant operators of 35 (or 3 to 4 annually) over the 10-year period. Thus, the total potential cost of compliance for this section is \$164,088 (or \$118,545, discounted).

The cost estimate \$164,000 does not take into account the cost of training associated with adopting and implementing a security program. This is because there is uncertainty about the number and magnitude of the impacted operators. Based primarily on the informed judgement of FAA technical personnel, there would be little or no training cost associated with implementing and adopting the security program for most of the impacted operators. For most of these small operators, only one person (who performs a multitude of functions) would develop and implement the security program. For this person, little or no training would be required. However, in those instances in which other persons have to become familiar with the security program, there would be additional costs for training. It is not known as to how many of these other persons would have to be trained and the amount of training needed. As the result of this uncertainty, the FAA solicits comments from the aviation community as the full impact of the proposal on impacted part 108 operators.

#### *Section 108.277 Training and Knowledge of Persons With Security-Related Duties*

The regulation governing security training currently is directed toward flight crewmembers and Security Coordinators. The FAA requires extensive training for personnel who conduct screening, supervisors, and other persons performing extraordinary security procedures in air carriers to train any person performing security functions in accordance with their approved security programs. Security training would be conducted by an instructor trained and approved by the Administrator. The potential incremental cost for this proposed section is estimated to be \$13.3 million, or \$10.1 million (discounted), over the next 10 years. This estimate of \$13.3 million was derived in four steps. First, the FAA Training cost estimate of \$570,620 was derived by multiplying the FAA's Instructor Salary Cost per training session (\$1,030) times the

number of training sessions (554) over the next 10 years. Second, the Initial Air Carrier Training cost estimate of \$4.7 million was derived by adding the cost of training employees (\$4.3 million) to the cost for an instructor (\$422,000) over the 10-year period. Third, the cost estimate of \$8 million for annual air carrier training requirements was derived by combining the employee training cost estimate (\$7.3 million) with that for an instructor (\$700,000) over the 10-year period. And, last, all three of these cost components were summed.

While this section of the evaluation has attempted to account for the potential cost that bomb threats would have on passengers, it does not address the potential impact on air carrier operators. This omission is due to the fact that the FAA has no data from which to reasonably estimate what the potential cost impact would be in the event of bomb threats. Because of this omission, there is uncertainty as to the impact, in the form of delays, bomb threats would have on aircraft operators and other entities. As the result of uncertainty associated with the potential cost of delays caused by bomb threats, the FAA solicits comments from the aviation community. Commenters are asked to focus on the potential cost of delays this proposed section would impose on aircraft operators and other entities (including passengers). The FAA requests that comments be as detailed as possible and cite or include supporting documentation.

#### *Section 108.303 Bomb or Air Piracy Threats*

Air carrier operators follow a set of standard procedures, mandated by the FAA, in the event that an operation is threatened by an act of terrorism (bomb threat, hijacking, etc.). Currently, this does not always require that the aircraft be cleared. The FAA proposes to amend these procedures to require that an operator deplane all passengers on board a threatened aircraft so that the appropriate security personnel may conduct a security inspection.

#### *Section 108.305 Security Directives and Information Circulars*

This revision proposes that all air carrier operators develop and implement standardized procedures to deal with security directives and information circulars issued by FAA. The FAA proposes that operators respond immediately to a directive by acknowledging its receipt by phone and, within 72 hours (unless otherwise specified), to provide a written summary of procedures implemented to

the FAA. The potential incremental cost of this proposed rule change is estimated to be \$665,300 (or \$467,300, discounted). This estimate of \$665,300 to Notify the Principal Security Inspector (PSI), including acknowledgment and forwarding of results, was derived by combining the cost estimates for Staff to Process Directives (\$388,000) with that for phone calls and faxes (\$277,000).

#### *Section 108.307 Security Contingency Plan*

This section would require air carrier operators to adopt contingency plans developed by the FAA to test them periodically in coordination with the respective airport operator testing of contingency plans. Thus, based on the informed opinion of FAA security personnel, twelve hours would be required for each test of the contingency plan each year; the proposed revisions to this section would impose an incremental cost of \$26.3 million to operators over 10 years (or \$19.0 million, discounted). This estimate of \$26.3 million to ensure conformity with airport plans was derived by employing two steps. The first step estimated the one-time cost for ensuring conformity by conducting air carrier initial review of contingency plans. In the first year (1996) only, cost estimation for this step represents multiplying the number of impacted air carriers (185) times the number of airports involved (25) times the number of hours of work required to review plan (16) times the hourly salary of air carrier security personnel (\$32.25). For example, this computation would result in an estimated one-time compliance cost of \$2,386,500 ( $185 \times 25 \times 16 \times \$32.25$ ), over the 10-year period, for the initial review of contingency plans. And, the second step of ensuring conformity consists of testing the contingency plan. Over the next 10 years, cost estimation for this step represents multiplying the number of impacted air carries ( $1,850 = 185 \times 10$ ) times the number of airports involved (25) times the number of hours of work required to test plan (16) times the hourly salary of air carrier security personnel (\$32.25). For example, this computation would result in an estimated one-time compliance cost of \$23,865,000 ( $1,850 \times 25 \times 16 \times \$32.25$ ), over the 10-year period, for testing of contingency plans. Thus, the total compliance cost for this section was derived by summing the two cost components ( $\$26,251,500 = \$2,386,500 + \$23,865,000$ ).

### Benefits

The proposed rules to amend parts 107 and 108 are intended to enhance aviation safety for U.S. airports and air carriers in ways that are not currently addressed. The potential benefits of the proposed rules would be a strengthening of both airport and air carrier security by adding to their effectiveness. Security for U.S. airlines is achieved through an intricate set of interdependent requirements.

It would be difficult to separate out any one change or set of changes in the proposed rules to amend part 107 or part 108 and identify to what extent that change or set of changes, alone, would prevent a criminal or terrorist act in the future. Certainly, it would be difficult to show, for example, that air carrier contingency plans (proposed § 108.307) or training procedures (proposed § 108.227) would be solely responsible for preventing a future criminal or terrorist incident. Nevertheless, these changes in both proposed rules are an integral part of the total program needed by the airport operator and the FAA to thwart such incidents.

I would also be extremely difficult to determine to what extent an averted terrorist incident could be credited to either airport operator security or to air carrier security. Accordingly, the benefits from the proposed rules for parts 107 (airport operators) and 108 (air carriers) have been combined in this benefit-cost analysis. These benefits are comprised of the criminal and terrorist incidents that these rules are intended to prevent; hence, these benefits will be contrasted against the costs of the proposed changes to parts 107 and 108.

Since 1987, the FAA has initiated rulemaking and promulgated five security-related amendments that have amended both parts 107 and 108. These amendments added to the effectiveness of both parts in that they were designed to address certain aspects of the total security system to help prevent further criminal and terrorist activities. In 1996, both Congress and the White House Commission on Aviation Safety and Security (Gore Commission) recommended further specific actions to increase aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation is a national threat.

### Benefits of Preventing Criminal and Terrorist Incidents

The requirements in parts 107 and 108 allow the FAA to combat criminal

and terrorist incidents with a variety of actions. The primary incidents that recent rulemakings have addressed include bombings, hijackings, and sabotage. In order to increase the accuracy of the analysis, these criminal and terrorist incidents have been divided into classes.

Bombing incidents involving explosive have been grouped into two main categories:

- Class I Explosion incidents include tragedies, such as the explosion of Pan Am Flight 103, that involve the loss of an entire aircraft and incur a large number of fatalities; and
- Class II Explosion incidents include terrorist attempts that were partially averted (explosions that only partially damaged an aircraft) or that occurred outside the aircraft (usually in the airport itself), and that included some injuries and/or fatalities. An example of such an incident is TWA Flight 840, which resulted in 4 fatalities and injuries.

These two types of incidents differ significantly both in terms of costs and in terms of their predictability. Depending on the exact circumstances, the costs for a Class II Explosion can vary widely. The costs of a single Class I Explosion incident substantially exceed those of a Class II Explosion incident.

Six explosions have taken place on U.S. air carriers between 1979 and 1988; five of these were Class II Explosion incidents, while one (in 1988) was a Class I Explosion incident.

Most hijackings do not involve any deaths or injuries, the cost is calculated based on operating costs (crew salaries, fuel, and maintenance), passenger time loss, and the loss of future revenues. However, a few hijackings over the last 15 years have involved fatalities or injuries. One incident resulted in a large number of fatalities and injuries. Hijacking incidents have been divided into three main categories:

- Class I Hijacking incidents are typified by the September 5, 1986 hijacking of a Pan Am flight in Karachi, Pakistan that caused a large number of fatalities and injuries (this flight had 22 fatalities and 125 injuries);
- Class II Hijacking incidents include hijackings that are based on other casualty-related incidents when one or a few death(s) or injury(ies) occur. An example of an incident in this category would be the 1985 hijacking of a TWA flight en route from Athens to Rome that was hijacked to Lebanon.

- Class III Hijacking incidents involve the forcible diversion of an airplane with no loss of life or injuries. The majority of hijackings fall into this category; hijackings typical of this category include many in which the hijacker's destination was Havana, Cuba.

Sabotage, in this evaluation, refers strictly to an incident like the PSA 1771 incident. Sabotage incidents have been subdivided into two categories:

- Class I Sabotage incidents involve a major loss of life, typified by the PSA 1771 incident; and
- Class II Sabotage incidents include a few injuries, such as the incident at National Airport in 1990 where a former employee of Ogden Allied Services gained access to the AOA.

In order to estimate the magnitude of potential safety benefits that would be generated by the proposed rule, this evaluation employed two steps. First, the historical record was examined related to the number of criminal and terrorist incidents from 1985 to 1994. Those incidents were examined and summed for each of the seven categories shown in Table 1 (Column A). Second, each of those seven categories of incidents were assigned monetary values (as shown in Table 1, Column B). And last, the number of incidents in each of the seven categories were multiplied times their respective monetary values and summed. This last computation resulted in estimated potential benefits of \$1.871 billion (or \$1.334 billion, discounted) over the next 10 years in 1994 dollars. In this computation, the present value of each category of incident was calculated using the current discount rate of 7 percent. In order to provide the public and government officials with a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars, the FAA currently uses a value of \$2.7 million and \$518,000 to statistically represent a human fatality and a major injury avoided, respectively.

Table 1 shows the benefits of preventing potential Class I Explosion incidents, Class I through III Hijacking incidents, and Class I and Class II Sabotage incidents. The number of projected incidents are the same as the number of historical or past incidents.

TABLE 1.—MONETARY VALUE OF INCIDENTS BY TYPE AND CATEGORY  
[1994 Dollars]

| Type of incidents by category | (Column A) number of past projected incidents | (Column B) monetary value (undiscounted) per incident | (Column C) monetary value (discounted) per incident |
|-------------------------------|---|---|---|
| Class I Explosions .....      | 1   | 1,416,572,478   | \$994,941,230                                       |
| Class II Explosions .....     | 2   | 7,731,000   | 5,429,931   |
| Class I Hijackings .....      | 1   | 124,784,223   | 87,643,214  |
| Class II Hijackings .....     | 1   | 3,467,403   | 2,435,357   |
| Class III Hijackings .....    | 18  | 249,403   | 175,168   |
| Class I Sabotage .....        | 1   | 304,915,169   | 234,083,083   |
| Class II Sabotage .....       | 1   | 1,035,000   | 727,642   |

Summing the product of the projected incidents by their undiscounted and discounted values yield total benefits of \$1.871 billion and \$1.334 billion, respectively.

#### *Changing Dynamics of Aviation Security Activity*

In this evaluation, the potential safety benefits were estimated based on the historical record of 25 criminal and terrorist incidents from 1985 to 1994.

Members of foreign terrorist groups and representatives from state sponsors of terrorism are present in the United States. There is evidence that a few foreign terrorist groups have well-established capability and infrastructures to support terrorism. In addition, the presence of international extremists in the United States is growing, and the potential threat from them is increasing. The activities of some of these individuals and groups go beyond fund-raising to recruiting other persons (both foreign and U.S.) for activities that include training with weapons and making bombs. Some of these extremists operate in small groups and act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities.

Investigation into the February 1993 attack on the World Trade Center (WTC) uncovered a foreign terrorist threat in the U.S. more serious than previously known. The WTC investigation and the discovery in 1995 of Ramzi Yousef's plot to bomb U.S. air carriers operating in Asia have shown that: (1) Foreign terrorists conducting future attacks in the U.S. may choose civil aviation as a target despite the many more easily accessible targets that are equally symbolic of America, (2) foreign terrorists have demonstrated their ability to operate in the U.S., and (3) foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. Civil aviation's prominence as a perspective target is clearly illustrated by the circumstances of the Asian conspiracy: The terrorists persisted in planning to attack aviation even when there were other targets identifiable with the U.S. in the area and even when they knew security measures protecting aviation were at a high level.

In addition, the bombing of a federal office building in Oklahoma City shows the potential for terrorism from domestic groups. Civil aviation's prominence would also be evident to domestic groups, so the threat to civil

aviation needs to be prevented and/or countered from both domestic and foreign sources and potential domestic sources.

The agency recognizes that potential benefits could change as the result of the changing dynamics of aviation security. While the benefits estimate contained in this analysis is valid based on those incidents cited in the historical record, this baseline could change upon the future assessment of an increased credible security threat(s). Accordingly, the pool of potential safety benefits could increase and be applied to any future rulemaking actions related to such threats.

#### *Recent Security-Related Rules—Updated Methodology*

Each of the other five security rule that the FAA has promulgated since 1987 has been updated from its respective base year dollars to 1994 using the implicit price deflator for Gross Domestic Product. The present value of the costs was recalculated using the current discount rate of 7 percent. The FAA has developed new data that improved components of past analyses. Table 2 below summarizes the total updated costs, which total \$727.1 million (\$497.8 million, discounted).

TABLE 2.—SUMMARY OF THE COSTS OF SECURITY-RELATED RULEMAKING ACTIONS  
[1994 Dollars]

| Rulemaking action (year)                               | Costs (undiscounted) | Costs (discounted) |
|--|----------------------|--------------------|
| Access to Secured Areas on Airports (1988) .....       | \$667,577,115        | \$452,643,386      |
| Security Directives (1989) .....                       | 56,050               | 39,367             |
| Explosives Detection Systems (1989) <sup>1</sup> ..... | N/A                  | N/A                |
| X-Ray Systems (1990) <sup>2</sup> .....                | 741,342              | 741,342            |
| Employment Standards (1990) .....                      | 58,679,348           | 44,339,289         |
| Total Cost: Existing Rules .....                       | 727,053,855          | 497,763,384        |

<sup>1</sup> See Appendix C to full regulatory evaluation.

<sup>2</sup> For this rulemaking action, discounted and undiscounted costs are the same. While this procedure is unusual, it is appropriate for the rule. This assessment is based on the fact that the cost of compliance impact on U.S. airport operators represents the "opportunity cost of capital." In order to comply with this rule, impacted airport operators were expected to purchase X-Ray systems from one to four years sooner than they otherwise would have.

### *Comparison of Costs and Benefits*

The benefits sections of this analysis describes how the FAA calculated a single point value of benefits upon the prevention of the assumed mean number of each of seven categories of criminal or terrorist incidents during the next 10 years. As discussed, above, the undiscounted benefits of avoiding this particular combination of incidents is \$1.871 billion (or \$1.334 billion, discounted). A simple comparison of this single value benefit estimate to the combined estimated costs of the proposed amendments to parts 107 and 108 (\$217.0 million or \$174.0 million discounted) suggests that expected benefits exceed estimated costs.

The FAA performed a computer analysis calculating the probability and associated benefits of each possible combination of occurrences. The results of that analysis indicates that the probability exceeds 95% that obtaining combinations of occurrences where the benefits of avoiding any of these combinations of occurrence will exceed the estimated costs of these proposed rules. When the estimated cost of these two proposed rules (\$217 million, undiscounted) are added to the cost of the five security rules (\$727 million, undiscounted) already issues, the combined cost is \$944 million (\$727+\$217), undiscounted. The probability of obtaining a combination of occurrence yielding benefits equal to or greater than \$944 million is over 68%. The FAA, therefore, has determined that the benefits of these two proposed rules exceed their costs, even when the costs of these two rules are added to the cost of the previously issued rules.

### **Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. the RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

In accordance with FAA Order 2100.14A (Regulatory Flexibility and Guidance, dated July 15, 1983), The FAA's criterion for a "substantial number" is a number that is not less than 11 and that is more than one third of the small entities subject to the rule. For this evaluation, small entities refer to U.S. operators of aircraft for hire with nine or fewer aircraft owned, but not necessarily operated. These small entities include: (1) Schedules aircraft operators whose entire fleet has a

seating capacity of over 60, (2) Other scheduled aircraft operators whose entire fleet has a seating capacity of less than 60 (e.g., commuter operators and small majors/nationals types), and (3) Unscheduled aircraft operators. Unscheduled operators include air taxi and large charter types.

The criterion for "significant economic impact" is defined as the FAA's assigned annualized net compliance cost threshold to that entity. When the cost of compliance for a small entity, as imposed by a proposed rule, is equal to or exceeds this annualized threshold level, it is considered to be significant. The annualized threshold amount for scheduled aircraft operators is \$121,300. For other scheduled aircraft operators, this amounts to \$67,800. For unscheduled aircraft operators, this amounts to \$4,800. These cost estimates have been converted from 1983 to 1994 dollars.

The proposed rule would potentially impact small U.S. air carriers engaged in charter services and selected helicopter operators. These aircraft operators are engaged in services under parts 121 and 135. An examination of small entities under each of these parts, by size of aircraft, will be discussed by each proposed section as follows. (The non-annual costs of the proposed rule have been annualized by multiplying them by a capital recovery factor of .14238 (10 years, 7 percent).)

### *Section 108.101 Security Program: Adoption and Implementation*

The proposed change to § 108.101 would only affect an estimated 51 operators. This estimate of 51 includes: 15 non-scheduled domestic service operators with greater than 60 seats, 11 scheduled international service operators with fewer than 31 seats, and 25 non-scheduled international service operators (including air taxi operations). This proposed section would impose an annualized cost of compliance of \$285 for each of the 51 aircraft operators.

### *Section 108.277 Training and Knowledge of Persons With Security-Related Duties*

The proposed change to § 108.227 would affect an estimated 2,930 aircraft operators. This estimate of 2,930 includes: 74 scheduled operators with between 31 and 60 seats, 131 scheduled operators with less than 31 seats, 15 non-scheduled operators with greater than 60 seats, and 2,710 non-scheduled operators with 60 or less seats. This proposed section would impose an annualized cost of compliance of \$470 for each of the 2,930 aircraft operators.

### *Section 108.303 Bomb or Piracy Threats*

The proposed change to § 108.303 would affect all 2,970 U.S. aircraft operators. This proposed section would impose in annualized cost of compliance of \$8 for each of the 2,970 aircraft operators.

### *Section 108.305 Information Circulars*

The proposed change to § 108.305 would affect an estimated 185 U.S. aircraft operators. This proposed section would impose an annualized cost of compliance of \$360 for each of the 185 operators that would be affected by this section.

### *Section 108.307 Contingency Plans*

The proposed change to § 108.307 would affect an estimated 185 U.S. aircraft operators. This would impose an annualized cost of compliance of \$14,600 for each of the 185 operators that would be affected by this section.

The sum of the annualized costs of each section is approximately \$16,000 (rounded). Of the total annualized cost of \$16,000, an estimated \$760 (proposed sections 108.101, 108.227, and 108.303) would potentially impact scheduled and unscheduled aircraft operators. Since unscheduled aircraft operators are potentially impacted, this assessment will include the lowest annualized threshold level of \$4,800 (from a worst cast standpoint). This cost estimate of \$810 is less than the annualized threshold amount of \$4,800. The remaining annualized cost of \$15,240 would only potentially impact scheduled aircraft operators. This estimate of \$15,240 is less than the annualized threshold estimates for scheduled and other scheduled operators (\$121,300 and \$67,800 respectively). Thus, the proposed rule would not impose a significant economic impact on a substantial number of small entities (scheduled or unscheduled). For this reason, a regulatory flexibility analysis is not required.

### **International Trade Impact Assessment**

In accordance with the Office of Management and Budget memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade.

The proposed rule would have no impact on the competitive posture of either U.S. carriers doing business in foreign countries or foreign carriers doing business in the United States. This assessment is based on several factors. First, it would not have an

impact on most existing part 121 scheduled operators, since they are already in compliance. However, it would impact non-scheduled aircraft operators with more than 60 passenger seats (primarily, large charter types), non-scheduled aircraft operators with less than 60 seats (primarily, small air taxi types), some scheduled aircraft operators with more than 60 seats, and all scheduled aircraft operators with less than 31 passenger seats (commuter types). U.S. non-scheduled aircraft operators (regardless of the number of seats) generally do not compete with foreign non-scheduled aircraft operators. This assessment is also true for U.S. schedule aircraft operators with less than 31 seats. When engaged in foreign travel, these operators usually fly from the U.S. to a foreign destination and return. These operators do not have aircraft based in foreign countries for flights to the U.S. and other foreign countries. Thus, neither domestic nor foreign air carriers would be affected disproportionately by these proposed requirements. These proposed requirements, therefore, will not cause a competitive disadvantage for U.S. air carriers operating overseas or for foreign carriers operating in the United States.

#### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small

governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

This proposed rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism statement.

#### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

#### List of Subjects in 14 CFR Part 108

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Law enforcement officers, Reporting and record keeping requirements, Security measures, X-rays.

#### The Proposed Amendment

In consideration of the foregoing, the FAA proposes to revise 14 CFR part 108 to read as follows:

### PART 108—AIRCRAFT OPERATOR SECURITY

#### Subpart A—General

Sec.

- 108.1 Applicability.
- 108.3 Definitions.
- 108.5 Inspection Authority.
- 108.7 Falsification.
- 108.9 Security responsibilities of persons.

#### Subpart B—Security Program

- 108.101 Adoption and implementation.
- 108.103 Form, content, and availability.
- 108.105 Approval and amendments.

#### Subpart C—Operations

- 108.201 Screening of persons and property, and acceptance of cargo.
- 108.203 Use of metal detection devices.
- 108.205 Use of X-Ray systems.
- 108.207 Use of Explosives detection systems.
- 108.209 Employment standards for screening personnel.
- 108.211 Law enforcement personnel.
- 108.213 Carriage of weapons.
- 108.215 Carriage of passengers under the control of armed law enforcement escorts.
- 108.217 Transportation of Federal Air Marshals.
- 108.219 Security of aircraft and facilities.
- 108.221 Employment history, verification, and criminal history records checks.
- 108.223 Personnel identification system.
- 108.225 Security Coordinators and crewmembers, training.
- 108.227 Training and knowledge of persons with security-related duties.

#### Subpart D—Threat and Threat Response

- 108.301 Security Coordinators.
- 108.303 Bomb or air piracy threats.
- 108.305 Security Directives and Information Circulars.
- 108.307 Contingency plan.

**Authority:** 49 U.S.C. 106(g); 5103, 40113, 40119, 44701-44702, 44705, 44901-44905, 44907, 44913-44914, 44932, 44935-44936, 46105.

#### Subpart A—General

##### § 108.1 Applicability.

(a) This part prescribes aviation security rules governing:

(1) The operations of holders of FAA air carrier operating certificates or holders of operating certificates for scheduled passenger operations, public charter passenger operations, private charter passenger operations, and other air carriers voluntarily adopting an aviation security program.

(2) Each person aboard an aircraft operated by an air carrier described in paragraph (a)(1) of this section.

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

(4) In accordance with part 191 of this chapter, each air carrier that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Assistant Administrator for Civil Aviation Security.

(b) Except as provided in § 108.105 of this part, the authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in their capacity. The

authority of the Assistant Administrator, including matters under § 108.105 of this part, may be further delegated.

### § 108.3 Definitions.

Terms defined in part 107 of this chapter apply to this part. For purposes of this part, part 107 of this chapter, and security programs under these parts, the following definitions also apply:

*Accepted security program* means a security program accepted by the Administrator for use by a foreign air carrier in accordance with § 129.25 of this chapter.

*Approved security program* means a security program approved by the Administrator for use by scheduled passenger operations, public charter passenger operations, private charter passenger operations, or all-cargo carrier operations, in accordance with § 108.105 of this part.

*Assistant Administrator* means the FAA Assistant Administrator for Civil Aviation Security as described in 49 U.S.C. 44932.

*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 set in certain aircraft which may be used by a representative of the Administrator to conduct flight checks but is available for revenue purposes on other occasions.

*Principal Security Inspector* means the civil aviation security special agent assigned by the Administrator to be the FAA's primary point of contact with the air carrier for all matters relating to aircraft operator security.

*Private chapter* means any air carrier flight—

(1) For which the charterer engages the total passenger capacity of the aircraft for the carriage of passengers; for which passengers are invited by the charterer, the cost of the flight is borne entirely by the charterer and not directly or indirectly by any individual passenger; and that is not advertised to the public, in any way, to solicit passengers.

(2) Flights for which the total passenger capacity of the aircraft is used for the purpose of civilian or military air transportation conducted under contract with the Government of the U.S. or the Government of a foreign country also considered "private charters."

*Private charter* means any charter which is not a private charter.

*Scheduled passenger operation* means a public air transportation service (a flight) from identified air terminals at a set time which is held out to the public and announced by timetable or schedule

published in a newspaper, magazine, or other advertising medium.

*Sterile area* means a portion of an airport defined in the airport security program to which access is controlled by either the inspection of persons and property in accordance with an approved or accepted security program required under §§ 108.105 of this part or § 129.25 of this chapter, or an access control system meeting the requirements of § 107.205 of this chapter.

### § 108.5 Inspection authority.

(a) Each air carrier shall allow the Administrator, including FAA Special Agents, at any time or place, to make any inspections or tests to determine compliance of the airport operator, air carrier, foreign air carrier, and other airport tenants with—

(1) The air carrier security program;

(2) This part;

(3) 49 CFR part 175, which relates to the carriage of hazardous materials by aircraft; and

(4) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each air carrier shall provide evidence of compliance with this part and its air carrier security program.

(c) On request of any FAA Special Agent, and presentation of valid FAA-issued credentials, each air carrier shall issue to that agent access and identification media to provide the special agent with unescorted access to, and movement within, exclusive areas.

### § 108.7 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

### § 108.9 Security responsibilities of persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or circumvent any security system, method, or procedure implemented under this part.

(2) Enter, or be present within, a critical security area or restricted operations area without complying with the systems, methods, or procedures being applied to control access to, or presence in, such areas.

(3) Use, allow to be used, or cause to be used any airport-approved access medium or identification medium that authorizes the access or presence of persons and vehicles in critical security areas or restricted operations areas in any other manner than that for which it was issued by the appropriate authority under this part, part 107, or part 129 of this chapter.

(b) Except as provided in 49 U.S.C. Subtitle VII, and paragraphs (c) and (d) of this section, no individual may have any deadly or dangerous weapon, explosive, incendiary, or other destructive substance on or about the individual's person or accessible property when entering, or within, a critical security area or restricted operations area of an airport governed by part 107 of this chapter, or a sterile area governed under § 108.201 of this part.

(c) The provisions of this section with regard to paragraphs (a) and (b) of this section do not apply to persons authorized by the Federal government, airport operator, air carrier, or foreign air carrier to conduct inspections for compliance with this part, parts 107 and 129 of this chapter, and 49 U.S.C. Subtitle VII, while they are conducting an inspection.

(d) The provisions of this section with respect to firearms and weapons do not apply to the following:

(1) Law enforcement personnel required under this part or part 107 of this chapter to carry a firearm or other weapon while in the performance of their duties at the airport.

(2) Persons authorized to carry a firearm under § 108.213, § 108.215, or § 129.27 of this chapter.

(3) Persons authorized to carry a firearm in a sterile area, critical security area, restricted operations area under this part, an approved airport security program, an approved air carrier security program, or a security program used in accordance with § 129.25 of this chapter.

(4) Properly declared firearms in checked baggage for transport under § 108.213 of this part.

(5) Transportation of hazardous materials under 49 CFR part 175.

(6) Federal Air Marshals while on mission status.

(7) Air carrier aircraft not subject to part 108 and part 129 of this chapter carrying firearms in accordance with state or local law.

**Subpart B—Security Program****§ 108.101 Adoption and implementation.**

(a) Each air carrier shall adopt and carry out a security program that meets the requirements of § 108.103 for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of more than 60 seats.

(2) A scheduled passenger or public charter operation using an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area.

(3) A private charter operation when passengers are enplaned from or deplaned into a sterile area.

(4) An air carrier operation, other than that described in paragraphs (a) (1), (2), and (3) of this section, further identified below except that those parts of the program effecting compliance with the requirements listed in § 108.103(b) (1), (2), (3), (4), (6), and (8) of this part need only be implemented when the Administrator notifies the air carrier in writing that a security threat exists concerning that operation:

(i) A private charter operation with an aircraft having a passenger-seating configuration of more than 30 seats.

(ii) A scheduled passenger or public charter operation with an aircraft having a passenger-seating configuration between 31 and 60 seats inclusive.

(iii) A scheduled passenger, public charter, or private charter operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the U.S.

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

**§ 108.103 Form, content, and availability.**

(a) The security program required under § 108.101 shall:

(1) Provide for the safety of persons and property traveling on flights provided by the air carrier against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, deadly or dangerous weapons, or other destructive substances aboard an aircraft.

(2) Provide that, upon receipt of an approved security program or security program amendment from the FAA, the air carrier shall acknowledge receipt of the approved security program to the Principal Security Inspector, in writing and signed by the air carrier or any person delegated authority in this matter within 72 hours.

(3) Include the items listed in paragraph (6) of this section, as required by § 108.101.

(4) Be approved by the Administrator.

(b) The security program shall include:

(1) The procedures, and description of the facilities and equipment used to perform screening functions specified in § 108.201 of this section, and used to perform the functions for each exclusive area under § 107.207 of this chapter.

(2) The procedures and a description of the equipment used to comply with the requirements of § 108.203 of this part regarding the use of metal detection devices.

(3) The procedures and a description of the equipment used to comply with the requirements of § 108.205 of this part regarding the use of X-ray systems.

(4) The procedures and descriptions of the facilities and equipment used to comply with the requirements of § 108.207 of this part regarding explosives detection systems.

(5) The procedures used to comply with the applicable requirements of § 108.211 of this part regarding law enforcement personnel.

(6) The procedures and a description of the facilities and equipment used to perform the aircraft and facilities control functions specified in § 108.219 of this part.

(7) The procedures used to comply with the requirements of § 108.221 of this part regarding employee background investigations and personnel identification systems.

(8) The procedures used to comply with the applicable requirements of § 108.301 of this part regarding the responsibilities of security coordinators and the prevention and management of hijacking and sabotage attempts.

(9) The procedures used to comply with the requirements of § 108.303 of this part regarding bomb and air piracy threats.

(10) The curriculum used to accomplish the training required under § 108.225 of this part.

(11) The procedures and curriculum of the training requirements under § 108.227 of this part; and a security compliance program that specifies procedures the air carrier will implement to ensure that persons with authorized unescorted access to critical security areas and restricted operations areas comply with § 108.7 and § 108.9 of this part, including revocation of unescorted access authority of persons that fail to comply with security requirements.

(12) Designation of an Air Carrier Security Coordinator (ACSC). The designation shall include the name of

the ACSC and a description of the means by which the ACSC can be contacted on a 24-hour basis.

(13) A security contingency plan as specified under § 108.307 of this part.

(c) Each air carrier having an approved security program shall:

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

(2) Have available a complete copy, or the pertinent portions, of its approved security program, or appropriate implementing instructions, at each airport served.

(3) Make a copy of the approved security program available for inspection upon request of an FAA Special Agent.

(4) Restrict the distribution, disclosure and availability of information contained in the security program to persons with a need-to-know as described in part 191 of this chapter.

(5) Refer requests for such information by other persons to the Administrator.

(6) Implement a program to ensure that its employees and employees of its contractors comply with paragraphs (a) and (b) of § 108.103. The program's provisions shall include penalties to be imposed on individuals who fail to comply with paragraphs (a) and (b) of this section that are in accordance with the standards contained in its approved security program.

**§ 108.105 Approval and amendments.**

(a) *Approval of Security Program.* Unless otherwise authorized by the Assistant Administrator, each air carrier required to have a security program under this part shall submit its proposed security program to the Assistant Administrator for approval at least 90 days before the date of intended passenger operations. Such request shall be processed as follows:

(1) Within 30 days after receiving the proposed air carrier security program, the Assistant Administrator will either approve the program or give the air carrier written notice to modify the program to comply with the applicable requirements of this part.

(2) Within 30 days of receiving a notice to modify, the air carrier may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify. A petition for reconsideration must be filed with the Assistant Administrator. 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.



(3) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant administrator to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an air carrier.* An air carrier may submit a request to the Assistant Administrator to amend its approved or accepted security program as follows:

(1) The application must be filed with the Assistant Administrator at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Assistant Administrator. However, in accordance with the procedures in this paragraph, it may take longer than 45 days for a final decision by the Administrator.

(2) Within 30 days after receiving a proposed amendment, the Assistant administrator, in writing, either approves or denies the request to amend.

(3) An amendment to an air carrier security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the air carrier may petition the Administrator to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment, or affirm the denial.

(c) *Amendment by the FAA.* If the safety and the public interest require an amendment, the Assistant Administrator may amend an approved or accepted security program as follows:

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

(2) After considering all relevant material, the Assistant Administrator notifies the air carrier of any amendment adopted or rescinds the

notice. If the amendment is adopted, it becomes effective not less than 30 days after the air carrier receives the notice of amendment, unless the air carrier petitions the administrator to reconsider no later than 15 days before the effective date of the amendment. The air carrier shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments.* Notwithstanding paragraphs (a), (b), and (c) of this section, if the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment, effective without stay, on the date the airport operator receives notice of it. In such a case, the Assistant Administrator shall incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The air carrier may file a petition for reconsideration under paragraph (c) of this section, however, this does not stay the effectiveness of the emergency amendment.

### Subpart C—Operations

#### § 108.201 Screening of persons and property, and acceptance of cargo.

(a) Each air carrier 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 inspect each person entering a sterile area and to inspect each person's accessible property.

(b) Each air carrier required to conduct screening under a security program shall detect and prevent the carriage aboard aircraft and introduction into a sterile area of any explosive, incendiary, deadly or dangerous weapon, or destructive substance on or about each person or the person's accessible property.

(c) Each air carrier required to conduct screening under a security

program shall deny entry into a sterile area and 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 person 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.

(d) No person shall enter a sterile area without submitting to the screening of his or her person and property, or submitting to other procedures in accordance with § 107.205(a) of this chapter, to control access to that area in accordance with an FAA-approved or FAA-accepted program.

(e) Except as provided in paragraph (f) of this section, no person shall have an explosive, incendiary, deadly or dangerous weapon, or destructive substance on or about the person or the person's accessible property—

(1) When inspection has begun of the individual's person or accessible property before entering a sterile area;

(2) When entering or in a sterile area;

or

(3) When attempting to board or onboard an aircraft.

(f) The provisions of paragraphs (b) and (e) of this section with respect to firearms and weapons do not apply to the following:

(1) Law enforcement personnel required to carry a firearm or other weapons while in the performance of their duty at the airport.

(2) Persons authorized to carry a firearm in accordance with § 108.213, § 108.215, § 108.217, of this part or § 129.27 of this chapter.

(3) Persons authorized to carry a firearm in a sterile area under an FAA-approved or FAA-accepted security program.

(g) Each air carrier shall staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

(h) Each air carrier required to conduct screening under a security program shall use the procedures include and the facilities and equipment described in its approved security program to prevent the carriage of explosives or incendiaries onboard a passenger aircraft.

#### § 108.203 Use of metal detection devices.

(a) No air carrier may use a metal detection device to inspect passengers, carry-on baggage, or checked baggage

unless specifically authorized under a security program required under this part. No air carrier may use such device contrary to its approved security program.

(b) Metal detection devices shall meet the calibration standards established by the Administrator in the air carrier's approved security program.

#### **§ 108.205 Use of X-ray systems.**

(a) No air carrier may use any X-ray system within the United States or under the air carrier's operational control outside the United States to inspect carry-on or checked articles unless specifically authorized under a security program under this part. No air carrier may use such a system in a manner contrary to its approved security program. The Administrator authorized air carriers to use X-ray systems for inspecting carry-on or checked articles under an approved security program if the air carrier shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) 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; and

(3) The system meets the imaging requirements set forth in its approved security program.

(b) No air carrier may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) No air carrier may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the air carrier shows that it can be moved without altering its performance.

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

(e) No air carrier may use any X-ray system to inspect carry-on or checked articles unless a sign is posted in a conspicuous place at the screening checkpoint or where checked articles are accepted which notifies individuals 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 inspection. This sign shall also advise individuals 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 air carrier shall post a sign which advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

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

(1) The air carrier'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 F792–88, "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.

(h) Each air carrier shall comply with the X-ray operator duty time limitations specified in its security program.

#### **§ 108.207 Use of explosives detection systems.**

When the Administrator shall require by an amendment under § 108.105 of this part, each air carrier required to conduct screening under a security program shall use an explosives detection system that has been approved by the Administrator to screen checked baggage on each international flight in accordance with the air carrier's security program.

#### **§ 108.209 Employment standards for screening personnel.**

(a) No air carrier shall use any person to perform any screening function, unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience which the air carrier has determined to have equipped the person to perform the duties of the position.

(2) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(i) Screeners operating X-ray equipment must be able to distinguish on the X-ray monitor the appropriate imaging standard specified in the air carrier's security program. Wherever the X-ray system displays colors, the operator must be able to perceive each color;

(ii) Screeners operating any screening equipment must be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies;

(iii) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment;

(iv) Screeners performing physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons must have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

(3) The ability to read, speak, and write English well enough to—

(i) Carry out written and oral instructions regarding the proper performance of screening duties;

(ii) Read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) Provide direction to and understand and answer questions from English-speaking persons undergoing screening; and

(iv) Write incident reports and statements and log entries into security records in the English language.

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the air carrier's security program.

(b) Notwithstanding the provisions of paragraph (a)(4) of this section, the air carrier may use a person during the on-

the-job portion of training to perform security functions provided that the person is closely supervised and does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No air carrier shall use a person to perform a screening function after that person has failed an operational test related to that function until that person has successfully completed the remedial training specified in the air carrier's security program.

(d) Each air carrier shall ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each person assigned screening duties and may continue that person's employment in a screening capacity only upon the determination by the Ground Security Coordinator that the person:

(1) Has not suffered a significant diminution of any physical ability required to perform a screening function since the last evaluation of those abilities;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in its approved security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(e) Paragraphs (a) through (d) of this section do not apply to those screening functions conducted outside the United States over which the air carrier does not have operational control. In the event the air carrier is unable to implement paragraphs (a) through (d) of this section for screening functions outside the United States, the air carrier shall notify the Administrator of those air carrier stations so affected.

(f) At locations outside the United States where the air carrier has operational control over a screening function, the air carrier may use screeners who do not meet the requirements of paragraph (a)(3) of this section, provided that at least one representative of the air carrier who has the ability to functionally read and speak English is present while the air carrier's passengers are undergoing security screening.

#### **§ 108.211 Law enforcement personnel.**

(a) At airports within the United States not required to hold a security program under part 107 of this chapter, each air carrier shall—

(1) For operations described in § 108.101(a) (1), (2), and (3), provide for law enforcement personnel meeting the qualifications and standards specified in

§§ 107.213 and 107.215 of this chapter; and

(2) For operations described in § 108.101(a)(4) of this part for which screening is not required shall—

(i) Arrange for law enforcement personnel meeting the qualifications and standards specified in § 107.215 of this chapter to be available to respond to an incident; and

(ii) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

(b) At airports required to hold a security program under part 107 under this chapter, each air carrier conducting operations described in § 108.101(a)(4) of this part shall:

(1) Arrange with the airport operator for law enforcement personnel meeting the qualifications and standards specified in § 107.215 of this chapter to be available to respond to an incident; and

(2) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

#### **§ 108.213 Carriage of weapons.**

(a) *Accessible weapon: Screening conducted.* Notwithstanding § 108.201, a person may have a deadly or dangerous weapon accessible to him or her while aboard an aircraft for which screening is required, if the following are met:

(1) The person in possession of the weapon—

(i) Is a Federal law enforcement officer or a full-time municipal, county, or state law enforcement officer receiving remuneration for his or her services;

(ii) Is sworn and commissioned to enforce criminal statutes;

(iii) Is currently trained and certified as a law enforcement officer and is armed in the performance of these duties;

(iv) Is authorized by the employing agency to have the weapon in connection with assigned duties; and

(v) Has completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA.

(2) The person having the weapon needs to have the weapon accessible in connection with the performance of his or her duties from the time he or she would otherwise check the weapon in accordance with paragraph (f) of this section until the time it would be claimed after deplaning. The need to have the weapon accessible during the period of time set forth in this paragraph shall be based on one of the following:

(i) The provision of protective escort (assigned to principle or advance team),

(ii) The conduct of a hazardous surveillance operation.

(iii) Prisoner escort, in accordance with § 108.215 of this part.

(iv) Status as an FBI Special Agent.

(v) FAA Federal Air Marshal on mission status.

(vi) Law enforcement personnel on official travel required to report to another location, armed and immediately prepared for duty.

(3) The air carrier is notified of the flight(s) on which the armed person needs to have the weapon accessible at least 1 hour, or in an emergency as soon as practicable, before departure.

(4) If the armed person is a State, County, or municipal law enforcement personnel, the person must present an original letter of authority, signed by an authorizing official from his or her employing agency, confirming the need to travel armed and detailing the itinerary of the travel while armed, and stating that the person has completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA.

(5) The armed person identifies himself or herself to the air carrier by presenting bona fide credentials that include clear, full-face picture, signature, and the signature of the authorizing official of service or the official seal of service. A badge, shield, or similar device may not be used as the sole means of identification.

(6) The armed person identifies himself or herself and presents a copy of the form required by the air carrier to a crewmember prior to departure.

(7) The air carrier—

(i) Verifies that the armed person is familiar with its procedures for carrying a firearm aboard its aircraft before the time the person boards the aircraft;

(ii) Ensures that the armed person has fully completed and signed a form required by the air carrier prior to boarding or entering a sterile area which states that the person has completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA;

(iii) Ensures that the identity of the armed person is known to each law enforcement personnel and each employee of the air carrier responsible for security during the boarding of the aircraft;

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

(v) Ensures that the information required in paragraphs (a) (3) and (4) of

this section is furnished to the flight crew of each additional connecting flight by the Ground Security Coordinator or other designated agent at each location.

(b) *Accessible weapon: Screening not conducted.* No person may, while on board an aircraft operated by an air carrier for which screening is not conducted, carry on or about his or her person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph does not apply to Federal and full-time municipal, county, or state law enforcement officers receiving remuneration for their services, who—

(1) Are sworn and commissioned to enforce criminal statutes;

(2) Are currently trained and certified as law enforcement officers and armed in the performance of these duties;

(3) Are authorized by the employing agency to have the weapon in connection with assigned duties; and

(4) Have completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA, and have notified the air carrier prior to boarding the flight.

(c) *Alcohol.* No air carrier may serve any alcoholic beverage to a person having a weapon accessible to him or her nor may such person consume any alcoholic beverage while aboard an aircraft operated by the air carrier. No person may have a weapon accessible if that person has consumed an alcoholic beverage within the previous 8 hours.

(d) *Location of weapon.* Any person traveling aboard an aircraft while armed must keep their weapon concealed and out of view, either on their person or in immediate reach if carried in any other type of cases, pouch, or container. No person shall place a weapon in an overhead storage bin.

(e) *Checked baggage.* No air carrier may knowingly permit any person to transport, nor may an person transport or offer for transport, any explosive, incendiary, destructive substance, or a loaded firearm in checked baggage aboard an aircraft. For the purpose of this section, a loaded firearm means a firearm which has a live round of ammunition, or any component thereof, in the chamber or in a magazine or cylinder inserted in the firearm.

(f) *Firearms in checked baggage.* No air carrier may knowingly permit any person to transport, nor may any person transport or offer for transport, any unloaded firearm(s) in checked baggage aboard an aircraft unless—

(1) The passenger declares to the air carrier, 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 that is hard-sided appropriate for air transportation;

(3) The container 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.

(g) *Military.* Paragraphs (a), (b), (d), and (f) 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 aircraft is under exclusive use by those military forces when the following conditions are met—

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

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

(h) *Federal Air Marshals.* The requirements of paragraphs (a)(6) and (a)(7) of this section do not apply to Federal Air Marshals performing official duties on a flight.

#### **§ 108.215 Carriage of passengers under the control of armed law enforcement escorts.**

(a) Except as provided in paragraph (e) of this section, no air carrier required to conduct screening under a security program may carry a passenger in the custody of an armed law enforcement escort aboard an aircraft for which screening is required unless, in addition to the requirements in § 108.213 of this part, the following requirements are met:

(1) The armed law enforcement escort is required by appropriate authority to maintain custody and control over an individual aboard an aircraft.

(2) The agency responsible for control of the prisoner determines whether the prisoner is considered a high risk, that is, an escape risk or charged with, or convicted of, a violent crime, or a law risk.

(3) The armed law enforcement escort(s) notifies the air carrier at least 24 hours before the scheduled departure, or, if that is not possible, as far in advance as possible of the following—

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

(ii) Any pre-existing medical conditions of the prisoner generating unusual behavior which may create a security risk to other passengers; and

(iii) Whether or not the passenger is considered to be a high risk or a low risk.

(4) The armed law enforcement escort(s) arrive at the check-in counter at least 1 hour prior to the schedule departure.

(5) A high risk prisoner shall be under the control of at least two armed law enforcement escorts and no other prisoners shall be under the control of those two armed law enforcement escorts.

(6) No more than one high risk prisoner shall be carried on the aircraft.

(7) Except as stated in paragraph (a)(9) this section, a low risk prisoner shall be under the control of at least one armed law enforcement escort, and no more than two low risk prisoners shall be carried under the control of any one armed law enforcement escort.

(8) For a flight exceeding 4 hours' duration, each two risk prisoners shall be under the control of at least two armed law enforcement escorts, and no more than two low risk prisoners shall be under the control of any two armed law enforcement escorts.

(9) The air carrier is assured, prior to departure, by each law enforcement escort that 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.

(10) For each passenger under the control of an armed law enforcement escort, the following requirements shall be met:

(i) The passenger under escort shall be restrained from full use of hands by an appropriate device which is then attached to a separately locked waist restraint device that provides for minimum movement of the person's hands. Leg irons shall not be used;

(ii) The passenger under escort shall be 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; and

(iii) The passenger under escort shall be seated in a seat that is neither located in any passenger lounge area nor located next to or directly across from any exit and, when practicable, the air carrier should seat the prisoner in the rearmost seat of the passenger cabin.

(11) An armed law enforcement escort having control of a passenger shall be seated between the passenger and any aisle.

(b) No air carrier operating an aircraft under paragraph (a) of this section shall—

(1) Serve food or beverage or provide metal eating utensils to a passenger

under the control of a law enforcement escort while aboard the aircraft unless authorized to do so by the armed law enforcement escort.

(2) Serve the passenger under the control of an armed law enforcement escort any alcoholic beverage while aboard the aircraft.

(c) Each armed law enforcement escort 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 aircraft.

(d) No passenger under the control of an armed law enforcement escort shall drink alcoholic beverages while aboard the aircraft.

(e) This section does not apply to the carriage of passengers under voluntary protective escort, or under escort by unarmed law enforcement officers.

#### **§ 108.217 Transportation of Federal Air Marshals.**

(a) Each air carrier shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation, public charter passenger operation, and private 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 positioning and repositioning flights. When a Federal Air Marshal is assigned to a scheduled flight that is canceled for any reason, the air carrier shall carry that Marshal without charge on another flight as designated by the Administrator.

(c) Each air carrier shall assign the specific seat requested by a Federal Air Marshal who is on official mission status.

(d) Each air carrier shall restrict any information concerning the presence, seating, names, and purpose of Federal Air Marshals at any station or on any flight to those persons within operational need to know.

(e) Each air carrier shall permit any FAA Special Agent, including Federal Air Marshals, to observe the search of the aircraft prior to the departure.

#### **§ 108.219 Security of aircraft and facilities**

Each air carrier 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 aircraft passenger operation for which screening is required:

(a) Prevent unauthorized access to areas controlled by the air carrier under

an exclusive area agreement in accordance with § 107.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Ensure that checked baggage carried in the aircraft is received by a responsible air carrier agent.

(d) Ensure that proper identification and, where appropriate, proper certification is obtained by a responsible air carrier agent from each entity shipping cargo prior to the acceptance of these items for transport aboard the passenger aircraft.

(e) Ensure that cargo and checked baggage carried aboard the aircraft, after being accepted for transport by the air carrier, are safeguarded in a manner that prevents the unauthorized introduction of any explosive, incendiary, deadly or dangerous weapon, or destructive substance aboard the aircraft, or access to the tendered cargo or checked baggage by any person other than an air carrier employee or its agent.

(f) Conduct a security inspection of each aircraft before placing it in service.

(g) Each air carrier shall comply with the procedures for identifying vehicles set forth in the FAA-approved airport security program required by § 107.211 of this chapter.

#### **§ 108.221 Employment history, verification, and criminal history records checks.**

(There is a separate rulemaking action that will result in new text for this section. To avoid confusion, the section is not repeated here. See the preamble for further explanation.)

#### **§ 108.223 Personnel Identification System.**

Each air carrier shall establish and implement a personnel identification system for its flight and cabin crewmembers to include:

(a) Positive, accurate identification and expiration dates that can be readily recognized as accurate and current.

(b) Issuance only after satisfactory completion of the required access investigation.

(c) Control and accountability standards in accordance with an FAA-approved security program.

(d) Periodic review, recertification, and renewal or forfeiture.

#### **§ 108.225 Security coordinators and crewmembers, training.**

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

(b) No air carrier may use any person as an In-Flight Security Coordinator or crewmember on any domestic or international flight unless, within the preceding 12-calendar months or within the time period specified in an Advanced Qualifications Program approved under SFAR 58, 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 air carrier's approved security program.

(c) The requirements prescribed in paragraph (a) of this section apply to all security-related functions performed for the air carrier whether by a direct employee or a contractor employee.

(d) With respect to training conducted under this section, whenever a person completes recurrent training 1 month earlier, or 1 month after the date of original security certification, that person is considered to have completed the training in the calendar month in which it was required.

#### **§ 108.227 Training and knowledge of persons with security-related duties.**

(a) No air carrier may use any person to perform any security-related duties unless that person has received training as specified in its approved security program including their responsibilities in § 108.9 and § 108.103 of this part.

(b) Each air carrier shall ensure that individuals performing security-related functions for the air carrier have knowledge of the provisions of part 108, applicable Security Directives and Information Circulars promulgated pursuant to § 108.305 of this part, the approved airport security program, and the air carrier's security program to the extent that such individuals need to know in order to perform their duties.

(c) With respect to training conducted under this section, whenever a person completes recurrent training in the calendar month before or the calendar month after the calendar month in which that training is required, that person is considered to have completed the training in the calendar month in which it was required.

(d) All training prescribed in paragraphs (a), (b), and (c) of this section must be approved by the Administrator.

(e) The requirements prescribed in paragraphs (a), (b), and (c) of this section apply to all security-related functions performed for the air carrier whether by a direct employee or a contractor employee.

## Subpart D—Threat and Threat Response

### § 108.301 Security Coordinators.

(a) *Air Carrier Security Coordinator.* Each air carrier shall designate and use an Air Carrier Security Coordinator (ACSC). The ACSC shall serve as the air carrier's primary contact for security-related activities and communications with the FAA, as set forth in the security program.

(b) *Ground Security Coordinator.* Each air carrier shall designate and use a Ground Security Coordinator for each domestic and international flight to carry out the Ground Security Coordinator duties specified in the air carrier's approved security program. The Ground Security Coordinator at each airport shall conduct the following daily:

- (1) A review of all security-related functions for effectiveness and compliance with the part, the air carrier's security program, and applicable Security Directives.
- (2) Immediate initiation of corrective action for each instance of noncompliance with this part, the air carrier's security program, and applicable Security Directives. At foreign airports where such security measures are provided by an agency or contractor of a host government, the air carrier shall notify the Administrator for assistance in resolving noncompliance issues.

(c) *In-flight Security Coordinator.* Each air carrier shall designate and use the pilot in command as the In-flight Security Coordinator for each domestic and international flight to perform duties specified in the air carrier's approved security program.

### § 108.303 Bomb or air piracy threats.

(a) *Flight: Notification.* Upon receipt of a specific and credible threat to the security of a flight, the air carrier shall—

- (1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any measures to be applied; and
- (2) Ensure that the in-flight security coordinator notifies all crewmembers of the threat, any evaluation thereof, and any measures to be applied.
- (3) Immediately notify the appropriate airport operator.

(b) *Flight: Inspection.* Upon receipt of a specific and credible threat to the security of a flight, each air carrier shall attempt to determine whether or not any explosive or incendiary is present by doing the following:

- (1) Conduct a security inspection on the ground before the next flight or, if

the aircraft is in flight, immediately after its next landing.

(2) If the aircraft is on the ground, immediately deplane all passengers and submit that aircraft to a security search.

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

(c) *Ground Facility.* Upon receipt of a specific and credible threat to a specific ground facility at the airport, the air carrier shall:

- (1) Immediately notify the appropriate airport operator.
- (2) Inform all other air carriers at the threatened facility.
- (3) Conduct a security inspection.
- (d) *Notification.* Upon receipt of any bomb threat against the security or a flight or facility, or upon receiving information that an act or suspected act of air piracy has been committed, the air carrier also shall notify the Administrator. If the aircraft is in airspace under other than U.S. jurisdiction, the air carrier shall also notify the appropriate authorities of the State in whose territory the aircraft is located and, if the aircraft is in flight, the appropriate authorities of the State in whose territory the aircraft is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

### § 108.305 Security Directives and Information Circulars.

(a) When a threat against civil aviation becomes known, the Assistant Administrator may issue an information circular to notify air carriers of the general situation or a Security Directive setting forth mandatory countermeasures to an assessed threat.

(b) Each air carrier required to have an approved air carrier security program shall comply with each Security Directive issued to the air carrier by the Administrator, within the time prescribed in the Security Directive for compliance.

(c) Each air carrier that receives a Security Directive shall—

- (1) Immediately upon receipt from the FAA, or within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to the Principal Security Inspector, followed by written acknowledgment of receipt within 24 hours;
- (2) Not later than 72 hours after delivery by the FAA, or within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be

implemented, if the Security Directive is not yet effective) by providing the FAA a copy of the written measures and implementation procedures issued to (or that will be issued to) each affected air carrier station; and

(3) Ensure that information regarding the Security Directive and measures implemented in response to the Security Directive are distributed to specified personnel, as prescribed in the Security Directive, and to other personnel with an operational need-to-know.

(d) In the event that the air carrier is unable to implement paragraph (b)(2) of this section, the air carrier shall submit, within 72 hours after receipt of the Security Directive, proposed alternative measures and the basis for submitting the alternative measures to the Administrator for approval. Within 48 hours after receiving the air carrier's proposed alternative measures, the Administrator either approves the proposed alternative measures or notifies the air carrier to modify the alternative measures to comply with the requirements of the Security Directive. The air carrier shall implement any alternative measures approved by the Administrator within 72 hours of receipt of notification of the Administrator's determination.

(e) Each air carrier that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular shall:

- (1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need to know.
- (2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with an operational need-to-know without the prior written consent of the Administrator.

(f) The air carrier security coordinator, or an individual designated by the air carrier, may receive classified information related to national security if the air carrier security coordinator, or designee, has applied to the Administrator and received the appropriate security clearances.

### § 108.307 Contingency plan.

Each air carrier shall adopt a contingency plan and shall:

- (a) Implement its contingency plan when directed by the Administrator.
- (b) Conduct reviews and exercises of its contingency plan, and participate in each airport operator's test of the airport's contingency plan.

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