DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108, 109, 111, 129, and 191

[Docket No. FAA–1999–6673; Notice No. 99–21]

RIN 2120–AG84

Certification of Screening Companies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. This proposal is in response to a recommendation by the White House Commission on Aviation Safety and Security and to a Congressional mandate in the Federal Aviation Reauthorization Act of 1996. The proposal is intended to improve the screening of passengers, accessible property, checked baggage, and cargo and to provide standards for consistent high performance and increased screening company accountability.

DATES: Comments must be received on or before April 4, 2000.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6673, 400 Seventh Street SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Karl Shrum, Manager, Civil Aviation Security Division, Office of Civil Aviation Security Policy and Planning (ACP–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202)267–3946.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action 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 must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date. All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the 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 for Civil Aviation Security has determined that the security programs required by parts 108, 109, and 129 contain sensitive security information. As such, the availability of information pertaining to these security programs is governed by 14 CFR part 191. Carriers, screening companies, and others who wish to comment on this document should be cautious not to include in their comments any information contained in any security program.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–6673.'' The postcard will be date stamped and mailed to the commenter.

To give the public an additional opportunity to comment on the NPRM, the FAA anticipates planning public meetings. If the FAA determines that it is appropriate to hold such meetings, a separate notice announcing the times, locations, and procedures for public meetings will be published in the **Federal Register**.

Availability of NPRMs

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 Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm, or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents 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.

Outline of Preamble

I. Introduction

I.A. Current Requirements

The Administrator is required to prescribe regulations to protect passengers and property on aircraft operating in air transportation or intrastate air transportation against acts of criminal violence or aircraft piracy. Such protections include searches of persons and property that will be carried aboard an aircraft to ensure that they have no unlawful dangerous weapons, explosives, or other destructive substances (49 U.S.C. 44901–44903). Screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation must be done before the aircraft is boarded, using weapon-detecting facilities or procedures used or operated by employees or agents of the air carriers, intrastate air carriers, or foreign air carriers (49 U.S.C. 44901).

Part 108 of Title 14, Code of Federal Regulations, contains rules in §§ 108.9, 108.17, and 108.20 for air carrier screening operations. These rules, which are available to the general public, provide basic standards for the screeners, equipment, and procedures to be used. In addition, each air carrier required to conduct screening has a nonpublic security program (required under current §§ 108.5 and 108.7) that contains detailed requirements for screening of persons, accessible property, checked baggage, and cargo. All air carriers subject to part 108 have adopted the Air Carrier Standard Security Program (ACSSP). The ACSSP provides identical measures for air carriers. Individual air carriers may request alternate procedures in specific situations if the required level of security can be maintained.

Part 109 of Title 14, Code of Federal Regulations (14 CFR), contains rules in § 109.3 for conducting security procedures by indirect air carriers. An indirect air carrier is any person or entity within the United States, not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in the air transportation of property, and uses, for all or any part of such transportation, the services of a passenger air carrier. This does not include the U.S. Postal Service (USPS) or its representative while acting on behalf of the USPS. This definition does include freight forwarders and air couriers. Each indirect air carrier has a nonpublic security program (§ 109.5) that contains detailed requirements for screening cargo. All indirect air carriers adopt the Indirect Air Carrier Standard Security Program (IACSSP). The IACSSP provides identical measures for indirect air carriers. IACSSP requirements are essentially the same as the requirements in the ACSSP for screening cargo.

Part 129 of Title 14, Code of Federal Regulations, contains rules in §§ 129.25, 129.26, and 129.27 for foreign air carrier screening. Each foreign air carrier conducting screening has a nonpublic security program (§ 129.25) that contains detailed requirements for screening persons, accessible property, checked baggage, and cargo. All foreign air carriers conducting operations in the United States are subject to part 129 and have adopted the Model Security Program (MSP) for their security programs in the United States. The MSP provides identical measures for foreign air carriers. MSP requirements applicable within the United States are essentially the same as the requirements in the ACSSP.

Throughout this notice, air carriers, indirect air carriers, and foreign air carriers are collectively referred to as ''carriers.''

There are several means by which a carrier can conduct screening. It can use its own employees. It can contract with another company to conduct the screening in accordance with the carrier's security program. It can contract with another carrier to conduct screening. In each case, the carrier is required to provide oversight to ensure that all FAA requirements are met.

I.B. History

Since 1985, at least 10 major international terrorist incidents involving aviation have occurred worldwide, including the bombing of Pan Am flight 103 on December 21, 1988, which killed 243 passengers, 16 crewmembers, and 11 people on the ground. While all of the attacks against U.S. civil aviation in this period have taken place abroad, the link between the February 1993 World Trade Center bombing and the January 1995 plot to bomb several U.S. airliners in the Far East suggests that civil aviation in the United States may have become a more attractive target for terrorist attacks. Ramzi Ahmed Yousef was convicted (along with different sets of co-conspirators) for his roles in both plots as well as for the bombing of Philippine Airlines flight 434 in December 1994. Had Yousef's plot to bomb U.S. airliners succeeded, hundreds if not thousands of passengers would almost certainly have been killed.

These incidents have demonstrated the capabilities and intentions of international terrorists to attack the United States and its citizens as well as the ability of such terrorists to operate in the United States. The threat posed by foreign terrorists in the United States remains a serious concern, and the FAA believes that the threat will continue for the foreseeable future.

The threat of terrorist acts against aircraft has led to several actions by the United States Government to strengthen

aviation security. These actions include two Presidential commissions, the Aviation Security Improvement Act of 1990, the Federal Aviation Reauthorization Act of 1996, and several FAA rulemakings to improve security measures at airports. The action proposed in this notice therefore is part of a broad, continuing effort to increase aviation security.

Following the tragic crash of TWA flight 800 on July 17, 1996, the President created the White House Commission on Aviation Safety and Security (the White House Commission). The White House Commission issued an initial report on September 9, 1996, with 20 specific recommendations for improving security. One recommendation was for the development of uniform performance standards for the selection, training, certification, and recertification of screening companies and their employees. The final report, issued on February 12, 1997, reiterated this recommendation.

Before the crash of TWA flight 800, the FAA had become concerned as well that there was a need to reevaluate the overall level of civil aviation security. The FAA asked the Aviation Security Advisory Committee (ASAC) to review the threat assessment of foreign terrorism within the United States, consider the warning and interdiction capabilities of intelligence and law enforcement, examine the vulnerabilities of the domestic civil aviation system, and consider the potential consequences of a successful attack. The ASAC, which consists of representatives from the FAA and other Federal agencies, the aviation industry, and public interest groups, formed a subgroup called the Baseline Working Group (BWG) on July 17, 1996, to evaluate the domestic aviation security ''baseline'' in light of the new threat environment. The BWG released its Domestic Security Baseline Final Report on December 12, 1996. The report presented multiple recommendations for improving aviation security through certifications of screeners and screening companies, rapid deployments of available technologies, and institutional and procedural changes in the U.S. aviation security system.

On October 9, 1996, the President signed the Federal Aviation Reauthorization Act of 1996, Public Law 104–264. Section 302 (49 U.S.C. 44935 note) states:

> The Administrator of the Federal Aviation Administration is directed to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services.

I.C. Aviation Security Screening

Effective aviation security screening is critical to protecting passengers in air transportation against acts of criminal violence and aircraft piracy. It is the front line of defense against potential acts of aviation terrorism. It is therefore imperative that airports, carriers, screening companies, and the FAA work together to strengthen continually the aviation security screening system.

The FAA first required domestic passenger screening in 1973 in response to increasing numbers of hijackings. The focus at that time was to detect weapons, such as handguns and knives, through the use of X-ray and metal detector technologies at security checkpoints. The introduction of screening greatly reduced hijackings in the United States. Since then, the greater challenge to security has been the prevention of aircraft bombings, a challenge that became particularly urgent in the 1980's as various terrorist elements succeeded in bringing down aircraft and causing mass casualties by means of on-board bombs. Some of the bombs used against aircraft have been crude devices, easily detectable by screeners utilizing X-ray machines, but the trend has been toward smaller improvised explosive devices (IED's) and plastic explosives that are more difficult to detect without explosives detection systems (EDS). The threat of IED's has also expanded the initial scope of screening from passengers and carry-on baggage only to include checked baggage and cargo.

The FAA has conducted extensive research regarding how the United States can best counter these evolving threats. The research has centered around both technologies and human factors issues; each is important to thorough, effective screening and poses unique challenges.

The traditional X-ray and metal detector technologies have been supplemented since the mid-1990's with several new advanced screening technologies. An advanced screening technology, as that term is used here, is any technology that is capable of automatic threat identification. These advanced screening technologies include explosives detection systems, explosive trace detectors (ETD), and advanced technology (AT) X-ray-based machines for automatic bulk explosives detection, some of which employ screener assist technologies. At this time EDS-type technologies certified by the FAA apply medical computed axial tomography (CAT) scan technology, but other types of technologies also may meet EDS criteria in the future. The EDS are used to screen checked baggage and have the ability to automatically detect threat types and quantities of bulk explosives at FAA-specified detection and false alarm rates, up to the initial system alarm and without human intervention. The AT systems also focus on detecting bulk explosives in checked baggage and have automatic alarm capabilities; however, AT systems do not meet the full EDS standards required by the FAA for all categories of explosives, amounts, detection rates, and false alarm rates. The AT's still have more sophisticated detection capabilities than the standard X-ray systems used for imaging only. The ETD's also detect explosives, but differ in that they are used to analyze and detect minute amounts of explosive residues or vapors, are much smaller in size and less costly than the EDS's and AT's, and are primarily used at screening checkpoints to screen items entering sterile areas.

The FAA currently is deploying several types of advanced screening technologies in the Nation's airports. Each advanced screening technology is capable of detecting specific items. The FAA believes that the most effective approach to screening at this time is to use a combination of these technologies at screening locations.

Some of the technologies being developed focus on the human element of screening. The FAA currently is developing and deploying computer based training (CBT) and threat image projection (TIP) systems that provide initial and recurrent training and monitor screener performance. The potential benefits of CBT are self-paced learning, enhanced opportunities for realistic practice, combined training and performance testing, and instruction that is uniform throughout the country. CBT currently is being used to train screeners in many of the Nation's busiest airports, and the FAA is evaluating its effectiveness at these locations. The FAA anticipates making CBT available for use by all of the carriers but does not anticipate requiring its use at this time. Some private companies also are developing CBT systems that may earn FAA acceptance and the FAA encourages this development.

TIP also has significant potential benefits and is a critical component of this proposed rule. TIP systems currently are being deployed and tested on both X-ray and explosives detection systems. The TIP systems use two different methods of projection—fictional threat image (FTI) and

combined technology image (CTI). FTI superimposes a threat image from an extensive library of images onto the X-ray image of actual passenger baggage being screened. The image appears on the monitor as if a threat object actually exists within the passenger's bag. The screener can check whether the image is an actual threat image before requesting that the bag be screened further. The CTI is a prefabricated image of an entire threat bag and also can be electronically inserted onto a display monitor. For both types of images, screeners are immediately provided with feedback on their ability to detect each threat. TIP exposes screeners to threats on a regular basis to train them to become more adept at detecting threats and to enhance their vigilance. TIP allows the FAA to expose screeners to the latest potential threats and should allow the FAA and the industry to determine what elements make a screener more effective, such as training methods and experience levels. Future TIP data may affect requirements proposed in the security programs.

The FAA also is validating a series of screener selection tests to help screening companies identify applicants who may have natural aptitudes to be effective screeners. Currently, the cognitive skills and processes for optimal detection of threat objects are poorly understood. The FAA sees an immediate need to identify valid tests to select job applicants who should be able to become successful screeners. The FAA currently is administering several screener selection tests to groups of screener trainees as part of their CBT and then measuring their subsequent job performance using TIP. If valid selection tests are developed, the FAA may offer them to carriers and screening companies for optional use but does not anticipate requiring their use at this time.

The FAA will continue its human factors research. Although the new technologies described are highly effective in detecting explosives, the FAA realizes that each one is ultimately dependent on the human operator. Screeners are critical to the screening process. Future human factors research will focus on the attributes, skills, and abilities that make for an effective screener. Such elements may include an individual's cognitive ability, learned skills, education level, quality and amount of training, and experience (i.e., time on the job). Screener pay levels and the quality of supervision may also affect screener performance (i.e., threat detection rates). Analyzing TIP data will help the FAA to explore and confirm or refute many hypotheses regarding the factors that affect screener performance.

What is known currently is that each type of screening and screening technology is unique and requires different skills and abilities. For example, monitoring a walk-through metal detector requires a limited understanding of the technology involved and does not involve image interpretations. Conversely, operating an EDS is much more complex and requires operators to exercise independent judgment as they interpret and make decisions regarding images that are all distinctly different. The screening tasks described in these examples require different types of skills and abilities and require training designed to optimize performance for those particular tasks. The FAA's human factors research will attempt to isolate these skills and abilities and determine how they can best be recognized and developed. With regard to compensation, wages for screeners in the United States currently average $5.75 per hour and some screeners do not receive fringe benefits. Average annual screener turnover rates exceed 100 percent in many locations. Screeners repeatedly state that low wages and minimal benefits, along with infrequent supervisor feedback and frustrating working conditions, cause them to seek employment elsewhere.

Experience in other countries seems to indicate that higher compensation, more training, and frequent testing of their screeners may result in lower turnover rates and more effective screener performance. The FAA has reports from many sources that screening, particularly screening of checked baggage, is conducted more effectively in many other countries than it is in the United States. U.S. citizens traveling abroad also have expressed concern that screening in the United States appears to be less thorough than it is in other countries. While the FAA until recently did not have actual performance data from other countries to substantiate these views, it now has test results that are strongly indicative of better screener performance by some European authorities than by some U.S. screening operators. The test results were derived from joint testing of screeners that the FAA conducted with a European country. FAA special agents and government personnel from the European country tested screeners in each country using the same methods. On average, screeners in the European country were able to detect more than twice as many test objects as screeners in the United States. Screeners in the European country receive significantly more training and higher salaries than screeners in the United States and receive comprehensive benefits. Screeners in the European country also have more screening experience on average than their United States counterparts. U.S. air carriers and screening companies may want to pursue any and all of these factors to achieve higher performance. The FAA will continue to conduct research and examine operational data to determine how these factors affect screener performance and retention, both domestically and in conjunction with foreign governments.

It is clear that the United States can improve upon practices in many of these human factors areas making its aviation screening operations as strong and effective as its other aviation operations and endeavors. Several issues related to human factors in screening, such as performance and the environment in which screeners work, are addressed in this NPRM. The FAA invites comments and supporting data regarding human factors issues such as the potential affects of increased wages, benefits, experience, and training on screener performance.

I.D. The Advance Notice of Proposed Rulemaking (ANPRM)

In response to the Congressional mandate and to the White House Commission report, the FAA published an ANPRM on March 17, 1997 (62 FR 12724), requesting comments on certification of companies providing security screening. The FAA received 20 comments from the public on the ANPRM, all of which were substantive.

Subsequent to the publication of the ANPRM, the FAA began field testing threat image projection systems and evaluating their potential for measuring screener performance. The FAA determined that the TIP systems would be integral to proposing requirements for performance measurements and standards. Therefore, the FAA published an ANPRM withdrawal notice on May 13, 1998 (63 FR 26706), to allow TIP to be adequately field tested and validated before the FAA proceeded with the rulemaking. Although the ANPRM was withdrawn, the FAA considered and incorporated many of the commenters' suggestions in this proposal. The following is a brief summary of the overall comments.

While commenters disagreed on several issues, including the level of oversight responsibility that air carriers should have over certificated screening companies, commenters generally agreed that national standards for security screening operations are

needed. Approximately one-third of the commenters stated that certificating individual screeners would have a greater impact on improving security than certificating screening companies. Most of these commenters also stated that certificating individual screeners would improve screener professionalism and performance.

Approximately half of the commenters agreed that air carriers conducting screening operations should be subject to the same standards as certificated screening companies. A majority of commenters stated that the same screening operation requirements that apply to U.S. carriers should apply to foreign carriers providing services in this country. Several commenters disagreed with any proposal by the FAA to regulate joint-use checkpoints and checkpoint operational configurations. More detailed discussions of the issues raised by commenters are provided throughout the proposed rule section of this preamble.

I.E. Related Rulemakings

On August 1, 1997, the FAA published two NPRM's. Notice No. 97–12 (62 FR 41730) proposes to revise 14 CFR part 108 to update the overall regulatory structure for air carrier security. Notice No. 97–13 (62 FR 41760) proposes to revise 14 CFR part 107 to update the overall regulatory structure for airport security. Notice No. 97–12 and notice No. 97–13 are the result of several years of work by the FAA, airports and air carriers, and the Aviation Security Advisory Committee (ASAC), a committee formed under the Federal Advisory Committee Act (5 U.S.C., appendix II) in April 1989 by the Secretary of Transportation.

This document proposes to amend the proposed rule language of part 108 in Notice No. 97–12 rather than the current part 108. The numbering system for part 108 of this NPRM is based on the numbering system for Notice No. 97–12. The numbering systems for proposed part 111 and revised part 109 are also closely aligned with the Notice No. 97–12 numbering system for clarity and consistency.

II. The Proposal: Overview

This document has two objectives: to propose procedures for certification of screening companies; and to propose other requirements to improve screening, such as performance measurements and new training and FAA testing requirements for screeners. The FAA believes that this proposal would improve performance, improve the consistency and quality of screening, and meet the congressional mandate stated in the Federal Aviation Reauthorization Act of 1996 and the intent of the White House Commission recommendations.

This overview contains a summary of the basic framework of the proposed rule for certification of screening companies. It also contains more detailed discussions of some of the approaches to regulating screening that are implemented in the proposals and the FAA's reasons for using these approaches.

II.A. Summary

The major proposals contained in part 111 and the changes and additions proposed to parts 108, 109, and 129 are as follows:

(1) The proposed rule would require certification of all screening companies that inspect persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon in the United States on behalf of air carriers, indirect air carriers, or foreign air carriers required to adopt and carry out FAA-approved security programs (proposed §§ 111.1 and 111.109(a)).

(2) The certification requirement would include all persons conducting screening within the United States under parts 108, 109, and 129. An air carrier, indirect air carrier, or foreign air carrier that performs screening for itself or for other carriers would have to obtain a screening company certificate (proposed §§ 108.201(h), 109.203(a), and 129.25(k)).

(3) The proposed rule would provide for provisional certificates for new screening companies and screening companies already performing screening at the time of publication of the final rule. Before the end of the provisional period, screening companies would apply for screening company certificates, that would be valid for 5 years (proposed § 111.109(d) and (e)).

(4) Responsibility for the performance of a screening company would be borne by the screening company and the relevant air carrier(s), indirect air carrier(s), or foreign air carrier(s). Carrier oversight would be required (proposed §§ 111.117; 108.103(b); 108.201(i) and (j); 109.103(b); 109.203(b) and (c); and 129.25(c), (l), and (m)).

(5) The proposed rule would require approvals of operations specifications that would include locations of screening sites; types of screening; equipment and methods used to screen; and screener training curricula (proposed §§ 111.113 and 111.115).

(6) The proposed rule would require that screening companies adopt and implement FAA-approved screening company security programs that would include procedures to perform screening functions, including operating equipment; screener testing standards and test administration requirements; threat image projection standards, operating requirements, and data collection methods; and performance standards (proposed §§ 111.103, 111.105, and 111.107).

(7) The proposed rule would set forth requirements for screening companies regarding the screening of persons and property and the use of screening equipment (proposed §§ 111.201 and 111.203).

(8) The proposed rule would add requirements for the use of X-ray systems to part 109 and for the use of explosives detection systems to part 129 (proposed §§ 109.207 and 129.28).

(9) The proposed rule would provide consolidated employment standards for all screening company personnel, including new training requirements for screeners regarding courteous and efficient screening and U.S. civil rights laws and for supervisors regarding leadership and management subjects (proposed § 111.205).

(10) The proposed rule would require that screening companies have qualified management and technical personnel (proposed § 111.209).

(11) The proposed rule would require that screening instructors meet minimum experience and training standards (proposed § 111.211).

(12) The proposed rule would specify training requirements for screening companies regarding training programs and knowledge of subject areas and would require that the training programs be submitted to the FAA for approval (proposed § 111.213).

(13) The proposed rule would require that all screening personnel pass computerized FAA knowledge-based and X-ray interpretation tests before and after their on-the-job training and at the conclusion of their recurrent training and that the tests be monitored by carrier personnel in accordance with the carriers' security programs. The proposed rule would also describe and prohibit specific instances of cheating and other unauthorized conduct (proposed §§ 111.215, 111.217, 108.229, 109.205, and 129.25(p)).

(14) The proposed rule would require that all carriers install threat image projection (TIP) systems on their X-ray systems and that all air carriers and foreign air carriers install TIP systems on their explosives detection systems unless otherwise authorized by the Administrator. Screening companies would be required to use the TIP systems as specified in their security

programs, including collecting and analyzing the TIP data, and to meet the performance measurements and standards set forth in their security programs (proposed §§ 108.205 and 108.207; 129.26 and 129.28; 109.207; and 111.223).

(15) The proposed rule would prohibit interference with screening personnel in the course of their screening duties (proposed § 111.9).

In addition to the above proposed changes, the proposal would amend part 191 to extend SSI requirements to certificated screening companies and their employees.

The FAA is not proposing to require certifications for individual screeners, as some commenters to the ANPRM recommended. The FAA does not have the statutory authority under Title 49 or the Federal Aviation Reauthorization Act of 1996 to require such certification. Other requirements in this proposal would help to improve the professionalism of screeners; e.g., by providing for mobility of screener records (proposed § 111.221) and by requiring letters of completion to be issued to screeners and screener supervisors upon their successful completion of initial, recurrent, and specialized courses of training (proposed § 111.219).

The FAA has also decided not to specifically address joint-use screening locations in this rulemaking, although comments were invited with respect to this issue in the ANPRM. A joint-use screening location is a security location that is screening for multiple carriers. The FAA received several comments to the ANPRM that stated that an agreement should be required for all air carriers to sign with the managing air carrier of a screening location. However, other commenters stated that the concept of joint-use screening locations is an internal management tool of the air carriers that allows flexibility. These commenters believe that it is not appropriate for the FAA to place undue restraints on the management process for joint-use screening locations. After considering the ANPRM comments and reviewing representative samples of joint-use screening location agreements, the FAA has determined that rulemaking is not the best way to address these issues. They would be better addressed in future security program amendments and/or compliance and enforcement policies.

II.B. Certification of All Who Perform Screening

This proposal would require that all companies that perform screening be certificated under part 111, even if they are air carriers, foreign air carriers, or indirect air carriers. This approach is consistent with several comments to the ANPRM that stated that air carriers conducting screening should be subject to the same standards as certificated screening companies.

Certifying all screening companies, including carriers that perform screening, would:

- Provide uniform standards for all companies that intend to provide screening.
- Ensure that all companies that conduct screening benefit from the enhanced requirements imposed upon screening companies in part 111.
- Clearly differentiate between the roles of the air carriers, indirect air carriers, and foreign air carriers as carriers and as certificated screening companies.
- Clarify the relationships among air carriers, indirect air carriers, and foreign air carriers that contract with each other for screening services.

Some commenters to the ANPRM questioned the need to certificate air carriers for the purpose of screening since they are already certificated by the FAA. Air carriers currently are certificated to operate as air carriers under part 119. However, the certification process in part 119 does not include an evaluation of whether an applicant can adequately perform screening functions. The FAA has determined that to fulfill the congressional mandate, all who perform screening shall establish their ability to do so by qualifying for screening company certificates. Any air carrier, indirect air carrier, or foreign air carrier that does not choose to hold a screening company certificate could contract with a certificated screening company to perform its screening.

II.C. Roles of Carriers and Screening Companies

Currently, carriers have statutory and regulatory responsibilities to conduct screening properly. The FAA cannot propose to relieve carriers of these responsibilities. The responsibility of air carriers and foreign air carriers to ensure that screening is conducted on persons and property to be carried in the cabin of an aircraft is in the statute (49 U.S.C. 44901(a)) and cannot be changed by the FAA. As discussed previously, the requirement to certificate screening companies also is in the statute. Issues arise, then, concerning the relationships between the carriers and the screening companies and the proper roles for each. The FAA interprets these statutory provisions as leaving the ultimate responsibility for screening with the carriers and providing for concurrent carrier and screening company responsibilities for some tasks. This relationship is not unlike that between repair stations and air carriers. Repair stations are certificated under part 145 and are responsible for performing maintenance in accordance with regulations; however, the air carriers remain ultimately responsible for the airworthiness of their aircraft. The FAA recognizes that this relationship may be difficult to define, but proposes the following general guidance.

The FAA envisions that the carriers would continue to be responsible for providing proper screening equipment, such as X-ray machines and metal detectors. The carriers would also have primary responsibility to deal with the airport operators on issues regarding the locations of screening equipment in the airports. Finally, and perhaps most importantly, the carriers would be responsible for overseeing the performance of the screening companies to ensure that they carry out their duties.

The screening companies would be responsible for inspecting persons and property for unauthorized explosives, incendiaries, and deadly or dangerous weapons. They would be responsible for ensuring that they use the equipment properly, staff the screening locations adequately, train their screeners properly, and otherwise manage the screening locations so as to enable them to meet the standards for screening in their security programs.

II.D. Compliance and Enforcement Issues

As discussed previously, this proposed rule would not shift the responsibility for screening from air carriers, indirect air carriers, and foreign air carriers to screening companies. Rather, certificating screening companies is a way to assist carriers in ensuring that those who conduct screening are fully qualified to do so. Certification also would make screening companies directly accountable to the FAA for failures to carry out their screening duties. This rule would increase the level of responsibility required of screening companies while improving screening oversight by air carriers, indirect air carriers, and foreign air carriers.

The FAA envisions that screening companies would be primarily responsible for the day-to-day operation of the screening locations. Screening companies generally would be held accountable for screening location failures. The FAA intends to look to screening companies to maintain the

highest standards and to continuously monitor and improve their capabilities.

The full range of actions would be available for use against screening companies that failed to comply with the regulations, their operations specifications, and their security program. These include counseling, administrative action (warning notices and letters of correction), civil penalties, and certificate actions (suspension or revocation of a certificate). In addition, if the screening company was unable to carry out its duties at a specific screening location, the FAA could amend its operations specifications (see § 111.111) to withdraw its authority to screen at that location.

If a company was removed from a location because of its failure to screen properly, the FAA would continue to monitor closely that location as another company came in to conduct screening. The FAA is concerned about situations in which incoming companies use the same equipment and hire the same employees from the unsatisfactory companies and make no real changes in the quality of screening. The FAA would consider requiring incoming companies to take additional corrective measures to ensure that the problems that affected the performance of the previous companies do not recur.

Carriers would continue to be responsible for the overall proper screening of persons and property. They would be directly accountable for failing to carry out duties specifically assigned to them, such as providing the proper screening equipment and carrying out specific oversight functions (such as Ground Security Coordinator duties and auditing functions). In addition, when a screening company failed to screen properly or otherwise failed to carry out its duties, the FAA would carefully evaluate all facts and circumstances to determine whether the carrier should be the subject of enforcement action. In general, repeated or systemic failures of a screening company to comply with the regulations or fundamental failures of the screeners to comply with security requirements might lead to the conclusion that the carrier has failed to conduct screening properly or to oversee the screening company's operations, even if the carrier had conducted the required audits and did not discover problems. The audits would be one tool for the carrier to use but would not limit its responsibility to ensure proper screening. Carriers would be expected to identify problems with the screening company and take corrective action in a timely manner.

If the FAA determines that a screening company is performing poorly, whether at a particular location or in its overall operations, the FAA could require the screening company and/or the responsible air carriers to implement additional security measures under this proposal to maintain system performance. Such additional measures would vary depending on the circumstances and might involve, for example, additional training for screeners, redundant screening of property, or increased management oversight. The measures could slow screening operations at affected locations but would help ensure that thorough, effective screening was being performed. If the additional measures proved ineffective or if the circumstances were extreme, amendments of the screening companies' operations specifications or suspensions or revocations of certificates could result.

The proposal would require that each air carrier or foreign air carrier required by the FAA to implement additional security measures to maintain system performance notify the public of the increased measures by posting signs at affected screening locations (see section IV.F.). The signs would be required to state that the additional security measures being implemented by the air carriers could slow screening operations at those locations, but that the measures are necessary to ensure the safety and security of flights. The proposal is intended to ensure that the traveling public is informed and to increase screening company and air carrier accountability for their operations. The specific language and specifications to be required for the signs would be included in the security programs.

II.E. New Part 111

The FAA proposes to create a new part 111, which would contain all the requirements for screening companies. Part 111 would require certification of all screening companies that perform screening for air carriers under part 108, indirect air carriers under part 109, and foreign air carriers under part 129.

The proposal would affect only the screening that is done by inspecting persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon, as required under parts 108, 109, and 129. These inspections currently are performed by a variety of methods such as manual searches, metal detectors, X-ray machines, explosives detection systems, explosives trace detection systems, and advanced technology devices. The proposal would also amend certain requirements in parts 108, 109, and 129 to accommodate the proposed new part 111.

Forms of screening other than inspection, such as determining that a person is a law enforcement officer with authority to carry a weapon on board aircraft, would not be covered in part 111. These other forms of screening would not have to be done by a certificated screening company. These types of screening would continue to be the responsibility of the carriers. They could be performed, as they are now, by such methods as ticket agents checking the documentation of law enforcement officers flying armed, local law enforcement officers at the checkpoint checking the credentials of law enforcement officers entering the sterile area, or checkpoint security supervisors checking the law enforcement officer's credentials. The checkpoint security supervisors checking these credentials would be doing so as representatives of the carriers, rather than as part of their duties for the certificated screening companies.

II.F. Screening of Cargo

Certain cargo carried on passenger air carriers must be screened. The FAA considered whether this screening should be done only by certificated screening companies and has decided to propose that it should be. If unauthorized explosives or incendiaries are introduced aboard passenger aircraft in cargo, it would be just as devastating as if introduced in checked or carry-on baggage or on passengers. The FAA believes that cargo also must be subjected to rigorous screening controls to avoid such a result.

Accordingly, the FAA proposes that inspections of cargo for unauthorized explosives and incendiaries be done only by certificated screening companies, similar to the proposal for persons, accessible property, and checked baggage. Under this proposal, air carriers and foreign air carriers carrying passengers would be required to ensure that cargo screening is conducted by certificated screening companies. Indirect air carriers that elect to perform required screening (instead of referring their cargo to air carriers or foreign air carriers for required screening) also would be required to hold screening company certificates or contract with certificated screening companies to perform the screening. The FAA believes that a comprehensive approach to certificating all screening companies, including companies that screen cargo, is vital to having a safe, secure, and effective aviation security system. The FAA requests public comments on the issues

relating to certificating indirect air carriers in this NPRM.

II.G. Screening Standard Security Program (SSSP)

In addition to the regulatory requirements, the proposed rule would establish a separate security program for screening companies that would accompany the requirements in proposed part 111. The Screening Standard Security Program (SSSP) would contain detailed and sensitive requirements relating to screening that currently are contained in the carrier security programs, as well as additional requirements related to proposals in part 111. The carriers as well as the screening companies would be required to ensure that their screening companies' security programs are carried out.

The FAA considered proposing that screening companies be required to comply with the standardized security programs for air carriers, foreign air carriers, and indirect air carriers. Requiring screening companies to comply with the ACSSP, MSP, and IACSSP would emphasize that the carriers are primarily responsible for ensuring that screening is properly carried out. It would also prevent having to relocate the screening-related language from the carrier security programs to the screening standard security program. However, the FAA recognizes that this system could result in confusion in some cases where screening companies might have to observe portions of three different security programs—the ACSSP, the MSP, and the IACSSP. Having a separate security program for screening companies would also more clearly delineate the responsibilities of screening companies and those of the carriers, which would continue to be responsible for proper screening. Both part 111 and the Screening Standard Security Program would state that the requirements also are applicable to carriers that conduct screening.

The FAA requests comments on consolidating all screening-related program requirements into one screening standard security program. The FAA has prepared a draft SSSP proposal to accompany the release of this NPRM. Commenters with a need to know, as specified in 14 CFR part 191, may request copies of the draft proposed SSSP from the Office of Civil Aviation Security Policy and Planning as listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

II.H. Screener Qualifications

As discussed in section I.C., it is critical that screeners be highly qualified in order to counter the increasing sophistication of the threats. This proposal contains a number of provisions to promote improved qualifications of screeners. Most notable are the proposed requirements to include FAA testing standards for screening personnel, test administration requirements for carriers, and additional monitoring of screener performance made possible by TIP as discussed in section II.I.

Under this proposal, screeners would be required to pass knowledge-based and X-ray interpretation tests developed by the FAA before beginning on-the-job training. This would help to ensure that all screeners have uniform understanding of their tasks and a consistent high level of achievement. The FAA would provide the tests by amending the screening companies' security programs through notice and comment procedures and would expect the screening companies to train their personnel to pass those tests. Screening companies would have flexibility in designing their training programs and would submit them to the FAA for approval. The FAA is not proposing that training programs be designed in a specific manner, only that they thoroughly and effectively address all of the testing standard subjects. The proposal also would require that the carriers administer and monitor the tests to promote carrier involvement in the training process and to establish closer accountability for the administration of the training tests.

II.I. Performance Measurements and Standards

For the FAA, carriers, and screening companies to monitor the performance of screening companies and to track their level of performance, a consistent means of regularly measuring performance is needed. The FAA, carriers, and screening companies need to be able to monitor how well screeners are detecting threat objects and must be able to determine whether performance is decreasing and whether corrective measures are needed. The FAA, carriers, and screening companies need to be able to measure performance of a screening location to determine what factors lead to better or worse detection and what corrective measures are effective.

Factors that may lead to better or worse detection include the amount of passenger traffic, the type of training that the screeners receive, how often screener functions are rotated, and the conditions under which screeners are working. The FAA, carriers, and screening companies also need to determine which types of threat objects the screeners can readily detect and which types they have difficulty detecting. All of these factors can be analyzed along with other elements that may affect screening ability, such as education level, screening experience, and screener compensation levels. The analyses would be used by the FAA to work more effectively with screening companies and carriers to improve screening continuously. Further, it appears that regular testing of screeners promotes vigilance. Frequent testing can increase screeners' ability to recognize threats that they rarely, if ever, encounter in reality but must be ready to detect should the unlikely event occur.

In order to monitor screening performance and to examine the effects of all of these factors, the means of measuring performance must be consistent, reliable, cost effective, and frequent. The two options for conducting testing are anonymous testing by individuals and computer testing. The FAA and the carriers now rely on testing conducted by individuals. Carriers currently are required to test each screener periodically, as set forth in their security programs.

The FAA uses FAA employees to submit for screening items of baggage that contain test objects that will appear on the X-ray screens to be weapons or explosives. There are a number of limitations involved with this method, however. For instance, the FAA tests cannot be conducted frequently at many screening locations due to the large number of airports in the United States and their diverse locations. The FAA must arrange for different employees to travel to airports and have them change their appearance after each test to prevent the screeners from recognizing them as FAA testers. It is therefore very difficult, costly, and labor-intensive to obtain a large number of tests that accurately measure screeners' success rates and that provide a continuous measure of the success of screening locations, either overall or under specific conditions. Further, when screening personnel realize that the FAA is conducting tests, they sometimes alert other nearby screening locations to expect testing, which can skew the testing results. Because FAA testing is infrequent at many locations, it also can limit the number and variety of test objects that the screeners are exposed to. Also, because the tests are

conducted by individuals, there is the possibility that different FAA employees will apply the test protocols differently, which also could skew the testing results.

To deal with these problems, the FAA has developed TIP, discussed previously in section I.C. This computer-based system is capable of introducing test objects to screeners on the X-ray and EDS systems at various rates set on the computers. The TIP program can be set to run the entire time that a screening location is in use. Test items can be easily added to or changed by simply loading new images or parameters into the computers, providing an efficient means to regularly expose screeners to the most recent and sophisticated threats. The success rates can easily be recorded and later analyzed by the FAA, carriers, and screening companies to monitor continuously how well the screening locations are operating.

The FAA has conducted validation testing of TIP. In addition, at one location one screening company conducted extensive testing of TIP and provided its data to the FAA for analysis. The FAA determined that the detailed results of the FAA and screening company testing should not be made available to the general public because they could be used to attempt to discover ways to defeat the screening system; therefore, the FAA has determined that this information is sensitive security information under 14 CFR part 191. Air carriers, foreign air carriers, and indirect air carriers that have security programs under parts 108, 129, and 109, respectively, may obtain further information on these tests and the FAA's analysis by contacting the Office of Civil Aviation Security Policy and Planning as listed in the section titled **FOR FURTHER INFORMATION CONTACT**. Screening companies that are screening for carriers may obtain copies of the testing results through their carriers. Comments on the data and analyses should be submitted to the Office of Civil Aviation Security Policy and Planning, rather than to the public docket, because of the sensitivity of the information.

Based on all of the data gathered to date, the FAA has determined that TIP is an effective and reliable means to measure screener performance. Accordingly, the proposed rule would require the use of threat image projection systems on all X-ray and explosives detection systems. TIP would be installed over a period of time as specified in the security programs. The specific TIP equipment requirements acceptable to the Administrator would be set forth in the carriers' security programs. The screening companies and carriers would be required to download the data or allow the FAA to download the data in accordance with standards that would be adopted in the security programs through notice and comment procedures. The screening companies and carriers would be able to download the data at any time to monitor their own performance.

The results of TIP would be used to monitor the performance of screening locations, screening companies, and individual screeners. TIP operational data would be analyzed to focus resources on most effectively improving screening to detect threats. TIP data can be used to determine such things as what working conditions lead to better performance, on which topics the screeners need further instruction, and what corrective action or training programs prove to be most successful. The FAA would look at the success rates of screeners detecting various kinds of test objects, the success rates at different times of day and during different traffic levels, and the other factors that may affect screening effectiveness.

TIP also serves as a continuous means of on-the-job training for screeners. Screeners report that being exposed to TIP images keeps them alert and interested, supplements their classroom training, and fosters healthy competition among them to continuously improve their detection rates. The use of TIP provides screeners with immediate feedback regarding their performance and indicates specific areas for improvement.

The FAA anticipates that in the future, TIP data may provide a basis not only to monitor the performance of screening locations but also to establish performance standards. Under such a system, the screening companies and carriers could be required to meet the standards set forth in their security programs for the detection of various threat objects. For instance, the FAA anticipates that it would analyze TIP data to determine the range of screening company detection rates in the United States. It might then set minimum detection percentages that each screening company would have to meet based on the higher detection rates within the range. The minimum detection percentages could be incrementally raised as overall screener performance in the United States rises. The performance standards might vary depending on such factors as the screening system being used and the type of threat object. Initially, however, the FAA could implement overall performance measurement requirements whereby the FAA would collect performance data from all TIP systems installed in the United States and then require corrective action of the screening companies with the lowest performance. These performance standards would be developed based on extensive additional data from TIP systems.

The FAA would propose to add these performance measurement and performance standard requirements as amendments to the security programs through notice and comment procedures. Including these requirements in the security programs would protect them as sensitive security information and allow for flexibility in changing the standards as screening company performance improves in the United States. The use of TIP systems to establish performance measurements and ultimately performance standards would allow the FAA to monitor closely the performance of screening companies.

If performance standards were adopted in the security programs, screening companies and carriers that the FAA determined were not performing to specified standards could be held accountable in any number of ways, as discussed in section II.D.

The FAA currently tests other forms of screening, such as walk-through metal detectors and handwands, similar to the way it currently tests X-ray screening. The FAA may in the future develop performance standards for other screening equipment and proposed amendments to the security programs would be issued.

III. Proposed Part 111: Section-by-Section Discussion

Proposed part 111 would prescribe the requirements for screening company certifications and operations. Part 111 would apply to all screening companies, whether they are performing screening under part 108, 109, or 129. Carriers would be required to ensure that their screening operations, whether conducted by the carriers themselves or by screening companies with which the carriers contract, are conducted in accordance with part 111 requirements.

Subpart A would contain general information relating to applicability, definitions, inspection authority, falsification, and prohibition against interference with screening personnel and is described in paragraphs III.A. through III.E. Subpart B would prescribe requirements for security programs, screening company certificates, operations specifications, and carrier oversight and is described in paragraphs

III.F. through III.K. Subpart C would prescribe requirements relating to screening operations such as the screening of persons and property, the use of screening equipment, employment standards, screening company manager and instructor qualifications, training and testing, and performance measurement and standards among others and is described in paragraphs III.L. through III.W. The following discussion provides details on each part 111 requirement.

Subpart A—General

III.A. § 111.1 Applicability

Proposed § 111.1 states that the part would prescribe the requirements for the certification and operation of screening companies. The requirements in proposed part 111 would apply to each screening company that screens for an air carrier under part 108, for an indirect air carrier under part 109, or for a foreign air carrier under part 129. The proposed requirements would also apply to the air carriers (including those air carriers voluntarily adopting aviation security programs), indirect air carriers, and foreign air carriers that are responsible for conducting, and therefore overseeing, screening operations. Portions of proposed part 111 would also apply to two groups of individuals: all persons conducting screening within the United States under parts 111, 108, 109 and 129 and all persons who interact with screening personnel during screening. ''Person'' as defined in 14 CFR 1.1 means ''an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity.''

The certification requirements in the proposed rule would apply only to screening companies performing screening in the United States. The FAA does not propose at this time to certify screening companies that perform screening for air carriers at foreign airports. Screening in other countries is performed either by the host governments or by private sector screening companies, but under the authority and operational control of the host governments. However, where air carriers have operational control over screening outside of the United States they would be required under this proposal to carry out and comply with all relevant sections of part 111 to the extent allowable by local law, with the exception of those requirements related to screening company certification.

III.B. § 111.3 Definitions

Proposed § 111.3 would define for the purpose of part 111 ''carrier,'' ''screening company,'' ''screening company security program,'' and ''screening location.'' The proposed definitions are needed to clarify the use of these terms in the proposed rule language.

The term ''carrier'' would be defined for the purposes of parts 108, 109, 111, and 129 to refer to an air carrier, an indirect air carrier, or a foreign air carrier.

The term ''screening company'' would be defined to mean an air carrier, indirect air carrier, foreign air carrier, or other entity that inspects persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon, as required under part 111 and 108, 109, or 129, before their entry into a sterile area or carriage aboard an aircraft.

The term ''screening company security program'' would be defined to mean the security program approved by the Administrator under this part.

The term ''screening location'' would be defined to mean any site at which persons or property are inspected for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon. Examples of screening locations are checkpoints where persons and accessible property are screened, ticket counters and baggage makeup rooms where checked bags may be screened, and cargo areas where cargo may be screened.

Additional terms to be defined in the part 108 final rule would also apply to part 111, as would any other definitions contained in parts 109 and 129 of the chapter. Of particular relevance to this rule are the definitions for ''cargo'' and ''checked baggage.''

The term ''cargo'' would be defined in part 108 to mean property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Security programs further define the term cargo.

The term ''checked baggage'' would be defined in part 108 to mean property tendered by or on behalf of a passenger and accepted by an air carrier for transport, which will be inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

III.C. § 111.5 Inspection Authority

This proposed section would clarify that a screening company shall allow FAA inspections and tests to determine its compliance with part 111, its security program, and its operations specifications. The screening company shall also allow FAA inspections and tests of equipment and procedures at screening locations that relate to carrier compliance with their regulations. This proposed section would also require screening companies to provide the FAA with evidence of compliance. Both of these proposed requirements are similar to those in proposed § 108.5 of Notice No. 97–12.

III.D. § 111.7 Falsification

This proposed section would apply falsification requirements to screening companies that are similar to those that apply under current § 108.4. While the provisions of § 108.4 apply to matters involving screening, the inclusion of a falsification rule in part 111 would serve to emphasize the requirements. Under this rule, no person would be permitted to make or cause to be made any fraudulent or intentionally false statement in any application for any security program, certificate, or operations specifications or any amendment thereto under part 111. No person would be permitted to make or cause to be made any fraudulent or intentionally false entry in any record or report that would be kept, made, or used to show compliance with part 111 or to exercise any privileges under part 111. Also, any reproduction or alteration for fraudulent purpose of any report, record, security program, certificate, or operations specifications issued under part 111 would be subject to civil penalties under this proposed rule. There are also criminal statutes that might apply to such activities.

III.E. § 111.9 Prohibition Against Interference with Screening Personnel

The proposed rule would include new requirements prohibiting any person from interfering with, assaulting, threatening, or intimidating screening personnel in the performance of their screening duties. The proposed rule is intended to prohibit interference that might distract or inhibit a screener from effectively performing his or her duties. This rule is necessary to emphasize the importance to safety and security of protecting screeners from undue distractions or attempts to intimidate. Previous instances of such distractions have included excessive verbal abuse of screeners by passengers and certain air carrier employees. Screeners encountering these situations are taken away from their normal duties to deal with the disruptive people, which may affect the screening of other people. The

disruptive persons may be attempting to discourage the screeners from being as thorough as required. Screeners may also need to summon checkpoint screening supervisors and law enforcement officers, taking them away from other duties. Checkpoint disruptions can be potentially dangerous in these situations. This proposal would help support screeners' efforts to be thorough and would help prevent persons from unduly interfering with the screening process. This proposed rule is similar to 14 CFR § 91.11, which prohibits interference with crewmembers aboard aircraft and which also is essential to passenger safety and security. Note that this proposed rule is not intended to prevent good-faith questions from persons seeking to understand the screening of their persons or property. But abusive, distractive behavior and attempts to prevent screeners from performing required screening would be subject to civil penalties under this proposed rule.

Subpart B—Security Program, Certificate, and Operations Specifications

III.F. § 111.101 Performance of Screening

Proposed § 111.101 states that each screening company shall conduct screening and screener training in compliance with the requirements of part 111, its approved screening company security program (see section III.G.), its approved operations specifications, and applicable portions of security directives (SD) and emergency amendments (EA) to security programs. When a response to an imminent threat is required, the FAA issues SD's to air carriers under current § 108.18, and EA's to foreign air carriers and indirect air carriers under §§ 129.25 and 109.5, to require immediate action and response to the threat.

SD's and EA's may be issued to carriers to help them respond to threats that require quick responses. SD's and EA's typically involve a range of differing requirements, only a portion of which may pertain to how the screening companies shall perform their duties. Currently, carriers are required to provide to their screening companies any screening-related information from SD's and EA's and any other applicable information pertaining to threats. Carriers extract the screening-related requirements from the SD's and EA's and forward them to the screening companies.

It appears that the most efficient means for the FAA to issue the SD and EA requirements to screening companies would be to continue the practice of issuing them to the carriers, who then provide appropriate information to their screening companies. It would be inefficient for the FAA to attempt to issue two different SD or EA documents, one with the requirements solely applicable to screening companies and one with all of the requirements for the carriers. Moreover, this emphasizes the ultimate statutory and regulatory responsibilities of the carriers to perform aviation security screening and to ensure that screening companies carry out the requirements in the SD's and EA's.

III.G. §§ 111.103; 111.105; and 111.107 Security Programs

As discussed in II.G., the FAA is proposing to establish a separate security program to accompany proposed part 111. The Screening Standard Security Program (SSSP) would contain requirements for screening persons, accessible property, checked baggage, and cargo for air carriers, foreign air carriers, and indirect air carriers. This would consolidate all of the screening-related requirements into a single source that screening companies could use to carry out their duties. The ACSSP would continue to contain the nonpublic details regarding the air carriers' responsibility to conduct screening under part 108, as would the MSP for foreign air carriers and the IACSSP for indirect air carriers. However, much of the screening information to be contained in the Screening Standard Security Program would be relocated from the ACSSP, MSP, and IACSSP.

Under the proposal, screening companies would be directly responsible for compliance with their security programs and might be subject to enforcement actions if they fail to comply. Screening companies would therefore have a strong interest in complying with the program requirements. Carriers would continue to have an interest in the screening requirements in the security programs, because they would remain responsible for their implementation and oversight by statute and in the case of air carriers and foreign air carriers would be transporting the persons and property being screened. As part of their oversight responsibilities, carriers would be required to have access to, understand, and make available to the FAA upon request copies of the security programs of the companies with which they contract.

Under the proposal, the sections pertaining to security program requirements are organized in the same format that is used in Notice No. 97–12 for part 108. Proposed § 111.103 would be titled ''Security program: adoption and implementation'' and would require that each screening company adopt and carry out an FAA-approved screening company security program that meets the requirements of proposed § 111.105. Proposed § 111.105 would be titled ''Security program: form, content, and availability'' and would provide specific requirements for security programs. Proposed § 111.107 would be titled ''Security program: approval and amendments'' and would describe the procedures for approvals of and amendments to security programs.

Proposed § 111.105 would be divided into three paragraphs. Paragraph (a) would state that a security program shall provide for the safety of persons and property traveling on flights provided by the air carriers and/or foreign air carriers for which a screening company screens against acts of criminal violence and air piracy and the introduction of explosives, incendiaries, or deadly or dangerous weapons. This same wording appears under proposed § 108.103 of Notice No. 97–12 for air carriers, as both parties are responsible for passenger safety. Paragraph (a) would also require that screening company screening performance coordinators (see section III.P.) acknowledge receipt of amendments to their programs in signed, written statements to the FAA within 72 hours. The security programs would have to contain the items listed under paragraph (b) of § 111.105 and be approved by the Administrator.

Proposed § 111.105(b) would list three items that a screening company's security program shall include at a minimum. The security program shall include the following: the procedures used to perform the screening functions specified in proposed § 111.201; the testing standards and training guidelines for screening personnel and instructors; and the performance standards and operating requirements for threat image projection systems. These requirements are further explained in the detailed discussions of the sections.

Proposed § 111.105(c) would describe logistical and availability requirements related to a security program. A screening company would be required to maintain at least one complete copy of its security program at its principal business office and at each airport served and to make a copy of the program available for inspection upon the request of an FAA special agent. All screening companies and applicants for screening company certificates,

regardless of type, would be required to restrict the availability of information in their security programs to those persons with an operational need to know in accordance with § 191.5 and refer requests for such information by other persons to the Administrator. All of these requirements are similar to the requirements for air carriers under proposed § 108.105.

Proposed § 111.107 would be divided into four sections: ''Approval of security program,'' ''Amendment requested by a screening company,'' Amendment by the FAA,'' and ''Emergency amendments.'' The proposed language is based on the language in proposed § 108.105 (Notice No. 97–12) with the exception of the following changes unique to screening companies.

Proposed § 111.107(a) would differ from proposed § 108.105 (Notice No. 97–12) in several ways due to the proposed application process for screening company certifications. The language would state that unless otherwise authorized by the Assistant Administrator, each screening company required to have a security program under this part would be required to submit a signed, written statement to the Assistant Administrator within 30 days of receiving the SSSP from the FAA indicating what its intentions are for adopting and carrying out a security program. A screening company could choose to adopt the SSSP as is or adopt the SSSP after making amendments to it. If a screening company chooses to adopt the SSSP without changing it, the granting of a screening company certificate by the Assistant Administrator would serve as FAA approval of the SSSP. If the screening company chooses to adopt the SSSP after making amendments to it, the Assistant Administrator would either approve the proposed security program within 30 days or give the screening company written notice to modify its program to comply with the applicable security program requirements. The remaining procedures for accepting a notice to modify or petition the notice would be the same as the procedures in proposed § 108.105 of Notice No. 97–12. In this case as well, the Assistant Administrator's granting a screening company certificate to the screening company would serve as FAA approval of the screening company's security program.

Under proposed § 111.107(b), once a screening company is employed by one or more carriers, it would be required to include in any application for amendment to its security program a statement that all carriers for which it screens have been advised of the proposed amendment and have no objection to it. The screening company would also be required to include the name and phone number for each individual who was advised at each carrier. This would ensure that screening companies would have the opportunity to apply to amend their security programs, and also would ensure that carriers would be aware of the applications and have no objections to them. Because carriers would retain primary responsibility for screening, it would be essential that they concur with any changes requested by screening companies that screen on their behalf.

Under proposed § 111.107(c) and (d), if the FAA were to seek to amend a portion of a security program that covers the activities of screening companies, it would provide to screening companies notice and opportunity to comment. Carriers would also be notified and provided opportunities to comment regarding proposed changes to the SSSP that apply to their operations. In the case of an emergency, there would be no prior notice or opportunity to comment.

III.H. § 111.109 Screening Company Certificate

Certificate required. Proposed § 111.109(a) states that a screening company may not perform required screening except under the authority of and in accordance with the provisions of a screening company certificate.

Section 302 of the Federal Aviation Reauthorization Act of 1996 (Public Law 104–264, 49 U.S.C. 44935 note) requires the Administrator to certificate companies providing security screening. The FAA proposes to certificate screening companies under 49 U.S.C. 44707, which provides for examinations and ratings of air agencies. Under that section, certain pilot schools (14 CFR part 141) and repair stations (14 CFR part 145) hold air agency certificates. That section also permits certifications of ''other air agencies the Administrator decides are necessary in the public interest'' (49 U.S.C. 44707(3)).

By certificating screening companies under section 44707 as air agencies, the companies would be under the requirements of 49 U.S.C. 44709. That section makes clear that the Administrator may re-inspect an air agency at any time. Section 44709 also contains the procedure by which the Administrator may amend, modify, suspend, or revoke a certificate. This procedure includes an air agency's right to appeal to the National Transportation Safety Board an order amending, modifying, suspending, or revoking its certificate. The Board's procedure for hearing such appeals, found at 49 CFR part 821, includes a hearing before an administrative law judge and an appeal to the full Board. A party may petition the U.S. Court of Appeals to review a decision of the Board. In this way, a screening company would receive full due process if the FAA were to take action against its certificate.

Application for a screening company certificate. Under proposed § 111.109(b), an application for a screening company certificate shall be made in a form and manner prescribed by the Administrator. The FAA anticipates a two-phase application process as follows. A company interested in applying for certification as a screening company would write to the FAA to request application instructions. The application instructions would require the applicant to submit several items in writing in a standard format. This same application package would eventually become the screening company's operations specifications if the company is approved for certification. (See next preamble section for discussion of operations specifications.) The completed application package would be submitted to the FAA as part of phase one and would contain the following items: the name of the applicant's company; the company's address; incorporation and tax identification information; a letter of intent; an organization chart; a description of the company's ability to perform and comply with regulations; the name of the company's chief executive officer; the names, titles, qualifications, and references for the screening performance coordinators; and the company's procedures for safeguarding and distributing sensitive security information under part 191.

Upon receiving an application package, the FAA would review and verify all relevant information. This review might include verifying past employment and training references for the company's screening performance coordinator. Once the FAA completes its review, it would notify the applicant and provide the applicant with a copy of the Screening Standard Security Program (SSSP). The applicant would need the security program to complete phase two of the application process.

After obtaining a copy of the SSSP, the applicant would review it to determine whether the company wants to adopt the SSSP as is or amend it to incorporate additional company-specific information. The applicant would be instructed to inform the FAA of its decision regarding the SSSP in writing within 30 days of receipt of the SSSP. At that time or soon thereafter the

applicant would prepare and submit to the FAA a copy of its training curriculum and any FAA-requested changes to its original application. (See later discussions regarding these requirements in this notice.) The FAA would provide guidance to the applicant in preparing these documents, as needed. The applicant would submit the documents as part of phase two, and the FAA would review them. If the FAA finds that the documents from phase two meet all requirements, they would be combined with the phase one documents and signed by the Administrator as the company's operations specifications. The Administrator would then issue the company a screening company certificate. If changes are needed, the FAA would request that the applicant make the specific amendments and resubmit them before the Administrator would issue a certificate.

Issuance and renewal-general. Under proposed § 111.109(c), an applicant would be entitled to a certificate if the applicant applies not less than 90 days before the applicant intends to begin screening or the applicant's certificate expires; the Administrator determines that the applicant has met the requirements of this part for the type of screening certificate requested; the issuance would not be contrary to public safety and security; and, unless otherwise authorized by the Administrator, the applicant has not had a screening company certificate revoked within the past 12 months.

Under proposed § 111.109(c)(2), the applicant would have to be able to meet the requirements of this part, to include adopting and carrying out an FAA-approved security program and approved operations specifications for it to be issued a provisional screening company certificate. Proposed § 111.109(c)(3) would describe the requirements that a screening company would have to meet for issuance or renewal of its 5-year screening company certificate. Failure to meet the performance standards set forth in its security program would be grounds for denial of the screening company certificate. Under proposed § 111.109(c)(5), if the FAA revokes a screening company's certificate, the company would have to wait 1 year before a new certificate could be issued unless otherwise authorized by the FAA. This would ensure that the company that had proven unqualified to hold its certificate could not immediately seek a new certificate. This provision is similar to a provision in 49 U.S.C. 44703(c), which relates to airmen certificates.

Provisional Certificates. Under proposed paragraph (d), companies that do not hold screening company certificates would be able to apply for provisional screening company certificates. The FAA would issue a provisional certificate to an applicant if the Administrator finds that the applicant is able to meet the requirements of this part, to include adopting and carrying out an FAA-approved security program and approved operations specifications (proposed § 111.109(c)(2)). The applicant for the provisional screening certificate would be subject to FAA investigation and required to show that it has met the requirements of this part. Under proposed § 111.109(g)(1), a provisional screening company certificate would expire at the end of the 12th month after the month in which it was issued.

The purpose of the proposed provisional certificate would be to provide a probationary period for the FAA to monitor a company's screening performance. During that year, a new screening company would undergo rigorous scrutiny by the FAA, during which time the company would have to demonstrate that it has met the requirements for FAA certification. If before the end of the 12-month period the new screening company has met the requirements of this part, and had adopted and carried out an FAA-approved security program and approved operations specifications, the company would be able to apply for and may be granted a certificate. In accordance with § 111.109(c)(1), the screening company would be required to apply for a screening certificate not less than 60 days before the expiration of the provisional certificate. Companies that cannot demonstrate that they are qualified during the year or that do not meet the performance standards specified in the security program would be denied certification.

The proposed requirements for using a provisional certificate are consistent with several comments to the Advanced Notice of Proposed Rulemaking that stated that new companies should have to operate in a provisional status during which time the FAA would perform compliance and records audits.

Under proposed § 111.109(d)(2), the holder of a provisional certificate would not begin screening at a screening location without first giving the Administrator 7 days' notice, unless otherwise authorized by the Administrator. This notice would allow the FAA to monitor the startup of new company operations at each location. The FAA anticipates that this requirement for 7 days' notice would not result in any start-up delays should a new company replace a company whose operations are decertified at a location. The FAA anticipates that it usually would notify the responsible carriers in advance that they must replace their existing screening company with a different company if performance does not improve within a certain amount of time. This advance notification to the carriers would allow them ample time to make arrangements with a new company, if necessary, and to provide the required 7 days' notice to the FAA. If for some reason the FAA was unable to notify carriers in advance, it would have the authority to waive the 7 days' notice to keep the screening location in operation.

Screening company certificate. Under proposed § 111.109(e), the holder of a provisional screening company certificate could be issued a screening company certificate. The certificate would expire at the end of the 60th month after the month in which it is issued (proposed § 111.109(g)(2)). To issue or renew a screening company certificate, the Administrator would have to determine that the applicant has met the requirements of part 111, to include adopting and carrying out an FAA-approved security program and approved operations specifications, and has implemented applicable portions of the security directives (proposed § 111.109(c)(3)).

As part of its renewal procedures, the FAA would consider the company's performance under the performance standards that could be added to the company's security program. As discussed in section II.I., the FAA anticipates using threat image projection (TIP) data to measure a screening company's overall performance for X-ray and EDS machines and eventually amending the SSSP to include performance standards. This data would then be used to help evaluate whether a screening company certificate should be issued or renewed.

The FAA is proposing that a certificate be valid for 60 months. The screening company would be required to apply for a renewal at least 60 days before the expiration date in order to continue screening operations. The 60-month (5-year) renewal would allow the benefits of renewal without creating an undue burden on the screening company. As with carriers, the FAA would inspect screening companies regularly and would continually monitor operations and tests to determine that each screening company is in compliance with the regulations, its security program, and its operations

specifications. This would result in consistent and close monitoring of screening operations. If significant deficiencies are found during the 5-year period, the FAA would take appropriate action to require correction of those deficiencies or if necessary would revoke the screening company's certificate. In addition, requiring a 5-year renewal of a screening company's certificate would create a more in-depth review than that conducted during periodic inspections. Before the FAA would renew a certificate, it would review the company's operations specifications (including the training curriculum), required records, the results of FAA inspections and any enforcement actions that were taken, performance data, and any other relevant information.

There are several precedents in the FAA regulations for periodic renewals of certificates and approvals. For example, exemptions from certain Federal Aviation Regulations are typically issued for 3 years, and Special Federal Aviation Regulations (SFAR) rarely are issued for longer than 5 years. The duration of pilot school certificates in part 145 is 24 months. Having a specific duration encourages a thorough review of any changes in the environment of a company, such as the addition of new equipment or an increase in the size of operations, as well as a review of past performance and an evaluation of what should be done to improve performance if necessary.

The FAA considered proposing a shorter duration for the screening company certificates but decided to propose the 60-month duration as a reasonable option for obtaining the most benefits with the least burden. The FAA invites comments on the costs and benefits of the proposed duration and of a shorter duration such as 2 or 3 years.

Certificate contents. Proposed paragraph § 111.109(f) lists the information that would be contained on a certificate, such as the name of a company and a certificate number, certificate issuance date, and expiration date.

Proposed compliance. The FAA is considering how much time after the publication of the final rule should be given for carriers and screening companies to come into compliance. The FAA proposes in paragraph § 111.109(k) that the effective date for the final rule be 60 days after its publication in the **Federal Register**. As of that date, no company could begin screening under part 108, 109, or 129 unless it holds a screening company certificate.

The FAA also proposes, however, to provide some accommodation for existing screening companies. There are many companies that have been providing required screening services for years. The FAA has observed their operations and is familiar with these companies. The FAA proposes in § 111.109(k) that companies actively screening at any time during the year before the date of publication of the final rule be able to continue screening after the effective date if they submit applications for provisional certificates within 60 days after publication of the final rule. The FAA would review the applications and issue provisional certificates to those qualified. A company that applied on time and that submitted complete and accurate documentation as required would be able to continue screening unless and until it is issued a denial of its application.

After an existing screening company receives its provisional certificate, it would be subject to a rigorous application process to achieve certification. The company would be required to achieve certification before the expiration of its provisional certificate in order to continue screening. Existing screening companies could apply for certificates any time after they receive provisional certificates but not later than 60 days before the expiration of their provisional certificates.

Duration. In addition to establishing a 12-month provisional certificate and a 60-month certificate (discussed previously), proposed § 111.109(g)(3) would provide that a certificate would expire if a screening company has not provided required screening during the previous 12 months. Under this provision, a company not actively screening and maintaining its proficiency could lose its authority to screen. If the company intends to screen again, it would need to apply for a provisional certificate.

A screening company would have the responsibility for keeping track of its compliance with this requirement and for returning its certificate, as required in § 111.109(h), if it has automatically expired. During the FAA's yearly inspections of screening locations, it intends to compare its list of screening companies with those companies that are performing screening at locations. If a screening company does not appear to have a screening location, the FAA would check with the company to determine when it last conducted screening for a carrier.

Proposed paragraph (h) would require the holder of a screening company certificate that is expired, suspended, or revoked to return the certificate to the Administrator within 7 days. Suspension or revocation of a certificate would follow established procedures for certificates issued by the FAA such as airport, air carrier, and airmen certificates (see earlier discussion of this issue in ''Certificate required'').

Amendment. Under proposed § 111.109(i), a screening company would be required to apply for an amendment to its certificate to change any of the information listed on the certificate, such as the name of the screening company, and/or any names under which it would do business.

Inspection. Under proposed § 111.109(j), screening company certificates would be made available for inspection upon request of the Administrator.

III.I. §§ 111.111; 111.113; and 111.115 Operations specifications

Under proposed § 111.111, screening companies would be required to have approved operations specifications before they could perform screening. Screening companies would prepare operations specifications with FAA guidance. Under proposed § 111.115, during the application process for a provisional certificate, a company would submit its operations specifications to the FAA for approval. Once the operations specifications have been approved, the screening company would not need to obtain subsequent approval when it applies for a certificate or renews its certificate. However, the FAA would review the operations specifications to consider whether changes are needed. Further FAA approval of operations specifications would only be necessary if the screening company seeks to amend its operations specifications. The proposed requirements for approvals and amendments of operations specifications would follow the same process as is currently provided for air carrier security programs.

Under proposed § 111.113, operations specifications would list the following items: the locations at which a company may conduct screening; the types of screening that the company is authorized to perform (persons, accessible property, checked baggage, and cargo); the equipment and methods of screening that the company may employ; the name of the company's screening performance coordinator (SPC) (see discussion in the next section of this preamble); the procedures for notifying the Administrator and any carrier for which the company is performing screening if an equipment or

facility failure makes the performance of adequate screening impracticable; and the curriculum used to train persons performing screening functions. The operations specifications would also be required to contain a statement signed by the person required by § 111.209(b) on behalf of the company, confirming that the information is true and correct. The operations specifications would also contain any other information that the Administrator would deem necessary. Portions of the above items and the format may be provided by the Administrator as standard operations specifications.

Screening companies in most cases would be authorized to screen at all locations in the United States. However, where a special circumstance occurs, the FAA would have the ability to amend a screening company's operations specifications to limit the company's authority to screen at a particular location in accordance with the procedure in § 108.105(c). One example would be where the FAA is deploying new technology that required a high degree of oversight, such as the recent deployments of explosives detection systems. In such a case, the FAA might limit the locations at which a screening company could operate the new technology. Another example would be where a company demonstrates an inability or unwillingness to comply with required procedures at one location, but at other locations is in compliance. The FAA could amend the company's operations specifications to remove the company's authority to operate at the one location. If the company later comes into compliance at that location the operations specifications could be amended to restore its authority to screen there.

Operations specifications would list the types of screening that companies are authorized to perform. This requirement would emphasize the different capabilities and needs of the various companies that perform screening. For instance, cargo screening involves procedures different from those for screening persons. A company's required operations specifications, including its training program, would reflect the type(s) of screening that it would be authorized to perform.

The operations specifications would include the equipment and methods of screening that the Administrator has authorized the company to operate and carry out. Examples include manual searches of items, metal detector inspections of persons, and X-ray inspections. The operations specifications would also include procedures for notifying the Administrator and the carrier(s) for which the company is performing screening in the event that the procedures, facilities, or equipment that the company is using are not adequate for it to perform screening. Each company's operations specifications, including its training program, would specify the methods and equipment on which it was authorized. There shall be a training curriculum for each type of equipment that a company operates in performing screening. The training program curriculum would have to be approved as part of the operations specifications before the company would be certificated as a screening company.

Proposed § 111.113(c) would require a screening company to maintain a complete copy of its operations specifications at its principal business office and at each airport where it conducts security screening. The screening company would also have to ensure that the operations specifications are amended to remain current and made available to the Administrator upon request. The screening company would be required to provide a current copy of its operations specifications to the carrier(s) for which it screens. The screening company would also be required to restrict the availability of information in its operations specifications to those persons with an operational need to know. Persons with an operational need to know are specified in § 191.5(b). The screening company would be required to direct to the Administrator requests for information that is in operations specifications if the requests are from persons other than persons with an operational need to know. These proposed requirements would be necessary to ensure that operations specifications are available to persons who need to know them and at the same time to protect security sensitive information in the operations specifications. Furthermore, these requirements would ensure that carriers have current copies of screening companies' operations specifications for monitoring and auditing purposes.

III.J. § 111.117 Oversight by air carriers, foreign air carriers, or indirect air carriers

Proposed § 111.117(a) would make clear that each screening company holding a certificate under part 111 would be required to allow any air carrier, indirect air carrier, or foreign air carrier for which it performs screening to inspect its facilities, equipment, and records to determine its compliance with part 111, its security program, and operations specifications. The proposed regulation would also require that a screening company allow any carrier for which the company is performing screening to test the screening company's screening personnel using the procedures specified in the applicable security program. This is a natural consequence of the fact that carriers are ultimately responsible for proper screening and must be able to ensure that their screening companies are in compliance and that screening personnel are performing adequately.

Because the carriers are ultimately responsible for screening and contract with screening companies to perform the service on their behalf, the FAA does not consider it essential from a legal standpoint to include proposed § 111.117. However, it appears that inclusion of this section may avoid confusion concerning the roles of the carriers and screening companies. The FAA requests comments on whether to include this section in the final rule.

If a carrier chooses to hold a screening company certificate and to conduct screening at a particular location on its own behalf, it would still have to perform oversight functions. In its capacity as a screening company, it would be responsible for day-to-day operations; in its capacity as a carrier, it would have to audit and test the performance of its screening functions. Any other carrier using that screening location also would be responsible for auditing and testing the carrier in its capacity as a screening company.

In performing oversight responsibilities, the carriers need to know when the FAA discovers significant compliance problems with the screening companies. Currently, when the FAA discovers an alleged violation, it typically brings it to the attention of the appropriate carrier(s) to initiate corrective action as soon as possible. This often is done in a discussion with the station manager or other carrier official at the time of the inspection. Depending on the circumstances, enforcement action may be taken later. The FAA envisions that if it finds an alleged violation committed by a screening company, it would discuss the matter not only with the screening company, but also with the relevant carrier(s).

The FAA also proposes in § 111.117(b) that each screening company shall provide a copy of each letter of investigation and final enforcement action to each carrier using the screening location where the alleged violation occurred. Final enforcement actions include warning letters, letters

of correction, orders assessing civil penalties, and orders of suspension and revocation. The screening company would be required to provide a copy to each applicable carrier's corporate security officer within 3 business days of receipt of the letter of correction or final enforcement action. This proposed requirement would assist the carriers(s) in evaluating the performance of the screening company. Such enforcement actions could include warning notices and letters of correction, civil penalty actions, suspensions or revocations of certificates, cease and desist orders, or other actions. The FAA proposes that a screening company would have to provide copies of these documents to only those carriers for which it conducted screening at the location of an alleged violation, rather than to all carriers for which it conducted screening nationwide. The proposed requirement to provide the copies within 3 business days of receipt would ensure that the carrier(s) receive(s) timely notice.

The FAA considered proposing that the FAA would provide copies directly to the carriers involved. However, the FAA believes that this responsibility more correctly belongs with the screening companies. A screening company should keep the carriers for which it is performing screening informed of the company's compliance status. During its regular inspections of screening companies, the FAA would check to make certain that the screening companies are keeping carriers informed. The FAA requests comments on any alternative means for keeping the carriers informed of their screening companies' compliance.

III.K. § 111.119 Business office

Under the proposal, each certificated security screening company would be required to have a principal business office with mailing address and would be required to notify the Administrator of any address changes. The FAA would not expect all files to be maintained at the business office. Most files would be retained onsite and be available for inspection.

Subpart C—Operations

III.L. § 111.201 Screening of persons and property and acceptance of cargo

The language in proposed § 111.201 is similar to the proposed language contained in § 108.201 for air carriers (Notice No. 97–12). The FAA is not proposing to remove any of the language from proposed § 108.201 or from similar language in § 129.25, because the carriers will remain responsible under statute for screening persons and property. This proposal does, however, include similar provisions under proposed § 111.201, because screening companies are the primary screeners of persons and property in most situations, and they must be aware of and be held accountable for their screening responsibilities.

Under proposed § 111.201(a), each screening company would be required to use the procedures included in its approved screening company security program to inspect each person and his or her accessible property entering a sterile area. Under proposed § 111.201(a), each screening company would also be required to deter and prevent the introduction into a sterile area of any explosive, incendiary, or deadly or dangerous weapon on or about each person or the person's accessible property.

Note that this NPRM also proposes to change the wording in § 108.201(a) and (b) to indicate that the screening procedures, facilities, and equipment may also be described in the screening companies' approved security programs as well as in the air carriers' approved security programs. The FAA expects that differing requirements would appear in one or the other of the programs, depending on the requirement. Similar requirements also appear in proposed § 109.201 for indirect air carriers and in existing § 129.25 for foreign air carriers. These changes are further explained in the detailed proposed rule discussion for parts 108, 109, and 129.

Under proposed § 111.201(b), each screening company would be required to deny entry into a sterile area at a checkpoint to the following: any person who does not consent to a search of his or her person in accordance with the screening system prescribed in paragraph (a) of this section; and any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by paragraph (a) of this section.

Proposed § 111.201(c) would state that the provisions of paragraph (a) of § 111.201, with respect to firearms and weapons, would not apply to law enforcement personnel required to carry firearms or other weapons while in the performance of their duties at the airport; persons authorized to carry firearms in accordance with § 108.213, 108.215, 108.217, or 129.27 of the chapter; and persons authorized to carry firearms in sterile areas under FAA-approved or FAA-accepted security programs.

Under proposed § 111.201(d), each screening company would be required to staff the screening locations that it operates with supervisory and nonsupervisory personnel in accordance with the standards specified in its security program. This language is similar to the language contained in proposed § 108.201(g) of Notice No. 97–12; however, it would be relocated to part 111 because screening companies are responsible for their own staffing. Also, the words ''security screening checkpoints'' would be replaced with the words ''screening locations'' to include screening that is conducted at checkpoints and at other locations.

Under proposed § 111.201(e), each screening company would be required to use the procedures included in its approved security program to inspect checked baggage, or cargo presented for inspection by a carrier, and therefore prevent or deter the carriage of explosives or incendiaries in checked baggage or cargo onboard passenger aircraft. This language is similar to the language contained in proposed § 108.201(h) of Notice No. 97–12; however, it has been amended to more clearly indicate this requirement's applicability to checked baggage and cargo.

III.M. § 111.203 Use of screening equipment

Under proposed § 111.203(a), each screening company would be required to operate all screening equipment in accordance with its approved security program. This equipment would include metal detectors, X-ray systems, explosives detection systems, explosives trace detectors, and any other screening equipment that is approved for use by the FAA. In most cases, the carriers that contract with the screening companies for their screening services own and maintain the equipment and provide it to the screening companies for their use. While screening companies would be responsible for the day-to-day operational testing and operation of the equipment, the carriers would still retain responsibility for the calibration and maintenance of the equipment.

Proposed § 111.203(b)–(d) would contain several X-ray-related requirements that were originally included as part of § 108.205 (see Notice No. 97–12) but which the FAA is proposing to relocate to proposed part 111, because they are functions that screening companies typically carry out. Specifically, some of the language from proposed § 108.205 would be repeated in § 111.203 and amended to apply to screening companies. Proposed § 111.203(b) would state that the

Administrator authorizes certificated screening companies to use X-ray systems for inspecting property under approved screening company security programs if several items are met. A screening company would be required to show that it has established a mandatory program for the initial and recurrent training of operators of the X-ray systems, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of unauthorized weapons, explosives, incendiaries, and other dangerous articles. The screening company also would be required to show that the X-ray systems that it operates meet the imaging requirements set forth in its approved security program. These requirements are currently contained in the carrier standard security programs but would be relocated to the screening standard security program to accompany the relocation of these requirements.

Under proposed § 111.203(c), screening companies would be required to inspect individuals' photographic equipment and film packages without exposure to X-ray or explosives detection systems if requested by the individuals. Proposed § 111.203(d) would require that each screening company comply with any X-ray operator duty time limitations specified in its approved security program.

As will be explained in the detailed proposed rule discussion for parts 108, 109, and 129, all requirements related to the use of X-ray systems would also be extended to indirect air carriers and their screening companies. The proposed § 111.203 requirements above would also apply to indirect air carriers. All remaining requirements related to the use of X-ray systems would remain in parts 108 and 129 and be included in part 109 as carrier responsibilities. These requirements involve conducting radiation surveys, meeting imaging requirements, meeting Food and Drug Administration (FDA) standards and compliance standards regarding FDA defect notices or modification orders, and meeting other equipment-related requirements.

III.N. § 111.205 Employment standards for screening personnel

Under existing regulations, employment standards for screening personnel are provided as requirements for air carriers under § 108.31 (proposed § 108.209), for foreign air carriers under their model security program (MSP), and for indirect air carriers under their security program. Since these requirements include standards regarding the screening personnel to be hired by screening companies, the FAA proposes to relocate them from part 108, the MSP, and the IACSSP to part 111, and assign responsibility for them to screening companies. This would establish one consolidated list of employment standards for all screeners performing screening in the United States.

The consolidation of all employment standards would impose some additional requirements on screeners performing screening for air carriers, foreign air carriers, and indirect air carriers. Under proposed § 111.205(a)(2), two additional requirements would be added for screeners performing screening for air carriers and foreign air carriers, which were incorporated in recent cargo-related security program amendments. First, under proposed § 111.205(a)(2)(i), screeners would have to be able to identify the components that might constitute an explosive or an incendiary. Second, under proposed § 111.205(a)(2)(ii), screeners would have to be able to identify objects that appear to match those items described in all current security directives and emergency amendments. The addition of these proposals and other proposals below would result in the rearrangement of the numbering structure of proposed § 108.209(a)(2) (Notice No. 97–12).

Another proposal under § 111.205(a)(2)(iii) would require that screeners operating both X-ray and explosives detection system equipment be able to distinguish on the equipment monitors the appropriate imaging standards specified in the screening companies' approved security programs. The FAA is proposing to amend this requirement that already exists in part 108 to include explosives detection systems and to change the location of all screener employment standards from the carrier programs to the screening companies' security programs.

Screeners performing screening for foreign air carriers operating their own screening checkpoints in the United States theoretically would have to meet additional standards under this proposal that currently are not required of them. Specific differences from the current MSP standards and this proposal are that these proposed rule requirements would expand the English language requirements, add education requirements, add specific screener evaluation requirements, and provide allowances for special circumstances. Most foreign air carriers, however, use screening checkpoints operated by U.S. air carriers, and all of these foreign air carriers already voluntarily comply with the existing 14 CFR part 108 employment standards to be consistent and to allow for screener shift rotations with screening checkpoints operated by domestic air carriers.

Screeners performing cargo screening may also have to meet an additional standard under this proposal that is not currently required of them. Under proposed § 111.205(a)(1), these screeners would be required to have high school diplomas, general equivalency diplomas, or combinations of education and experience that the screening companies have determined to have equipped the persons to perform the duties of their positions. No other new standards would be required of screeners performing cargo screening.

The FAA may revisit the current screener education requirements after threat image projection (TIP) data becomes available regarding education level as it relates to screener performance. If it appears from the data that different employment standards are appropriate, the FAA would propose such standards for comment and make the supporting data available to the carriers and screening companies.

In addition to relocating the standards, a proposed requirement would be added to § 111.205(a)(4) stating that initial and recurrent training for all screeners shall include screening persons in a courteous and efficient manner and in compliance with the applicable civil rights laws of the United States. The statute requires that FAA rules for passenger screening ensure the courteous and efficient treatment of passengers by air carriers or foreign air carriers or agents or employees of air carriers or foreign air carriers (49 U.S.C. 44903(b)(3)(B)). Further, there are a number of laws requiring air carriers to observe the civil rights of persons (e.g., see 42 U.S.C. 1981, 2000a, and 2000d; and 49 U.S.C. 41310 and 41702). The FAA and the DOT's Office of the Secretary have received reports that some screeners were discourteous and might have discriminated against certain individuals. The FAA proposes to require that in initial and recurrent training, screeners receive instruction in screening in a courteous and efficient manner and in compliance with the civil rights laws. For instance, it would not be appropriate for a screener to subject a person to increased inspection based on the screener's view that the person appears to be of an ethnic group that the screener considers of a higher threat to air transportation. Further, while different methods are required to screen persons in wheelchairs, persons with implanted medical devices that

may alarm the metal detector, and other persons with certain disabilities, screeners are required to be courteous and to avoid violating the civil rights laws while they conduct the screening. (See, e.g., 49 U.S.C. 41705 and 14 CFR part 382, and § 382.49 in particular.) Training would help ensure that screeners are aware of their duties in this regard.

Proposed § 111.205(a)(5) would require persons with supervisory screening duties to have initial and recurrent training that includes leadership and management subjects. In response to noted deficiencies in training for checkpoint security supervisory personnel and a determination that they lacked communication skills training, leadership development, and general supervisory skills training, the FAA developed the Supervisor Effectiveness Training (SET) Program which focuses on communication and leadership skills. While the SET program is intended to serve as a model for teaching these supervisory subjects, it is not required at this time. However, the FAA intends to propose for comment specific standards that the leadership and management training for checkpoint supervisors shall meet in the SSSP, and the SET Program would meet those standards.

The FAA is seeking comments on whether additional or different selection and employment standards are appropriate to improve the screening companies' ability to hire qualified, effective screeners.

III.O. § 111.207 Disclosure of sensitive security information

Certain information related to civil aviation security must be protected from unauthorized disclosure because it could be used to attempt to defeat the security system if it falls into the wrong hands. In § 191.7 the FAA has designated this information as sensitive security information (SSI). SSI includes information about security programs, technical specifications of certain screening equipment and objects used to test screening equipment, and other information. Under § 191.3, the FAA does not disclose such information. Under § 191.5, carriers are required to protect SSI from disclosure, including disclosing it to only those with a need to know.

Some SSI must be revealed to persons being trained to be screeners. There is a high rate of turnover among screener trainees, however. A large portion of the trainees do not complete training. It is advisable to avoid providing SSI to those who will never need it to perform security duties. The FAA therefore is proposing that the appropriate steps of the employment history, verification, and criminal history records checks that air carriers or airport operators are required to conduct are carried out before trainees are given SSI during training.

Airport operators are required to ensure that persons with unescorted access to security identification display areas (SIDA) have their checks completed beforehand (see § 107.31). The checks may be carried out by the airport operators or the air carriers. Air carriers are required to ensure that checks are completed on certain persons, including persons who screen passengers or property that will be carried into the cabins of aircraft (see § 108.33; to appear as § 108.221 under Notice No. 97–12). Most persons who screen cargo and checked baggage are either also qualified to screen persons and property that will be carried into aircraft cabins, and/or have unescorted access to SIDA's and therefore will be subject to the checks in § 107.31 or 108.33.

The checks required under current § 107.31 or 108.33 are in two parts. In most cases, only part 1 is required. Part 1 includes the individuals providing certain information on applications, with the air carriers or airport operators verifying selected parts of that information. If certain conditions (triggers) are discovered during part 1 (such as an individual is unable to support statements made on his or her application form), the air carriers or airport operators shall accomplish part 2 of the checks, which involves criminal history records checks based on fingerprints.

The FAA proposes under § 111.207 that each screening company would be required to ensure that no SSI is provided to a screener trainee who will be required to have an employment history verification until part 1 of the trainee's check is completed. If the individual has a history of a disqualifying crime set forth in § 107.31 or 108.33, that individual would not be permitted to screen persons or property to be carried into aircraft cabins and thus would not be eligible to be a screener. Under the statute, if a part 2 criminal history records check is needed, an individual may be employed as a screener until his or her check is completed if the person is subject to supervision (see 49 U.S.C. 44936(a)(1)(D)). This means that the person would be permitted to receive SSI unless or until his or her records check reveals a disqualifying crime.

The FAA considered duplicating these employment history and verification requirements in proposed part 111 for screening companies but did not because the statute makes the air carriers responsible for the checks; only the air carriers, not the screening companies, can obtain the criminal histories that may be called for under proposed § 108.221 (current § 108.33). If an airport operator or an air carrier completes part 1, the screening company would have to receive confirmation from one of them indicating that it has been completed. Many airport operators or air carriers authorize screening companies to obtain applicants' part 1 employment history information and verify the applicants' most recent 5 years of employment history. In these situations, the airport operators or air carriers are responsible for ensuring that the screening companies are complying with these requirements.

III.P. § 111.209 Screening company management

This proposed section would require that each screening company have sufficient qualified management and technical personnel to ensure the highest degree of safety in its screening. This is based on a requirement in § 119.65(a) that applies to air carriers operating under part 121.

Proposed § 111.209(b) would require that each screening company have a screening performance coordinator (SPC). The SPC would, at a minimum, be responsible for monitoring the quality and performance of screening at each screening location and ensuring that corrective action is taken to remedy any performance deficiencies. The SPC would also serve as the primary point of contact for the company for FAA and carrier communications regarding security-related issues. In most cases the FAA anticipates that the SPC's would be responsible for managing the screening operations for their companies. Management experience, technical training, and knowledge of screening-related information would be critical to SPC's effectiveness in their positions.

Under the proposed rule, an SPC would be required to have successfully completed the initial security screener training course, including the X-ray interpretation portion of the course and the end-of-course FAA exam. The SPC's completion of initial security screener training would ensure that he or she would have formal training in the screener's job. The SPC would not be required to complete the on-the-job portion of the training, because he or she would not actually perform required

screening, and it would not be necessary for the SPC to accomplish the same level of proficiency as that required of a screener. The FAA requests comments regarding which portions of the training that the SPC's should be required to successfully complete in order to manage screening operations effectively.

Furthermore, to ensure that the SPC's have management skills and practical experience in the aviation security environment necessary to act as SPC's, proposed § 111.209(b)(1)(i) would require that each SPC have at least 1 year of supervisory or managerial experience within the last 3 years in a position that exercised control over any aviation security screening required under part 108, 109 or 129. This requirement is intended to provide SPC's with solid experience and knowledge bases regarding managing and coordinating aviation screening operations, including knowledge to apply new procedures and technologies. The proposal would include exceptions in § 111.209(d) for those who screen only cargo for indirect air carriers (IAC's) under part 109. During the 3-year period following the publication of the final rule, a person who does not satisfy the experience requirements of § 111.209(b)(1)(i) would be able to serve as SPC for IAC screening operations if authorized to do so by the Administrator. IAC's have not been involved in screening for very long, and there might be few individuals who could meet this standard at first. In deciding to grant exceptions, the FAA would consider such factors as individuals' other management experience, nonmanagement screening experience or training, and security experience other than aviation screening.

The name and business address of an SPC would be listed in the screening company's operations specifications. If a change in SPC's or a vacancy occurs, the screening company would be required to notify the Administrator within 10 days of the change under proposed § 111.209(b)(2).

Under proposed § 111.209(c), each SPC would be required to have a working knowledge of parts 111 and 191 and part 108, 109, or 129, as applicable; his or her screening company's security program; his or her screening company's operations specifications; relevant statutes; and relevant technical information or manuals regarding screening equipment, security directives, advisory circulars, and information circulars on aviation security. This proposed requirement would help to ensure that each SPC has a satisfactory understanding of the fundamental regulatory and statutory requirements for screening operations and that he or she understands the challenges involved with screening. Well-trained, experienced SPC's would be better able to manage safe, effective, professional screening operations. These requirements are based on the management requirements in § § 119.65–119.71 for air carriers. The requirements are consistent with comments received on the ANPRM that stated that management personnel should be required to have aviation screening experience, training, and knowledge.

III.Q. § 111.211 Screening company instructor qualifications

As discussed in II.H., it is increasingly important that screeners be well qualified and receive proper training from qualified instructors. Under proposed § 111.211, screening company instructors would have to have a minimum of 40 hours of actual experience as security screeners making independent judgments and pass the FAA screener knowledge-based and performance tests for each type of screening to be taught and for the procedures and equipment for which the instructors would be providing training. Each instructor would also have to be briefed regarding the objectives and standards of each course taught.

The emphasis with this proposal is to ensure that screening companies employ instructors with important minimum qualifications. Requiring screening instructors to have actual experience as screeners would allow them to better understand the challenges involved in screening and to relay helpful, realistic advice and information to screener trainees. Requiring instructors to pass the FAA screener knowledge-based and performance tests in each area of screening taught would help ensure that the instructors have attained the knowledge and, as applicable, the skills and abilities needed to be effective as instructors. The FAA expects that screening companies would hire instructors who are knowledgeable about the screening process, who are able to demonstrate correctly screening procedures to trainees, and who can effectively and thoroughly communicate screening-related objectives and lesson plans to trainees. Conducting on-the-job training would keep instructors proficient regarding screening technologies and procedures.

III.R. § 111.213 Training and knowledge of persons with screening-related duties

The language in proposed § 111.213 mirrors parts of the proposed language contained in § 108.227 for air carriers (Notice No. 97–12). Under proposed § 111.213(a), no screening company would be permitted to use any screener, screener-in-charge, or checkpoint security supervisor unless that person had received training as specified in its approved screening company security program, including the responsibilities in § 111.105. Under § 111.213(c), each screening company would be required to ensure that screeners, screeners-in-charge, or checkpoint security supervisors have knowledge of the provisions of part 111, the screening company's security program, and any applicable security directive (SD), emergency amendment (EA), and information circular (IC) information to the extent that such individuals need to know this information to perform their duties.

Proposed §§ 111.213(b) would require that each screening company submit its training program for screeners, screeners in charge, and checkpoint security supervisors to the Administrator for approval. Each training program should address the subject material contained in the security program's training and testing standards. The FAA proposes to create a performance-based training environment where screening companies would be expected to train their screening personnel to pass specific tests developed by the FAA. The FAA proposes to do away with the hourly training requirements for initial and recurrent training and give screening companies the flexibility to train their screeners using their own FAA-approved training programs. Screening companies would be responsible for ensuring that their trainees are able to pass an FAA knowledge-based and, if applicable, X-ray interpretation test at the end of their initial training and that their screening personnel are meeting performance standards thereafter (see proposed § 111.215 for discussion regarding FAA tests). The FAA testing standards would encompass the subjects currently outlined in the Air Carrier Standard Security Program and might include additional standards regarding, for example, operating new screening technologies. The testing standards would differ for tests of persons who will screen persons and accessible property, checked baggage, and cargo, because each type of screening has some different features. As discussed above,

the FAA is developing computer-based instruction and has made this available for use by the industry.

In addition to the testing standards, the Screening Standard Security Program also would contain a list of subjects and types of training that the FAA would require that screening companies brief and demonstrate to their trainees. Trainees might not be tested on all of the subjects, but the information would be critical to their positions and performance. Examples of training standards would be demonstrating effective handwanding and manual search techniques, demonstrating a variety of improvised explosive device configurations, and briefing trainees on the definition of sensitive security information (SSI) and why SSI must be protected.

III.S. § 111.215 Training tests: requirements

This proposed section would introduce several new requirements all related to testing screeners at the completion of their classroom training sessions. The provisions would impose more control and consistency in the training environment, emphasize the importance of proper training and testing, and promote professionalism by both trainees and instructors. The proposals under this section are similar to other FAA regulations related to testing, such as those required for pilots and flight instructors under 14 CFR part 61. They are designed to help ensure that screener trainees have attained the knowledge and skills that they need to perform their jobs effectively.

Currently, air carriers can design and administer their own written tests for screeners. The tests usually consist of approximately 20 basic multiple-choice questions (the knowledge-based portion), and the air carriers have latitude in choosing the subject matter to be addressed and in designing the questions. The performance-based portion of the tests often consists of X-ray interpretation scenarios using overhead slides.

Proposed § 111.215(a) would require that each screener trainee pass one standardized FAA screener readiness test for each type of screening to be performed (persons, accessible property, checked baggage, and cargo) and for the procedures and equipment to be used prior to beginning on-the-job training. Since most screeners conduct screening of persons, accessible property, and checked baggage, the FAA envisions designing one test to address all of these types of screening. Since cargo screening involves some unique factors and does not involve screening persons, the FAA would most likely develop a separate test for cargo screeners. These standardized tests would address the traditional methods of screening and equipment used to conduct screening, such as metal detector devices, hand wand devices, and X-ray systems. The standardized tests might also encompass such explosives detection devices as explosives trace detection (ETD) devices. For more complex explosives detection equipment, such as explosives detection systems (EDS), an additional FAA knowledge-based and performance test would be required before the screeners could operate that equipment.

Proposed § 111.215(b) would require that each screening company ensure that each screener trainee completes 40 hours of on-the-job training and passes an FAA on-the-job training test before exercising independent judgment as a screener. Screeners would have to successfully pass that test before qualified supervisory-level individuals could sign the certification statements in the screeners' training and qualification records. The FAA envisions that this on-the-job training test would be a computer-based test that is similar to the image interpretation portion of the FAA screener readiness test, but that it might require a higher score. The test would supplement all realistic carrier testing required before screeners are permitted to make independent judgments. Applicants for pilot certificates under part 61 and mechanic certificates under part 65 must also pass FAA knowledge and performance tests.

Under proposed § 111.215(c), each screening company would be required to ensure that each screener passes an FAA review test at the conclusion of his or her recurrent training. The written tests that are currently administered at the conclusion of recurrent training are required by the FAA and are designed by the carriers or screening companies; screening companies would now be required to provide their screeners with FAA recurrent tests, and carriers would be required to monitor the testing and grading process.

The specific requirements and guidelines for the tests proposed under § 111.215(a), (b), and (c) would be outlined in the screening companies' security programs. Using the same tests and grading them the same way throughout the country would ensure that trainees all meet the same, appropriate standards before making independent judgments and would promote uniformity among all screeners.

Currently, many screening companies administer end-of-course knowledge-based tests to screener trainees in a paper format and administer the performance tests to trainees using overhead slides. This increases opportunities for cheating, because many screener trainees receive the same versions of the tests and because classes as a whole are usually interpreting the X-ray images at the same time. Instances have occurred where trainees or instructors have helped other trainees answer test questions or interpret X-ray images.

Proposed § 111.215(d) would address this issue by requiring that each screening company use an FAA computer-based test to administer the FAA tests for screener readiness, on-the-job training, and recurrent training unless otherwise authorized by the Administrator. This proposal would standardize the screener testing process, provide a unique mix of challenging and relevant test questions for each screener, discourage the sharing of test information, provide X-ray images for the X-ray interpretation portion of the test that are more like those on an actual X-ray machine, and automatically score the trainees' responses. The questions and interpretation images would be varied for each trainee (making it impossible to copy from one another), but would always address the key subjects contained in the testing standards. The FAA is currently developing these automated tests based on existing requirements for screeners. The tests are being designed to be user friendly and easily loaded onto standard personal computers to minimize costs and maximize flexibility.

Proposed § 111.215(e) would require each screening company to ensure that each test that it administers under § 111.215(a) and (c) is monitored by an employee of the carrier for which it screens. When the screening company plans to administer a test to screener trainees it would be responsible for requesting that the applicable carrier(s) provide a test monitor during the entire testing and grading process. Each applicable carrier would be responsible for providing a test monitor upon request and ensuring that the test monitor meets the qualifications contained in proposed § 108.229, 109.205, or 129.25(p) and the supporting requirements in the screening company's security program. (See section IV.I. regarding monitoring of screener training tests and sharing of carrier responsibilities.)

III.T. § 111.217 Training tests: cheating and other unauthorized conduct

Proposed § 111.217 is included to emphasize that cheating is not permitted on any training test

administered to or taken by screening personnel, to include test monitors, screeners, screeners-in-charge, checkpoint security supervisors, and screening performance coordinators. Under proposed § 111.217, no person may copy or intentionally remove a knowledge-based or performance test under this part; give to another or receive from another any part or copy of that test; or give help on that test to or receive help on that test from any person during the period that test is being given. In addition, no person may take any part of that test on behalf of another person; use any material or aid during the period that test is being given; or intentionally cause, assist, or participate in any act prohibited by this paragraph except as authorized by the Administrator. These requirements are similar to the testing regulations set forth in § 61.37 for pilots. These prohibitions apply ''except as authorized'' by the FAA, to provide for the possibility that in the future the FAA would authorize such conduct as the use of certain outside materials. For instance, in pilot exams, the applicants may bring flight computers to perform required calculations.

Any instances reported to the FAA involving allegations that screening companies or screening company employees are permitting cheating on tests would be investigated, and those companies or individuals involved in the incidents could be held accountable. It would be particularly important that the test monitors explain the consequences of cheating on tests to their trainees and be alert to any occurrences of cheating. If an instance of cheating occurs, a test monitor would be required to declare the test invalid and inform appropriate screening company and carrier management officials of the incident. FAA special agents also would regularly monitor screening company testing.

III.U. § 111.219 Screener letter of completion of training

Throughout this proposal, the FAA has sought ways to more effectively train, challenge, and motivate screeners and their supervisors. The following proposal would provide screeners and supervisors with verification of their training, and may provide a modest means of motivation by encouraging pride in the employees regarding their accomplishments. Under proposed § 111.219, each screening company would issue letters of completion of training to screeners, screeners-in-charge (SIC), and checkpoint security supervisors (CSS) upon each successful completion of approved initial, recurrent, or specialized courses of training. Specialized training would encompass, for example, training for explosives detection equipment. These letters of completion would not serve as certification for screeners, CSS's, and SIC's, but would provide them with records of their specific training accomplishments. The FAA believes that requiring screening companies to issue letters of completion to screeners and screener supervisors for their successful completion of training would help enhance the professionalism of this critical security job.

Each letter of completion of training would be required to contain the trainee's name, course of training completed and date of completion, name of the screening company providing the training, and a statement signed by a GSC, CSS, or SIC indicating that the trainee has satisfactorily completed each required stage of the approved course of training and the associated tests. Each letter of completion would also be required to indicate the types of screening that the screener was trained to perform (persons, accessible property, checked baggage, and/or cargo) and the equipment and methods of screening that the screener was trained to operate and carry out. Examples of equipment would be X-ray systems and EDS. An example of a method of screening would be a manual search.

Screening companies could include letters of completion of training as part of their required screener and screener supervisor training and qualification records, but the letters would not serve as substitutes for the remaining records requirements.

III.V. § 111.221 Screener and supervisor training records

Under proposed § 111.221, a screening company would be required to forward training records for a screener, screener-in-charge, or checkpoint security supervisor to another screening company upon the request of the employee. The other screening company would be able to use the employee without fully retraining him or her if it provides training on the procedures that differ from those of the previous company. In the event that a screening company ceases operations at a site, it would also be required to return its original screener records to the carrier for which it was conducting screening. These improvements would increase mobility for screeners, screeners-in-charge, and checkpoint security supervisors. They would also ensure that training documentation would not be lost if a screening company leaves a location. These proposed requirements are consistent with several comments received on the ANPRM which stated that making screener personnel and training files transferable would enhance professionalism.

Proposed § 111.221(f), in particular, would require that training, testing, and certification records be made available promptly to FAA special agents upon request and be maintained for a period of at least 180 days following the termination of duty for a screener, screener-in-charge, or checkpoint security supervisor. Test records would include all tests to which the employee was subjected, not just those satisfactorily completed. Carriers currently are required to maintain these records under their security programs. Including this requirement as part of proposed part 111 would result in transferring the responsibility to maintain the records to screening companies, who often already maintain the records, and would standardize the length of time that records have to be maintained.

III.W. § 111.223 Automated performance measurement and standards

As discussed in section II.I., the FAA is proposing to enhance the FAA's, carriers', and screening companies' abilities to measure the performance of screening locations and to set FAA standards for their operation. Under proposed § 111.223(a), each screening company would be required to use a threat image projection (TIP) system for each X-ray and explosives detection system that it uses as specified in its security program to measure the performance of individual screeners, screening locations, and screening companies. It is important to note that this requirement would not require screening companies to install physically the TIP systems on the X-ray systems that they operate. Rather, it would require screening companies to operate the TIP systems that the carriers have installed in accordance with the procedures contained in their screening company security programs. The security program procedures would specify usage procedures, log on/log off procedures for each screener, and any data collection requirements. Proper operation of the TIP units and collection of data would be critical to measuring accurately the performance of screening companies.

Under proposed § 111.223(b), each screening company would be required to meet the performance standards set forth in its security program. These

performance standards would be established through the notice and comment procedures for amending security programs. The FAA envisions establishing a range of performance that all screening companies would be required to fall within to be considered effective at detecting possible threats. If a screening company falls short of the minimum performance standards, it may be required to carry out additional security measures to maintain the required level of security, depending on the circumstances involved, and could ultimately lose its FAA certification if its performance does not improve (see discussion of possible additional security measures in section II.I.).

The FAA expects that each screening company would regularly monitor its overall performance as well as its individual screeners' performance and take corrective actions as necessary. The FAA also expects that each carrier that contracts with a screening company would regularly monitor that screening company's performance. These oversight responsibilities would be outlined in the carriers' security programs, and the carriers would be responsible for working with their screening companies to remedy any performance problems.

The FAA would collect and analyze screening company performance data regularly to monitor performance and to determine whether screening companies and carriers are in compliance with the required performance standards. The FAA would also closely review data regarding screening companies' performance at the time of initial certification (if historical performance data are available) and before each subsequent certification renewal.

The FAA proposes to require that TIP systems be installed on X-ray and explosives detection systems at the U.S. screening locations specified in the carriers' security programs. The FAA proposes to require that TIP systems be installed initially at the busiest screening locations. The specific screening locations affected by this requirement would be described in the carriers' security programs. The FAA then would phase in requirements to install TIP systems at the remaining U.S. screening locations where property is screened. The process of phasing in requirements for TIP systems would allow the FAA to address promptly the higher threat airports and would allow realistic timeframes for updating older equipment to make it TIP-compatible. The FAA already has installed TIP systems at many of the Nation's major airports and will advocate additional installations at other airports and cargo facilities. During the phase-in process, the FAA will continue to measure screening companies' performance through testing and assessments.

IV. Proposed Revisions to Parts 108, 109, and 129

The following section discusses the detailed rule proposals for parts 108, 109, and 129. The proposed additions for part 109 have been organized in a new regulatory format similar to that of Notice No. 97–12 for part 108, for clarity and consistency.

IV.A. §§ 108.201(h); 109.203(a); and 129.25(k) Certification requirement

Proposed new § 108.201(h) would require that each carrier required to conduct screening of persons and property under a security program hold a screening company certificate issued under part 111 if the carrier will conduct the screening or use another screening company certificated under part 111 to conduct such screening.

Proposed new § 109.203(a) would require that each indirect air carrier that elects to conduct screening of property under a security program hold a screening company certificate issued under part 111 or use another screening company certificated under part 111 to conduct such screening.

Proposed § 129.25(k) would require that each foreign air carrier required to conduct screening of persons and property under a security program either hold a screening company certificate issued under part 111 or use a screening company certificated under that part for screening locations within the United States.

Proposed § 108.201(h), 109.203(a), and 129.25(k) would all state that FAA-certified canine teams are not required to be operated by certificated screening companies. This statement is included to provide clarification for situations where FAA-certified canine teams are used to conduct screening.

IV.B. §§ 108.5 and 109.5 Inspection authority

Proposed § 108.5, Inspection authority, would be amended to require that each air carrier also allow the Administrator, including FAA special agents, to make any inspections or tests at any time or place to determine screening company compliance with the new part 111 of this chapter and the carrier's screening company security program(s). Proposed § 108.5 also would be amended to require that an air carrier provide evidence of compliance with the new part 111 of this chapter and its screening company security program(s) at the request of the Administrator.

Similar inspection authority language would also be proposed as § 109.5 to be consistent with the requirements in §§ 108.5 and 119.59. This proposed parallel section would not be a new requirement, because it is already required by statute. Rather, the proposed section is intended to resolve any confusion regarding the FAA's statutory authority to conduct inspections and tests under title 49, U.S.C., Subtitle VII.

IV.C. §§ 108.103(b); 109.103(b); and 129.25(c) Security program form, content, and availability

Proposed § 108.103 in Notice No. 97–12 sets forth the form, content, and availability of security programs required under part 108. Proposed § 108.103(b) of Notice No. 97–12 lists items to be included in the security programs. The proposed rule in this notice would add to that list of items in Notice No. 97–12 two new items: a description of how an air carrier would provide oversight to each screening company performing screening on its behalf, and a description of how the air carrier would evaluate and test the performance of screening. The proposed rule would also add comparable requirements as proposed §§ 109.103(b)(4) and (5) and 129.25(c)(5) and (6). These requirements also would apply to indirect air carriers that elect to perform the screening functions themselves.

The proposed requirement regarding a description of carrier oversight is based on proposed §§ 108.201(j), 109.201(c), and 129.25(m), which would require that each carrier required to conduct screening under parts 108, 109, and 129 provide oversight to each screening company performing screening on behalf of the carrier. The specific oversight requirements would be included in the carrier's security programs.

The proposed requirement regarding a description of testing and evaluation procedures would include the process that the carrier would use to collect and evaluate automated screener and screening company performance data on a regular basis as required in proposed § 111.223. Requiring the air carriers, indirect air carriers, and foreign air carriers to provide these descriptions would help to ensure that the carriers adequately oversee and manage the performance of screening companies employed by them.

In addition to adding the new requirements above to part 109, the proposal would rename the current § 109.3 as § 109.103 and reorganize it to parallel § 108.103. Proposed

§ 109.103(a) would state several overall requirements for the indirect air carrier security program. All of the requirements are stated in the current § 109.3 with the exception of one new requirement. This proposed addition would require indirect air carriers to state in their programs that upon receipt of an approved security program or security program amendment from the FAA, the indirect air carriers shall acknowledge receipt of it to the Assistant Administrator in writing and signed by the indirect air carriers or persons delegated authority in this matter within 72 hours. This is a proposed requirement in § 108.103 and would also be applicable to indirect air carriers.

Section 109.103(b) would list all of the items that the indirect air carrier security programs shall include. In addition to adding the two description requirements to § 109.103(b), the proposal would also require that the security programs include the following: the procedures and descriptions of the facilities and equipment used to perform screening functions specified in § 109.201; and the procedures and descriptions of the equipment used to comply with the requirements of § 109.207 of this part regarding the use of X-ray systems should indirect air carriers elect to perform screening functions. These requirements would be added to support the new cargo screening requirements, with an emphasis on X-ray systems.

Section 109.103(c) would describe how the indirect air carriers should maintain their programs and to whom they should make security program information available. All of these requirements already are required by the current § 109.3.

IV.D. §§ 109.105 and 129.25(e) Approvals and amendments of security programs

The proposal would reorganize the current regulatory text of §§ 109.5 (proposed § 109.105) and 129.25(e)(2), (3), and (4) to clarify the requirements and make them consistent with the organization of § 108.105. The only substantive changes would affect indirect air carriers under proposed § 109.105(c) and (d). Section 109.105(c) would allow indirect air carriers to petition the Administrator to reconsider a notice of amendment if the petitions are submitted no later than 15 days before the effective date of the amendment. Section 109.105(d) would allow indirect air carriers the opportunity to file petitions for reconsideration under § 109.105(c).

IV.E. §§ 108.201(i), (j), and (k); 109.203(b), (c), and (d); and 129.25(l), (m), and (n) Responsibilities of carriers and screening companies

Proposed new §§ 108.201(i), 109.203(b), and 129.25(l) would require each carrier to ensure that each screening company performing screening services on the carrier's behalf do so consistent with part 111, the screening company's security program, and the screening company's operations specifications. Proposed new §§ 108.201(j), 109.203(c) and 129.25(m) would require each carrier required to conduct screening to oversee each screening company performing screening on its behalf as directed in the carrier's security program. The requirements for oversight would all be listed in the ACSSP, MSP, and IACSSP. For example, the security programs may require periodic audits by the carriers to look at different aspects of the screening companies' operations. The frequency of such audits and the specific aspects to be audited would be described in the security programs and could be tailored to the different types of screening operations conducted. The FAA recently issued an amendment to the ACSSP that meets the intent of this proposal for air carriers. The proposed amendment strengthens checkpoint auditing and testing requirements for ground security coordinators.

As part of their oversight responsibilities, each carrier required to conduct screening under a security program would be required under proposed §§ 108.201(k), 109.203(d), and 129.25(n) to maintain at least one complete copy of each of its screening companies' security programs at its principal business office; have available complete copies or the pertinent portions of its screening companies' security programs or appropriate implementing instructions at each location where the screening companies conduct screening for the carrier; and make copies of its screening companies' security programs available for inspection by an FAA special agent upon request. Each carrier would also be required to restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs to persons with a need to know as described in part 191 of this chapter, and refer requests for such information by other persons to the Administrator.

These proposed requirements are consistent with several comments on the ANPRM that stated that air carriers must ensure that the screening companies are conducting screening on their behalf in compliance with the applicable security programs and all other regulations. Some commenters also stated that while air carriers should retain responsibility for checkpoint screening activities, certificated screening companies should be directly responsible for their own regulatory compliance.

IV.F. §§ 108.201(l) and 129.25(o) Public notification regarding additional security measures

As discussed in section III.W., the FAA envisions that performance standards eventually may be established using TIP data. If a screening company were to fall short of the minimum standards it may be required to carry out additional measures to maintain the required level of security. These measures may result in slowing the screening operation at that location. Proposed §§ 108.201(l) and 129.25(o) would be added to require that each carrier required by the FAA to implement additional security measures to maintain system performance notify the public by posting signs at affected locations as specified in its security program. This would explain to the public why it might take longer than usual for screening to be accomplished and why baggage may be subjected to additional searches. This is further discussed in section II.I.

IV.G. §§ 108.205; 109.207; and 129.26 Use of X-ray systems

Proposed § 108.205 would be amended to require that air carriers use X-ray systems in accordance with their approved security programs and their screening companies' approved security programs. Both programs are included here, because the air carriers would be required to ensure that the X-ray systems meet the standards for cabinet X-ray systems issued by the Food and Drug Administration (FDA), have had radiation surveys as required, have met the required imaging requirements at the time of initial installation and when the systems are relocated, are in full compliance with any defect notices or modifications orders issued for those systems by the FDA, and meet other equipment-related requirements as described in proposed § 108.205. However, an air carrier would also be responsible for ensuring that its screening companies comply with the X-ray-related requirements to be relocated to the Screening Standard Security Program. Specifically, § 108.205(a)(2), which requires that a program for initial and recurrent training of operators of X-ray systems be established, would be relocated to

§ 111.203. Screening companies would assume responsibility for training their employees under this proposed rule. Section 108.205(a)(3) would then be renumbered to read (a)(2) and would be revised to indicate that the screening companies' security programs would contain the imaging requirements. Also, § 108.205(h), which would require each air carrier to comply with X-ray operator duty time limitations, would be relocated to § 111.203.

A new paragraph (h) would be added to state that unless otherwise authorized by the Administrator, each air carrier shall ensure that each X-ray system that it uses have a functioning threat image projection (TIP) system that meets the standards set forth in its security program. The FAA has worked with some X-ray system vendors to develop TIP systems and acceptable TIP standards and will continue to do so; these TIP systems currently are being used in several U.S. airports.

The FAA, carriers, and screening companies would use the data gathered from the TIP systems to measure performance of the screening location and screeners, as described in section II.I. It therefore is necessary that the TIP systems be functioning properly and that the carriers use them as specified in their screening companies' security programs at all times unless they obtain amendments from the Administrator. Such amendments could be approved by the FAA for a limited time period if, for example, there were not enough X-ray systems with functioning TIP systems available for necessary screening operations at particular screening locations.

Paragraph (h)(1) would state that automated X-ray TIP data will be collected as specified in the air carriers' security programs and in the responsible screening companies' security programs. Paragraph (h)(2) would state that air carriers shall make X-ray TIP data available to the FAA upon request and shall allow the FAA to download TIP data upon request.

Section 129.26 would contain proposed amendments similar to those described previously for § 108.205. Section 129.26(a)(3), which requires that a program for initial and recurrent training of operators of X-ray systems be established, would be relocated to § 111.203. Screening companies would assume responsibility for training their employees under this proposed rule. Section 129.26(a)(5) would then be renumbered to read (a)(3) and would be amended to indicate that the imaging requirements for X-ray systems will now be set forth in the approved Screening Standard Security Program rather than in the foreign air carriers' security programs.

Currently, § 129.26(a)(4) requires foreign air carriers using X-ray systems to establish procedures to ensure that all operators of the systems be provided with individual personal dosimeters to measure exposure to X-rays and that they evaluate them every month. The FAA is proposing to omit this requirement, as was also proposed in Notice No. 97–12 for part 108. In 1975, the FAA first adopted rules regarding the use of X-ray machines to screen accessible property. 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 impacts of these systems. Although the experts who submitted comments did not find it 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 determinations of those agencies with the expertise.

The FAA proposes to add a new paragraph as § 129.26(a)(4) that would parallel the proposed new paragraph (h) in § 108.205. Paragraph (a)(4) would state that unless otherwise authorized by the Administrator, each foreign air carrier shall ensure that each X-ray system that it uses has a functioning threat image projection system that meets the standards set forth in its security program. The FAA, carriers, and screening companies would use the data gathered from the TIP systems to measure performance of the screening location and screeners, as described in section II.I. Paragraph (a)(4)(i) would state that automated X-ray TIP data will be collected as specified in the SSSP and the MSP. Paragraph (a)(4)(ii) would state that foreign air carriers shall make X-ray TIP data available to the FAA upon request and shall allow the FAA to download their TIP data upon request.

Proposed § 109.207 would be added to provide regulations on the use of X-ray systems consistent with the requirements of proposed § 108.205 and § 129.26. These requirements are a slightly edited version of rule language in proposed § 108.205, with minor differences related to the unique nature of screening cargo.

IV.H. §§ 108.207 and 129.28 Use of Explosives Detection Systems

Because most screening-related procedures would be moved to the Screening Standard Security Program, proposed § 108.207 would be reworded to state the following: 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 and its screening company security programs.

This proposal would designate this revised paragraph as paragraph (a), and create a paragraph (b) to state that unless otherwise authorized by the Administrator, each air carrier shall ensure that each explosives detection system that it uses has a functioning TIP system that meets the standards set forth in its security program. The FAA is working with explosives detection system vendors to develop TIP systems and to establish acceptable standards similar to those being developed for X-ray systems. The FAA would use the data gathered from the TIP systems to measure performance of screening locations and screeners, as described in section II.I. Paragraph (b)(1) would state that automated explosives detection system TIP data will be collected as specified in the air carriers' and screening companies' security programs. Paragraph (b)(2) would state that air carriers shall make explosives detection system TIP data available to the FAA upon request and shall allow the FAA to download their TIP data upon request.

A new § 129.28 would also be added to part 129 to extend the TIP requirements for explosives detection systems to foreign air carriers. The language in this proposed addition would be similar to the proposed revised language for § 108.207 but would require foreign air carriers to comply with their security programs and their screening companies' security programs.

IV.I. §§ 108.229, 109.205, and 129.25(p) Monitoring of Screener Training Tests

Proposed new §§ 108.229, 109.205, and 129.25(p) would require that each carrier monitor each screener training test required under § 111.215(a) and (c) for all screening companies that conduct screening on its behalf in accordance with its security program. As discussed in section II.H., this proposed requirement is intended to increase carrier involvement with the training and testing processes and to help deter possible cheating. It is one of many proposals in this NPRM intended to emphasize how critical it is that screeners individually demonstrate a fundamental knowledge of screening-related information and that they meet

the standards that are needed for them to perform their screening responsibilities effectively and without inappropriate assistance.

The FAA does not intend to impose unrealistic burdens on carriers with this requirement. In a situation where multiple carriers contract with one screening company, one carrier could be designated to monitor the screener tests, or the responsibility could be rotated among all of the responsible carriers. The FAA is not proposing to require that carriers monitor the tests under proposed § 111.215(b) because of the logistical difficulties involved with screeners' completing their 40 hours of on-the-job training at varied times. In this way, screening companies would have added flexibility in administering these automated on-the-job training tests to their screening personnel.

Each test monitor would be required to meet specific qualifications, which are listed in the three proposed carrier sections. A test monitor would have to be an employee of a carrier who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor. However, if the carrier is unable to provide a test monitor who meets these requirements, it could seek an amendment from the FAA allowing it to use one or more test monitors who do not meet the qualifications requirements. Requiring that monitors be employees of the carriers would prevent carriers from designating contracted screening company employees as test monitors, resulting in increased carrier involvement with monitors who are independent from the screening companies. Carriers could designate any qualified carrier employees as test monitors, including ground security coordinators. In addition to the qualifications requirement, test monitors would be required to be familiar with the testing and grading procedures contained in their screening companies' security programs and would be required to monitor the procedures as specified in the security programs.

IV.J. Additional Proposed Requirements to Parts 108, 109, and 129

Proposed § 109.1, ''Applicability,'' would revise current § 109.1 to clarify and simplify the applicability for the part. The proposal would state that § 109.1 prescribes aviation security rules governing each indirect air carrier (IAC) engaged indirectly in the air transportation of property.

Proposed § 109.3, ''Definitions,'' would define the term ''indirect air carrier'' to clarify its meaning for the purpose of part 109.

Proposed § 109.7, ''Falsification,'' would be a new section in part 109. This section would be added to be consistent with the falsification requirements in proposed § 108.7.

Proposed § 109.101, ''Adoption and implementation,'' would be created to emphasize the requirement for each indirect air carrier to adopt and carry out a security program that meets the requirements of § 109.103. Creating this separate section would also make the statement of this requirement consistent with the ''Adoption and implementation'' section in § 108.101.

Proposed § 109.201, ''Screening of Cargo,'' would be added to clarify under paragraph (a) that each indirect air carrier that elects to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its approved security program and its screening company approved security program(s) to inspect cargo and prevent the carriage of explosives or incendiaries onboard any aircraft. Proposed § 109.201(b) would be added to clarify that each indirect air carrier that elects to conduct screening under a security program shall detect and prevent the carriage of explosives or incendiaries aboard aircraft and into sterile areas in cargo. This section would be added to be consistent with the applicable requirements in the ''Screening of persons and property and acceptance of cargo'' section in proposed § 108.201.

Proposed § 108.201(m) would be added under ''Screening of persons and property and acceptance of cargo'' to clarify that although all screening-related requirements for screening in the United States have been relocated to part 111, certain requirements still apply at screening locations outside the United States at which air carriers have operational control over screening. Specifically, proposed § 108.201(m) would state that air carriers that do have operational control over screening outside the United States shall carry out and comply with all relevant sections of part 111 of this chapter, except for those requirements related to screening company certification, to the extent allowable by local law. An air carrier would be permitted to use screeners who do not meet the requirements of § 111.205(a)(3) provided that at least one representative of the air carrier who has the ability to read and speak English functionally is present while the air carrier's passengers are undergoing security screening. In the event that an air carrier is unable to implement any of the requirements for screening, the air carrier would be required to notify the Administrator of those air carrier stations or screening locations so affected. Most of proposed § 108.201(m) consists of requirements contained in § 108.209(e) and (f) of proposed Notice No. 97–12. Proposed § 108.201(n) would be added to require that air carriers notify the Administrator of any screening locations outside the United States at which they do have operational control. To the FAA's knowledge, there are currently no foreign locations where part 108 air carriers have operational control over screening; however, this proposal includes these requirements in the event of such a situation.

Proposed § 108.203, ''Use of metal detection devices,'' would be revised to state that no air carrier may use a metal detection device contrary to its approved security program or its screening company approved program(s). The section would also be revised to require that metal detection devices meet the calibration standards established by the Administrator in the screening company approved security program(s).

Proposed § 108.227(b) would be amended to also require that each air carrier ensure that individuals performing security-related functions on its behalf have knowledge of their screening company approved security program(s) to the extent that such individuals need to know in order to perform their duties.

Proposed § 108.301(b)(1) would be amended to require that the ground security coordinator (GSC) at each airport also conduct a review of all security-related functions for effectiveness and compliance with its screening company security program(s). Proposed § 108.301(b)(2) would be amended to require that the GSC at each airport also immediately initiate corrective action with its applicable screening company for each instance of noncompliance with the screening company's security program.

Proposed § 129.25(j) would revise current (j) to more clearly break out and include the operations requirements consistent with § 108.201.

V. Proposed Revisions to Part 191

V.A. Protection of Sensitive Security Information (SSI)

The carriers' security programs are not available to the public because the information that they contain would be helpful to individuals who might intend to attack civil aviation. Part 191 of Title 14, Code of Federal Regulations, contains rules to protect security

programs and other sensitive security information (SSI) from disclosure to unauthorized persons. For example, under § 191.5, a carrier and each individual employed by, contracted to, or acting for that carrier are required to restrict disclosure of and access to SSI to persons with a need to know.

V.B. § 191.1 Applicability and Definitions

Part 191.1(c) indicates that for matters involving the release or withholding of information and records containing information described in § 191.7 (a) through (g) and related documents described in (l), the authority of the Administrator may be further delegated. The FAA proposes to add § 191.7(m) to this list.

V.C. § 191.5 Records and Information Protected by Others

Currently, screeners are required to protect SSI because they are employed by, contracted to, or acting for carriers. This would remain true under the screening company certification rules proposed in this notice. However, to emphasize the need for screening companies and their employees to protect SSI, the FAA proposes to add to § 191.5 the requirement that screening companies also shall restrict access to SSI.

As discussed previously, the FAA anticipates that in the course of applying for and qualifying for a screening company certificate, an applicant would receive the Screening Standard Security Program. To ensure that applicants for certificates are under the same requirements to protect SSI as are persons who hold certificates, the FAA proposes to add § 191.5(e). Proposed § 191.5(e) provides that references in part 191 to an air carrier, airport operator, indirect air carrier, foreign air carrier, or certificated screening company include applicants. Thus, an applicant for a screening company certificate would be required to restrict disclosure of the security program information that it receives. The same would be true of an applicant for an air carrier certificate who also is seeking an approved security program. The amount of SSI that carrier applicants now receive is very limited, and there usually is very little time between when they might receive standard security program information and when they might become certificated. However, they should protect the security program information from unauthorized disclosure.

In some parts of the industry, individuals may be placed in training for positions, such as a screener position, before they are on the companies' payrolls. The training may include SSI. If a person completes training, he or she is hired. There has been some misunderstanding as to whether such trainees are covered by part 191. The FAA does consider them to be covered and proposes to add § 191.5(f) to make this clear. Such trainees meet one or more of the criteria of employed by, contracted to, or acting for a carrier, airport operator, or screening company.

V.D. § 191.7 Description of SSI

Section 191.7 defines what information and records are SSI and therefore are subject to the protections in § 191.5. Under this proposal, § 191.7 would be amended to treat screening companies the same as carriers and to emphasize the need for them to protect sensitive security information. Section 191.7(a) describes various security programs that are protected. It would be amended to include screening company security programs.

Section 191.7(h) describes the information that the Administrator has determined may reveal systemic vulnerabilities of the aviation system or vulnerabilities of aviation facilities to attack. It would be amended to include alleged violations and findings of violations of part 111 and any information that could lead to the disclosure of security information or data developed during FAA evaluations of certificated screening companies. For events that occurred less than 12 months before the date of the release of the information, § 191.7(h) would be amended to allow the FAA to release summaries of certificated screening companies' total security violations in specified time ranges without identifying specific violations. For events that occurred 12 months or more before the date of the release of the information, § 191.7(h) would be amended to allow the FAA to release the names of certificated screening companies cited in the alleged violations.

A new § 191.7(m) would be added to cover the operations specifications of screening companies. Specific portions of the operations specifications would be considered SSI and would be protected from disclosure to unauthorized persons. Some parts of the operations specifications, however, would be considered not to be SSI and would not be protected under part 191. These nonprotected items include the name of the company, the locations at which the Administrator has authorized the company to conduct business, the type of screening that the Administrator has authorized the company to perform, and the title and name of the person required by proposed § 111.209(b).

A new § 191.7(n) would be added to cover the screener tests that the FAA will develop and require under proposed § 111.215. These tests will contain information that is in the security programs and must be protected in the same way.

VI. Paperwork Reduction Act

This proposal would create a new part 111 within Title 14, Code of Federal Regulations, titled ''Certification of Screening Companies.'' It would also result in conforming amendments to 14 CFR parts 108, 109, 129, and 191. This proposal contains information collections that the FAA has submitted to the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995 (44 U.S.C. section 3507(d)).

Title: Certification of Screening Companies.

The following proposed sections include new information collection requirements: § § 108.103(b)(14) and (15), 108.201(j), and (k), 108.205, 108.207, 108.229, 109.103(b)(4) and (5), 109.105, 109.203(b) and (c), 109.205, 109.207(e), (f), and (h), 111.105–111.109, 111.113–111.119, 111.205, 111.209, 111.215, 111.219, 111.221, 129.25(c)(5) and (6), (l), (m), and (o), 129.26(a)(4), and 129.28.

The FAA proposes to require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. The FAA also proposes specific requirements that are intended to improve the screening of passengers, accessible property, checked baggage, and cargo and proposes to provide standards for consistent high performance and increased accountability of screening companies. The proposal is in response to a recommendation by the White House Commission on Aviation Safety and Security and to a Congressional mandate in Section 302 of the Federal Aviation Reauthorization Act of 1996.

The FAA would collect several types of information from screening companies. The FAA would collect and analyze information during the application process before issuing certificates to screening companies. This would be the most significant collection of information involved but would ccur only initially for provisional screening company certificates, after approximately 1 year for ''standard'' certificates, and once every 5 years thereafter. In addition, the FAA would

require that screening companies notify the FAA and provide information as applicable when adopting their security programs and when proposing to amend their security programs, operations specifications, or screening company certificates. During periodic assessments of screening company operations, the screening companies would be required to provide any information requested to the FAA. The FAA would use this information to ensure that the screening companies and carriers are complying with screening requirements.

Next, the FAA would collect information from air carriers, foreign air carriers, and indirect air carriers. These carriers would be required to show evidence of compliance with specified regulations and programs. This includes a proposed requirement that carriers maintain copies of their screening companies' security programs at their principal business offices and at their screening locations, and be able to obtain copies of these programs to show the FAA upon request. Carriers would be required to include in their security programs descriptions of the systems that they would use to evaluate and test the performance of all screening that they conduct. This requirement would ensure that all carriers plan how they would remain actively involved in evaluating and testing their screening operations and then carry out those security program provisions. The FAA would review each security program to ensure that the systems descriptions provide for effective oversight and would evaluate the carriers periodically to ensure that they are complying with their security programs. Each carrier would also be required to collect threat image projection data as specified in its carrier security program and in its responsible screening company security programs and make the data available to the FAA if requested.

In addition to the FAA collecting information, carriers would also collect information from screening companies. First, when the FAA issues an enforcement action to a screening company, that company would be required to provide a copy of the enforcement action to the carrier(s) for which it is providing screening. The carriers would use the information that they collect regarding enforcement actions to monitor the effectiveness of the screening operations being conducted on their behalf. This would be a third party disclosure. Second, carriers would also receive copies of their screening companies' certificates, operations specifications, and security programs as well as all of their screening companies' proposed changes to any of this documentation. A screening company would be required to submit with its amendment request a statement that all carriers for which it screens have been advised of the proposed amendment and have no objection to it. The Administrator would review this application and determine whether or not to approve the proposed amendment. Third, upon termination of screening services at a site, a screening company would be required to surrender all its records of individual screeners to the carrier(s) for which it conducts screening. The carrier(s) would use this information from the screening company as needed for future contracts.

Air carriers and foreign air carriers also would be required under this proposal to notify the public by posting signs at screening locations as specified in their security programs when they are required by the FAA to implement additional security measures to maintain system performance. This would be a third-party disclosure. Indirect air carriers, in particular, would be required under this proposal to post signs or provide written notifications to their customers to caution them that certain X-ray systems being used may damage specified types of film contained in their property. Indirect air carriers also would be required under this proposal to maintain copies of the results of their most recent radiation surveys conducted at their principal business offices and the places where the X-ray systems are in operation and would be required to make the surveys available for FAA inspection upon request.

Screening companies would also be required to collect and retain information under this proposed rule. Screening companies would be required to collect copies of applicable regulations as specified in the proposed rule and maintain records regarding the requirements in the rule. Such records would include copies of their certificates, operations specifications, security programs, and training records. Screening companies would be required to ensure that the steps in current § 108.33(c)(1–4) have been completed before providing sensitive security information to screener trainees. Screening companies would be required to annotate screeners' training records when screeners complete or terminate their training or transfer to other companies. Screening companies would on occasion collect brief permission statements from screeners that would require them to release screener training and performance records to other screening companies or to the screeners directly upon the screeners' request. These would be third-party disclosures. Screening companies would also be required under this proposal to issue letters of completion of training to all screeners, screeners-in-charge, and checkpoint security supervisors upon their successful completion of approved initial, recurrent, and specialized courses of training.

It is estimated that this proposal would affect 640 screening companies and carriers annually. This estimate consists of 66 screening companies, 150 air carriers, 145 foreign air carriers, and 264 indirect air carriers. This estimate also takes into account the FAA's assumption that approximately 15 of the air carriers would apply for and receive screening company certificates in order to screen cargo and thus counts these 15 air carriers twice—once, which takes into account the costs they would accrue as air carriers and once more, which takes into account the costs they would accrue as screening companies. The estimated annual reporting and recordkeeping burden hours are estimated to be 173,577 hours.

Individuals and organizations may submit comments regarding the information collection requirements. The comments must be received on or before April 4, 2000 and must be submitted to the address for comments listed in the **ADDRESSES** section of this document. 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.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. When OMB assigns a control number, a notification of that number will be published in the **Federal Register**.

VII. Compatibility With ICAO Standards

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. This proposal is consistent with the 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. 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.

VIII. Regulatory Analyses

VIII.A. Regulatory Evaluation Summary

This proposed rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but does not reach the threshold for an ''economically significant'' action (i.e., annual costs greater than $100 million).

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency 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, as amended March 1996, requires agencies to analyze the economic effects of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that the proposed rule would generate benefits that justify its costs. Although the FAA was unable to determine if the proposed rule would have a significant impact on a substantial number of small entities and given the complexity of the issues, the FAA conducted a regulatory flexibility analysis. The proposed rule would not constitute a barrier to international trade and does not contain Federal intergovernmental or private sector mandates. The full analyses performed in response to the above requirements are contained in the docket and are summarized below.

The FAA has analyzed the expected costs of this regulatory proposal for a 10-year period, from 2000 through 2009. As required by the Office of Management and Budget (OMB), the present value of this cost stream was calculated using a discount factor of 7 percent. All costs in this analysis are expressed in 1997 dollars.

Companies that have traditionally been providing passenger screening for air carriers would be covered by these proposed regulations. Some direct air carriers do their own passenger screening and/or provide screening for other direct air carriers; in the context of passenger screening, these carriers will be referred to as screening companies. There currently are 66 screening companies performing screening for part 108 and part 129 air carriers. The FAA estimates that in 2000, there would be approximately 19,600 screeners and screener supervisors, working for these screening companies who would be affected by this proposed rule. The FAA estimates that there would be an additional 3 screening companies that would be covered by these regulations each year starting in 2001.

This proposed rule also would affect the 150 U.S. air carrier operators certificated under part 108 providing scheduled and other domestic and international passenger service in the United States as well as the 2,634 U.S. indirect air carriers certificated under part 109 and 145 foreign air carriers certificated under part 129. The FAA assumes that the number of direct, indirect, and foreign air carriers would remain constant for each year of the analysis.

The FAA assumes that 10 percent of the direct and indirect air carriers that currently transport cargo would elect to screen this cargo. The FAA assumes that these carriers would choose to do their own screening, with time being a very expensive commodity, for it would be cost beneficial for them to do so rather than depend on other screening companies to perform the services. Air carriers that screen cargo would need to comply with the provisions that regulate screening companies; this compliance would generate new costs.

Some of the sections of the proposed part 111 make references to parts 108 and 109, and this analysis also examines potential changes to parts 108 and 109. The numbering system for part 108 of this NPRM is based on the numbering system of a recently published NPRM; on August 1, 1997, the FAA published Notice No. 97–12, which proposes to revise 14 CFR part 108 to update the overall regulatory structure for air carrier security (62 FR 41730). This notice proposes to amend the proposed rule language of part 108 in Notice No. 97–12 rather than the current part 108. The numbering systems for revised part 109 (and proposed part 111) also are closely aligned with the Notice No. 97–12 numbering system for clarity and consistency. If the text refers to a proposed section in part 108 that is simply a renumbered section (based on Notice No. 97–12), the current section number will be placed in parentheses.

Many of the proposals for part 111 are either definitional or discuss requirements in other sections. In addition, many of the proposed changes to parts 108, 109, and 129 simply change definitions or make minor word changes. These changes would not result in any incremental costs and will not be covered in this summary. Twenty-one proposed sections would result in costs and these are covered below.

Proposed § 111.5 would require all companies performing screening to allow FAA inspection to determine compliance with these proposals. The screening company must also allow for FAA inspections and tests of equipment as well as procedures at screening locations that relate to the carrier's compliance with their regulations. The FAA estimates that it would need 12 additional inspectors, 3 based at FAA headquarters and 1 each stationed at the 9 FAA regions. The additional personnel would process all the paperwork involved with issuing the certificates, writing and approving the Standard Security Screening Program (SSSP), and approving operations specifications as well as processing any changes and amendments and analyzing performance data. Ten-year costs sum to $10.10 million (net present value, $7.10 million).

Proposed § 111.105 would provide specific requirements for each screening company's SSSP. The FAA would write the basic SSSP document and provide copies of the document to the screening companies. After the SSSP is finalized, each screening company would be required to maintain at least 1 complete copy of the SSSP at its principal business office, at each airport that it serves, and each carrier that it screens for. The 10-year costs for this proposed section sum to $65,600 (net present value, $50,400).

Proposed § 111.107 describes the procedures for seeking SSSP approvals and making future amendments. A screening company would review the basic SSSP document obtained from the FAA, and then could choose to adopt the SSSP as is or adopt the SSSP after making amendments to it. Either the company providing screening services or the FAA could initiate amendments to the SSSP after its initial makeup has been agreed upon. The FAA assumes, for the purpose of this analysis, that amendments to the SSSP would occur 3 times a year on average. Each company would then need to brief its employees on these changes. In addition, both screening companies and the FAA would be required to make sure that all carriers using those screening companies are aware of and concur with all SSSP changes. Total 10-year costs for § 111.107 sum to $48.13 million (net present value, $33.27 million).

Proposed § 111.109 would require all screening companies to have

certificates. All companies would apply initially for provisional certificates that would be good for 1 year. Existing companies would be permitted to continue their screening activities uninterrupted while their applications are considered. Both existing and new screening companies would then have to apply for standard certificates, which would be effective for 5 years. The FAA would inspect screening companies regularly and would monitor operations and tests continually to determine that each screening company is in compliance with the regulations. Once a certificate is obtained, a screening company would need to apply to the FAA for an amendment to change any of the information on the certificate; the FAA assumes that a certificate would be amended once every other year on average. Total 10-year costs sum to $133,000 (net present value, $96,400).

Proposed § 111.113 would stipulate what each screening company would need to have in its operations specifications (ops specs) in order to get a screening certificate. Each screening company would write its own ops specs; this document would emphasize the capabilities and needs of the screening company, and it would need to be submitted to the FAA for approval. Once the certificate is approved, the screening company would be required to maintain a complete copy of its ops specs at its principal business office and at each airport where it conducts security screening as well as provide a current copy to each carrier for which it screens. The FAA assumes that the ops specs would be amended 4 times a year, twice by the screening company and twice by the FAA. Total 10-year costs sum to $513,700 (net present value, $447,400).

Proposed § 111.115 describes the procedures for approving a company's ops specs and future amendments to these ops specs. After a company's ops specs are submitted, the FAA would review them to consider whether changes are needed. Further FAA approval of the ops specs would be necessary only if the screening company sought to amend them. The screening company would need to brief its employees after initial FAA acceptance of the ops specs and after each amendment. The FAA assumes, for the purpose of this analysis, that changes to the ops specs would occur twice a year on average. Total 10-year costs sum to $5.29 million (net present value, $3.70 million).

Proposed § 111.117 would require each screening company to allow each carrier for which it performs screening to inspect the screening company's personnel, facilities, equipment, and records to determine compliance. Direct air carriers currently inspect the locations of the screening companies that are screening for them; the FAA assumes that the new requirements would result in additional inspections. Should an audit result in an alleged violation, a screening company would provide a copy of any proposed and final enforcement action to each carrier for which it screens. This proposed requirement would assist the carriers in evaluating the performance of their screening companies. Ten-year costs sum to $10.36 million (net present value, $7.38 million).

Proposed § 111.119 would require each certificated security screening company to have a principal business office with mailing address and to notify the FAA of any address changes. The FAA assumes that virtually all businesses currently have a principal business office, and expects that a screening company would change its mailing address once every 3 years on average. Ten-year costs sum to $4,800 (net present value, $3,300).

Under proposed § 111.201, screening companies would be required to prevent the introduction of explosives, incendiaries, or deadly or dangerous weapon into sterile areas. In addition, screening companies would be required to staff their security screening checkpoints. Companies that currently screen would not incur additional costs. However, indirect air carriers that choose to screen would have new responsibilities and costs; these costs would include those for training new personnel and, in some cases, purchasing new equipment (the costs of which are included in proposed § 109.207). Total 10-year costs for § 111.201 sum to $1.01 million (net present value, $711,300).

Proposed § 111.205 would require initial and recurrent training for persons who screen passengers, checked baggage, and carry-on items. This training would include ensuring that screeners work in a courteous and efficient manner and in compliance with the applicable civil rights laws of the United States. This proposed section also would require persons with supervisory screening duties to have initial and recurrent training that includes leadership and management subjects. Ten-year costs would be $8.29 million (net present value, $5.78 million).

Proposed § 111.209 would require all companies providing screening services to have qualified management and technical personnel available at each major screening locations. Among these would be the screening performance coordinator (SPC), CSS's and Screeners in charge (SIC's). The SPC would be the focal point for FAA communication on security-related issues and communication. All SPC's would be required to take annual classes in leadership training, which would be a new requirement. While each screening company would be required to fill this position, the FAA does not assume that it would be a full time position at every screening company. At smaller companies, the persons who fill the SPC positions could perform SPC duties on a part time basis while performing other duties at other times. The FAA calls for comments from screening companies as to the number of companies that already have personnel performing these SPC duties, and requests that all comments be accompanied with clear documentation. Ten-year costs for § 111.209 would be $67.27 million (net present value, $47.06 million).

Proposed § 111.213 would specify the requirements for screening companies regarding training programs and knowledge of subject areas. The FAA proposes to create performance-based training where screening companies could use FAA-approved computer-based training (CBT) programs. Screening companies would be responsible for ensuring that their trainees are able to pass FAA knowledge-based and X-ray interpretation tests at the end of their initial training and that screening personnel meet performance standards thereafter. Ten-year costs sum to $7.78 million (net present value, $5.41 million).

Proposed § 111.215 would require that all screening personnel pass computerized tests at the conclusion of their initial training and every year thereafter and that the tests be administered by air carrier personnel. Each screening company would be required to use an FAA-designed computer-based test. The tests would be designed to help ensure that screener trainees have achieved the knowledge and skills that they need to perform their jobs effectively. In addition, the FAA would require that all screening personnel pass additional 1 hour tests after their on-the-job-training. These additional tests would be designed to test proficiency and may require higher scores than those the tests after initial training. These subsequent tests would not need to be administered by air carrier personnel. Ten-year costs for this proposed section sum to $3.44 million (net present value, $2.38 million).

To increase screener professionalism, proposed § 111.219 would require all

screening companies to issue letters of completion of training to screeners upon their successful completion of approved courses of training. These letters of completion would provide personnel with official records of their specific training accomplishments. The FAA anticipates that screeners with evidence of training could move more smoothly between employers and that they would be valued more highly because they would not require as much training as new hires. Most importantly, the FAA believes that requiring screening companies to issue letters of completion to screeners for successful completion of training would help enhance professionalism in this essential security job. Ten years' costs sum to $1.38 million (net present value, $963,600).

Under proposed § 111.221, companies that provide screening services would be required to forward screener training records to other screening providers when requested by the screeners. This requirement would help increase each screener's control over his or her own mobility, and would resolve current problems relating to control of screener documents. Ten-year costs above and beyond the SPC's time sum to $151,300 (net present value, $105,500).

Under proposed § 111.223, each screening company would be required to use a threat image projection (TIP) system for each X-ray and explosives detection system (EDS) that it uses to measure the screening company's performance. (TIP is capable of introducing test objects to screeners on the X-ray machines and EDS machines at any rates set on the computers. The success rates can easily be recorded and later analyzed by the FAA, the carriers, and the screening companies to monitor continuously how well screening locations are operating.) Proper operation of TIP systems and data collection would be critical to measuring accurately screening company performances. The FAA would ultimately establish a performance range that all screening companies would be required to fall within to be considered effective at detecting possible threats. The FAA would be responsible for collecting TIP-related data; 10-year costs would sum to $20.46 million (net present value, $14.37 million).

Proposed §§ 108.103 (current § 108.7), 109.103, and 129.25(c) set forth changes to the direct, indirect, and foreign air carrier security programs. New program sections would be required; these new sections would reference each carrier's new responsibilities and requirements vis-a-vis screening companies. Hence, new sections would have to be written and submitted to the FAA for approval, and air carriers would need to expend resources to maintain these new sections. The proposed changes to § 109.103 also would require indirect air carriers to acknowledge in writing their receipt of approved security programs or security program amendments from the FAA. Ten-year costs for these sections total $15.29 million (net present value, $10.74 million).

The proposal would modify the current regulatory text of proposed § § 109.105 (current § 109.5) and 129.25(e) to clarify the requirements and make them consistent with the organization of proposed § 108.105 (current § 108.25). Under these proposals, the only substantive change would affect indirect air carriers, as they would be allowed to petition the FAA to reconsider FAA amendments if the petitions are submitted no later than 15 days before the effective dates of the FAA amendment. Ten-year costs total $14,800 (net present value, $10,400).

Proposed §§ 108.201(i) and (j); 109.203(b) and (c); and 129.25(l) and (m) (all new sections) would require each carrier to ensure that each of its screening company's actions are consistent with part 111, the screening company's SSSP, and the screening company's ops specs. Each air carrier would need to expend resources to amend its security programs to include these new oversight responsibilities. Air carriers would also have to purchase and maintain computer equipment required to test screeners. The amounts and types of equipment that air carriers would need to provide to screening companies would vary depending on the size of the airports where the screening is taking place. The FAA currently is providing screening companies at certain airports with computers for CBT but would not provide for the computer's maintenance; all other equipment would have to be purchased and maintained by the applicable air carriers. Ten-year costs for these proposed sections sum to $21.07 million (net present value, $15.52 million).

Proposed §§ 108.205 (current § 108.17), 109.207, and 129.26 would be amended to require that carriers use X-ray systems in accordance with their security program and applicable screening company security programs. Each carrier would need to ensure that each X-ray system that uses TIP meets the standards set forth in its security program. As TIP is a new system, X-ray systems that have been used at airports have not been designed to run it. Accordingly, many X-ray machines at airports would need to be replaced with equipment that is TIP compatible. The FAA is providing carriers at certain airports with the equipment required but would not provide the maintenance of these X-ray machines; all other equipment would have to be purchased and maintained by the applicable carriers. The FAA proposes that the deployment of these machines be phased in over a 5-year period based on the size and complexity of the airport. In addition, foreign air carriers would no longer have to ensure that their screening operators be provided with individual personal dosimeters to measure exposure to X-rays; removal of this requirement would result in cost savings. Ten-year costs for this proposed section sum to $69.39 million (net present value, $57.20 million).

Proposed new §§ 108.229, 109.205, and 129.25(n) would require that each carrier monitor each screener training test required under proposed § 111.215 for all screening companies screening on the carrier's behalf. This proposed requirement is intended to increase air carrier involvement with the training and testing processes and to help deter cheating. Each test monitor would have to be a direct carrier employee (not a contracted employee) who does not have part 111 or other screening-related responsibilities. These proposed sections also would require that screeners be evaluated by non-screening supervisors once a year; direct and foreign air carriers already have supervisors do this, so the only additional cost would be for indirect air carriers. Ten-year costs for this proposed section sum to $9.04 million (net present value, $6.32 million).

Total 10-year costs for these proposals would be $300.02 million (present value, $219.22 million).

Benefits

The primary benefit of the proposed rule would be significantly increased protection to U.S. citizens and other citizens traveling on U.S. domestic and foreign air carrier flights from acts of terrorism as well as increased protection for those operating aircraft. Specifically, the proposed rule is aimed at deterring terrorism by preventing explosives, incendiaries, and deadly or dangerous weapons from being carried aboard commercial flights in checked baggage, carry-on baggage, cargo, and on persons.

Terrorism can occur within the United States. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements from many nations are present in the United States. In addition, Americans are joining

terrorist groups. The activities of some 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. These extremists operate in small groups and can act without guidance or support from state sponsors. This makes it difficult to identify them or to anticipate and counter their activities. The following discussion outlines some of the concrete evidence of the increasing terrorist threat within the United States and to domestic aviation.

Investigation into the February 1993 attack on the World Trade Center (WTC) uncovered a foreign terrorist threat in the United States that is more serious than previously known. The WTC investigation disclosed that Ramzi Yousef had arrived in the United States in September 1992 and had presented himself to immigration officials as an Iraqi dissident seeking asylum. Yousef and a group of Islamic radicals in the United States then spent the next 5 months planning the bombing of the WTC and other acts of terrorism in the United States. Yousef returned to Pakistan on the evening of February 26, 1993, the same day that the WTC bombing took place. Yousef traveled to the Philippines in early 1994 and by August of the same year had conceived a plan to bomb as many as 12 U.S. airliners flying between East Asian cities and the United States.

Yousef and co-conspirators Abdul Murad and Wali Khan tested the type of explosive devices to be used in the aircraft bombings and demonstrated the group's ability to assemble such a device in a public place, in the December 1994 bombing of a Manila theater. Later the same month, the capability to get an explosive device past airport screening procedures and detonate it aboard an aircraft also was successfully tested when a bomb was placed by Yousef aboard the first leg of Philippine Airlines Flight 424 from Manila to Tokyo. The device detonated during the second leg of the flight, after Yousef had deplaned at an intermediate stop in the Philippine city of Cebu.

Preparations for executing the plan were progressing rapidly. However, the airliner bombing plot was discovered in January 1995 by chance after a fire led Philippine police to the Manila apartment where the explosive devices were being assembled. Homemade explosives, batteries, timers, electronic components, and a notebook full of instructions for building bombs were discovered. Subsequent investigations of computer files taken from the apartment revealed the plan, in which 5 terrorists were to have placed explosive devices aboard United, Northwest, and Delta airline flights. In each case, a similar technique was to be used. A terrorist would fly the first leg of a flight out of a city in East Asia, planting the device aboard the aircraft and then deplane at an intermediate stop. The explosive device would then destroy the aircraft, continuing on a subsequent leg of the flight to the United States. It is likely that thousands of passengers would have been killed if the plot had been successfully carried out.

Yousef, Murad, and Khan were arrested and convicted in the bombing of Philippine Airlines flight 424 and in the conspiracy to bomb U.S. airliners. Yousef was sentenced to life imprisonment for his role in the Manila plot, while the 2 other co-conspirators have been convicted. Yousef also was convicted and sentenced to 240 years for the World Trade Center bombing. However, there are continuing concerns about the possibility that other conspirators remain at large. The airline bombing plot, as described in the files of Yousef's laptop computer, would have had 5 participants. This suggests that, while Yousef, Murad and Khan are in custody, there may be others at large with the knowledge and skills necessary to carry out similar plots against civil aviation.

The fact that Ramzi Yousef was responsible for both the WTC bombing and the plot to bomb as many as 12 United States air carrier aircraft shows that: (1) Foreign terrorists are able to operate in the U.S. and (2) Foreign terrorists are capable of building and artfully concealing improvised explosive devices that pose a serious challenge to aviation security. This, in turn, suggests that foreign terrorists conducting future attacks in the U.S. may choose civil aviation as a target. Civil aviation's prominence as a prospective target is clearly illustrated by the circumstances of the 1995 Yousef conspiracy.

The bombing of a Federal office building in Oklahoma City, Oklahoma shows the potential for terrorism from domestic groups. While the specific motivation that led to the Oklahoma City bombing would not translate into a threat to civil aviation, the fact that domestic elements have shown a willingness to carry out attacks resulting in indiscriminate destruction is worrisome. At a minimum, the possibility that a future plot hatched by domestic elements could include civil aircraft among possible targets must be taken into consideration. Thus, an increasing threat to civil aviation from both foreign sources and potential domestic ones exists and needs to be prevented and/or countered.

That both the international and domestic threats have increased is undeniable. While it is extremely difficult to quantify this increase in threat, the overall threat can be roughly estimated by recognizing the following:

- U.S. aircraft and American passengers are representatives of the United States, and therefore are targets;
- Up to 12 airplanes could have been destroyed and thousands of passengers killed in the actual plot described above;
- These plots came close to being carried out; it was only through a fortunate discovery and then extra tight security after the discovery of the plot that these incidents were thwarted;
- It is just as easy for international terrorists to operate within the United States as domestic terrorists, as evidenced by the World Trade Center bombing; therefore,
- Based on these facts, the increased threat to domestic aviation could be seen as equivalent to some portion of 12 Class I Explosions on U.S. airplanes. (The FAA defines Class I Explosions as incidents that involve the loss of an entire aircraft and incur a large number of fatalities.)

In 1996, both Congress and the White House Commission on Aviation Safety and Security (Commission) recommended further specific actions to increase civil aviation security. The Commission stated that it believes that the threat against civil aviation is changing and growing, and recommended that the Federal Government commit greater resources to improving civil aviation security. President Clinton, in July 1996, declared that the threat of both foreign and domestic terrorism to aviation is a national threat. The U.S. Congress recognized this growing threat in the Federal Aviation Reauthorization Act of 1996 by: (1) Authorizing money for the purchase of specific anti-terrorist equipment and the hiring of extra civil aviation security personnel; and (2) Requiring the FAA to promulgate additional security-related regulations, including this proposal.

In the absence of increased protection for the U.S. domestic passenger air transportation system, it is conceivable that the system would be targeted for future acts of terrorism. If even one such act were successful, the traveling public would demand immediate increased security. Providing immediate protection on an ad hoc emergency basis would result in major inconveniences, costs, and delays to air travelers that may substantially exceed those imposed

by the planned and measured steps contained in this proposal.

Based on the above statement, and after evaluating feasible alternative measures, the FAA concludes that this proposed rule sets forth the best method to provide increased security at the present time. Notwithstanding the above, it is helpful to consider, to the limited extent possible, the benefits of this proposal in reducing the costs associated with terrorist acts. The following analysis describes alternative assumptions regarding the number of terrorist acts prevented and potential market disruptions averted that result in the proposed rule benefits at least equal to the proposed rule costs. This is intended to allow the reader to judge the likelihood of benefits of the proposed rule equaling or exceeding its cost.

The cost of a catastrophic terrorist act can be estimated in terms of lives lost, property damage, decreased public utilization of air transportation, etc. Terrorists acts can result in the complete destruction of an aircraft with the loss of all on board. The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. The fair market value of a Boeing 737 is $16.3 million, and the typical 737 airplane has 113 seats. It flies with an average load factor of 64.7%, which translates into 73 passengers per flight; the airplane would also have two pilots and three flight attendants.

A terrorist catastrophic event could also result in fatalities on the ground. However, looking at the number of accidents including aircraft covered by this proposed rule and the number of fatalities on the ground over the last ten years, the average fatality was less than 0.5 persons per accident. Therefore, the FAA will not assume any ground fatalities in this analysis.

In order to provide a benchmark comparison of the expected safety benefits of rulemaking actions with estimated costs in dollars, a minimum of $2.7 million is used as the value of avoiding an aviation fatality (based on the willingness to pay approach for avoiding a fatality). In these computations, the present value of each incident was calculated using the current discount rate of 7 percent. Applying this value, the total fatality loss of a single Boeing 737 is represented by a cost $210.6 million (78 × $2.7 million). The safety related costs of a single domestic terrorist act on civil aviation sum to $271.18 million (net present value, $190.46 million).

Certainly the primary concern of the FAA is preventing loss of life, but there are other considerations as well. Another large economic impact is related to decreased airline travel following a terrorist event. A study performed for the FAA by Pailen-Johnson Associates, Inc., *An Econometric Model of the Impact of Terrorism on U.S. Air Carrier North Atlantic Operations*, indicated that it takes about 9 to 10 months for passenger traffic to return to the pre-incident level after a single event. Such a reduction occurred immediately following the destruction of Pan Am Flight 103 over Lockerbie, Scotland in December 1988. In general, 1988 enplanements were above 1987's. There was a dramatic fall-off in enplanement in the first 3 months of 1989 immediately following the Pan Am 103 tragedy, and it took until November 1989 for enplanements to approximate their 1987 and 1988 levels.

Trans-Atlantic enplanements increased, from 1985 to 1988, at an annual rate of 10.7 percent. Projecting this rate to 1989 would have yielded 1989 enplanements of 8.1 million, or 1.6 million more than Pan Am actually experienced. This represents almost a 20 percent reduction in expected enplanements caused by the destruction of Pan Am 103 by terrorists.

The estimated effect of a successful terrorist act on the domestic market has not been studied. Although there are important differences between international and domestic travel (such as the availability of alternative destinations and means of travel), the FAA believes that the traffic loss associated with international terrorist acts is representative of the potential domestic disruption.

There is a social cost associated with travel disruptions and cancellations caused by terrorist events. The cost is composed of several elements. First is the loss associated with passengers opting not to fly—the value of the flight to the passenger (consumer surplus) in the absence of increased security risk and the profit that would be earned by the airline (producer surplus). Even if a passenger opts to travel by air, the additional risk may reduce the associated consumer surplus. Second, passengers who cancel plane trips would not purchase other goods and services normally associated with the trip, such as meals, lodging, and car rental, which would also result in losses of related consumer and producer surplus. Finally, although spending on air travel would decrease, pleasure and business travelers may substitute spending on other goods and services (which produces some value) for the foregone air trips. Economic theory suggests that the sum of the several societal value impacts associated with canceled flights would be a net loss. As a corollary, prevention of market disruption (preservation of consumer and producer welfare) through increased security created by the proposed rule is a benefit.

The FAA is not able to estimate the actual net societal cost of travel disruptions and the corollary benefit gained by preventing the disruptions. However, there is a basis for judging the likelihood of attaining benefits by averting market disruption sufficient, in combination with safety benefits, to justify the proposed rule. The discounted cost of this proposed rule is $219.22 million, while the discounted benefits for each Class I Explosion averted comes to $190.46 million. Hence, if 1 Class I Explosion is averted, the present value of losses due to market disruption must at least equal $28.77 million ($219.22 million less $190.46 million—one Class I Explosion).

The value of market loss averted is the product of the number of foregone trips and the average market loss per trip (combination of all impacts on consumer and producer surplus). If one uses an average ticket price of $160 as a surrogate of the combined loss, preservation of 179,800 lost trips would be suffered, in combination with the safety benefits of 1 averted Class I Explosion, for the benefits of proposed rule to equal costs. This represents less than 0.1 percent of annual domestic trips (the traffic loss caused by Pan Am 103 on trans-Atlantic routes was 20 percent). Calculations can be made on the minimum number of averted lost trips needed if the net value loss was only 75 percent of the ticket price or exceeded the ticket price by 25 percent. If total market disruption cost was $130 or $200 per trip, a minimum retention of 221,300 and 143,800 lost trips, respectively, would need to occur for the proposed rule benefits to equal the proposed rule costs, assuming 1 Class I Explosion would be prevented. The FAA requests comments on the potential size of market loss per trip and number of lost trips averted.

The FAA used the same set of benefits for another proposed rule, ''Security of Checked Baggage on Flights Within the United States; Notice of Proposed Rulemaking'' (64 FR 19220, April 19, 1999) as both rulemakings have the same goals—to increase significantly the protection to U.S. citizens and other citizens traveling on U.S. domestic air carrier flights from acts of terrorism and to increase protection to those persons operating aircraft. Accordingly, the FAA calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify both proposed rules.

These values can be seen in the full analysis contained in the docket.

The FAA stresses that the range of trips discussed in the above paragraph should be looked upon as examples and does not represent an explicit endorsement that these would be the exact number of trips that would actually be lost. As noted above, it is important to compare, to the limited extent possible, the cost of this proposal to some estimate of the benefit of increased security it would provide as that level of security relates to the threat level.

Based on the White House Commission recommendation, recent Congressional mandates and the known reaction of U.S. citizens to any air carrier disaster, the FAA determines that proactive regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

VIII.B. Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit Government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended in March 1996, requires regulatory agencies to review rules to determine if they have ''a significant economic impact on a substantial number of small entities.'' The Small Business Administration defines small entities to be those with 1,500 or fewer employees for the air transportation industry. For this proposed rule, the small entity groups are considered to be both scheduled air carrier operators (subject to FAR part 108) and screening companies having 1,500 or fewer employees. The FAA has identified a total of 41 direct air carriers and 38 screening companies that meet this definition.

The FAA has estimated the annualized cost impact on each of the small entities, but has not conclusively determined whether or not the proposed rule would have a significant economic impact on a substantial number of small air carrier and screening company entities. Accordingly, the Agency prepared an initial regulatory flexibility analysis and invites comments on the Agency's conclusion and on the analysis. This decision is based on the following analyses:

- One percent of the 1997 annual median revenue of the 41 small direct air carriers impacted by this proposed rule, which is $809,610 in 1997 dollars, is considered economically significant. None of these entities would incur a substantial economic impact in the form of annualized costs in excess of $809,610 as the result of the proposed rule. However, as will be discussed further below, several of the small direct air carriers are having financial difficulties and may have trouble meeting the requirements of this proposed rule. Furthermore, the cost burden is not strictly proportionate to the size of the airline as measured by the number of employees. In addition, as discussed below, the FAA was unable to obtain complete financial data on approximately one third the air carriers and believes it important to show the potential impact on these entities for the sake of completeness and in the hope of eliciting substantive comments.
- One percent of the 1997 annual median revenue of the 38 small screening companies impacted by this proposed rule, which is $296,830 in 1997 dollars, is considered economically significant. None of these entities would incur a substantial economic impact in the form of annualized costs in excess of $296,830 as the result of the proposed rule. However, based on the data available, some of the screening companies may have trouble meeting the requirements of the proposed rule due to financial difficulties. In addition, as discussed below, the FAA was unable to obtain any data on half of the screening companies and complete data on most of the rest, and so believes it important to show the potential impact on these entities for the sake of completeness and in the hope of eliciting substantive comments.

The FAA has not performed this type of analysis for the indirect carriers that would choose to screen cargo. Each of these carriers would have chosen to be certificated under part 111 and thus would be voluntarily subjected to these proposals. Since the carriers would have chosen to incur the costs, the FAA believes that none of these carriers would have done so if it were not in their financial interests. The FAA does not know which carriers would be certificated under proposed part 111 and so does not know how many of these carriers would be small entities. The FAA seeks comments concerning whether any small indirect carriers would screen cargo and requests that all comments be accompanied with clear documentation.

Initial Regulatory Flexibility Analysis

Under section 603(b) of the RFA (as amended), each initial regulatory flexibility analysis is required to address the following points: (1) Reasons why the FAA is considering the proposed rule, (2) The objectives and legal basis for the proposed rule, (3) The kind and number of small entities to which the proposed rule would apply, (4) The projected reporting, recordkeeping, and other compliance requirements of the proposed rule, and (5) All Federal rules that may duplicate, overlap, or conflict with the proposed rule. The FAA will perform this analysis for small direct air carrier and small screening companies separately.

1. Air Carriers

Reasons why the FAA is considering the proposed rule.—Over the past several years, both Congress and the FAA have recognized that the threat against civil aviation is changing and growing (see the background section of the preamble for a more detailed discussion of this threat). Terrorist and criminal activities within the United States have forced the Congress, the FAA and other Federal agencies to reevaluate the domestic threat against civil aviation. The proposed rule is intended to counter this increased threat to U.S. civil aviation security.

The objectives and legal basis for the proposed rule.—The objective of the proposed rule is to increase protection to Americans and others traveling on U.S. domestic air carrier flights from terrorist acts. Specifically, the proposed rule is aimed at preventing explosives from being on board commercial flights either in carry-on baggage or checked cargo.

The legal basis for the proposed rule is found in 49 U.S.C. 44901 *et seq.* Among other matters the FAA must consider as a matter of policy are maintaining and enhancing safety and security in air commerce as its highest priorities (49 U.S.C. 40101(d)).

The kind and number of small entities to which the proposed rule would apply.—The proposed rule applies to 150 scheduled airlines subject to FAR part 108, of which 41 are small scheduled operators (with 1,500 or fewer employees).

The projected reporting, recordkeeping, and other compliance requirements of the proposed rule.—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. Four proposed sections would impose paperwork costs on small direct air carriers; these are described in detail in the full analysis contained in the docket. The average amount of paperwork time and costs for each small direct air carrier sums to 270.9 hours, costing $6,395 per year. Over 10 years,

total time and costs for all small direct air carriers sum to 111,048.5 hours costing $2,621,950.

All federal rules that may duplicate, overlap, or conflict with the proposed rule.—The FAA is unaware of any Federal rules that either duplicate, overlap, or conflict with the proposed rule.

Other Considerations:

Affordability Analysis

For the purpose of this analysis, the degree to which small entities can ''afford'' the cost of compliance is predicated on the availability of financial resources. Initial implementation costs can be paid from existing company assets such as cash, by borrowing, or through the provision of additional equity capital. Continuing annual costs of compliance may be accommodated either by accepting reduced profits, by raising ticket prices, or by finding other ways of offsetting costs.

In this analysis, one means of assessing the affordability is the ability of each of the small entities to meet its short-term obligations. According to financial literature, a company's short-run financial strength is substantially influenced by its working capital position and its ability to pay short-term liabilities, among other things.

Net working capital is the excess of current assets over current liabilities. It represents the margin of short-term debt-paying ability over existing short-term debt. In addition to the amount of net working capital, two analytical indexes of current position are often computed: (1) Current ratio; and (2) Quick ratio. The current ratio (*i.e.*, current assets divided by current liabilities) helps put the amount of net working capital into perspective by showing the relationship between current assets and short-run debt. And the quick ratio (sometimes called the acid test ratio) focuses on immediate liquidity (*e.g.*, cash, marketable securities, accounts receivable, divided by current liabilities). A decline in net working capital, the current ratio, and the quick ratio over a period of time (say, 3 years, 4 years, etc.) may indicate that a company is losing financial solvency. Negative net working capital is an indication of financial difficulty. If a company is experiencing financial difficulty, it is less likely to be able to afford additional costs.

There is an alternative perspective to the assessment of affordability based on working capital of this proposed rule. The alternative perspective pertains to the size of the annualized costs of the proposed rule relative to annual revenues. The lower the relative importance of the costs, the greater the likelihood that implementing offsetting cost-saving efficiencies or raising fares to cover increased costs will not substantially decrease the number of passengers.

The FAA collected financial information on small air carriers for 1994 to 1997. Unfortunately, some of the needed information was not available; in those cases, the FAA estimated revenue, assets, and liabilities based on taking averages of similar sized companies. For example, many of the financial statistics for 13 of the small regional operators were not available. Hence, because of the paucity of data for small regionals, many of the conclusions for many of the small regional carriers may be questionable.

The financial information suggests the following:

Liquidity Analysis/Profitability Analysis—Small Air Carriers

- Six of these entities have experienced increases in their net working capital as well as their current and quick ratios over the past 3 or 4 years. They also are generally profitable and, therefore, probably would have financial resources available to meet the requirements of this proposed rule.
- One small entity was unprofitable in 1997; however, it was profitable in the 3 previous years. In addition, it has positive net working capital, and its current and quick ratios have been strong. It is likely that this carrier would not have trouble meeting the costs of this proposed rule.
- For 10 currently profitable small entities, their ability to afford the cost of compliance is less certain. This uncertainty stems from the fact that the financial performances of these entities have been inconsistent over the past 4 years.
- The current liquidity and profitability of 11 small entities would require action to finance the expected cost of compliance imposed by this NPRM. Over the past 2 or 3 years, each of these small entities has had negative net working capital. In addition, their respective current and quick ratios have generally been on a decline. They have frequently experienced financial losses.
- For the 13 air carriers classified as small regionals for which the FAA does not have complete data, it appears likely that 7 of these air carriers would probably be able to afford the cost of compliance associated with this proposed rule, but the other 6 may have problems. This conclusion is based on their projected 1997 profitability.

Relative Cost Impact

- The other alternative of assessing affordability, annualized cost of compliance relative to the total operating revenues, shows that for each of the 41 small air carriers impacted by this NPRM, there would be relatively small impacts for most of the small entities. The annualized cost of compliance relative to total operating revenues would be less than or equal to 0.61 percent in all cases.
- Hence, for all of the air carriers, the ratio of annualized proposed rule costs to revenues would be less than 1.0 percent for each of the 3 years from 1995 through 1997. For all air carriers that have liquidity and/or profitability problems, there appears to be the prospect of absorbing the cost of the proposed rule through some combination of fare increases and cost efficiencies.

No clear conclusion can be drawn with regard to the abilities of some small entities to afford the cost of compliance that would be imposed by this NPRM. On one hand, the *Liquidity Analysis/Profitability Analysis* does not paint a positive picture of the ability of some of the small entities impacted by this NPRM to pay near-term expenses imposed by this rule, whereas the *Relative Cost Impact Analysis* indicates that most of those same small entities may be able, over time, to find ways to offset the increased cost of compliance. As the result of information ascertained from both of these analyses, there is uncertainty as to whether all of the small entities would be able to afford the additional cost of doing business due to compliance with this NPRM. Because of this uncertainty, the FAA solicits comments from the aviation community (especially from small air carriers with less than 1,500 employees) as to what extent small operators subject to this NPRM would be able to afford the cost of compliance. The FAA requests that all comments be accompanied with clear supporting data.

Disproportionality Analysis

On average, the 41 small entities would be disadvantaged relative to large air carriers due to disproportionate cost impacts. This would occur due to several reasons:

- Individual large air carrier's total operational revenues and current assets are, on average, well over 100 times larger than the revenues and assets for small air carriers. However, the large air carriers don't deal with 100 times as many checkpoints, X-ray systems, or screening companies. So, these air

carriers enjoy economies of scale in terms of the costs of complying with this proposed rule;

• All of the X-ray systems that the FAA anticipates purchasing would be purchased at the higher volume airports, so that almost all of them would be purchased for large air carriers; indeed, only 1 of these systems would be purchased for a small air carrier. This would save large air carriers almost $22 million; and

• All air carriers, whether large or small, would have some of the same fixed administrative costs, such as writing up and maintaining new sections to their security programs. Having such costs the same would give an advantage to large air carriers when looking at the proportionate effect of this proposed rule.

Competitiveness Analysis

This proposed rule would not impose significant costs on any small carriers. However, due to the financial problems that certain air carriers are having, there may be some impacts on the relative competitive positions of these carriers in markets served by them. A more detailed evaluation is described in the full analysis contained in the docket.

The FAA solicits comments on this issue from the U.S. airline industry and small airlines in particular. Specifically, commenters are asked to provide information on the impact that this proposed rule would have on the continued ability of small airlines to compete in their current markets. Comments are especially sought from operators with 1,500 or fewer employees who would be impacted by this proposed rule. The FAA requests that supporting data on markets and cost be provided with the comments.

Business Closure Analysis

The FAA is unable to determine with certainty the extent to which those small entities that would be significantly impacted by this proposed rule would have to close their operations. However, the profitability information and the affordability analysis can be indicators in business closures.

In determining whether or not any of the 41 small entities would close as the result of compliance with this proposed rule, one question must be answered: ''Would the cost of compliance be so great as to impair an entity's ability to remain in business?'' A number of these small entities are already in serious financial difficulty. To what extent the proposed rule makes the difference in whether these entities remain in business is difficult to answer. The FAA believes that the likelihood of business closure for any of these small air carriers as a result of this proposed rule is low to moderate. However, since there is uncertainty associated with whether some of the small entities would go out of business as the result of the compliance cost of this proposed rule, the FAA solicits comments from the aviation community as to the likelihood of this occurrence. As noted above, the FAA requests that all comments be accompanied with clear supporting data.

Alternatives

The FAA considered alternatives to the proposed rule for small direct air carriers. These alternatives have compliance costs that range from $13.30 million to $19.95 million.

Alternative 1—Status Quo. Under this alternative, the FAA would exempt small direct air carriers from all requirements of this proposed rule. Continuing with this policy would be the least costly course of action but also would be less safe than the proposed rule; direct air carriers are ultimately responsible for proper screening, as they must be able to ensure that the screening companies are in compliance and that screening personnel are performing adequately. The FAA believes that the threat to civil aviation within the United States has increased and that further rulemaking is necessary. Thus, this alternative is not considered to be acceptable because it permits continuation of an unacceptable level of risk to U.S. airline passengers. In addition, the FAA would not meet the Congressional mandate.

Alternative 2.—The FAA considered doing away with the test monitoring requirements of screening companies by small direct air carriers.

The proposal would require that each carrier monitor each screener training test for all screening companies that conduct screening on the air carrier's behalf. Each test monitor would have to be a direct air carrier employee. This alternative would result in cost savings to each small direct air carrier. Small carriers would no longer have to process request letters from the screening companies or have employees monitor the tests. Over 10 years, this alternative would save all small direct air carriers $2.68 million (net present value, $1.73 million), resulting in total compliance costs of $17.27 million (net present value, $12.54 million).

The FAA believes that this alternative would not enhance security. Because air carriers are ultimately responsible for ensuring the safe and proper screening of persons and property, the FAA believes that it is important to ensure air carrier involvement with critical aspects of this rulemaking. Monitoring testing is a critical aspect of this rulemaking, for it helps to prevent potential screeners from passing the tests by cheating and other unauthorized conduct. Removing the monitoring requirement would diminish the emphasis and importance that this proposed rule places on air carrier oversight. In addition, retaining the monitoring requirement helps to support the concept of a balance of responsibilities between screening companies and the air carriers for which they screen. Under this alternative, there would be less coordination between small air carriers and screening companies. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 3.—The FAA considered not requiring that smaller screening companies obtain approval from their carriers before submitting their security program amendments to the FAA.

The proposal would require screening companies to include in any proposed amendment packages that they send to the FAA statements that all carriers for which they screen have been advised of the proposed amendments and approve of them. Hence, each air carrier would have to process and respond to any proposed amendment by the screening companies that conduct screening on its behalf. This alternative would result in cost savings to each small direct air carrier. These carriers would not need to spend time evaluating the proposed amendments for the screening companies. Hence, the direct air carriers would no longer have to expend resources evaluating the proposed amendments by the screening companies. Over 10 years, this alternative would save all small direct air carriers $6.65 million (net present value, $4.67 million), resulting in total compliance costs of $13.30 million (net present value, $9.60 million).

The FAA believes that this alternative would harm security. Air carriers are responsible, by statute, for screening and would be held responsible along with the screening companies for complying with part 111 and the SSSP. The carriers would therefore need to be kept informed about any changes to screening-related regulations and should have the opportunity to comment on and approve of them before the FAA approves the changes. The FAA would have a difficult time holding carriers accountable for changes of which they were not made aware; this alternative would ensure that some air carriers were not made aware of all changes. Hence, under this alternative,

all carriers would not be informed of all screening-related changes to the applicable SSSP. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 4—The FAA considered not requiring that small air carriers install and operate TIP on their X-ray systems.

Under the proposal, each air carrier would need to ensure that each X-ray system that it uses has a TIP system that meets the standards set forth in its security program. As TIP is a new system, some older X-ray systems have not been designed to run TIP. Accordingly, many X-ray systems at airports would need to be replaced with newer systems that are TIP compatible. This alternative would result in cost savings to all small air carriers. These carriers would not have to purchase these new X-ray systems or maintain the TIP portions of the systems annually. Over 10 years, this alternative would save all small air carriers $6.09 million (net present value, $4.58 million), resulting in total compliance costs of $13.30 million (net present value, $9.60 million).

The FAA believes that this alternative would harm security. Promoting this alternative would result in inconsistent measurements of performance at different airports and even at different screening locations within airports; the FAA believes that it is important to have consistent measurements of performance at all screening locations. In addition, the FAA needs to ensure the same level of safety and continuity at all of the Nations airports and screening locations. Not having TIP would result in a reduction in security for those small air carriers covered under this alternative in particular and for the entire aviation system in general. Hence, under this alternative, there would be a decrease in screener effectiveness and a reduction in the number of ways to measure this decrease. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 5.—Proposed Rule. This alternative represents the proposed rule for direct air carriers. Under this alternative, small direct air carriers would be subject to all aspects of this proposed rulemaking. The cost of compliance expected to be incurred by the 41 small entities subject to the requirements of the proposed rule is estimated to be $19.95 million ($14.27 million, discounted) over the next 10 years. This alternative is preferred because the FAA believes that it has the best balance between costs and benefits for all screening companies while enhancing aviation safety and security (in the form of risk reduction) for the traveling public.

2. Screening Companies

Reasons why the FAA is considering the proposed rule.—The reasons are the same as those discussed above for the small air carriers.

The objectives and legal basis for the proposed rule.—The objectives and legal basis are the same as those discussed previously for the small air carriers.

The kind and number of small entities to which the proposed rule would apply.—The proposed rule applies to 66 screening companies that screen for direct air carriers subject to FAR parts 108 and 129, of which 38 are small entities (with 1,500 or fewer employees).

The projected reporting, recordkeeping, and other compliance requirements of the proposed rule.—As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copies of these proposed sections to the Office of Management and Budget (OMB) for its review. Twelve proposed sections would impose paperwork costs on small screening companies; these are described in detail in the full analysis contained in the docket. The average amount of paperwork for each small screening company totals 1,861.0 hours costing $78,259 over 10 years. Over 10 years, total time and costs for all small screening companies sum to 70,718 hours costing $2,973,836.

All Federal rules that may duplicate, overlap, or conflict with the proposed rule.—The FAA is unaware of any Federal rules that either duplicate, overlap, or conflict with the proposed rule.

Other Considerations

Affordability Analysis

The previous discussion under ''Affordability Analysis'' for small air carriers is applicable to small screening companies.

The FAA attempted to collect financial information on small screening companies. In many cases, the data were not available; data were available for only 19 companies for 1994 to 1997. Of the 38 small screening companies, 8 were small air carriers that screen for themselves and other air carriers; the financial information available is the same as was used in the previous small air carrier analysis. Unfortunately, though, there is no requirement for screening companies to report their financial data as there is for air carriers, so there is no readily available source for financial information. In addition, many of these companies are privately held companies that do not have to report their assets, liabilities, profits, and revenues. The FAA was able to find some information for 11 screening companies, but the scope of the data varied extensively; some of these companies have not updated their publicly disclosed financial data in several years. For 2 of the companies, the most recent data publicly available were from 1993, another had current assets and liabilities available only for 1994, while a fourth had net profits, current assets, and current liabilities available for only 1994 and 1995. In many cases, total operating revenue and quick assets were available, at most, for 1 year.

Another problem facing this type of financial analysis for a company that provides many services to include screening is that no matter how small a percentage of its business comes from screening, the company is being considered under this Initial Regulatory Flexibility Analysis if it has less than 1,500 employees. Neither finding data for such companies nor applying this data to other screening companies is straightforward. In addition, of the 18 screening companies for which the FAA had (or estimated) 1997 financial data, 8 of the 9 largest companies were small air carriers (and some of the data for these were based on estimates). Hence, it is difficult to extrapolate their financial information to makes estimations for other small screening companies.

The FAA attempted to make estimates based on the available data. The FAA requests financial data for all screening companies, particularly those where no information was publicly available; in all cases, the FAA requests that all data be accompanied by clear documentation.

The financial information suggests the following:

Liquidity Analysis/Profitability Analysis

- Of the 6 screening companies that are also air carriers for which the FAA has complete data on, 2 would probably have no problem meeting the proposed rule's requirements; two might have trouble meeting the proposed rule's requirements due to their inconsistent financial performance in previous years; and two probably would have trouble meeting the proposed rule's requirements due to poor financial performance.
- The other 2 screening companies that also are air carriers are small regional air carriers for which, as noted

previously, the FAA did not have complete data; it appears that both would probably be able to afford the cost of compliance associated with this proposed rule. This conclusion is based on their projected 1997 profitability.

As discussed above, the FAA has incomplete data on the remaining 11 screening companies and had to estimate portions of their financial data. Accordingly, these conclusions are less certain:

- Five of these entities have experienced increases in their net working capital as well as their current and quick ratios over the past 3 or 4 years. They also are generally profitable and therefore probably would have financial resources available to meet the requirements of this proposed rule.
- One small entity was unprofitable in 1994 but has been profitable in the last 3 years. Another small entity has been profitable in the past 2 years. Both now have positive net working capital, and their current and quick ratios have been strong. It is likely that these companies would not have trouble meeting the costs of this proposed rule.
- For two small entities, their ability to afford the cost of compliance is less certain. For one of these, while it was profitable for all 4 years, its net working capital as well as its current and quick ratios have been declining; in addition, it had negative net working capital in 1996 and 1997. For the other, while it has had positive net working capital for the last 3 years, it has not been profitable in 2 of these 3 years.
- The current liquidity and profitability of 2 small entities would require action to finance the expected cost of compliance imposed by this NPRM. Over the past 2 or 3 years, each of these small entities has had negative net working capital. In addition, their respective current and quick ratios have generally been on a decline. They have frequently experienced financial losses.

Relative Cost Impact

- In looking at the annualized cost of compliance relative to the total operating revenues for each of the 8 small air carriers that also provide screening services, the FAA notes that the costs show relatively small impacts for these small entities. The annualized cost of compliance relative to total operating revenues would be less than or equal to 0.12 percent.
- In looking at the annualized cost of compliance relative to the total operating revenues for the other 11 small entities, these ratios are not as benign. The annualized cost of compliance relative to total operating revenues would be less than or equal to 3.19 percent. For two companies, this ratio exceeds 1.0 percent for all three years examined; each of these 3 companies was profitable for the years examined. It is important to emphasize, once again, that many of these ratios are based on estimated total operating revenues.
- Hence, for each of the small screening companies, the ratio of annualized proposed rule costs to revenues would be no more than 3.19 percent for each of the 3 years from 1995 through 1997. For the 4 screening companies that had liquidity and/or profitability problems in 1997, this ratio has been no greater than 0.38 percent over this 3-year period, so there appears to be the prospect of absorbing the cost of the proposed rule through price and production efficiencies.

No clear conclusion can be drawn with regard to the abilities of some small entities to afford the costs of compliance that would be imposed by this NPRM. On one hand, the *Liquidity Analysis/Profitability Analysis* does not portray a positive picture of the ability of some of the small entities impacted by this NPRM to pay near-term expenses imposed by this rule, whereas the *Relative Cost Impact Analysis* indicates that most of those same small entities may be able, over time, to find ways to offset the incremental costs of compliance. As the result of information ascertained from both of these analyses, there is uncertainty as to whether all of the small entities would be able to afford the additional costs of doing business due to compliance with this NPRM. Because of this uncertainty, the FAA solicits comments from screening companies (especially from small companies with less than 1,500 employees) as to what extent small companies subject to this NPRM would be able to afford the costs of compliance. The FAA requests that all comments be accompanied with clear supporting data.

Disproportionality Analysis

Due in large part to the paucity of data from which to work, the FAA can not draw any firm conclusions concerning any of the 38 small entities would be disadvantaged relative to large screening companies due solely to disproportionate cost impacts. The FAA compared the annualized costs of the 5 largest screening companies to an average of annualized costs of the small entities, and found them to be, on average, 12 times as large. This comparison was basically in line with the comparison of the total operating revenues of the largest screening companies to the average of the small entities; these average, 11 times as large for both 1996 and 1997. However, this comparison was double the comparison of current assets of the largest screening companies to the average of the small entities for these same 2 years; the FAA found them to be, on average, 6 times as large. This analysis suggests that large entities may be disadvantaged relative to small screening companies due to disproportionate cost impact. The FAA requests that both large and small screening companies provide additional financial data to assist the FAA in determining any financial disproportionality. As always, the FAA requests that all submitted data be accompanied with clear documentation.

Competitiveness Analysis

This proposed rule would not impose significant costs on any small screening companies. However, due to the financial problems that certain air carriers are having, there may be some impact on the relative competitive positions of these carriers in markets served by them. The FAA solicits comments on this issue from all screening companies and small screening companies in particular. The FAA requests that supporting data on markets and cost be provided with the comments.

Business Closure Analysis

The FAA is unable to determine with certainty the extent to which those small entities that would be significantly impacted by this proposed rule would have to close their operations. However, the profitability information and the affordability analysis can be indicators in business closures.

In determining whether any of the 38 small entities would close business as the result of compliance with this proposed rule, one question must be answered: ''Would the cost of compliance be so great as to impair an entity's ability to remain in business?'' Of the information that the FAA has on 19 of these entities, 4 already are in serious financial difficulty. To what extent the proposed rule makes the difference in whether these entities remain in business is difficult to answer. The FAA believes that the likelihood of business closure for any of these small screening companies, as a result of this proposed rule, is low to moderate. However, since there is uncertainty associated with whether some of the small entities would go out of business as the result of the compliance costs of this proposed rule, the FAA solicits comments from the aviation community as to the likelihood

of this occurrence. As always, the FAA requests that all comments be accompanied with clear supporting data.

Alternatives

The FAA considered alternatives to the proposed rule for small screening companies. These alternatives have compliance costs that range from $12.73 million to $13.10 million.

Alternative 1.—Status Quo. Under this alternative, the FAA would exempt small screening companies from all requirements of this proposed rule. Currently, the FAA does not regulate screening companies directly. Continuing with this policy would be the least costly course of action but also would be less safe than the proposed rule and would not fulfill the Congressional mandate. The FAA believes that the threat to civil aviation within the United States has increased and that further rulemaking is necessary. Thus, this alternative is not considered to be acceptable because it permits continuation of an unacceptable level of risk to U.S. airline passengers.

Alternative 2.—The FAA considered doing away with direct air carrier test monitoring requirements for smaller screening companies.

The proposal would require each screening company to ensure that each test is monitored by an employee of the carrier for which it screens. The screening company would be responsible for informing the applicable carrier(s) that it plans to administer a test to screener trainees, and the applicable carrier(s) would be responsible for providing test monitors upon request. Under this alternative, small screening companies would not have to request a testing monitor. This alternative would result in cost savings to all small screening companies. These companies would no longer need to write letters to the applicable direct air carrier requesting the employees to monitor the tests. Over 10 years, this alternative would save all small screening companies $357,800 (net present value, $251,300), resulting in total compliance costs of $12.74 million (net present value, $8.85 million).

The FAA believes that this alternative would not enhance security. Because air carriers are ultimately responsible for ensuring the safe and proper screening of persons and property, the FAA believes that it is important to ensure air carrier involvement with critical aspects of this rulemaking. Removing this monitoring requirement would strongly diminish the emphasis and importance that this proposed rule places on air carrier oversight. In addition, retaining the monitoring requirement helps to support the concept of a balance of responsibilities between screening companies and the air carriers for which they screen. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 3.—The FAA considered not requiring that CSS's and shift supervisors of smaller screening companies complete leadership training.

The proposal would require persons with supervisory screening duties to have initial and recurrent training that includes leadership and management subjects. All CSS's and shift supervisors would be required to take annual classes in leadership training, which would be a new requirement. Under this alternative, small screening companies would not be required to have their CSS's and shift supervisors take this training. This alternative would result in cost savings to all small screening companies. These companies would no longer need to pay to have their personnel take these classes or pay for leadership training instructors. Over 10 years, this alternative would save all small screening companies $292,900 (net present value, $205,000), resulting in total compliance costs of $12.80 million (net present value, $8.89 million).

The FAA believes that this alternative would harm security. Security is best served when competent, qualified leadership exists at all locations, whether large or small, busy or not busy. There are certain core skills that CSS's and shift supervisors need in order to perform their responsibilities effectively. Hence, under this alternative, there would not be consistency of leadership at the different screening checkpoints. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 4.—The FAA considered not requiring that smaller screening companies obtain air carrier approval before submitting their security program amendments to the FAA.

The proposal would require screening companies to include in any proposed amendment packages that they send to the FAA a statements that all carriers for which they screen have been advised of the proposed amendments and agree to them. Hence, each screening company would have to send its proposed amendment to every carrier for which it screens and respond to any changes that that carrier proposes. This alternative would result in cost savings to all small screening companies. These screening companies would no longer have to send copies of their proposed amendments to their carriers or respond to their carrier's modifications. Over 10 years, this alternative would save all small screening companies $367,200 (net present value, $258,400), resulting in total compliance costs of $12.73 million (net present value, $8.84 million).

The FAA believes that this alternative would harm security. Air carriers are responsible by statute for screening and would be held responsible along with the screening companies for complying with part 111 and the SSSP. Under this alternative, all carriers would not be informed of all screening-related changes to the applicable SSSP's. The FAA would have a difficult time holding carriers accountable for changes of which they were not made aware; this alternative would ensure that some air carriers are not made aware of all changes. The FAA believes that potential cost savings would be outweighed by a reduction in security.

Alternative 5.—The Proposed Rule

This alternative represents the proposed rule for screening companies. Under this alternative, small screening companies would be subject to all aspects of this proposed rulemaking. The cost of compliance expected to be incurred by the 38 small entities subject to the requirements of the proposed rule is estimated to be $13.10 million (net present value, $9.10 million) over the next 10 years. This alternative is preferred, because the FAA believes that it has the best balance between costs and benefits for all screening companies while enhancing aviation safety and security (in the form of risk reduction) for the flying public.

VIII.C. International Trade Impact Statement

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. Because domestic and international air carriers use screeners, this proposed rule change would have an equal effect on both.

VIII.D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 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 1 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.

This proposed rule does not contain any Federal intergovernmental mandates or private sector mandates.

VIII.E. Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect 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, the FAA has determined that this final rule does not have federalism implications.

List of Subjects

14 CFR Part 108

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

14 CFR Part 109

Administrative practice and procedure, Air carriers, Aircraft, Freight forwarders, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 111

Administrative practice and procedure, Air carriers, Aircraft, Certification requirements, Foreign air carriers, Indirect air carriers, Performance standards, Reporting and recordkeeping requirements, Screening companies, Security measures.

14 CFR Part 129

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Security measures, Smoking.

14 CFR Part 191

Air transportation, Security measures.

The Proposed Amendment

For the reasons stated in the preamble, the Federal Aviation Administration proposes to amend 14 CFR chapter I as follows:

PART 108—AIRCRAFT OPERATOR SECURITY

1. The heading for part 108, proposed at 62 FR 41749, continues to read as set forth above.

1a. The authority citation for part 108, proposed at 62 FR 41749, continues to read as follows:

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

2. Section 108.5, proposed at 62 FR 41750, is amended by revising paragraphs (a) and (b) to read as follows:

§ 108.5 Inspection authority.

(a) Each air carrier shall allow the Administrator, including FAA special agents to make any inspections or tests at any time or place to determine compliance of an airport operator, air carrier, foreign air carrier, screening company, or other airport tenant with—

(1) This part;

(2) Part 111 of this chapter;

(3) The air carrier security program;

(4) Applicable screening company security program(s);

(5) 49 CFR part 175, which relates to the carriage of hazardous materials by aircraft; and

(6) 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, part 111 of this chapter, its air carrier security program, and its screening company security program(s).

* * * * *

3. Section 108.103, proposed at 62 FR 41751, is amended by adding new paragraphs (b)(14) and (b)(15) to read as follows:

§ 108.103 Form, content, and availability.

* * * * *

(b) * * *

(14) A description of how the air carrier will provide oversight to each screening company performing screening on its behalf.

(15) A description of how the air carrier will evaluate and test screening performance.

* * * * *

4. Section 108.201, proposed at 62 FR 41752, is amended by revising paragraph (a); removing paragraph (g); redesignating paragraph (h) as new paragraph (g) and revising it; and by adding new paragraphs (h), (i), (j), (k), (l), (m), and (n) to read as follows:

§ 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 and its screening company approved security program(s) to inspect each person entering a sterile area and to inspect each person's accessible property.

* * * * *

(g) 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 and its screening company approved security program(s) to prevent the carriage of explosives or incendiaries onboard a passenger aircraft.

(h) Except as provided in § 111.109(k) of this chapter each air carrier required to conduct screening of persons and property at locations within the United States under a security program shall either hold a screening company certificate issued under part 111 of this chapter or shall use another screening company certificated under part 111 of this chapter to inspect persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon. FAA-certified canine teams are not required to be operated by certificated screening companies.

(i) Each air carrier shall ensure that each screening company performing screening on its behalf conducts such screening in accordance with part 111 of this chapter, the screening company's security program, and the screening company's operations specifications.

(j) Each air carrier required to conduct screening under this part shall provide oversight to each screening company performing screening on its behalf as specified in the air carrier's security program.

(k) Each air carrier required to conduct screening under a security program shall:

(1) Maintain at least one complete copy of each of its screening companies' security programs at its principal business office;

(2) Have available complete copies or the pertinent portions of its screening companies' security programs or appropriate implementing instructions at each location where the screening companies conduct screening for the air carrier;

(3) Make copies of its screening companies' security programs available for inspection by an FAA special agent upon request;

(4) Restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs to persons with a need to know as described in part 191 of this chapter; and

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

(l) Each air carrier required by the Administrator to implement additional security measures to maintain system performance shall notify the public by posting signs at affected locations as specified in its security program.

(m) At screening locations outside the United States at which an air carrier has operational control over screening, the air carrier shall screen as follows:

(1) The air carrier shall carry out and comply with all relevant sections of part 111 of this chapter, except for those requirements related to screening company certification, to the extent allowable by local law.

(2) The air carrier may use screeners who do not meet the requirements of § 111.205(a)(3) of this chapter provided that at least one representative of the air carrier who has the ability to read and speak English functionally is present while the air carrier's passengers are undergoing security screening.

(3) In the event that an air carrier is unable to implement any of the requirements for screening, the air carrier shall notify the Administrator of those air carrier stations or screening locations so affected.

(n) The air carrier shall notify the Administrator of any screening locations outside the United States at which it does have operational control.

5. Section 108.203, proposed at 62 FR 41752, is revised to read as follows:

§ 108.203 Use of metal detection devices.

(a) No air carrier may use a metal detection device to inspect passengers, accessible property, or checked baggage unless specifically authorized under a security program required under this part. No air carrier may use such a device contrary to its approved security program or its screening companies' approved program(s).

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

6. Section 108.205, proposed at 62 FR 41753, is amended by revising paragraph (a) introductory text, removing paragraph (a)(2), redesignating paragraph (a)(3) as new paragraph (a)(2) and revising it, and revising paragraph (h) to read as follows:

§ 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 accessible property or checked articles unless specifically authorized under a security program required by this part. No air carrier may use such a system in a manner contrary to its approved security program or its screening company approved security program(s). The Administrator authorizes an air carrier to use X-ray systems for inspecting accessible property or checked articles under an approved security program if the air carrier shows that:

* * * * *

(2) The system meets the imaging requirements set forth in the approved screening company's standard security program.

* * * * *

(h) Unless otherwise authorized by the Administrator, each air carrier shall ensure that each X-ray system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated X-ray threat image projection data will be collected as specified in the air carrier's security program and in the responsible screening company's security program.

(2) The air carrier shall make X-ray threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

7. Section 108.207, proposed at 62 FR 41753, is revised to read as follows:

§ 108.207 Use of explosives detection systems.

(a) When the Administrator shall require by an amendment under § 108.105, 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 its security program and its screening companies' security programs.

(b) Unless otherwise authorized by the Administrator, each air carrier shall ensure that each explosives detection system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated explosives detection system threat image projection data will be collected as specified in the air carrier's security program and in the responsible screening company's security program.

(2) The air carrier shall make explosives detection system threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

§ 108.209 [Removed and Reserved]

8. Section 108.209, proposed at 62 FR 41753, is removed and reserved.

9. Section 108.227, proposed at 62 FR 41756, is amended by revising paragraph (b) to read as follows:

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

* * * * *

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

* * * * *

10. A new § 108.229 is added to subpart C, proposed at 62 FR 41752, to read as follows:

§ 108.229 Monitoring of screener training tests.

Each air carrier shall monitor each screener training test required under § 111.215(a) and (c) of this chapter for all screening companies that conduct screening on its behalf in accordance with its security program. Each test monitor shall meet the following qualifications:

(a) Be an air carrier employee who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor, unless otherwise authorized by the Administrator.

(b) Be familiar with the testing and grading procedures contained in the screening company's security program.

(c) Meet other qualifications set forth in the screening company's security program.

11. Amend § 108.301, proposed at 62 FR 41757, by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 108.301 Security Coordinators.

* * * * *

(b) * * *

(1) A review of all security-related functions for effectiveness and compliance with this part, the air carrier's approved security program, part 111 of this chapter, its screening company approved security program(s), and applicable security directives.

(2) Immediate initiation of corrective action for each instance of noncompliance with this part, the air carrier's approved security program, part 111 of this chapter, its screening company approved security program(s), and applicable security directives. At foreign airports where such security measures are provided by agencies or contractors of host governments, the air carriers shall notify the Administrator for assistance in resolving noncompliance issues.

* * * * *

12. Revise part 109 to read as follows:

PART 109—INDIRECT AIR CARRIER SECURITY

Subpart A—General

Subpart B—Security Program

Subpart C—Screening and Operations

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

§ 109.1 Applicability.

This part prescribes aviation security rules governing each indirect air carrier (IAC) engaged indirectly in the air transportation of property.

§ 109.3 Definitions.

Terms defined in parts 107, 108, 111, and 129 of this chapter apply to this part. For purposes of this part, parts 107, 108, 111, and 129 of this chapter, and security programs required by these parts, the following definition also applies:

Indirect air carrier means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of a passenger air carrier. This does not include the U.S. Postal Service (USPS) or its representative while acting on the behalf of the USPS.

§ 109.5 Inspection authority.

(a) Each indirect air carrier shall allow the Administrator, including FAA special agents to make any inspections or tests at any time or place to determine compliance of the indirect air carrier with:

(1) This part;

(2) Part 111 of this chapter;

(3) The indirect air carrier security program;

(4) Its screening companies' security programs; and

(5) 49 CFR parts 100–199, which relate to handling and carrying hazardous materials.

(b) At the request of the Administrator, each indirect air carrier shall provide evidence of compliance with this part, part 111 of this chapter, its indirect air carrier security program, and its screening company security program(s).

§ 109.7 Falsification.

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

(a) Any fraudulent or intentionally false statement in any application for any security program 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, or security program issued under this part.

Subpart B—Security Program

§ 109.101 Adoption and implementation.

Each indirect air carrier shall adopt and carry out a security program that meets the requirements of § 109.103.

§ 109.103 Form, content, and availability.

(a) The security program required under § 109.101 shall—

(1) Be designed to detect and prevent the introduction of any unauthorized explosive or incendiary into cargo intended for carriage by air;

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

(3) Include the items listed in paragraph (b) of this section as required by § 109.101;

(4) Be in writing and signed by the indirect air carrier or any person delegated authority in this matter; and

(5) Be approved by the Administrator.

(b) The security program shall include—

(1) A system of security safeguards acceptable to the Administrator;

(2) The procedures and descriptions of the facilities and equipment used to perform screening functions specified in § 109.201;

(3) The procedures and descriptions of the equipment used to comply with the requirements of § 109.207 regarding the use of X-ray systems should the indirect air carrier elect to perform screening functions;

(4) A description of how the indirect carrier will provide oversight to each screening company performing screening on its behalf should the indirect air carrier elect to perform screening functions; and

(5) A description of how the indirect air carrier will evaluate and test the performance of screening should the indirect air carrier elect to perform screening functions.

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

(1) Maintain at least one complete copy of its 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 office where package cargo is accepted;

(3) Make a copy of its approved security program available for inspection upon the request of an FAA special agent;

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with an operational need to know as described in part 191 of this chapter; and

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

§ 109.105 Approval and amendments.

(a) *Approval of Security Program.* Unless otherwise authorized by the Assistant Administrator, each indirect 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 30 days before the date of intended operations. Such request shall be processed as follows:

(1) Within 30 days after receiving the proposed indirect air carrier security program, the Assistant Administrator will either approve the program or give the indirect 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 indirect 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 shall 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 will either amend or withdraw the notice or transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose 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 indirect air carrier.* An indirect air carrier may submit a request to the Assistant Administrator to amend its approved security program as follows:

(1) The application shall be filed with the Assistant Administrator at least 30 days before the date that it proposes for the amendment to become effective unless a shorter period is allowed by the Assistant Administrator.

(2) Within 15 days after receiving a proposed amendment, the Assistant Administrator will either approve or deny the request to amend in writing.

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

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

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

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

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

(2) After considering all relevant material, the Assistant Administrator will notify the indirect air carrier of any amendment adopted or will rescind the notice. If the amendment is adopted, it will become effective not less than 30 days after the indirect air carrier receives the notice of amendment unless the indirect air carrier petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The indirect air carrier shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration will stay the effective date of the amendment.

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

(d) *Emergency amendments.* 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 that will become effective without stay on the date that the indirect air carrier 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 indirect air carrier may file a petition for reconsideration under paragraph (c) of this section; however, this will not stay the effectiveness of the emergency amendment.

Subpart C—Screening and Operations

§ 109.201 Screening of cargo.

(a) Each indirect air carrier that elects to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its approved security program and its screening company approved security program(s) to inspect cargo and prevent the carriage of explosives or incendiaries onboard any aircraft.

(b) Each indirect air carrier that elects to conduct screening under a security program shall detect and prevent the carriage of any explosive or incendiary in cargo aboard aircraft and into sterile areas.

§ 109.203 Screening certificate, performance, and oversight.

(a) Except as provided in § 111.109(k) of this chapter, each indirect air carrier that conducts screening of cargo for locations within the United States under a security program shall either hold a screening company certificate issued under part 111 of this chapter or use another screening company certificated under part 111 of this chapter to inspect property for the presence of any unauthorized explosive or incendiary. FAA-certified canine teams are not required to be operated by certificated screening companies.

(b) Each indirect air carrier shall ensure that each screening company performing screening on the indirect air carrier's behalf conducts such screening in accordance with part 111 of this chapter, the screening company's security program, and the screening company's operations specifications.

(c) Each indirect air carrier that conducts screening under this part shall provide oversight to each screening company performing screening on behalf of the indirect air carrier as specified in the indirect air carrier's security program.

(d) Each indirect air carrier required to conduct screening under a security program shall:

(1) Maintain at least one complete copy of each of its screening companies' security programs at its principal business office;

(2) Have available complete copies or the pertinent portions of its screening companies' security programs or

appropriate implementing instructions at each location where the screening companies conduct screening for the indirect air carrier;

(3) Make copies of its screening companies' security programs available for inspection by an FAA special agent upon request;

(4) Restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs to persons with a need to know as described in part 191 of this chapter; and

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

§ 109.205 Monitoring of screener training tests.

Unless otherwise authorized by the Administrator, each indirect air carrier shall monitor each screener training test required under § 111.215(a) and (c) of this chapter for all screening companies that conduct screening on its behalf in accordance with its security program. Each test monitor shall meet the following qualifications:

(a) Be an indirect air carrier employee who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor, unless otherwise authorized by the Administrator.

(b) Be familiar with the testing and grading procedures contained in the screening company's security program.

(c) Meet other qualifications set forth in the screening company's security program.

§ 109.207 Use of X-ray systems.

(a) No indirect air carrier may use any X-ray system to inspect cargo unless specifically authorized under a security program required by this part. No indirect air carrier may use such a system in a manner contrary to its screening company's approved security program. The Administrator authorizes an indirect air carrier to use X-ray systems for inspecting cargo under an approved screening security program if the indirect air carrier shows that—

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

(2) The system meets the imaging requirements set forth in the approved screening security program.

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

(c) No indirect air carrier may use any X-ray system after the system has been installed at a screening location 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 indirect air carrier shows that it can be moved without altering its performance.

(d) No indirect 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 indirect air carrier may use any X-ray system to inspect cargo unless a sign is posted in a conspicuous place at the receiving area or written notification is provided to inform individuals that items are being inspected by an X-ray and advise them to remove all X-ray, scientific, and high-speed film from their cargo before inspection. This sign or written notification also shall advise individuals that they may request that inspections be made of their photographic equipment and film packages without exposure to X-ray systems. If an X-ray system exposes any cargo to more than 1 milliroentgen during inspection, the indirect air carrier shall post a sign that advises individuals to remove film of all kinds from their cargo before inspection.

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

(1) The indirect air carrier's principal business office.

(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,'' is incorporated by reference in this section and made a part of this section pursuant to 5 U.S.C. 552(a)(1). All persons affected by this section may obtain copies of the standard from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

(h) Unless otherwise authorized by the Administrator, each indirect air carrier shall ensure that each X-ray system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated X-ray threat image projection data will be collected as specified in the indirect air carrier security program and in the responsible screening company's security program.

(2) The indirect air carrier shall make X-ray threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

13. A new part 111 is added to subchapter F to read as follows:

PART 111—SCREENING COMPANY SECURITY

Subpart A—General

Subpart B—Security Program, Certificate, and Operations Specifications

Subpart C—Operations

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705, 44707, 44901–44905, 44907, 44913–44914, 44932, 44935–44936, 46105.

Subpart A—General

§ 111.1 Applicability.

This part prescribes the requirements for the certification and operation of screening companies. This part applies to all of the following:

(a) Each screening company that screens for an air carrier under part 108 of this chapter, for an indirect air carrier under part 109 of this chapter, or for a foreign air carrier under part 129 of this chapter.

(b) All persons conducting screening within the United States under this part, part 108, part 109, or part 129 of this chapter by inspecting persons or property for the presence of unauthorized explosives, incendiaries, or deadly or dangerous weapons.

(c) Each air carrier, foreign air carrier, and indirect air carrier required to conduct screening under this chapter.

(d) All persons who interact with screening personnel during screening.

§ 111.3 Definitions.

Terms defined in parts 107, 108, 109, and 129 of this chapter apply to this part. For purposes of this part, parts 107, 108, 109, and 129 of this chapter, and security programs under these parts, the following definitions also apply:

Carrier means an air carrier under part 108 of this chapter, indirect air carrier under part 109 of this chapter, or foreign air carrier under part 129 of this chapter.

Screening company means a carrier or other entity that inspects persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon, as required under this part, before entry into a sterile area or carriage aboard an aircraft.

Screening company security program means the security program approved by the Administrator under this part.

Screening location means each site at which persons or property are inspected for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon.

§ 111.5 Inspection authority.

(a) Each screening company shall allow the Administrator to make inspections or tests at any time or place to determine compliance with all of the following:

(1) This part.

(2) The screening company's security program.

(3) The screening company's operations specifications.

(4) Part 108, 109, or 129 of this chapter, as applicable.

(b) At the request of the Administrator, a screening company shall provide evidence of compliance with this part, its security program, and its operations specifications.

§ 111.7 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, certificate, or operations specifications 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, certificate, or operations specifications issued under this part.

§ 111.9 Prohibition against interference with screening personnel.

No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties.

Subpart B—Security Program, Certificate, and Operations Specifications

§ 111.101 Performance of screening.

Each screening company shall conduct screening and screener training required under this part in compliance with the requirements of this part, its approved security program, its approved operations specifications, and applicable portions of security directives and emergency amendments to security programs issued under part 108, 109, 129 of this chapter, and this part.

§ 111.103 Security program: Adoption and implementation.

Each screening company shall adopt and carry out an FAA-approved security program that meets the requirements of § 111.105.

§ 111.105 Security program: Form, content, and availability.

(a) A security program required under § 111.103 shall:

(1) Provide for the safety of persons and property traveling on flights provided by air carriers and/or foreign air carriers for which the screening company screens against acts of criminal violence and air piracy and the introduction of explosives, incendiaries, or deadly or dangerous weapons aboard aircraft.

(2) Provide that upon receipt of an approved security program or security program amendment, the screening company screening performance coordinator shall acknowledge receipt of the approved security program or amendment in a signed, written statement to the FAA within 72 hours.

(3) Include the items listed in paragraph (b) of this section as required by § 111.103.

(4) Be approved by the Administrator.

(b) The security program shall include all of the following:

(1) The procedures used to perform screening functions specified in § 111.201.

(2) The testing standards and training guidelines for screening personnel and instructors.

(3) The performance standards and operating requirements for threat image projection systems.

(c) Each screening company 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 of its approved security program at each airport served.

(3) Make a copy of its approved security program available for inspection by an FAA special agent upon request.

(4) Restrict the distribution, disclosure, and availability of information contained in its 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.

§ 111.107 Security program: Approval and amendments.

(a) *Approval of security program.* Unless otherwise authorized by the Assistant Administrator, each screening company required to have a security program under this part shall within 30 days of receiving the screening standard security program from the FAA submit a signed, written statement to the Assistant Administrator indicating one of the following: the screening company will adopt the Screening Standard Security Program as is, or the screening company will adopt the Screening Standard Security Program after making amendments to it. FAA approval of a security program will be as follows:

(1) If the screening company chooses to adopt the Screening Standard Security Program as is, the granting of the screening company certificate by the Assistant Administrator will serve as

FAA approval of the screening company's security program.

(2) If the screening company chooses to adopt the Screening Standard Security Program after making amendments to it or to submit its own security program that meets the requirements of § 111.103 to the FAA, the request will be processed as follows:

(i) Within 30 days after receiving the screening company's security program, the Assistant Administrator will either approve the program or will give the screening company written notice to modify its program to comply with the applicable requirements of this part.

(ii) Within 30 days of receiving a notice to modify, the screening company 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 shall 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.

(iii) Upon receipt of a petition for reconsideration, the Assistant Administrator will amend or withdraw the notice or will transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by directing the Assistant Administrator to withdraw or amend the notice to modify or by affirming the notice to modify.

(iv) The granting of a screening company certificate by the Assistant Administrator will serve as FAA approval of a screening company's security program.

(b) *Amendment requested by a screening company.* A screening company may submit a request to the Assistant Administrator to amend its approved security program as follows:

(1) The application shall be filed with the Assistant Administrator at least 45 days before the date that it proposes for the amendment to become effective unless a shorter period is allowed by the Assistant Administrator. The screening company shall include with its application a statement that all air carriers for which it screens have been advised of the proposed amendment and have no objection to the proposed amendment. The screening company shall include the name and phone number of each individual from each air carrier who was advised.

(2) Within 30 days after receiving a proposed amendment, the Assistant Administrator will either approve or deny the request to amend in writing.

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

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

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

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

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

(2) After considering all relevant material, the Assistant Administrator will notify the screening company and carrier(s) of any amendment adopted or will rescind the notice. If the amendment is adopted, it will become effective not less than 30 days after the screening company and carrier(s) receive the notice of amendment unless the screening company or carrier(s) petition(s) the Administrator to reconsider no later than 15 days before the effective date of the amendment. The screening company or carrier(s) 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 will either amend or withdraw the notice or will transmit the petition together with any pertinent information to the Administrator for reconsideration. The Administrator will dispose of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the notice 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 that will become effective without stay on the date that the screening company and carrier(s) receive 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 screening company or carrier(s) may file a petition for reconsideration under paragraph (c) of this section; however, this will not stay the effectiveness of the emergency amendment.

§ 111.109 Screening company certificate.

(a) *Certificate required.* No person may perform any screening required under this part or part 108, 109 or 129 of this chapter except under the authority of and in accordance with the provisions of a screening company certificate issued under this part.

(b) *Application.* An application for a provisional screening company certificate, a screening company certificate, or a screening company certificate renewal is made in a form and a manner prescribed by the Administrator. The application shall include at a minimum the information that will be placed on the certificate under paragraph (f) of this section and the information that will be contained in the operations specifications under § 111.113(b).

(c) *Issuance and renewal.* An applicant for a provisional screening company certificate, a screening company certificate, or a screening company certificate renewal is entitled to a certificate if the following are met:

(1) The applicant applies for a certificate as provided in this section not less than 90 days before—

(i) The applicant intends to begin screening; or

(ii) The applicant's current certificate expires.

(2) For the issuance of a provisional screening company certificate, the Administrator finds after investigation that the applicant is able to meet the requirements of this part to include adopting and carrying out an FAA-approved security program and approved operations specifications.

(3) For the issuance or renewal of a screening company certificate, the Administrator determines that the

applicant has met the requirements of this part, its screening company security program, and its approved operations specifications. The applicant's failure to meet the performance standards set forth in the security program is grounds for denial or withdrawal of the screening company certificate.

(4) The issuance of the certificate is not contrary to the interests of aviation safety and security.

(5) The applicant has not held a provisional or a screening company certificate that was revoked within the previous year, unless otherwise authorized by the Administrator.

(d) *Provisional certificate.* (1) A person who does not hold a screening company certificate may be issued a provisional screening company certificate.

(2) Unless otherwise authorized by the Administrator, the holder of a provisional screening company certificate may not begin screening at any screening location unless it notifies the Administrator 7 days before beginning such screening.

(3) The Administrator may prescribe the conditions under which a provisionally certificated screening company may operate while it is beginning screening at a new location.

(e) *Screening company certificate.* (1) The holder of a provisional screening company certificate may be issued a screening company certificate.

(2) The holder of a screening company certificate may renew its certificate.

(f) *Certificate contents.* A screening company certificate contains the following information:

(1) The name of the screening company and any names under which it will do business as a certificated screening company.

(2) Certificate issuance date.

(3) Certificate expiration date.

(4) Certificate number.

(5) Such other information as the Administrator determines necessary.

(g) *Duration.* (1) Unless sooner suspended, revoked, or surrendered, a provisional screening company certificate will expire at the end of the 12th month after the month in which it was issued.

(2) Unless sooner suspended, revoked, surrendered, or expired under paragraph (g)(3) of this section, a screening company certificate will expire at the end of the 60th month after the month in which it was issued or renewed.

(3) If a screening company has not performed screening on behalf of a carrier during the previous 12 calendar months, its certificate will be deemed to have expired, and the company will no longer be authorized to conduct screening under this part.

(h) *Return of certificate.* The holder of a screening company certificate that is expired, suspended, or revoked shall return it to the Administrator within 7 days.

(i) *Amendment of certificate.* (1) A screening company shall apply for an amendment to its screening company certificate in a form and manner prescribed by the Administrator if it intends to change the name of its screening company, and/or any names under which it will do business as a certificated screening company.

(2) The holder of a screening company certificate requiring amendment shall return the certificate to the Administrator within 7 days for appropriate amendment.

(j) *Inspection.* A screening company certificate shall be made available for inspection upon request by the Administrator.

(k) *Compliance dates.* A carrier may use a company not certificated under this part to perform screening required under part 108, part 109, or part 129 of this chapter if the company performed required screening for a carrier at any time on or after [date 1 year before effective date of final rule] through [effective date of final rule] and if all of the following apply:

(1) The company submits an application as required by paragraph (b) of this section for a provisional certificate on or before [date 60 days after effective date of the final rule].

(2) The FAA has not issued under this part a denial of a screening company certificate to the company.

§ 111.111 Operations specifications: Adoption and implementation.

No screening company may perform screening under this part unless the company adopts and complies with operations specifications that meet the requirements of this part.

§ 111.113 Operations specifications: Form, content, and availability.

(a) Operations specifications required by this part shall—

(1) Be in writing and signed by the screening company;

(2) Include the items listed in paragraph (b) of this section; and

(3) Be approved by the Administrator.

(b) Operations specifications required by this part shall include—

(1) Locations at which the Administrator has authorized a company to conduct screening required under this part, part 108, part 109, or part 129 of this chapter;

(2) The types of screening that the Administrator has authorized the company to perform which include persons, accessible property, checked baggage, and cargo;

(3) The equipment and methods of screening that the Administrator has authorized the company to operate and carry out;

(4) The title and name of the person required by § 111.209(b);

(5) Procedures to notify the Administrator and any carrier for which it is performing screening in the event that the procedures, facilities, or equipment that it is using are not adequate to perform screening under this part;

(6) The curriculum used to train screeners;

(7) A statement signed by the person required by § 111.209(b) on behalf of the company confirming that the information contained in the operations specifications is true and correct; and

(8) Any other subjects that the Administrator deems necessary.

(c) Each screening company having approved operations specifications shall—

(1) Maintain at least one complete copy of the operations specifications at its principal business office;

(2) Maintain a complete copy or the pertinent portions of its approved operations specifications at each airport where it conducts security training;

(3) Ensure that its operations specifications are amended so as to maintain current descriptions of the screening company and its services, procedures, and facilities;

(4) Make its operation specifications available to the Administrator for inspection upon request;

(5) Provide current operations specifications to each carrier for which it screens;

(6) With the exception of information described in paragraph (b)(1) of this section, restrict the availability of information contained in the operations specifications to those persons with an operational need to know as provided in § 191.5(b) of this chapter; and

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

§ 111.115 Operations specifications: Approval, amendments, and limitations.

(a) Each applicant for a provisional screening company certificate shall submit its proposed operations specifications to the Administrator when applying for a provisional screening company certificate. After receiving the proposed operations specifications, the Administrator will approve the operations specifications or will notify the applicant to modify its operations specifications to comply

with the applicable requirements of this part. The applicant may petition the Administrator to reconsider the notice to modify. A petition shall be submitted no later than 15 days from the date that a notice to modify is issued.

(b) The Administrator may amend approved operations specifications if it is determined that safety and the public interest require the amendment as follows:

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

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

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedures in this paragraph impracticable or contrary to safety or the public interest, the Administrator may issue an amendment that will become effective without stay on the date that a screening company receives notice of it. In such a case, the Administrator will incorporate the findings and a brief statement of the reasons for it in the notice of the amendment to be adopted.

(c) A screening company may submit a request to the Assistant Administrator to amend its operations specifications. The application shall be filed with the Assistant Administrator at least 30 days before the date that it proposes for the amendment to become effective unless a shorter period is allowed by the Assistant Administrator. The Assistant Administrator will approve or deny a request within 15 days after receiving the proposed amendment. Within 30 days after receiving from the Assistant Administrator a notice of refusal to approve an application for amendment, the applicant may petition the Administrator to reconsider the refusal to amend.

(d) The FAA may limit the specific locations at which a screening company may operate if it determines that the company's operations are contrary to the interests of aviation safety and security.

§ 111.117 Oversight by air carriers, foreign air carriers, or indirect air carriers.

(a) Each screening company shall allow any air carrier, foreign air carrier, or indirect air carrier for which it is performing screening under part 108, part 109, or part 129 of this chapter to do the following:

(1) Inspect the screening company's facilities, equipment, and records to determine the screening company's compliance with this part, the screening company's security program, and the screening company's operations specifications.

(2) Test the performance of the screening company using procedures specified in the applicable security program(s).

(b) Each screening company holding a certificate under this part shall provide a copy of each letter of investigation and final enforcement action to each carrier using the screening location where the alleged violation occurred. The copy shall be provided to the applicable carrier's corporate security officer within 3 business days of receipt of the letter of investigation or final enforcement action.

§ 111.119 Business office.

(a) Each screening company shall maintain a principal business office with a mailing address in the name shown on its certificate.

(b) Each screening company shall notify the Administrator before changing the location of its business. The notice shall be submitted in writing at least 30 days before the change.

Subpart C—Operations

§ 111.201 Screening of persons and property and acceptance of cargo.

(a) Each screening company shall use the procedures included in its approved security program to:

(1) Inspect each person entering a sterile area;

(2) Inspect each person's accessible property entering a sterile area; and

(3) Prevent or deter the introduction into a sterile area of any explosive, incendiary, or deadly or dangerous weapon on or about each person or the person's accessible property.

(b) Each screening company shall deny entry into a sterile area at a checkpoint to:

(1) Any person who does not consent to a search of his or her person in accordance with the screening system prescribed in paragraph (a) of this section; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by paragraph (a) of this section.

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

(1) Law enforcement personnel required to carry firearms or other weapons while in the performance of their duties at airports.

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

(3) Persons authorized to carry firearms in sterile areas under FAA-approved or FAA-accepted security programs.

(d) Each screening company shall staff the screening locations that it operates with supervisory and nonsupervisory personnel in accordance with the standards specified in its security program.

(e) Each screening company shall use the procedures included in its approved security program to:

(1) Inspect checked baggage, or cargo presented for inspection by a carrier; and

(2) Prevent or deter the carriage of explosives or incendiaries in checked baggage or cargo onboard passenger aircraft.

§ 111.203 Use of screening equipment.

(a) Each screening company shall operate all screening equipment in accordance with its approved security program.

(b) The Administrator authorizes a certificated screening company to use X-ray systems for inspecting property under an approved security program if the screening company shows that:

(1) A program for initial and recurrent training of operators of the system that includes training in radiation safety, the efficient use of X-ray systems, and the identification of unauthorized weapons, explosives, incendiaries, and other dangerous articles is established.

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

(c) If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to X-ray or explosives detection systems.

(d) Each screening company shall comply with the X-ray duty time limitations specified in its approved security program.

§ 111.205 Employment standards for screening personnel.

(a) No screening company shall use any person to perform any screening

function in the United States unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience that the screening company has determined to have equipped the person to perform the duties of the screening 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 shall be able to identify the components that may constitute an explosive or an incendiary;

(ii) Screeners shall be able to identify objects that appear to match those items described in all current security directives and emergency amendments;

(iii) Screeners operating X-ray and explosives detection system equipment shall be able to distinguish on the equipment monitors the appropriate imaging standards specified in the screening company's approved security program;

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

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

(vi) Screeners performing manual searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, cargo, and other objects subject to security processing;

(vii) Screeners performing manual searches of cargo shall be able to use tools that allow for opening and closing boxes, crates, or other common cargo packaging;

(viii) Screeners performing screening of cargo shall be able to stop the transfer of suspect cargo to passenger air carriers; and

(ix) Screeners performing pat-down or hand-held metal detector searches of persons shall have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

(3) The ability to read, speak, write, and understand 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, documents, air waybills, invoices, 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 or submitting cargo for 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 screening company's security program. Initial and recurrent training for all screeners shall include, but is not limited to, the following:

(i) The conduct of screening of persons in a courteous and efficient manner.

(ii) Compliance with the applicable civil rights laws of the United States.

(5) For persons with supervisory screening duties, initial and recurrent training shall include leadership and management subjects as specified in the screening company's security program.

(b) Notwithstanding the provisions of paragraph (a)(4) of this section, the screening company 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 sterile areas or aircraft or whether cargo may be loaded aboard aircraft without further inspection.

(c) No screening company 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 screening company's security program.

(d) Each air carrier with a ground security coordinator and each foreign air carrier and indirect air carrier with a screening supervisor shall ensure that that person conducts and documents an annual evaluation of each person assigned screening duties. The ground security coordinator or supervisor may continue that person's employment in a screening capacity only upon determining 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 the approved screening company's security program; and

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

§ 111.207 Disclosure of sensitive security information.

(a) Each screening company shall ensure that for each screener trainee who will be required to have an employment history verification, the steps in § 107.207(c)(1), (2), (3), and (4), or § 108.221(c)(1), (2), (3), and (4) of this chapter have been completed before the screener trainee receives sensitive security information as defined in part 191 of this chapter.

(b) If the employee application, employment verification, or criminal history record check has disclosed that the trainee has a history of a disqualifying crime as provided in § 107.207(b)(2) or § 108.221(b)(2) of this chapter, no sensitive security information may be provided to that trainee.

(c) If a criminal history record check has been requested under § 108.221(c)(5) of this chapter, the trainee may receive sensitive security information unless and until the results of the record check disclose a disqualifying crime.

§ 111.209 Screening company management.

(a) Each screening company shall have sufficient qualified management and technical personnel to ensure the highest degree of safety in its screening.

(b) Each screening company shall designate a screening performance coordinator (SPC) as the primary point of contact for security-related activities and communications with the FAA and carrier.

(1) To serve as a screening performance coordinator under this part, a person shall have the following:

(i) Except as provided in paragraph (e) of this section, at least 1 year of supervisory or managerial experience within the last 3 years in a position that exercised control over any aviation security screening required under this part or part 108, 109, or 129 of this chapter.

(ii) Successfully completed the initial security screener training course, including the end of course FAA exam.

(2) Each screening company shall notify the Administrator within 10 days of any screening performance coordinator change or any vacancy.

(c) Each screening performance coordinator shall to the extent of his or her responsibilities have a working knowledge of the following with respect to the screening company's operations:

(1) This part.

(2) Part 108, 109, or 129 and part 191 of this chapter.

(3) The screening company's security program.

(4) The screening company's operations specifications.

(5) All relevant statutes.

(6) All relevant technical information and manuals regarding screening equipment, security directives, advisory circulars, and information circulars on aviation security.

(d) Before [date 3 years after effective date of final rule], the Administrator may authorize an individual who does not meet the standard required in paragraph (b)(1)(i) of this section to serve as the screening performance coordinator for screening under part 109 of this chapter.

§ 111.211 Screening company instructor qualifications.

(a) No screening company shall use any person as a classroom instructor unless that person meets the requirements of this part.

(b) To be eligible for designation as a security screening instructor for a course of training, a person shall have a minimum of 40 hours of actual experience as a security screener making independent judgments, unless otherwise authorized by the Administrator.

(c) An instructor shall pass the FAA screener knowledge-based and performance tests for each type of screening to be taught and for the procedures and equipment for which the instructor will provide training, unless otherwise authorized by the Administrator.

(d) An instructor may not be used in an approved course of training until he or she has been briefed regarding the objectives and standards of the course.

(e) This section does not prevent a screening company's using guest speakers or persons in training as instructors if they are under the direct supervision of a qualified security screening instructor who is readily available for consultation.

§ 111.213 Training and knowledge of persons with screening-related duties.

(a) No screening company may use any screener, screener-in-charge, and checkpoint security supervisor unless that person has received initial and recurrent training as specified in the screening company's approved security program, including the responsibilities in § 111.105.

(b) Each screening company shall submit its training programs for screeners, screeners-in-charge, and checkpoint security supervisors for approval by the Administrator.

(c) Each screening company shall ensure that individuals performing as screeners, screeners-in-charge, and checkpoint security supervisors for the screening company have knowledge of the provisions of this part, the screening company's security program, and applicable security directive, emergency amendment, and information circular information to the extent that such individuals need to know in order to perform their duties.

§ 111.215 Training tests: Requirements.

(a) Each screening company shall ensure that each screener trainee passes an FAA screener readiness test for each type of screening to be performed and for the procedures and equipment to be used prior to beginning on-the-job training.

(b) Each screening company shall ensure that each screener completes 40 hours of on-the-job training and passes an FAA on-the-job training test before exercising independent judgment as a screener.

(c) Each screening company shall ensure that each screener passes an FAA review test at the conclusion of his or her recurrent training.

(d) Unless otherwise authorized by the Administrator, each screening company shall use computer-based testing to administer FAA tests for screener readiness, on-the-job training, and recurrent training.

(e) Each screening company shall ensure that each test that it administers under paragraphs (a) and (c) of this section is monitored by an employee of the carrier for which it screens.

§ 111.217 Training tests: Cheating or other unauthorized conduct.

Except as authorized by the Administrator, no person may:

(a) Copy or intentionally remove a knowledge-based or performance test under this part;

(b) Give to another or receive from another any part or copy of that test;

(c) Give help on that test to or receive help on that test from any person during the period that the test is being given;

(d) Take any part of that test on behalf of another person;

(e) Use any material or aid during the period that the test is being given; or

(f) Cause, assist, or participate intentionally in any act prohibited by this paragraph.

§ 111.219 Screener letter of completion of training.

(a) Each screening company shall issue letters of completion of training to screeners, screeners-in-charge, and checkpoint security supervisors upon each successful completion of their approved initial, recurrent, and specialized courses of training.

(b) Each letter shall contain at least the following information:

(1) The name of the company and the number of the screening company certificate.

(2) The name of the screener to whom it is issued.

(3) The course of training for which it is issued.

(4) The type(s) of screening the screener has been trained to perform, which may include persons, accessible property, checked baggage, and cargo.

(5) The equipment and methods of screening that the screener has been trained to operate and carry out.

(6) The date of completion.

(7) A statement that the trainee has satisfactorily completed each required stage of the approved course of training, including the tests for those stages.

(8) The signature of a supervisory-level individual (ground security coordinator, checkpoint security supervisor, or screener-in-charge).

§ 111.221 Screener and supervisor training records.

(a) Whenever a screener, screener-in-charge, or checkpoint security supervisor completes or terminates his or her training or transfers to another company, the screening company shall annotate the employee's record to that effect.

(b) The screening company shall upon request of a screener, screener-in-charge, or checkpoint security supervisor make a copy of the employee's training record available to the employee within 4 days of his or her request.

(c) A screener, screener-in-charge, or checkpoint security supervisor who has been issued a letter of completion of training may request in writing that the screening company provide to another certificated screening company or a screening company that has applied for a screening company certificate a complete copy of the employee's training and performance records. Upon receiving such a request, the screening company shall provide the records to the second company within 7 days. Any company receiving records from another company may use the screener, screener-in-charge, or checkpoint security supervisor without providing retraining if the company provides transition training as specified in its security program, unless an evaluation of the employee's training shows the results to be unsatisfactory or the employee has not performed screening functions for 1 year or more.

(d) A screening company may request from another screening company records for a screener, screener-in-charge, or checkpoint security

supervisor as described in paragraph (c) of this section when a signed consent form has been provided by the employee whose records are to be requested.

(e) Upon the termination of screening services at a site, a screening company shall surrender all original records required under this part to the carrier for which it was conducting screening under this part.

(f) Records of training, testing, and certification shall be made available promptly to FAA special agents upon request and shall be maintained for a period of at least 180 days following the termination of duty for a screener, screener-in-charge, or checkpoint security supervisor. Test records will include all tests to which the employee was subjected, not just those satisfactorily completed.

§ 111.223 Automated performance standards.

(a) Each screening company shall use a threat image projection system for each X-ray and explosives detection system that it operates as specified in its security program to measure the performance of individual screeners, screening locations, and screening companies.

(b) Each screening company shall meet the performance standards set forth in its security program.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

14. The authority citation for part 129 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906, 44935 note.

15. Amend § 129.25 by revising paragraph (a); by removing ''and'' at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding a semicolon in its place; by adding new paragraphs (c)(5) and (c)(6); by revising paragraphs (e)(2), (e)(3), (e)(4), and (j); and by adding new paragraphs (k), (l), (m), (n), (o), and (p) to read as follows:

§ 129.25 Airplane security.

(a) Terms defined in parts 107, 108, 109, and 111 of this chapter apply to this part. For purposes of this part, parts 107, 108, 109, and 111 of this chapter, and security programs under these parts, the following definitions also apply:

* * * * *

(c) * * *

(5) Include within it a description of how the foreign air carrier will provide oversight to each screening company performing screening on its behalf; and

(6) Include within it a description of how the foreign air carrier will evaluate and test the performance of screening.

* * * * *

(e) * * *

(2) A foreign air carrier may submit a request to the Assistant Administrator to amend its accepted security program as follows:

(i) The application shall 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.

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

(iii) An amendment to a foreign 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.

(iv) Within 45 days after receiving a denial, the foreign air carrier may petition the Administrator to reconsider the denial.

(v) 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 affirms the denial.

(3) If the safety and the public interest require an amendment, the Assistant Administrator may amend an accepted security program as follows:

(i) The Assistant Administrator notifies the foreign air carrier, in writing, of the proposed amendment, fixing a period of not less than 45 days within which the foreign air carrier may submit written information, views, and arguments on the amendment.

(ii) After considering all relevant material, the Administrator notifies the foreign air carrier of any amendment adopted or rescinds the notice. The foreign air carrier may petition the Administrator to reconsider the amendment, in which case the effective date of the amendment is stayed until the Administrator reconsiders the matter.

(iii) 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 Administrator to withdraw or amend the amendment, or by affirming the amendment.

(4) 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 foreign air carrier 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 foreign air carrier may file a petition for reconsideration under paragraph (e)(2) of this section; however, this does not stay the effectiveness of the emergency amendment.

* * * * *

(j) The following apply to the screening of persons and property, and the acceptance of cargo:

(1) Each foreign air carrier required to conduct screening under a security program shall use the procedures included, and the facilities and equipment described, in its screening company security program(s) to inspect each person entering a sterile area, each person's accessible property, and checked baggage and cargo as specified.

(2) Each foreign 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 unauthorized explosive, incendiary, or deadly or dangerous weapon on or about each person or the person's accessible property.

(3) Each foreign air carrier required to conduct screening under a security program shall use the procedures included and the facilities and equipment described in its screening company security program(s) to prevent the carriage of any unauthorized explosive, incendiary, or deadly or dangerous weapon aboard a passenger aircraft.

(k) Except as provided in § 111.109(k) of this chapter each foreign air carrier required to conduct screening of persons and property for locations within the United States under a

security program shall either hold a screening company certificate issued under part 111 of this chapter or shall use another screening company certificated under part 111 of this chapter to inspect persons or property for the presence of any unauthorized explosive, incendiary, or deadly or dangerous weapon. FAA-certified canine teams are not required to be operated by certificated screening companies.

(l) Each foreign air carrier shall ensure that each screening company performing screening on its behalf conducts such screening in accordance with part 111 of this chapter, the screening company's security program, and the screening company's operations specifications.

(m) Each foreign air carrier required to conduct screening under this part shall provide oversight to each screening company performing screening on its behalf as specified in the foreign air carrier's security program.

(n) Each foreign air carrier required to conduct screening under a security program shall:

(1) Maintain at least one complete copy of each of its screening companies' security programs at its principal business office.

(2) Have available complete copies or the pertinent portions of its screening companies' security programs or appropriate implementing instructions at each location where the screening companies conduct screening for the foreign air carrier.

(3) Make copies of its screening companies' security programs available for inspection by an FAA special agent upon request.

(4) Restrict the distribution, disclosure, and availability of information contained in its screening companies' security programs 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.

(o) Each foreign air carrier required by the Administrator to implement additional security measures to maintain system performance shall notify the public by posting signs at affected locations as specified in its security program.

(p) Each foreign air carrier shall monitor each screener training test required under § 111.215(a) and (c) of this chapter for all screening companies that conduct screening on its behalf in accordance with its security program. Each test monitor shall meet the following qualifications:

(1) Be a foreign air carrier employee who is not a contractor, instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening company supervisor, unless otherwise authorized by the Administrator.

(2) Be familiar with the testing and grading procedures contained in the screening company's security program.

(3) Meet other qualifications set forth in the screening company's security program.

16. Amend § 129.26 by removing paragraphs (a)(3) and (a)(4); redesignating paragraph (a)(5) as new paragraph (a)(3) and revising it; and adding a new paragraph (a)(4) to read as follows:

§ 129.26 Use of X-ray system.

(a) * * *

(3) The system meets the imaging requirements set forth in the screening standard security program using the step wedge specified in American Society for Testing and Materials Standard F792–82; and

(4) It ensures that each X-ray system that it uses has a functioning threat image projection system installed on it that meets the standards set forth in its security program unless otherwise authorized by the Administrator.

(i) Automated X-ray threat image projection data will be collected as specified in the model security program and in the responsible screening company's security program.

(ii) The foreign air carrier shall make X-ray threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

* * * * *

17. Add a new § 129.28 to read as follows:

§ 129.28 Use of explosives detection systems.

(a) When the Administrator shall require by an amendment under § 129.25(e), each foreign 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 its security program and its screening company security programs.

(b) Unless otherwise authorized by the Administrator, each foreign air carrier shall ensure that each explosives detection system that it uses has a functioning threat image projection system that meets the standards set forth in its security program.

(1) Automated explosives detection system threat image projection data will be collected as specified in the foreign air carrier's security program and in the responsible screening company's security program.

(2) The foreign air carrier shall make explosives detection system threat image projection data available to the FAA upon request and shall allow the FAA to download threat image projection data upon request.

PART 191—PROTECTION OF SENSITIVE SECURITY INFORMATION

18. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701–44702, 44705–44706, 44901–44907, 44913–44914, 44932, 44935–44936, 46105.

19. Revise § 191.1(c) to read as follows:

§ 191.1 Applicability and definitions.

* * * * *

(c) The authority of the Administrator under this part also is exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security and any other individual formally designated to act in their capacity. For matters involving the release or withholding of information and records containing information described in § 191.7(a) through (g), related documents described in § 191.7(l), and § 191.7(m), the authority may be further delegated. For matters involving the release or withholding of information and records containing information described in § 191.7(h) through (k) and related documents described in § 191.7(l), the authority may not be further delegated.

20. Revise § 191.5 to read as follows:

§ 191.5 Records and information protected by others.

(a) Each airport operator, air carrier, indirect air carrier, foreign air carrier, and certificated screening company, and each person receiving information under § 191.3(b), and each individual employed by, contracted to, or acting for an airport operator, air carrier, indirect air carrier, foreign air carrier, certificated screening company, or person receiving information under § 191.3(b) shall restrict disclosure of and access to sensitive security information described in § 191.7(a) through (g), (j), (k), (m), and, as applicable, § 191.7(l) to persons with a need to know and shall refer requests by other persons for such information to the Administrator.

(b) A person has a need to know sensitive security information when the information is necessary to carry out FAA-approved or directed aviation security duties; when the person is in

training for such a position; when the information is necessary to supervise or otherwise manage the individuals carrying out such duties; to advise the airport operator, air carrier, indirect air carrier, foreign air carrier, or certificated screening company regarding the specific requirements of any FAA security-related requirements; or to represent the airport operator, air carrier, indirect air carrier, foreign air carrier, certificated screening company, or person receiving information under § 191.3(d) in connection with any judicial or administrative proceeding regarding those requirements. For some specific information, the Administrator may make a finding that only specific persons or classes of persons have a need to know.

(c) When sensitive security information is released to unauthorized persons, any air carrier, airport operator, indirect air carrier, foreign air carrier, certificated screening company, or individual with knowledge of the release shall inform the Administrator.

(d) Violation of this section is grounds for a civil penalty and other enforcement or corrective action by the FAA.

(e) Wherever this part refers to an air carrier, airport operator, indirect air carrier, foreign air carrier, or certificated screening company, those terms also include applicants for such authority.

(f) An individual who is in training for a position is considered to be employed by, contracted to, or acting for an airport operator, air carrier, indirect air carrier, foreign air carrier, certificated screening company, or person receiving information under § 191.3(b).

21. Amend § 191.7 by revising the introductory text; by revising paragraphs (a) and (h); and by adding new paragraphs (m) and (n) to read as follows:

§ 191.7 Sensitive security information.

Except as otherwise provided in writing by the Administrator, the following information and records containing such information constitute sensitive security information:

(a) Any approved or standard security program for an air carrier, foreign air carrier, indirect air carrier, airport operator, or certificated screening company and any security program that relates to U.S. mail to be transported by air (including that of the United States Postal Service and of the Department of Defense); and any comments, instructions, or implementing guidance pertaining thereto.

* * * * *

(h) Any information that the Administrator has determined may reveal a systemic vulnerability of the aviation system or a vulnerability of aviation facilities to attack. This includes but is not limited to details of inspections, investigations, and alleged violations and findings of violations of part 107, 108, 109, or 111 of this chapter or § 129.25, 129.26, or 129.27 of this chapter and any information that could lead to the disclosure of such details, as follows:

(1) For an event that occurred less than 12 months before the date of the release of the information, the following are not released: the name of an airport where a violation occurred, the regional identifier in the case number, a description of the violation, the regulation allegedly violated, and the identity of the air carrier in connection with specific locations or specific security procedures. The FAA may release summaries of an air carrier's or certificated screening company's total security violations in a specified time range without identifying specific violations. Summaries may include total enforcement actions, total proposed civil penalty amounts, total assessed civil penalty amounts, numbers of cases opened, numbers of cases referred by Civil Aviation Security to FAA counsel for legal enforcement action, and numbers of cases closed.

(2) For an event that occurred 12 months or more before the date of the release of the information, the following are not released: the specific gate or other location on an airport where the event occurred. The FAA may release the following: the number of the enforcement investigative report; the date of the alleged violation; the name of the air carrier, airport, and/or certificated screening company; the regulation allegedly violated; the proposed enforcement action; the final enforcement action; and the status (open, pending, or closed).

(3) The identity of the FAA special agent who conducted the investigation or inspection.

(4) Security information or data developed during FAA evaluations of the air carriers, airports, indirect air carriers, and certificated screening companies and the implementation of the security programs, including air carrier, airport, and indirect air carrier inspections and screening location tests or methods for evaluating such tests.

* * * * *

(m) Any approved operations specifications for a screening company except the following items, which are not sensitive security information: the name of the company, locations at which the Administrator has authorized the company to conduct business, the type of screening that the Administrator has authorized the company to perform, and the title and name of the person required by § 111.209(b) of this chapter.

(n) Any screener test used under part 111 of this chapter.

Issued in Washington, DC, on December 15, 1999.

Quinten Johnson,

Acting Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 00–16 Filed 1–4–00; 8:45 am]

BILLING CODE 4910–13–U