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14 CFR Part 108
Aircraft Operator Security; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–2001–8725; Formerly Docket No. 28978; Amendment No. 108–18]

RIN 2120–AD45

Aircraft Operator Security

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the existing airplane operator security rule. It revises the applicability section, definitions, and terms; reorganizes this part into subparts containing related requirements; and incorporates some requirements already implemented in the air carrier standard security program. Specifically, this final rule increases the number of aircraft operators that must have security programs, to include all that enplane from or deplane into a sterile area and certain helicopter operators. This final rule expands the training requirements for aircraft operator security personnel. Further, this final rule clarifies the procedures for carriage of prisoners under the control of armed law enforcement officers, procedures for carriage of weapons by law enforcement officers, and procedures for aircraft operators to comment on security directives issued by the FAA. This rule requires aircraft operators to participate in the airport sponsored contingency exercise or its equivalent. As part 108 applies to operators of rotorcraft as well as fixed-wing aircraft, this final rule changes the title of this part from ''Airplane Operator Security'' to ''Aircraft Operator Security.'' This final rule contains changes that are intended to enhance security for the traveling public, and aircraft operators.

EFFECTIVE DATE: This rule is effective November 14, 2001. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of November 14, 2001.

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

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy 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. Make sure to identify the amendment number or docket number of this final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail *us 9–AWA–SBREFA@faa.gov.*

Background

This final rule updates the overall regulatory structure for aircraft operator security. It is issued in conjunction with a companion rule revising 14 CFR part 107, Airport Security, published in today's issue of the **Federal Register**. This final rule is the result of a multi-year effort involving the FAA, airports and aircraft operators, and the Aviation Security Advisory Committee (ASAC). ASAC is a federal advisory committee sanctioned to develop recommendations for improvement of methods, equipment, and procedures to improve civil aviation security. The FAA invited ASAC to comment on the underlying issues, and potential solutions associated with the revision of part 108.

Several measures contained in this final rule have been previously implemented via amendments to the air carrier standard security program. These revisions are considered to be consistent with several of the recommendations of the White House Commission on Aviation Safety and Security and with the security mandates of the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264) signed on October 9, 1996.

Terrorism

The terrorist threat level in the United States over the next decade will remain at least as high as it is at present and, indeed, will probably rise. This judgement is based on consideration of a number of factors.

First, there are numerous unresolved conflicts across the globe, many of which show no sign of early resolution. While many of these do not involve the United States directly, the status of the United States as sole superpower means that parties to the conflict are prone to decry either US involvement or lack of involvement.

Second, since the United States is variously perceived as a supporter of unpopular regimes, an enemy of Islam, and an exponent of imperialism (whether political, economic, or cultural), any number of terrorist groups view the United States interests as fundamentally inimical to their own, and thus see attacks against US interests as justifiable, even meritorious.

Third, the expanding geographical range of terrorist activity is increasingly evident. Members of foreign terrorist groups, representatives from state sponsors of terrorism, and radical fundamentalist elements are present in the United States. The activities of some of these individuals and groups go beyond fund-raising to recruiting other persons (both foreign and US citizens) for terrorist-related activities that may include obtaining and training with weapons, providing safehaven for fugitives, and making bombs. A few foreign terrorist groups have supporters inside the United States who could be used to support terrorism.

Fourth, the vulnerabilities of the critical national infrastructure of the United States may prove inviting to foreign and domestic terrorists wishing to inflict damage on the US economy.

Fifth, although it remains to be seen what lessons terrorists will draw from the World Trade Center bombing in 1993 and the Oklahoma City bombing in 1995, a particularly worrisome development is the increasing

willingness on the part of various terrorists to carry out attacks intended to bring about indiscriminate casualties.

Finally, the phenomenon of ad hoc or non-traditional terrorists groups (such as the group responsible for the World Trade Center bombing) has become a primary concern to law enforcement. Difficulties exist in denying entry of such individuals (who are not members of any known terrorist group) into the United States, recognizing or identifying them as terrorists once they are here, or anticipating the timing or targets of their attacks.

With respect specifically to the threat to civil aviation in the United States, it must be seen in the context of the broader threat. The events in Asia in early 1995, showed that the terrorists persisted in planning to attack aviation even when there were other targets identifiable with the United States in the area and even when they knew that the security measures protecting aviation had been strengthened. Publicity about problems with US domestic civil aviation security measures increases the potential for attacks here. Civil aviation targets may be chosen by terrorists even if alternative, and (in their view) softer targets are available, especially since an attack on aviation seizes the public's imagination to a degree equaled by few other types of attack.

General Discussion of the Rule

On August 1, 1997 (62 FR 41730), the FAA published Notice 97–12 to revise part 108. Notice 97–12 proposed and requested comments by December 1, 1997.

Concurrent with the issuance of Notice 97–12, the FAA issued Notice 97–13 to revise part 107 on Airport Security (62 FR 41760; August 1, 1997), and held two public meetings. The first public meeting was held in Washington, DC on October 15, 1997, and the second was held on October 22, 1997, in Fort Worth, Texas.

On April 21, 1998, the FAA reopened the comment period and announced two public meetings on Notice 97–13 and Notice 97–12 (63 FR 19691, April 21, 1998). The public meetings were held on May 21, 1998, in Washington, DC, and on June 4, 1998, in Nashville, TN.

As of June 26, 1998, the closing of the second comment period, 160 comments were received addressing Notice 97–12. A majority of the comments were from law enforcement officers addressing the carriage of firearms onboard the aircraft. Comments were also received from specific aircraft operators, local airports, Transport Canada, State departments of transportation (DOT's), American Association of Airport Executives (AAAE), Airport Council International—North America (ACI–NA), Allied Pilots Association (APA), Air Transport Association (ATA), National Air Carrier Association (NACA), Regional Airline Association (RAA), Cargo Airline Association (CAA), Air Line Pilots Association (ALPA), and Helicopter Association International (HAI). The comments mostly address clarification of terms, carriage of weapons onboard the aircraft by law enforcement officers, transporting passengers under armed escort, and security operations. Generally, commenters suggest that the cost estimates to develop a security program were underestimated, however, no cost estimates were provided. A detailed discussion of the comments appears under ''Section by Section Analysis.''

On Tuesday, August 10, 1999, the FAA reopened the comment period to allow the public to submit additional comments on the compliance program proposed in Notice 97–12 (§ 108.103(b)(11) and (c)(6), 64 FR 43322). After considering all the written comments on the compliance program issue, the FAA will consider the need for amending part 108.

The revision of part 108 comprehensively updates the aircraft operator security regulations to more efficiently and effectively address terrorist and other criminal threats to civil aviation. This action incorporates both procedures currently in the air carrier standard security program and new security procedures, in a manner that is intended to allow regulated entities and individuals to understand their responsibilities more readily. Lastly, the revision incorporates certain new measures that provide for security enhancements.

Airport security programs required by part 107 also have been amended extensively since 1985. The FAA is revising part 107, which governs airport security, concurrently with this part. All references to part 107 in this preamble are intended to refer to part 107 as published in today's issue of the **Federal Register**.

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

Significant changes between the final rule include the following: (1) Increases the number of aircraft operators who must have security programs; (2) Moves some sections from current 14 CFR part 107; (3) Clarifies procedures allowing law enforcement officers to fly armed; (4) Clarifies procedures for transporting prisoners under armed escort; (5) Holds individuals accountable for certain violations; (6) Acknowledges administrative procedures for a formal comment period for security directives.

The changes are discussed in more detail in the Section-by-Section Analysis below.

Section-by-Section Analysis

Title and Organization of Revised Part 108

In this final rule, the FAA revises existing § 108.1 through § 108.33, and adds several new sections. Also, the FAA reorganized some of the material in Notice 97–12 resulting in additional sections addressing specific requirements. These changes are discussed in more detail below. The title ''Airplane Operator Security'' has been changed to ''Aircraft Operator Security,'' as this part applies to operators of rotorcraft as well as fixed-wing aircraft. All references to ''airplane'' in this part are changed to ''aircraft.''

Subpart A—General

Section 108.1 Applicability

Proposal: The FAA proposed, in § 108.1(a)(1), to extend the application of part 108 to certain private charter operations, helicopter operations, and all-cargo carriers.

Comments: The FAA received comments identified as applicable to § 108.1, the comments appear to be directed toward the content of security programs. Accordingly, the FAA has chosen to place those comments and the FAA's response to them in the analysis section for § 108.101.

The ASAC Part 108 Working Group supports permitting helicopter operators to voluntarily participate in a security program. The Part 108 Working Group notes that some helicopter activities place operators in direct contact with large domestic flag carrier operations. When this occurs, helicopter passengers disembark into the secure areas of terminals. The recommendation by the Part 108 Working Group is to allow the expeditious handling of such passengers through secure areas without diminishing the security of the sterile area. In order to do so, the helicopter operators would require an FAA-approved security program.

FAA response: The FAA continues to believe that this action will enhance the security of the sterile area by minimizing the opportunity for transfer or introduction of dangerous or deadly weapons into the sterile area by unscreened persons disembarking from private charter or helicopter operations into the sterile area.

The FAA concurs with the opinion of the Part 108 Working Group. All aircraft operators that enter the secured areas, enplane from or deplane into a sterile area, or use screening checkpoints, impact the security of all operations, and should have written and approved security programs.

Accordingly, the final rule will extend the applicability of § 108.1 to private charter operations and, under certain specified conditions, will require helicopter operations to adopt and implement a security program.

Section 108.3 Definitions

Proposal: In Notice 97–12, the FAA proposed to add commonly used terms and to update current terms used in part 108. The FAA also proposed to make the definitions in proposed part 107 apply to part 108 as well.

The FAA proposed to add the following definitions: ''accepted security program,'' ''approved security program,'' ''Assistant Administrator,'' and ''principal security inspector.'' The FAA proposed to revise the following definitions: ''passenger-seating configuration,'' ''private charter,'' ''public charter,'' ''scheduled passenger operations,'' and ''sterile area.''

Comments: Alaska Airlines (AS), American Airlines (AA), United Parcel Service Airline (UPS), Cargo Airline Association (CAA), Air Transport Association of America (ATA), Regional Airline Association (RAA), and the National Air Carrier Association (NACA) recommend that terms applicable to airport or aircraft operating areas should be defined in both parts 108 and 107, instead of only being in part 107. In addition, AS, AA, Northwest Airlines (NW), Federal Express (FedEx), RAA, CAA, UPS, and ATA are in strong opposition to the replacement of several terms as proposed in part 107. All of the organizations indicated above recommend retention of the current terms for secured area and SIDA, since they are understood and used daily by regulated parties and the FAA.

The FAA also received several comments offering definitions for ''public charter,'' ''private charter,'' and ''person.''

FAA response: The FAA has decided to keep the definitions in the most applicable part, with cross references showing that the terms apply to other parts as well. Although it would be convenient for users to have definitions repeated in each part, there is a risk that the definitions would become inconsistent over time, as each part is amended from time to time. Further, it is the FAA's experience that aircraft operators generally provide written guidance to their personnel, not simply copies of part 108. Operators can easily include in their guidance pertinent portions of part 107, as well as parts 1, 109, 129, and 191 as needed.

The FAA's decision regarding definitions as applied to the airport environment are contained in the final rule for part 107.

In this final rule, the FAA has made several editorial changes to the definitions. The definitions for ''accepted security program'' and ''approved security program'' have been removed and replaced with a single term, ''aircraft operator security program.'' For the purposes of this final rule, the definition of ''accepted security programs'' will be unnecessary because the references to part 129 have been removed. The only security programs which will be discussed in this final rule are those that have been approved by the Administrator under part 108.

In the current part 108, the term ''Director of Civil Aviation Security'' is used to refer to the official who oversees civil aviation security operations and approves air carrier security programs. Under the internal FAA reorganization, the current title of this position is ''Associate Administrator for Civil Aviation Security;'' however, the statute refers to the ''Assistant Administrator for Civil Aviation Security.'' As such, paragraph (b) of this section will use the title ''Assistant Administrator for Civil Aviation Security.'' In addition, paragraph (b) will clarify that the Deputy Assistant Administrator for Civil Aviation Security, or any individual formally designated as Acting Assistant Administrator or Acting Deputy Administrator, could act in the capacity of the Assistant Administrator. In addition, the duties of the Assistant Administrator could be further delegated.

With regard to the proposed term ''principal security inspector,'' it has been determined that it would be best to use the general term ''Administrator'' rather than to name specific positions held by various employees working on behalf of the Administrator. As a result of that decision, the term ''principal security inspector'' has been removed.

The FAA considered the definitions offered by the commenters for ''public charter'' and ''rivate charter'' and determined that they did not meet FAA security needs. The FAA has determined the need to retain the proposed definitions for ''public charter'' and ''private charter,'' but is correcting an editorial mistake in the NPRM that gave the definition for ''public charter'' as the definition for the term ''private charter.'' The definitions in part 108 are based on the different security issues present when all passengers are affiliated (private charters) and when passengers may have little or no affiliation with each other (public charter). The definitions suggested by the commenters are based more on economic concerns.

Although commenters offered other definitions for the term ''person,'' the definition for ''person'' is contained in 14 CFR part 1, and applies to all FAA regulations. The term as used in this part is in concert with that definition and as such, this final rule will not introduce a new definition for the term ''person.''

The term ''scheduled passenger operations'' has been rewritten for clarity with no change from the intent of the current regulation.

Notice 97–12 proposed to define ''sterile area'' as ''a portion of an airport defined in the airport security program to which access generally is controlled by either the inspection of persons and property in accordance with an approved or accepted security program required under § 108.105 of this part or § 129.25 of this chapter, or an access control system meeting the requirements of § 107.207 of this chapter.''

The final rule simplifies this definition, by describing the function of the sterile area. It is defined as ''a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with a security program.'' The reason the sterile area is needed, is to provide access to aircraft by passengers. Its use permits the screening of passengers well before the boarding of the aircraft, both in time and distance, so that screening can be accomplished more efficiently. In most cases, persons other than passengers may enter the sterile area, but sometimes such access is limited for security or crowd control purposes. The means by which access is controlled is not part of the definition, but is set out in § 108.201 and the security program.

The current rule refers to ''certificate holders.'' Notice 97–12 proposed to

change this term to ''air carriers,'' because there are many different kinds of certificate holders under FAA regulations, including airport operators (part 139). After further consideration, the term ''air carrier'' in part 108 is being changed to ''aircraft operator.'' There are some aircraft operators that will be required to hold security programs under part 108 that do not hold ''air carrier operating certificates,'' rather they hold ''operating certificates'' under part 119. For instance, those operators engaging in intrastate air transportation are not considered part of the air transportation industry, and are not required to hold air carrier operating certificates under part 119. However, they are required to screen their passengers in accordance with 49 U.S.C. 44901, and are required to hold a certificate under part 119.

In addition, some private charter operations may be conducted by those operators holding operating certificates, not air carrier operating certificates. Section 108.101 will require them to adopt a security program if they use a sterile area to enplane or deplane passengers, in order to protect the integrity of the sterile area.

Accordingly, ''aircraft operator'' is defined in § 108.3 as ''a holder of an air carrier operating certificate or an operating certificate under part 119 of this chapter that conducts operations described in § 108.101.'' This definition makes it clear that general aviation operators are not under part 108.

Two definitions that were not included in the NPRM, but will be added to the final rule are ''checked baggage'' and ''cargo.'' These terms will be added to help the reader understand two amended sections, which are numbered and entitled § 108.203, ''Acceptance and screening of checked baggage,'' and § 108.205, ''Acceptance and screening of cargo.'' The current rule also provides that one kind of private charter involves ''civil or military air movements.'' In Notice 97–12, this distinction was proposed to be termed ''civil or military air transportation.'' This final rule will use the term ''air movements.'' Air transportation has a particular meaning in the statute, and involves holding out to the public. Private charters may not involve holding out to the public and, therefore, to avoid confusion, the term will remain ''air movement.''

Further, Notices 97–12 and 97–13 proposed the use of the terms ''explosive, incendiary, deadly or dangerous weapon, or destructive substance'' in describing what items may not be permitted in sterile areas or onboard aircraft (see e.g., proposed §§ 107.101 and 108.201(b)). Some commenters request clarification of these terms, and question the meaning of the term ''destructive substance.'' They state that the term could be read as including various hazardous materials that are subject to extensive regulation under the Hazardous Materials Regulations (HMR), 49 CFR part 172, and that the terms ''explosive'' and ''incendiary'' are sufficient.

The FAA has decided not to use the term ''destructive substance'' as proposed. The term ''destructive substance'' is used in the statute, 49 USC 44902, however, the FAA believes the term is confusing and that its use would not add any benefits to this final rule. Aircraft operators will not be responsible for searching for substances other than by the means set forth in their security program, or any security directives that may be issued.

Section 108.5 Inspection Authority

Proposal: Notice 97–12 proposed to add a section on the inspection authority of the FAA. The authority of the Administrator to inspect for compliance with statutory and regulatory requirements is granted in 49 U.S.C. 40113. Proposed § 108.5(a) stated that the air carrier must allow the FAA to make inspections at any time or place to determine compliance with this rule, the statute, and the air carrier security program. This paragraph was largely based on § 119.59, which provides that the FAA may inspect air carriers and commercial operators for compliance with safety rules.

Proposed § 108.5(b) included the requirement found in current § 108.27 that on the request of the FAA, the air carrier must provide evidence of compliance with the rules and with its own security program. Proposed § 108.5(c) would have required air carriers to issue to any FAA Special Agent access and identification media to permit unescorted access to, and movement within, any exclusive area for which the air carrier has taken responsibility.

Comments: American Airlines, FedEx, UPS, and ATA believe the scope of proposed § 108.5(a) and (c) is too broad and could subject air carriers to unreasonable and frequent intrusions by FAA personnel, that off-airport inspections such as at corporate headquarters should not be permitted, and that unannounced inspections could result in unnecessary disruption. American Airlines states that the FAA should provide written notice of inspections so that management can observe and take immediate corrective action if needed. Continental Airlines (CO) states that the section should refer to inspections ''at any reasonable time or place.'' It notes that some inspections would be at corporate headquarters, which are closed during some hours. Northwest Airlines (NW) requests that the rule be modified to ensure air carriers are protected from unreasonable intrusion into their private corporate areas of business. Alaska Airlines states that not all FAA Special Agents are trained in dangerous goods, cargo security, and passenger security. Alaska Airlines also notes that the proposal did not address the timeframe of issuing the media. Alaska Airlines asks whether the special agents would have safety training in ramp safety. United Express states that the inspections should be performed only by FAA personnel trained to perform such inspections. Trans World Airlines states that there should be limitations to ensure air carrier operations are not unnecessarily interrupted. The RAA states that the proposal is written too broadly and should apply only to FAA inspectors trained in security inspections and states that non-security related surveillance should not be included in the security regulations.

FAA response: This section is intended to accomplish several important tasks. Paragraphs (a), (b), and (c) will provide information about the FAA's authority, which has existed since 1928, to conduct inspections and tests. Paragraphs (a) and (b) also will set forth affirmative duties on the aircraft operator to cooperate with and allow the inspections and tests, and its failure to do so could result in enforcement action against the aircraft operator. Paragraph (d) will require the aircraft operator to issue access and identification media to FAA special agents, which will assist them in carrying out their inspection duties.

The FAA agrees with the commenters that the FAA is required to conduct its investigations and tests in a reasonable manner, but does not believe that the words ''reasonable'' should be added to the regulation. The wording is similar to that used in a number of other FAA rules that have existed for years, including § 119.59 (aircraft operators and commercial operators), § 141.21 (pilot schools), § 145.23 (repair stations), and § 147.43 (aviation maintenance technician schools). The wording of these rules has not caused significant problems in the past. The FAA does not anticipate any change in its inspection procedures based on this new rule.

This new section will provide a basis for enforcement action in the event that an aircraft operator fails to allow the Administrator to conduct inspections

and tests as required under this section. While the Administrator has always had authority to conduct inspections and tests, there were not many options that the Administrator could take if the aircraft operator obstructed the inspection. This rule allows the FAA to take administrative action or civil penalty action if the aircraft operator fails to allow the inspection or test, or otherwise does not comply with the section.

As to the location of inspections, the FAA must be able to inspect each location at which regulated activity is being carried out. Regulated activity under part 108 is conducted primarily at airports, but there are other locations that the FAA must inspect. For example, off-airport baggage check-in locations such as hotels or cruise ships are subject to FAA inspection. In addition, some aircraft operators maintain required records of employment history, verification, and criminal history records checks (§ 108.229) at their corporate offices. These required records are periodically inspected by FAA Special Agents. It is FAA practice to make arrangements for a records review ahead of time, and to schedule the inspection for normal business hours, to ensure that aircraft operator personnel are available to assist and that the inspection does not cause undue disruption.

As to the timing of inspections, the FAA is aware of the need not to unduly interfere with operations. Often inspections are announced ahead of time to ensure that aircraft operator personnel are available to observe and assist. However, many inspections and tests can only be done effectively if unannounced, to determine whether the aircraft operator is in compliance when it does not know the FAA may be inspecting. Further, the FAA must sometimes inspect and test during peak traffic periods at the airport to ensure that even during the busiest times aircraft operators are in compliance with the security requirements. These peak periods are when the largest portion of the traveling public is being protected by the security procedures.

Regarding FAA personnel, the FAA takes care to only authorize trained personnel to conduct inspections. These individuals receive training (both classroom and on-the-job) on ramp safety and procedures, in addition to the training they receive on technical security requirements.

Several changes have been made in the final rule. Proposed § 108.5(a) referred to determining the compliance of the airport operator, aircraft operator, foreign air carrier operator, and other airport tenants. The final rule also will list the compliance of indirect air carriers, which must have security programs under part 109. Indirect air carriers have important security responsibilities, and the FAA must be able to inspect and test for their compliance. An inspection of an aircraft operator's cargo facility, for instance, reveals information about the compliance of both the aircraft operator being inspected and any indirect air carrier that has transferred cargo to that aircraft operator.

Section 108.5 only provides for inspection by the FAA. Unlike the Notice, it does not refer to inspection by other Federal government entities. The FAA has no authority to grant or to deny inspection authority to another agency. The section was changed to avoid any appearance that the FAA was purporting to grant such authority.

Proposed § 108.5(a)(1) and (2) referred to determining compliance with the aircraft operator security program and with part 108. The final rule in § 108.5(a)(1) also lists compliance with parts 107 (airport operators), 109 (indirect air carriers), 129 (foreign air carrier operations), and 191 (sensitive security information), and any security programs under those parts. In any given area of an airport, there may be duties which aircraft operators, airport operators, and the others must carry out. If a Special Agent is in an aircraft operator's exclusive area, for instance, he/she might also be inspecting access doors that are controlled, in whole or part, by the airport operator. This section will clarify that the Special Agent may be inspecting for compliance with one or all of these parts or security programs.

New § 108.5(a)(2) refers to 49 U.S.C. Subtitle VII. That subtitle, Aviation Programs, contains much of the enabling legislation for the FAA. Most of these provisions were in the Federal Aviation Act of 1958, as amended (49 U.S.C. appx. 1301 *et al.*), before that Act was recodified in 1994.

Proposed § 108.5(a)(3) referred to determining compliance with 49 CFR part 172, which provides requirements under the Hazardous Materials Transportation Act. This reference has been removed from the final rule. The FAA will continue to have authority to inspect for compliance with Hazardous Materials Regulations, but its authority is based on a different statute than that for civil aviation security. Part 108 is devoted to civil aviation security issues. To avoid misunderstanding, reference to hazardous materials inspections will be deleted.

Proposed § 108.5(a) referred to the Administrator making inspections and tests, and § 108.5(b) referred to the aircraft operator providing evidence of compliance to the Administrator. The final rule will add the clarification that these requirements include the FAA making copies of records or the aircraft operator providing copies. Obtaining copies of records is an inherent part of the FAA inspecting compliance with safety and security requirements. It is necessary to preserve the records for further review by the FAA, and on occasion, use as evidence. This situation is true for all FAA inspections, including those conducted by FAA Aviation Safety Inspectors (who look at compliance with operational and airworthiness rules) and FAA Special Agents. Often, the copying is done at the aircraft operator's or airport operator's office with their permission. Sometimes other arrangements are made, such as the FAA temporarily removing the records to copy them at a FAA office or a commercial service. The FAA has rarely encountered difficulty on this point, but includes these explicit statements in the final rule to avoid misunderstandings in the future.

This section refers to copying of records, not just documents. Records may be kept in a number of formats, such as paper, microfilm, and electronic. The FAA Special Agent may request copies of records in any of these formats, usually requesting that paper copies be made of the records. If another format is used more easily by the Special Agent, he/she may request records in that format.

New § 108.5(c) will state that FAA personnel may gain access to the SIDA and other controlled areas without holding access or identification media issued by the airport or aircraft operator, when it is necessary to conduct an inspection or investigation. This authority is not new. The FAA agrees that in most circumstances, FAA personnel should comply with the access and identification requirements in place at the airport, and it has been FAA practice to require that, when practicable, FAA personnel first obtain local media before conducting inspections. However, there are times when the FAA cannot adequately inspect and test compliance if its employees first obtain access and ID media from the airport or aircraft operator. The act of obtaining such media may provide an opportunity for the FAA representative to be recognized by personnel at the airport, thereby reducing or negating the value of the inspection. The FAA has in the past, and will continue, to make

unannounced, anonymous tests by entering the SIDA or other areas without first having obtained such media. Such tests are conducted under very controlled conditions, using personnel who are trained in safety and security. The FAA's Special Agents carry their FAA credentials for immediate display if they are challenged in order to establish their authority to conduct such inspections. FAA Special Agents only inspect without local ID's when obtaining local media before the inspection would greatly reduce, or even negate, the purpose of the inspection. In other circumstances, the FAA representatives have the appropriate access and/or ID media.

Notice 97–12 proposed in § 108.5(c) (§ 108.5(d) in the final rule) to require aircraft operators to issue identification and access media to FAA Special Agents upon their request and when they present FAA credentials issued by the Administrator. These media give Special Agents unescorted access to, and movement within, exclusive areas controlled by the aircraft operator. These exclusive areas may include portions of the airport secured area, SIDA, and AOA. While the FAA has the authority to inspect without local media, the FAA agrees that it is in the interest of security for all persons in the controlled areas to have locally issued or approved access and identification media. An undue number of different media makes the challenge system more difficult to carry out, and reduces the effectiveness of the challenge system. Therefore, the FAA's practice is for its agents to obtain local media when practicable. While the FAA rarely has had difficulty with the local authorities, there have been times when local authorities have resisted providing the media. This paragraph makes it clear that the aircraft operator is obligated to issue such media.

The FAA recognizes and concurs with the concerns that the number of people given unescorted access to the secured areas, SIDA's, and AOA's should be limited to those with a need to be there. For this reason, this particular provision is limited to FAA Special Agents. Other persons with inspection authority for other FAA programs may obtain limited access to perform their duties. Flight Standards Inspectors, for instance, may use their FAA Form 8000–39 to enable them to go to the aircraft that they intend to inspect or on which they intend to give a flight check. This authority is not the kind that Special Agents need to fully inspect secured areas, AOA's, and SIDA's. Therefore, this paragraph requires the aircraft operator only to give identification and access media to those individuals identified by the Administrator's Special Agent credentials.

The proposed rule stated that the media would be issued on request of the FAA Special Agent and presentation of his or her credentials. The final rule states that the media shall be issued upon request by the Administrator. As some commenters note, not all FAA Special Agents have duties and the type of training to conduct inspections at the airport, therefore, those agents do not need local media. The Administrator will provide the airport or aircraft operator with the names of Special Agents who require media.

The final rule states that the media shall be issued ''promptly.'' The FAA expects that the media will be issued without undue delay, generally within a similar timeframe that media are issued to airport, aircraft operator, and contractor employees who need the media. The particular procedures will be worked out at each airport with its FAA field office.

The FAA recognizes that, in most cases, it is important not to give unescorted access to those who have not had the specialized SIDA training required at that location. While all FAA Special Agents with the appropriate credentials have been given general training in access to and movement within the affected areas, each location has different layouts, ID media, and other systems. Accordingly, the final rule will provide that media are not issued to Special Agents until they complete the appropriate training, as stated in a security program. This practice will ensure that the agent is familiar with the procedures in place at that location, and will fully support the airport operator's and aircraft operator's training programs. Considering that the aircraft operator's procedures will be in an exclusive area agreement for the specific airport, the special procedures for issuing local media may be in either the airport or aircraft operator security program. These procedures will indicate when the training is given, including provisions for emergencies. In case of emergency, Special Agents may need the media without undergoing the full local SIDA training.

Section 108.7 Falsification

Proposal: The FAA proposed § 108.7 with no changes from the current § 108.4. The current section was adopted on November 27, 1996.

Comments: There were no comments on this section.

FAA response: Section 108.7 is not changed.

Section 108.9 Security Responsibilities of Employees and Other Persons

Proposal: The FAA proposed to prohibit persons from tampering or interfering with, compromising, or modifying any security system, or carrying a deadly or dangerous weapon, explosive, or incendiary into sterile areas, secured areas, or operations area.

Notice 97–12 proposed in § 108.9(b) to prohibit any deadly or dangerous weapons, explosives, incendiaries, or other destructive substances on or about the individual's person or accessible property when entering secured areas or the air operations areas of an airport governed by part 107. Proposed § 108.9(d) provided that this requirement would not apply to certain law enforcement personnel and other authorized persons.

Also proposed was the continuation of the current § 107.25(f) provision that no person could allow to be used or cause to be used any airport-approved access medium or identification medium that authorized access for a person or vehicle in any area controlled for security purposes in any other manner than that for which it was issued.

Comments: Denver International Airport, AS, AA, CO, ATA, and RAA, recommend incorporating specific parts of the law that identify penalties. American Airlines, FedEx, UPS, ATA, and RAA support the concept but request a clear distinction between the individual's actions and the air carrier's actions and want a distinction between intentional and unintentional noncompliance. American Airlines, FedEx, ATA, NACA, and RAA recommend that any FAA action could be in addition to or in lieu of any action by the air carrier against its employee or contractor. Three commenters suggest that language be incorporated to prevent testing of security operations by unauthorized persons or those who present false credentials. United Express, AA, ATA, FedEx, and RAA, oppose re-screening of employees entering the sterile area, who have access clearance from the airport to enter secured areas. Alaska Airlines, AA, ATA, UPS, and RAA recommend removal of the reference to ''other destructive substance.''

FAA response: In response to the comment to place civil penalties into the final rule, the FAA recommends that those seeking more information on this topic, refer to part 13. Potential penalties are addressed in part 13, which are not normally added to each part of Title 14.

Regarding the distinction between individual's actions and the aircraft operator's actions, it is not possible to state in the rule as to when enforcement action may be taken against just the individual, just the aircraft operator, or both. Aircraft operators are responsible for carrying out part 108 and their security program, which largely is done by making sure their employees, contractors, and agents carry them out. When an individual fails to do so, in each case the FAA will have to examine the facts and circumstances, and the parties' responsibilities under the statute, the regulations, and the security program, to determine what charges, if any, to bring against which persons. As to whether any FAA action would be in addition to, or in lieu of, any action by the aircraft operator, this determination also depends on the facts of each case.

The rule does not distinguish between intentional and unintentional noncompliance. However, it seems likely that in most cases, if a person violated § 108.9 the act would be intentional. If it appears that the violation was not intentional, the FAA would consider whether no enforcement action, or a mitigated penalty, was warranted.

The FAA considered whether to prohibit unauthorized testing of any security system. Such a blanket prohibition would be unduly broad, however, considering the uncertainty of what might be meant by ''testing'' the system. Section 108.9 does, in fact, prohibit some actions that persons might take to test the system that would unduly interfere with the proper operation of an air carrier. Deliberately entering a secured area without proper access or identification media would be a violation, for instance, whether the person was testing the system or had another reason for doing so.

As to the proposed prohibition of weapons in the secured areas or AOA in § 108.9(b), the FAA has determined that airport operators under § 107.11 are able to handle such occurrences through their local laws that control the presence of weapons and other deadly items on airport property. The law enforcement personnel who respond to incidents as described in the airport operator's security program, enforce such local laws. Therefore, proposed § 108.9(b) is not adopted. While the FAA will not take action at this time, it will continue to assess the need for any future comprehensive security enhancements regarding weapons and other destructive substances that may be detrimental to the flying public.

Section 108.9(d) (proposed § 108.9(c)), provides that this section does not apply to the FAA, or to aircraft operators, airport operators, or foreign air carriers while conducting inspections in accordance with their security program. These entities are expected to check their own compliance with the regulations by testing the system. However, not every breach by an employee can be characterized properly as an inspection. The security program will set out a regulated party's plan for conducting such inspections, including who may do them.

The FAA has also determined that proposed § 108.9(d), which indicates subsection (b) would not apply to persons authorized by the Federal government or the airport operator to carry weapons and other dangerous items on airport property, will also not be adopted. The FAA believes the local laws adequately address and recognize various persons who may have a need and the authority to carry weapons while on airport property. The FAA will also continue to assess these issues and address them as deemed appropriate in the future.

Subpart B—Security Program

Section 108.101 Adoption and Implementation

Proposal: In §§ 108.1 and 108.101, Notice 97–12 proposed to extend the application of part 108 to private charter and helicopter operations, as well as those air carriers that voluntarily hold security programs.

Current part 108 applies only to airplane operators, and therefore, does not apply to helicopter operators, which are specifically excluded under current § 108.1(b) and do not hold security programs. Current § 108.5(a) makes part 108 applicable to scheduled and public charter operators only, not private charters. Section 108.5, paragraphs (a)(1) and (a)(2) require a full security program to be carried out for operations with more than 60 seats and for operations with any size airplane deplaning through a sterile area. Passengers enplaning from or deplaning into sterile areas from private charters and helicopter operations currently are subject to the security program requirements of other air carriers responsible for the security of that sterile area. In such a case, the helicopter operator or private charter does not take responsibility for the security of that sterile area under a security program.

Current § 108.5(a)(3) requires some security procedures to be carried out for scheduled passenger and public charter operations with more than 30 but less than 61 seats, and requires the rest of the security program to be carried out if the FAA advises them that a threat exists. This practice is commonly called a ''partial program,'' because only part of the program routinely is carried out. Section 108.5(b) states that other certificate holders that have an approved security program shall carry out that program (commonly called a ''voluntary program''). Because the definition of ''certificate holder'' in current § 108.3 includes only passenger operations, some commenters have questioned the current practice of certain all-cargo carriers adopting a security program under part 108.

Notice 97–12 proposed not limiting part 108 to airplane operations, but to apply the same security requirements to all aircraft depending on passenger seating configuration and kind of operation. It proposed in § 108.101(a)(1) and (2) to require a full security program for scheduled and public charter operations with more than 60 seats, and for scheduled passenger and public charter operations with any size aircraft when enplaning from or deplaning into a sterile area. It proposed in § 108.101(a)(3) to require a full security program to be carried out for private charter operations when passengers are enplaned from or deplaned into a sterile area.

Notice 97–12 proposed in § 108.101(a)(4) to require a partial program for certain other scheduled, public charter, and private charter operations that do not enplane from or deplane into a sterile area. The operations include a private charter operation with an aircraft having a passenger seating configuration of more than 30 seats, a scheduled passenger or public charter operation with a passenger seating configuration of 31 to 60 seats, and a scheduled passenger, public charter, or private charter operation with a passenger seating configuration of less than 61 seats engaged in operations to, from, or outside of the United States.

In § 108.101(b), Notice 97–12 proposed that each air carrier that has a security program for other operations, shall carry out that program. Because part 108 would not use the term ''certificate holder'' and would not otherwise omit all-cargo operations from part 108, this paragraph would clarify that all-cargo operations may be under a security program.

Comments: American Airlines, CO, NW, TWA, United Express (Great Lakes Aviation), UPS, ATA, RAA, and NACA state that private charter operations should not be subject to part 108 requirements. They note that there is no history of such operations creating a

security problem. American Airlines, ATA, and TWA indicate that, if the FAA decides to regulate private charter operations under part 108, the only security requirement that is justified is the screening of passengers who deplane into a sterile area. The Regional Airline Association, UPS, and Era Aviation state that only screening of passengers who enplane from or deplane into a sterile area is justified. Continental Airlines does not object to screening passengers who enplane through a sterile area, but wishes to deplane private charter passengers into a sterile concourse. The NACA states that private charters should be able to escort passengers through the sterile area as an alternative to screening, and that there should be portions of the airport outside of the sterile area available for private charter enplaning and deplaning.

The City and County of Denver supports requiring private charter operations to have security programs, noting that an unscreened individual could deposit contraband for pick-up by another person or could return later himself or herself. This commenter states, ''with all of the technological advances and equipment being deployed, why would a private charter be allowed to compromise security?''

American Airlines, United Express, ATA, and RAA state (in their comments on proposed § 108.9(b)) that the rules should not be interpreted to prevent ''reverse screening,'' that is, screening upon deplaning at major airports as opposed to before boarding small commuter aircraft.

Northwest Airlines opposes applying part 108 to helicopter operations. The Helicopter Association International (HAI) supports permitting rotorcraft operators who want to interline with larger air carriers the ability to hold a part 108 security program and enplane from and deplane into a sterile area. The HAI also states that airports should have a place outside of the sterile area where rotorcraft may operate.

The United Parcel Service, FedEx, AA, RAA, ATA, and the Cargo Airline Association (CAA) support allowing other air carriers to voluntarily adopt a security program. The United Parcel Service, FedEx, and CAA would like the FAA to clarify that the air carrier operating under a voluntary program is required to comply with its particular program, not with the entire regulation. Federal Express also requests clarification that the primary objective of such programs is to protect large passenger aircraft and the passengers on them. Some commenters suggest that including voluntary programs in § 108.1 without a specific note that not all of part 108 applies to them, may imply that they must comply with the entire regulation.

The NACA recommends additional options for those aircraft operators conducting wet leases.

FAA response: Section 108.101(a)(1) in this final rule will maintain the current requirement in § 108.5(a)(1) that all scheduled passenger and public charter operations using aircraft with a passenger seating configuration of more than 60 seats have and carry out a full security program. Section 108.101(a)(2), as proposed, requires a full program for scheduled passenger and public charter operations using aircraft with a passenger-seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area. The FAA believes that preserving the integrity of the sterile area is critical for maintaining civil aviation security. Few additional security measures are applied to persons or property once they are in the sterile area. The FAA has determined, therefore, that it is essential that all persons who enter the sterile area be subject to security procedures, either by inspection of their person and property or by another means, such as verifying their status as an authorized aircraft operator employee or airport employee.

The FAA recognizes that the passengers in private charter operations have an affinity with each other, such as being on the same sports team and likely present little danger to one another. Permitting the passengers of private charter operations to enter the sterile area without being screened would compromise the sterile area. Screening persons entering the sterile area are intended not only to discover weapons, explosives, and incendiaries on individuals who intend to use them in a criminal manner, but also to find weapons carried by individuals with no criminal intent who forget they are carrying them. Each year at screening checkpoints, many weapons carried by such persons are prevented from entering the sterile area. If these weapons were brought into the sterile area, there is a risk that they could be used inappropriately by that person, or taken by another person and used. Any prohibited item that is introduced into the sterile area could be transferred to a scheduled or public charter flight. In addition, as Denver notes, an unscreened person on a private charter intentionally could transfer a weapon to another person, creating a danger to flights other than his or her own flight. For these reasons, the FAA continues to believe that all persons who enter the sterile area must be subject to security procedures.

Further, the FAA believes that aircraft operators that place passengers in the sterile area should be responsible for screening these passengers. Under part 108, this task is accomplished by the operator holding and carrying out a security program.

Accordingly, this final rule will require that all aircraft operators that enplane or deplane passengers through sterile areas, will be required to adopt and carry out a security program for those operations, regardless of the size or type of aircraft, or whether the flight is a scheduled, public charter, or private charter.

As to the type of aircraft being used, the FAA has found no reason to believe that there is any difference in the risk to air transportation depending on whether helicopters or airplanes are being operated. By changing the rule from applying to airplane operators to applying to aircraft operators, helicopter operators will be required to adopt and carry out a security program under the same circumstances as airplane operators. This practice will ensure that all operators of aircraft of the same passenger seating capacity and kind of operation maintain similar levels of security. Further, removing the exclusion of helicopters from part 108 that is in current § 108.1(b) may assist helicopter operators to transfer passengers, checked baggage, and cargo to other aircraft operators, because they can carry out the necessary security procedures.

After further evaluation, the FAA has determined that there is no need to require security procedures for private charters other than as needed to protect a sterile area. As noted, private charters, by definition, involve groups of passengers who are closely affiliated, and present little danger to one another. The FAA agrees with the commenters that further regulation of private charters is not warranted because there is insufficient evidence that these passengers pose a danger to air transportation. The final rule in § 108.101(b) requires private charter operators to have a security program (''Private Charter Program'') only if they enplane from or deplane into a sterile area. In that case, they need to carry out only the requirements related to protecting the sterile area.

Section 108.101(c)(2) will require scheduled and public charter operations using aircraft of less than 61 seats that operate to, from, or outside of the United States, and do not enplane from or deplane into a sterile area, to hold a ''Partial Program.'' The Partial Program

requires the aircraft operator to carry out portions of the security program for all operations and to carry out the remainder when the FAA informs the operator that a threat exists. Because the performance, including flight range, of such aircraft has increased and the potential threat to U.S. interests outside of the country has increased since part 108 was adopted, some additional security measures should be carried out for such operations.

The rule language will be amended for all Partial Programs. Section 108.101(c)(1)–(2) of the final rule will address operations to which this applies. These operations include scheduled passenger or public charter that do not enplane from or deplane into a sterile area, when such an operation either (1) involves an aircraft having a passenger seating capacity of more than 30 and less than 61 seats, or (2) involves an aircraft having a passenger seating configuration of less than 61 seats and is engaged in operations to, from, or outside of the United States (or both). The security measures that must be carried out by such operations are included in § 108.101(d). Section 108.101(d) will require the affected aircraft operators to comply with the requirements regarding security coordinators, law enforcement personnel, carriage of accessible weapons, carriage of prisoners, carriage of Federal Air Marshals, training, the contingency plan, bomb and air piracy threats, and security directives and information circulars. Section 108.101(d)(2) will require the aircraft operator to perform any other security measures that the FAA has approved upon request. This situation permits the aircraft operator to assume additional security responsibilities, such as exclusive areas. Section 108.101(d)(3) will require that aircraft operators implement the remainder of the security program requirements when the FAA informs them that a threat to that operation exists.

The FAA agrees that the final rule should not prohibit reverse screening. The FAA did not propose that reverse screening be eliminated. There are some operations that do no require screening for the flight itself, but the flight deplanes in a sterile area. This final rule will clarify that the operator of that flight must now have a security program. That program will include methods that the operator will use to ensure that passengers are not deplaned into the sterile area without having been screened.

The comments on providing other areas of the airport for enplaning and deplaning passengers, which would be located outside the sterile area, and the comments regarding special provisions for wet leases, are beyond the scope of Notice 97–12 and will not be addressed in this rulemaking.

Section 108.101(e) addresses ''voluntary programs'' for aircraft operators that are not required to have a security program but wish to have one to facilitate their operations. In response to comments, and after further evaluation, the final rule will provide further clarification. These programs will be referred to as ''Limited Programs'' in this final rule. The term ''voluntary'' might imply that the aircraft operator is not required to comply with the program. Although the aircraft operator is not required to adopt a ''Limited Program,'' once one is adopted, the aircraft operator is required to comply with it.

Typically, holders of Limited Programs are all-cargo carriers that are not required to have a security program because they do not carry passengers and do not use sterile areas. However, all-cargo carriers may wish to have an exclusive area on an airport, taking responsibility for the security of that area, which would leave the airport operator with less direct responsibility under part 107 for that particular area. Or they may choose to carry out certain security measures to facilitate the transfer of cargo to passenger carriers. Acquiring a security program allows the all-cargo operator to receive Security Directives from the FAA, which directly impact their operations.

The introductory text of § 108.101(e) will clarify that the FAA *may* approve such programs; however, it is not required to do so. In each case, the FAA will evaluate all of the circumstances, including the security implications of the program and the ability of the aircraft operator to carry out the program, to determine whether security and the public interest warrant approval of the program. This introductory text also indicates that the FAA approves such programs only after a request by the aircraft operator. The FAA *requires* programs only for the aircraft operators included in § 108.101(a), (b), and (c), and cannot require an aircraft operator to hold a security program under § 108.101(e). This text also emphasizes that a security program may be approved for an aircraft operator that has a certificate under part 119. This provision is not intended to permit general aviation operators to have security programs under part 108. General aviation operators, if they are tenants on the airport and wish to have a security program, may request a tenant security program from the airport operator under part 107.

Section 108.101(e) will require that the aircraft operator shall carry out selected provisions of Subparts C and D, and § 108.305, as specified in its security program. This section also will require that the aircraft operator shall adopt and carry out a security program that meets the applicable requirements of § 108.103(c). This requirement emphasizes that the security program is used only to permit aircraft operators to take on existing security responsibilities that are set out in part 108. Voluntary programs are not used to impose completely new security responsibilities. In determining which sections to include, the FAA will consider which responsibilities the aircraft operator is accepting, and will include in the security program all necessary requirements. In all cases, the aircraft operator will be subject to Security Directives under § 108.305 that relate to the responsibilities that operator is accepting.

Section 108.101(e) states that each aircraft operator that has adopted a security program under this paragraph shall carry out that program. Such an aircraft operator is not obligated to carry out other portions of part 108 that are not included in its security program. If an aircraft operator were to fail to carry out its program, the full range of actions would be available, including counseling, administrative action (warning notices and letters of correction), and civil penalties. In extreme cases, the FAA could withdraw approval of the security program.

The FAA believes, as a result of this final rule, that there will be aircraft operators who will encounter for the first time a need to apply for and implement a security program under part 108. A short explanation of the relationship between their security program and this final rule follows. The FAA is required to prescribe rules, as needed, to protect persons and property on aircraft against acts of criminal violence and aircraft piracy, and to prescribe rules for screening passengers and property for dangerous weapons, explosives, and destructive substances (see 49 U.S.C. 44901 through 44904).

To carry out the provisions of the statute, the FAA has adopted rules requiring aircraft operators to carry out various duties for civil aviation security. Title 14, Code of Federal Regulations, contains part 108, which is directed specifically toward aircraft operators. The part contains general requirements for promoting civil aviation security.

Aircraft operators, as required by § 108.101, have a security program that

is approved by the Administrator, containing information that specifies how they are to perform their regulatory and statutory responsibilities.

The security program contains sensitive security information and is available only to persons with the need-to-know. Each aircraft operator's security program is a comprehensive document that details the full range of security procedures and measures that they are required to perform under part 108. The program includes procedures for screening of passengers, carry-on baggage, checked baggage, and cargo; using screening devices (such as X-ray systems and metal detectors); controlling access to aircraft and aircraft operator facilities; reporting and responding to bomb threats, hijackings, and weapons discovered during screening; reporting and protecting bomb threat information; identifying special procedures required at airports with special security needs; and training and testing standards for crewmembers and security personnel.

Other security and information measures are contained in the Security Directives and Information Circulars, described in § 108.305. These sources address threats to civil aviation security as well as responsive measures to those threats. Additionally, these sources provide sensitive information concerning various security devices, such as metal detectors and X-ray machines.

The security program is far more detailed than the regulations, therefore, there will be items specifically addressed in detail that may be mentioned only in general terms in the rule language of part 108. The security program, once approved, has the force of law and is to be adhered to the same as the part 108 regulations.

In addition to including private charter and helicopter operations, this final rule now applies to all-cargo operations that adopt and implement security programs as described in § 108.101(e). Obtaining an approved security program permits these operators to enter into an exclusive area agreement with an airport operator in compliance with § 107.111.

Section 108.103 Form, Content, and Availability

P*roposal:* The FAA proposed in § 108.103 language describing the purpose of having air carrier security programs and described the requirements contained in § 108.101 for those security programs. The FAA also proposed the means by which the air carrier would acknowledge receipt from the FAA of either a security program or amendment.

Part of the proposed requirements included procedures and a curriculum to implement an individual accountability compliance program. The FAA proposed that the aircraft operator would have penalties imposed on persons who were not abiding with the security requirements. Penalties were to be levied per the standards contained within the air carrier's approved security program.

The FAA also proposed to require that the air carrier designate an Air Carrier Security Coordinator (ACSC) and indicate the means by which this person can be contacted on a 24-hour basis.

The proposal also contained language to permit the air carrier to have the necessary documents available for electronic transmission from another location or to have the necessary documents onboard the aircraft.

In the final rule, the sections pertaining to these requirements have been clarified.

Comments: The United Parcel Service, the Denver Airport, and ATA, agree that individuals should be held accountable, but strongly object to delegating enforcement authority to the air carrier. They prefer that the FAA take responsibility for such action.

Northwest Airlines (NW), United Express, UPS, RAA, and ATA, support the creation of the position of an ACSC, but oppose the 24-hour contact requirement, unless the air carrier is permitted to name an alternate person to be designated in the ACSC's absence. Northwest Airlines, UPS, and RAA, suggest the use of the air carrier operations centers, which are available on a 24-hour basis. The ATA recommends the designation of an individual at the corporate level, rather than at each station. Alaska Airlines (AS) asks whether an air carrier can have several ACSC's, and states that the duties and position are not defined.

Northwest Airlines and UPS state that the preamble acknowledges that the air carrier may have the necessary documents available for electronic transmission from another location or onboard the aircraft, but proposed §§ 108.103(c)(2) and (3) do not appear to include this allowance. The commenters believe that by using the word ''accessible,'' the regulation will convey more clearly the intent of the requirement.

The ATA and RAA urge that the FAA contact corporate headquarters to obtain implementing instructions. Additionally, RAA and UPS believe that the wording in § 108.103(c)(2) could be interpreted as requiring an onsite copy of 14 CFR part 108.

FAA response: The FAA has reopened the comment period requesting additional comments on the issue of security compliance programs (64 FR 43322, August 10, 1999). The FAA has deleted the language in proposed § 108.103(b)(11) and (c)(6) regarding security compliance programs. However, the omission of security compliance programs from the final rule does not stop an aircraft operator from voluntarily adopting a compliance program at any time.

The requirements regarding security programs and amendments are contained in § 108.105.

In keeping with the changed language from ''certificate holder'' to ''aircraft operator'' the coordinator title has been changed to ''Aircraft Operator Security Coordinator (AOSC)''. Final rule language has been incorporated in § 108.215(a) to allow for the designation of an alternate when the AOSC is absent. Also, § 108.215(a) has been changed in the final rule to clarify that the AOSC, or any alternate, is to be designated at the corporate level, and shall serve as primary contact for security related activities and communications with the FAA.

Section 108.103(b) is intended to permit the aircraft operator to have the necessary documents available for electronic transmission from another location or the necessary documents onboard the aircraft. To require that aircraft operators have a copy of the security program accessible conveys the intent of the requirement. The FAA has amended § 108.103(b) to require that each aircraft operator maintain an original copy of their security program at its corporate office. In addition, a complete copy, or the pertinent portions, of the aircraft operators' approved security program, or appropriate implementing instructions, should be accessible at each airport served. An electronic version of the program is adequate. The security program instructions may be site specific, and should be accessible at each airport location. The FAA agrees to change the word ''available'' to ''accessible'' in the final rule.

The purpose of having the security program or instructions accessible at each airport served is to ensure that personnel at each airport have the instructions on how to accomplish their security duties. The FAA checks compliance with this requirement by asking to see the instructions while at different airports. Asking for the instructions from corporate

headquarters would not adequately check for compliance with this rule.

Section 108.105 Approval and Amendments

Proposal: The FAA proposed to slightly modify the time elements regarding the approval and the obtaining of amendments for security programs. Further, the FAA proposed to place time elements on itself, which before had not been contained in the regulation. Additionally, it proposed to revise the procedures making the processes consistent for both parts 107 and 108. Codification of the existing practice of the Assistant Administrator for Civil Aviation Security approving security programs and amendments was also proposed. Time elements for the submission and disposition of amendments were also included in the proposal.

Comments: Northwest Airlines, UPS, FedEx, TWA, and ATA do not agree to increase the FAA timeframe for amendment approval from the current requirement of 15 days. One commenter, RAA, opposes any change in the current amendment process and states that proposed § 108.105(b)(1) and (2) appear to be inconsistent.

Two commenters, RAA and ATA, ask that the rule allow amendments to be approved for the air carrier and all similarly situated certificate holders.

FAA response: The FAA attempts to be realistic when determining timeframes needed to provide full consideration of all security issues. The FAA will process each amendment as quickly as possible. While it is the FAA's intent to meet the time elements listed within the regulation, it is incumbent on the FAA to take an appropriate amount of time to review all relevant issues affecting the requested amendment.

The final rule places in the regulation the existing practice of the Assistant Administrator for Civil Aviation Security, on behalf of the Administrator, issuing the approval for all security program amendments. In the final rules for parts 108 and 107, procedures for approval of security program amendments are identical.

The FAA believes there may be instances when proprietary information may be contained within the proposed amendment submitted by an aircraft operator. It is for this reason that the FAA has decided not to act on the recommendation submitted by the RAA and ATA. Section 108.105(b)(6) provides that any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the amendment.

The FAA will establish internal procedures to periodically review amendments it initiates. The procedures will ensure that the amendment is in fact appropriately placed in the security program, as opposed to requiring an amendment to part 108. The FAA believes that the ASAC recommendation to include expiration dates on amendments, was directed toward the amendments issued by the FAA and not those amendments requested by aircraft operators. The FAA recognizes that there will be circumstances when information, due to its sensitivity, cannot be discussed in a public forum. In those instances, the amendment processes for security programs provide a means to impose and implement needed requirements.

The final rule will allow the FAA 45 days after receipt of a proposed amendment to approve or deny that amendment. The FAA maintains that the amendment process may take additional time if the proposed amendment is modified or denied.

In addition to retaining the 45-day submission requirement, the FAA will retain a 30-day timeframe for a FAA response to a proposed amendment. These timeframes do not address time requirements for emergency amendments issued by the FAA. The additional time required by the FAA is needed to complete the review process and to ensure a timely and efficient exchange of information. The exchange of information not only occurs between the FAA and the aircraft operator but between internal FAA offices as well. There are instances when threat analyses are needed, requiring additional time to process the requests. Therefore, the FAA has determined that it is necessary to retain the language as proposed in Notice 97–12.

The FAA has deleted the last sentence in proposed § 108.105(b)(1) because it is unnecessary and confusing.

Subpart C—Operations

Section 108.201 Screening of Persons and Accessible Property

Proposal: The FAA proposed that the title and section number of current § 108.9 ''Screening of passengers and property'' be changed to § 108.201, ''Screening of persons and property, and acceptance of cargo.'' Air carriers currently are required to screen all persons entering a sterile area through a screening checkpoint. By changing the title, the FAA proposed to more accurately reflect that all persons, not just passengers, are required to be screened as they enter the sterile area through a screening checkpoint.

Further, to facilitate the transit of air carrier employees who have already been subjected to other security systems, the proposal provided that persons who are authorized unescorted access to a SIDA, may enter a sterile area from a public area using security procedures. These security procedures were proposed in § 107.207, ''Access control systems'' under Notice 97–13 that revised part 107.

Proposed § 108.201(b) would have required that the air carrier ''detect and prevent'' the carriage of any explosive, incendiary, deadly or dangerous weapon, or destructive substance on or about individuals or their accessible property aboard an aircraft or upon entry into a sterile area. This proposed language change was based on current procedures under the air carrier approved security programs which require that the air carrier ''detect and prevent'' or be subject to enforcement action.

The requirements proposed in § 108.201(d), (e), and (f) would transfer unchanged from current § 107.20 and § 107.21. These current sections require that an individual submit to screening of their person and property, and restrict the carriage of firearms into sterile areas to those persons required to carry the weapons in performance of their duties. Those persons who are required to carry weapons in performance of their duties are generally law enforcement officers traveling armed aboard aircraft, and persons specifically authorized to do so under an approved security program. Since control of the sterile area, and performance of screening are the air carriers' responsibilities, these requirements are more appropriate to part 108 than to part 107.

Proposed § 108.201(h) would have required that air carriers prevent the carriage of any explosive or incendiary onboard an aircraft. Although current security procedures applicable to the acceptance of cargo and checked baggage for transport onboard passenger aircraft are contained in the air carrier's standard security program, the basic requirement to apply security measures to cargo and checked baggage was not set out in detail in the current rule.

Comments: Trans World Airlines, RAA, and ATA oppose any modification of the requirement to screen passengers only. The RAA states that expanding the requirement to include all persons, could limit the air carrier's ability to provide access to the sterile area and may result in it having to limit access to sterile areas to ticketed passengers

only (rather than to all persons) or to close a checkpoint when there are no departing flights.

Alaska Airlines, FedEx, UPS, United Express, CAA, RAA, and ATA state that the air carrier cannot ''detect'' introduction of deadly or dangerous items 100% of the time, they believe that ''deter'' should be substituted for ''detect'' in the General Requirements paragraph of § 108.201. Federal Express, UPS, NACA, ATA, and RAA oppose any modification of the FAA requirement to rescreen employees. The NACA suggests that the following language be added ''* * * inspect each person entering a sterile area who does not have approved access media.''

FAA response: The screening of all who wish to enter a sterile area has been in effect, under § 108.9 (c), for many years. All individuals, with limited exceptions, who enter the sterile area through the screening checkpoint must be screened.

Notice 97–12 proposed that each aircraft operator required to conduct screening, use the facilities, equipment, and procedures described in its security program to ''prevent or detect'' the carriage of any deadly or dangerous weapon, explosive, incendiary, or other destructive substance, on or about each person or the person's accessible property before boarding an aircraft or entering a sterile area. The current requirement in § 108.9(a) is to ''prevent or deter.'' The FAA has decided to accept the commenters'' suggestion so the language in § 108.201(a) remains ''prevent or deter.'' Both phrases adequately reflect the overall intent that aircraft operators must use the measures in their security programs to keep deadly or dangerous weapons, explosives, or incendiaries off the aircraft and out of the sterile area. Further, the phrase ''other destructive substances'' has been removed from the list of prohibited items.

The FAA does not agree with the suggestion to exempt from screening any employee who has been issued an identification medium who is entering a sterile area at a screening checkpoint. The FAA attempted such a system in the past and found that the security checkpoint was not equipped to handle the increased workload of checking ID's of employees. The aircraft operator may seek to have an alternate entry point at which employees can enter without being screened, but where other security measures are carried out.

As discussed above in the General Discussion of the Rule, the requirements that appeared in § 108.201 of Notice 97–12 are now in separate sections. The sections that appear in the final rule are § 108.201, ''Screening of persons and accessible property,'' § 108.203, ''Acceptance and screening of checked baggage,'' and § 108.205, ''Acceptance and screening of cargo.'' Requirements for acceptance and control of cargo and checked baggage that appeared in Notice 97–12 § 108.219, ''Security of aircraft and facilities,'' now appear in either § 108.203, ''Acceptance and screening of checked baggage,'' or § 108.205, ''Acceptance and screening of cargo.''

Section 108.203 Acceptance and Screening of Checked Baggage

Proposal: Under the proposal, these requirements were contained in § § 108.201, 108.219(c), 108.213(b) and 108.225.

Comments: No comments were received.

FAA response: This section combines the requirements for checked baggage into one section. The language clarifies that although this section prohibits loaded firearms in checked baggage, as stated in § 108.203(d)(4), this section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. It also refers to the additional requirements governing carriage of ammunition on aircraft in title 49 CFR part 175. The regulation refers to preventing or deterring ''unauthorized'' explosives or incendiaries. Some explosives or incendiaries may be shipped if they are labeled and marked in accordance with the Hazardous Materials Regulations. Any other materials either improperly packaged, marked, or labeled, or otherwise not permitted to be carried aboard passenger aircraft are ''unauthorized.''

Section 108.205 Acceptance and Screening of Cargo

Proposal: This section combines the requirements for transport of cargo into one section. Under the proposal, these requirements were contained in § § 108.201 and 108.219(c), (d) and (e). Although proposed § 108.201 addressed screening of persons and property and acceptance of cargo, no specific mention of cargo appears in this section, it is referred to instead as ''property.''

Comments: The United Parcel Service, ATA, CAA, and RAA believe that a threat does not exist to justify expanding the requirements to cargo acceptance at all locations. It is their belief that the requirements should only apply to cargo accepted at the ticket counter. The United Parcel Service and RAA believe that the improvements to the Air Carrier Standard Security Program (ACSSP) that the FAA Cargo Baseline Working Group suggested, are sufficient and that there is no need to expand the regulation.

FAA response: Cargo acceptance is addressed in the security programs; the acceptance is not just limited to the ticket counter but addresses all cargo that may be transported onboard an aircraft that is transporting passengers. The inclusion of a section on cargo in the regulation does not impose any further regulations beyond those currently in the security program. The FAA disagrees that the only security threat exists with cargo accepted at the ticket counters. The final rule addresses all cargo regardless of where it was accepted. The final rule does not expand cargo security requirements beyond those already existing in security programs.

Section 108.207 Use of Metal Detection Devices

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

Comments: No comments were received.

FAA response: There are no changes to the final rule language, except that the section is renumbered from § 108.203 to § 108.207.

The aircraft operator shall apply the FAA calibration standard set by the FAA to conduct screening with metal detection devices in accordance with the operator's security program. This application applies to all domestic locations and at those locations outside of the United States where the aircraft operator has operational control of its screening process.

Section 108.209 Use of X-ray Systems

Proposal: In the proposal, current § 108.17 entitled ''Use of X-ray systems'' was renumbered as proposed § 108.205 and included under new Subpart C, ''Operations.'' In proposed § 108.205, the FAA would update the technical standards for X-ray systems. The reference incorporating American Society for Testing and Materials (ASTM) Standard F–792–82 would be updated to reflect the current ASTM Standard, F–792–88 (re-approved with

an amendment in 1993). In addition, references to the Food and Drug Administration regulations governing cabinet X-ray systems manufactured before April 25, 1974, are no longer necessary and, therefore, would be deleted.

Under this proposal, application of § 108.205 would be extended to X-ray systems under the air carrier's operational control at airports outside the United States as currently required in security programs. The X-ray systems used for this purpose should meet the same standards as X-ray systems used to inspect baggage in the United States to ensure that the prescribed security measures are equally effective. The X-ray systems owned and/or operated by government authorities or government-mandated security companies at foreign airports and not under the operational control of the air carrier would not be subject to the proposed regulation.

Notice 97–12 proposed to delete the term ''passengers'' under § 108.205(e) and substitute the term ''persons'' recognizing that, during daily operations, passengers are not the only category of individuals who enter a sterile area through a screening checkpoint with an X-ray system.

Additionally, in Notice 97–12, the FAA proposed to omit the requirement that the air carrier issue an individual dosimeter to each operator of an X-ray system.

Comments: Alaska Airlines, TWA, RAA, and ATA support deleting the dosimeter requirement. Alaska Airlines questions whether some of the new X-ray equipment does or will subject the items to more than one milloroentgen. The commenter believes that this requirement will confuse the public as to when film should be removed from items to be X-rayed.

FAA response: There are no substantive changes to the final rule language, except that the section is renumbered from proposed § 108.205 to § 108.209 in the final rule.

Most X-ray systems in use today emit less than one milloroentgen of radiation. The requirement to post a sign suggesting removal of all kinds of film applies only in those few situations where the equipment in use does emit more than one milloroentgen. Further this requirement is not new; it is in current § 108.17(e).

The FAA is not aware of any incident in which a person received excessive radiation from X-ray machines used for screening under an FAA-approved program. Due to this safety record and encouraged by today's technology, which uses lower levels of radiation for this equipment, the final rule eliminates the need for dosimeters. Aircraft operators would still be required to comply with requirements of other Federal agencies or State governments regarding the use of dosimeters.

The final rule changes the reference from ''carry-on bags'' to ''accessible property,'' which is consistent with § 108.201. At screening checkpoints, property that will be accessible in the sterile area or the aircraft or both are screened.

In the regulatory language, the FAA has removed the term ''dangerous articles.'' Instead, the FAA has inserted the words ''explosives, incendiaries, and deadly or dangerous weapons.'' The FAA believes the latter terms better describe the items for which the aircraft operators are carrying out the screening processes.

Section 108.211 Use of Explosives Detection Systems

Proposal: The FAA proposed renumbering current § 108.20 entitled ''Use of Explosives Detection Systems'' as § 108.207 and placing it in new Subpart C, ''Operations.''

Comments: No comments were received.

FAA response: In addition to the proposal, the FAA has added paragraph (b) due to the fact that explosive detection systems that use X-ray technology must comply with the requirements of § 108.209(e) regarding posting of signs. While this new paragraph clarifies the requirements for the use of explosive detection systems, it does not add any new compliance costs, since the requirement for posting signs where X-ray screening equipment is used has long been in the regulations. Further, manufacturers have already provided the required information on the machines. In the final rule, proposed § 108.207 is renumbered as § 108.211.

Section 108.213 Employment Standards for Screening Personnel

Proposal: The FAA proposed to renumber § 108.31 entitled, ''Employment standards for screening personnel'' to § 108.209 and place it in new Subpart C, ''Operations.'' The proposal provided that, in the event the air carrier is unable to implement this section for screening functions outside the United States, the air carrier must notify the Administrator of those air carrier stations so affected, to facilitate resolution of compliance issues.

Comments: The Denver International Airport comments that the FAA standards should not preclude any local licensing requirements for security or guard personnel that are more stringent than the FAA requirements. They also state that security or guard personnel should be tested for the ability to speak English, by the FAA.

FAA response: In the final rule, proposed § 108.209 is renumbered as § 108.213 with no additional changes.

The FAA cannot categorically state that all local licensing requirements for security personnel either are or are not preempted by the Federal government and part 108. Each case must be decided on its facts and circumstances.

The aircraft operators are responsible for ensuring that personnel meet all requirements, including requirements as contained in this regulation. The FAA does not have the operational capability to test the large numbers of screeners who qualify each year.

Section 108.215 Security Coordinators

Proposal: Notice 97–12 proposed to consolidate §§ 108.10 and 108.29, describing the duties and responsibilities of the Ground Security Coordinator (GSC) and the In-flight Coordinator, into one section. The FAA also proposed that the air carrier designate an Air Carrier Security Coordinator to ensure that the FAA had a security official to contact, at the corporate level, whenever the need arises.

Existing regulations provide for the GSC to immediately initiate corrective action for noncompliance with security regulations. At foreign airports, the air carrier may not be performing all security measures and may be unable to take corrective action. Therefore, Notice 97–12 proposed that when a host government agency or contractor provides security measures, the air carrier would notify the Administrator for assistance in resolving noncompliance issues. The Administrator could then work with the host government to address the issues.

The FAA also proposed to omit the distinction made in reference to ''direct employees'' versus ''contract employees.''

Comments: The United Parcel Service, FedEx, RAA, and ATA, state that ''daily'' requirements for GSC's should be replaced with ''routinely'' and that the wording ''departing flights'' should be added because many air carriers have late arrivals with no departure activity.

FAA response: Due to the change of terminology from ''air carrier'' to ''aircraft operator'' the FAA has determined that the new title of the proposed position will be changed to Aircraft Operator Security Coordinator (AOSC).

The Section-by-Section Analysis of Notice 97–12 explained the intent that

the AOSC be appointed at the corporate level. This language has been added to § 108.215(a) and clarifies that the AOSC is to be designated at the corporate level and shall serve as the primary contact for security-related activities and communications with the FAA. The FAA agrees with the need for the availability of an alternate AOSC to act in the AOSC's absence. The final rule requires that the alternate also shall be designated at the corporate level.

The FAA agrees with the comment regarding departing flights in connection with GSC duties. Therefore, in § 108.215(b) the word ''departure'' was inserted after ''domestic and international flight.''

The FAA did not agree with the suggestion to change the frequency of performance for the GSC's duties. The commenter suggested that the frequency be changed from ''daily'' to ''routinely''. The FAA believes that the routine performance of these functions leaves the frequency up to the individual and would be open to misinterpretation; therefore, the language has not been changed.

It is inherent that the aircraft operator is responsible for managing any employees carrying out various security duties whether they are direct or contract employees. Therefore, the FAA omitted the distinction between ''employee'' and ''contract employee.''

Section 108.217 Law Enforcement Personnel

Proposal: As in the past, Notice 97–12 proposed that part 108 air carriers operating passenger service or public charter passenger operations at airports not governed under proposed § 107.217 would be required, in the absence of the part 107 airport providing law enforcement support, to provide law enforcement personnel in a manner adequate to support its security program.

Comments: Commenters suggest using the term ''law enforcement officer'' or ''LEO,'' for consistency and providing a clear definition of ''LEO.'' These commenters also recommend that the rule make a clear distinction between a LEO and private security. The ATA and RAA suggest exempting non-scheduled charter operations from the requirement for law enforcement personnel.

FAA response: The FAA agrees that the term ''law enforcement officer'' should be used consistently throughout part 108. However, due to the allowances which are made for part 107, the term ''law enforcement personnel'' must be used in § 108.217. This requirement is different than the requirements of §§ 108.219 and 108.221 for the carriage of weapons and the escorting of prisoners. In those sections, the person is referred to as a ''law enforcement officer.'' In §§ 108.219 and 108.221, the FAA is referring to someone who is a Federal law enforcement officer or a full-time municipal, county, or State law enforcement officer who is the direct employee of a government entity. The FAA has the authority to establish such requirements for persons desiring to board the aircraft armed.

The FAA recognizes the authority of State and local governments to grant police-like privileges to persons other than commissioned law enforcement officers. The FAA is aware of at least one state that grants such powers to personnel of private security companies. The statute specifically provides that airports may meet their obligation to provide law enforcement support by providing for ''qualified State, local, and private law enforcement personnel'' (49 U.S.C. 44903(c)).

In light of this situation, the FAA must provide airport operators with the ability to use either commissioned law enforcement officers or any other persons who have been granted the authority set out in 49 U.S.C. 44903(c) and in § 107.217, by the State or local government, to react to specific situations as described in part 107.

Therefore, in both parts 107 and 108, the term ''law enforcement personnel'' is used to describe both the law enforcement officers and private persons who have been granted certain powers by the State or local government. An airport operator may use either type of personnel to meet the requirements of part 107. Training received by a security company employee, who is granted the appropriate authority by the State or local government, must be acceptable to the Administrator if the State or local jurisdiction does not prescribe training standards for them.

The FAA does not agree with the suggestion to exempt non-scheduled public charter operations from the requirement for law enforcement personnel. Depending on the size of aircraft used, the aircraft operator may need to screen passengers (§ 108.101(a)). Considering the incidents that can occur with screening (such as discovery of a weapon) it is important to have law enforcement support. For operators of smaller aircraft (§ 108.101(c)), it is important that employees know how to contact law enforcement support should that be needed (§ 108.217(a)(2)).

In the final rule, proposed § 108.211 is renumbered as § 108.217.

Section 108.219 Carriage of Accessible Weapons

Proposal: In Notice 97–12, § 108.213, the FAA proposed a revised procedure for carrying weapons in the cabin by authorized law enforcement officers. This proposal was intended to provide criteria for the carriage of firearms and to control the number of firearms in the cabin. The control of weapons topic was the impetus for the creation of the ASAC Carriage of Weapons Task Force in January 1992. The proposal was based on the Task Force recommendations where consensus was reached at the time the recommendations were developed. The proposed rule contained regulatory language specifically identifying the need for law enforcement officers to have their weapons available during a flight.

Comments: A majority of the comments responding to Notice 97–12 address the carriage of firearms onboard an aircraft. One commenter strongly supports restricting the carriage of firearms onboard aircraft by anyone. Many commenters strongly support allowing all Federal agents to carry their authorized firearms on aircraft.

The Allied Pilots Association (APA) and ALPA do not support changes that would modify proposed § 108.213(a)(2)(iv) to make it easier to board aircraft with firearms.

The most opposition to the restrictions came from U.S. Customs Service Agents. Many Customs agents, along with several other agents and officials from Federal agencies, recommend that all Federal agents authorized to carry firearms in the performance of their official duties be allowed to carry firearms onboard any aircraft. Furthermore, they believe that they should not be required to place firearms in checked baggage because of the greater risk of theft and consequent misuse of government-owned firearms.

Several commenters suggest that the FAA should not be in the position to restrict Federal LEOs from carrying their firearms onboard aircraft.

One commenter suggests that the proposed rule conflicts with 49 U.S.C. 46505. Another commenter notes that the authority to carry firearms is given to Federal agents by statute, therefore, it is inappropriate to limit by regulation.

One commenter proposes that Federal agents be allowed to carry their firearms in a locked container onboard or give their firearms to the captain prior to the flight. Another commenter opposes notifying ticket agents that LEOs are putting their firearms into the checked baggage system, which is not secure.

Another commenter suggests that armed LEO's should be advised of the identity of all other armed LEO's onboard a flight.

FAA response: Final rule § 108.219, which was proposed § 108.213, received a majority of the total comments addressing Notice 97–12. Final rule §§ 108.219–108.223 are revised, to some degree, based on comments received but continue to be structured largely from the recommendations of the Carriage of Weapons Task Force (CWTF) that has reviewed these issues since 1992.

The FAA has the authority and responsibility to ensure the safety and security of passengers within our national airspace system. The FAA has chosen, as one means of addressing that responsibility, to set controls on those persons who may carry a firearm in the cabin of an aircraft. The FAA has sought to meet the needs of law enforcement agencies.

One commenter suggests that the proposed rule conflicts with 49 U.S.C. 46505. Section 46505 provides for criminal penalties for persons who carry a concealed, accessible weapon. The criminal penalty does not apply to a law enforcement officer ''authorized to carry arms in an official capacity.'' This exception applies when the officer, in the performance of his or her duties, has a need to have the firearm accessible as defined in part 108.

It is the goal of both the FAA and the aviation industry to have as few weapons as possible carried onboard a flight. The FAA is aware that on a daily basis across the United States armed law enforcement officers board passenger carrying aircraft. The FAA recognizes the need for law enforcement officers to fly armed while in the performance of their duties, but has revised the rules to state more clearly when to permit this practice.

There appears to be a general misunderstanding by many commenters on the criteria necessary for flying armed, as detailed in the Notice. Neither this final rule nor the Notice limits the carriage of firearms to Federal agents. Likewise, neither this final rule nor the Notice limit the carriage of firearms specifically to the FBI. Federal agents and State and local officers who meet the criteria for law enforcement designation, regardless of the employing agency, may be permitted to fly armed for those duties as listed in this final rule.

This final rule clarifies FAA's very specific employment criteria needed for recognition as a law enforcement officer. Having met those criteria, having met the standards for a need to fly armed, and having received FAA's training program, the officer may, when permitted by the aircraft operator, fly armed.

The Notice provided a list of circumstances under which LEOs would be considered to have a need to travel armed as determined by the employing law enforcement agency.

New § 108.219(a)(2) provides that the LEO must have a need to fly armed, as determined by the LEO's employing agency. Section 108.219(a)(2)(i) provides for an LEO to carry a weapon when he or she is on protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function. Section 108.219(a)(2)(ii) provides for the conduct of a hazardous surveillance operation.

New § 108.219(a)(2)(iii) provides for carriage of weapons by an LEO who is on official travel required to report to another location, armed and prepared for duty. This includes reasonable allowances for delays that may occur in travel.

New § 108.219(a)(2)(iv) accommodates the needs of Federal LEO's who need to be armed and available for duty when they are traveling, even when not on official travel. Because Federal LEO's have jurisdiction throughout the country, their employing agency may call on them to return to duty at any place and time. This need is based on an agency-wide directive or policy statement of the employing agency. Not all Federal LEO's are authorized to fly armed, particularly when they are not on official travel at that time. Under this rule, Federal LEO's will not fly armed on non-official travel except in accordance with an agency-wide policy governing that type of travel.

Under § 108.219(a)(2)(v), control of a prisoner, in accordance with § 108.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner also constitutes a need to fly armed.

Federal Air Marshals are specifically permitted to fly armed while on duty status, as stated in § 108.219(a)(2)(vi). Given the purpose of the FAA's Federal Air Marshals' program, it is evident that they have a need to fly armed.

Bondsmen and bounty hunters, and law enforcement officers while they are serving as bondsmen or bounty hunters, are not authorized to travel armed. Similarly, private security guards serving as body guards or providing other protective services are not authorized to travel armed. These persons either do not meet the requirements for a law enforcement officer in § 108.219(a)(1), or the standards for a need to fly armed in § 108.219(a)(2), or both.

The descriptions of a need to fly armed have been altered to accommodate the law enforcement community's concern that the proposed rule would have unduly limited their legitimate law enforcement functions. While this may permit many of the nation's LEO's to fly armed, it greatly defines and controls the carriage of weapons compared with the current rule. We note that law enforcement agencies view very seriously any LEO's inappropriate conduct with a weapon. We also note that portions of this new rule make the LEO directly responsible to the FAA for complying with the requirements, including those regarding use of alcohol and the location of the weapon. The failure of the LEO to comply with these requirements could lead to civil penalty action by the FAA. The FAA believes that the limits on the need to carry weapons, and the personal accountability of the LEO to both the FAA and the employing agency, provide appropriate controls on the carriage of weapons without unduly interfering with legitimate law enforcement functions.

As to some LEO's comments that they need to travel armed so they are prepared to assist the pilot if needed, history shows that the need for the use of deadly force on a flight is extremely rare. Some commenters note that the pilot may seek assistance to restrain an unruly passenger. The FAA believes that all law enforcement officers, due to their training, are uniquely qualified to assist when there is a need to restrain an individual.

Regarding the concern expressed for placing firearms in checked baggage and having them stolen and subsequently misused, the FAA acknowledges that concern. However, the aircraft operators are responsible for the security of all checked bags and the incidents of theft of firearms from checked bags is low.

The concern expressed about notifying the ticket agent of an unloaded firearm placed in checked baggage has been brought up previously to the FAA. Law enforcement officers were concerned about the ''outside tagging'' of baggage when an unloaded firearm was declared. The FAA requirement remains that firearms placed in checked baggage will be declared as unloaded at the time the bag is checked. The FAA believes that this issue has been cleared up with the passage of Public Law 103–159, also known as the Brady Handgun Violence Prevention Act. This law prohibits the aircraft operator from tagging or labeling, on the outside, any

luggage or baggage indicating there is a firearm inside the container.

The CWTF explored the issue of having lockers onboard the aircraft for the storage of firearms. The task force found it would create far more problems than it would resolve (such as, location to unload/reload the firearm, adequate number of lock boxes per aircraft, and modification of the aircraft to accommodate the lock boxes). Due to all of the concerns expressed, no recommendation was forwarded to the FAA regarding this issue.

The FAA reiterates that any passenger may, upon notification to the aircraft operator, place an unloaded firearm in checked baggage provided the firearm is checked in a hard-sided, locking container and that the presence of the unloaded firearm is declared at the time the bag is checked. These same criteria apply to flight deck and cabin crewmembers should they wish to carry a firearm onboard the aircraft.

In Notice 97–12 and in this final rule there is a requirement for the aircraft operator to notify all armed LEO's onboard of the presence of all other armed LEO's who are passengers on that flight. In the Notice the one exception was that the aircraft operator would not notify other LEO's of the presence of a FAM, rather the FAM would notify the other LEO's. After further consideration the FAA has determined that having the aircraft operator notify other LEO's of FAM's on the flight will enhance coordination for the safety of all concerned. Therefore, under this rule the aircraft operator will notify all LEO's of the presence of all other LEO's, including FAM's. The new rule also requires that the aircraft operator must not close the doors until the notification is complete under circumstances described in the security program.

In response to a suggestion that there should be recurrent training for law enforcement officers flying armed, the FAA agrees that this suggestion would be an enhancement to the program. However, since it was not addressed in the Notice and would create an increased requirement on law enforcement, it cannot be addressed in this final rule. The FAA will issue an Advisory Circular that addresses the training program for law enforcement officers flying armed and recurrent training also will be addressed.

Law enforcement officers who are not in uniform are required under new § 108.219(d) to keep their weapons concealed and out of view. This is to avoid creating concern among other passengers who may see the weapon and not realize the person is a LEO authorized to carry it. LEO's are given the option of either keeping the weapon on their person or in immediate reach. However, the FAA recognizes that there may be a few instances when an armed officer will be in uniform while traveling. Since uniformed law enforcement officers are conspicuous, the FAA has added the stipulation that if an armed officer is traveling in uniform, the officer must maintain the weapon on their person at all times while aboard the aircraft. Because the officer is in uniform, other passengers will immediately recognize the LEO as having authority to be armed. All other restrictions concerning an armed law enforcement officer and the weapon apply. There is no economic impact on the aircraft operator or the officer by this addition.

In new § 108.219(a)(1), the FAA uses the phrase ''unless otherwise authorized by the Administrator.'' This phrase has been placed in the regulatory language to provide for those occasions when foreign officials may be traveling in the United States with their country's armed law enforcement or military personnel. In such cases, the carriage of weapons by these foreign officials will be handled in a manner in keeping with international protocol. Depending on the circumstances, the FAA or the U.S. State Department will be in contact with the aircraft operator when such needs arise.

Section 108.221 Carriage of Prisoners Under the Control of Armed Law Enforcement Officers

Proposal: In Notice 97–12 the FAA proposed § 108.215, ''Carriage of passengers under the control of armed law enforcement escorts,'' to provide more detailed requirements for escorting prisoners in part 108. In the final rule proposed § 108.215 is renumbered as § 108.221.

Comments: The APA suggests creating two sections to distinguish between ''prisoner'' and ''passenger.'' Several commenters recommend that all escorts (armed and unarmed) are trained and certified law enforcement officers and that this section should also apply to unarmed escorts. Another commenter recommends that the FAA establish a policy for restraints on prisoners.

One commenter suggests that the FAA develop regulations governing carriage of persons under escort by unarmed officers. Another commenter recommended that the FAA use consistent definitions to parallel definitions used by other agencies.

FAA response: The FAA finds no need to create two sections based on differences between the terms ''prisoners'' and ''passengers.'' The FAA decided to use the term ''prisoners'' in the final rule, because it is more appropriate. We note that the word ''prisoners'' is used for any person who is under armed escort (except for voluntary protective escort) even though the escorting agency may use another term, such as ''detainee.'' Additionally, the FAA determined that since all armed escorts must be trained and certified law enforcement officers the term used in this section must be ''officers,'' rather than ''escorts.''

Paragraph (a) now more clearly states the applicability of this section, and expressly excludes some persons and situations. For instance, the Immigration and Naturalization Service (INS) escorts detainees, some of whom require armed escort and therefore are subject to § 108.221. Many INS detainees are not violent and are not charged with or convicted of a crime, however, and do not require an armed escort. In that case this section does not apply. The INS escort may be armed in connection with other duties, and if so would be subject to the requirements of § 108.219, but the deportee would not be in hand restraints or otherwise be subject to § 108.221.

With regard to the comment requesting the requirements for unarmed escorts, this issue was not addressed in the NPRM, and is beyond the scope of this rulemaking.

A change was made in the final rule regarding the use of restraints on prisoners. Hand restraints are required in the final rule; however, the FAA has determined that it is not necessary to require that each prisoner have these hand restraints attached to a locked waist restraint. While the final rule provides in § 108.221(g) a standard indicating the extent of the restraint, the FAA prefers to allow the aircraft operator and the law enforcement officers to work out the specifics of the types of hand restraints to use.

With respect to the comments about the proposed definitions for ''high risk'' and ''low risk,'' the commenters offered no alternative definitions. The proposed definitions were created with input from the CWTF. After further consideration, however, it appears that the proposed definition of ''high risk'' may have been too stringent. It may have unduly limited the ability of law enforcement agencies to classify as ''low risk'' prisoners whom the agency believes, based on its review of the prisoners' histories and circumstances, do not warrant the more stringent limitations placed on high risk prisoners. Therefore the definition of ''high risk prisoner'' has been changed to mean both ''exceptional'' escape risk,

and charged with, or convicted of, a violent crime.

We have also added to paragraph (c)(2) that, if authorized by the FAA, more than one high risk prisoner may be carried on an aircraft. There are some circumstances where an aircraft operator and a law enforcement agency work out procedures to do so in a safe and secure manner. In such a case, new paragraph (d)(ii) requires that a minimum of at least one armed law enforcement officer for each prisoner and one additional armed law enforcement officer shall control the prisoners. This commonly is referred to as a ''one-to-one plus one'' escort. No other prisoners may be under the control of those armed law enforcement officers.

The FAA would like to clarify that the time restraints referred to in § 108.221 are for each segment of the trip. Therefore, if there are three flight ''legs'' required for the officer and the prisoner to reach their final destination, each ''leg'' must meet the appropriate time restraints as provided in this final rule.

New § 108.221(f)(1) refers to boarding a prisoner before, and deplaning the prisoner after, other passengers ''when practicable.'' This refers, for instance, to when there are passengers already on the aircraft from a previous flight, or when passengers are remaining onboard for another flight.

Section 108.223 Transportation of Federal Air Marshals

Proposal: The FAA proposed in § 108.217 to prohibit divulging the identity, seating, and purpose of Federal Air Marshals (FAM's) to any person who does not have an operational need-to-know. The onboard flight crew will be informed of the presence of any FAM's on a designated flight. The FAM's are made aware of all other law enforcement personnel flying armed on that flight. However, proposed § 108.213 paragraphs (a)(6) and (a)(7), do not require that the air carrier notify persons flying armed of the FAM's presence. This section has been renumbered as § 108.223 in the final rule.

Comments: Alaska Airlines, NW, ATA and RAA recommend that all LEO's onboard be notified of all other armed LEO's including FAM's.

FAA response: Active flight crews are informed by both the aircraft operator and the FAM(s) of the presence of any FAM(s) onboard a flight. A FAM(s) is made aware by the aircraft operator of all other law enforcement personnel flying armed on a flight. When a FAM(s) is on a flight where an armed LEO is present, a FAM will personally contact the armed LEO.

The FAA recognizes the vital need for coordination with an armed LEO when both a FAM and a LEO are onboard the same flight. The aircraft operator will notify each LEO of the presence of each other LEO, including a FAM. In addition the FAM will personally contact the LEO to promote full coordination.

The final rule continues the current requirement that each aircraft operator shall assign the specific seat requested by a FAM who is on duty status. The rule clarifies that, if another LEO is assigned to that seat or requests that seat, the aircraft operator shall inform the FAM. The FAM will coordinate seat assignments with the other LEO. The FAA notes that, if it is necessary for the FAM and one or more LEO's to coordinate under this section, they will consider each other's statutory authority and responsibility in deciding appropriate seating assignments.

Additionally, in this final rule the FAA states the specific information requirements placed on armed law enforcement officers will not apply to FAM's.

Section 108.225 Security of Aircraft and Facilities

Proposal: The proposal renumbered current § 108.13 entitled ''Security of Airplanes and Facilities'' as § 108.219 and placed it under new Subpart C, Operations.

The proposal addressed the current requirement which prohibits unauthorized access to aircraft, and also proposed that the air carrier prevent access to any area it controls for security purposes. The proposal incorporated requirements contained within, and implemented via, the security program. Accordingly, it was proposed that the air carrier must prevent, rather than prohibit, access to areas controlled by the air carrier under an approved airport security program.

The proposal also included language requiring the air carrier to prevent access by unauthorized persons to baggage or cargo tendered for transport aboard a passenger aircraft.

The proposed language required the air carrier to be in compliance with proposed § 107.209(b) which regulates the issuance and control of airport-approved vehicle identification systems.

In the final rule, the security measures regarding checked baggage appear in § 108.203 and security measures regarding cargo appear in § 108.205. In the final rule, proposed § 108.219 is renumbered as § 108.225.

Comments: One commenter states that ''safeguarded'' cargo and checked baggage should be changed to ''controlled cargo and checked baggage.'' United Express, RAA, UPS, and ATA stated that ''off road'' airline vehicles should not be required to display airport ID, just airline logos.

FAA response: The FAA traditionally uses, and has used, the word ''control,'' or ''controlled,'' relating to these measures, and has changed the word ''safeguarded'' to ''controlled.'' However, the FAA has decided to place the requirements for handling checked baggage and cargo in separate sections. Therefore, proposed § 108.219 paragraphs (c), (d), and (e) have been moved to new §§ 108.203 ''Acceptance and screening of checked baggage,'' and 108.205 ''Acceptance and screening of cargo.''

In Notice 97–12 § 108.219 was intended to impose similar requirements for both airport operators and aircraft operators regarding the responsibility for vehicles within certain areas of the airport. It was believed that this requirement would add to the overall security of the airport. Having reviewed the comments submitted for Notice 97–13, ''Airport Security,'' the FAA agrees that the proposed vehicle identification requirements are not necessary at each airport. As discussed further in the final rule for part 107, the FAA is withdrawing this portion of the proposal.

In Notice 97–12, the proposed regulatory language in § 108.219 discussed identification and certification relative to the shipment of cargo aboard a passenger aircraft. The FAA has determined the requirements for cargo acceptance are better left to the security program where they are discussed in detail.

New § 108.225(c) requires a security inspection of an aircraft if access has not been controlled as provided in the security program, or as otherwise required in the security program. For instance, there are special requirements for inspecting aircraft on certain international flights.

Section 108.227 Exclusive Area Agreement

This section was not proposed in the regulatory language in Notice 97–12, however, exclusive areas were discussed in the preamble to Notice 97–12, and the security measures for exclusive areas were to be in the aircraft operator security program under proposed § 108.103 (b)(1). Exclusive area agreements were directly dealt with under proposed § 107.111 in Notice 97–13. The ability of the aircraft operator to obtain from an airport operator the responsibility for controlling certain

access has been previously provided in § 107.13 (b), and Notice 97–13 proposed further requirements.

This section was added to part 108 to directly provide reference to exclusive area agreements. Under this final rule the security measures for exclusive area agreements are placed in the airport operator's security program. The aircraft operator would be required to list in its security plan those locations at which the aircraft operator has an exclusive area agreement. The aircraft operator is required under this section to carry out its agreement.

This inclusion of § 108.227 in the final rule does not adversely impact any aircraft operator who may have entered into an agreement with the airport operator. The aircraft operator will make its copy of the agreement available for FAA inspection. The FAA is not requiring that the aircraft operator give notice to the FAA that the agreement has been terminated. The reason for this decision is because the airport operator will have a changed condition to its security program both when it enters into an agreement or terminates it, and therefore, the FAA will have received notice of these changes through the airport operator.

New § 108.227 (c) provides a compliance due date one year after the effective date of the rule for existing exclusive area agreements to meet the new § 107.111. This will give aircraft operators and airport operators time to change existing agreements to conform to the new rules. Any new agreements after the effective date, however, will have to meet the new rules.

Section 108.229 Employment History, Verification, and Criminal History Records Checks

Proposal: The FAA published a final rule (63 FR 51204; September 24, 1998) addressing employment history verifications on individuals seeking unescorted access to a SIDA and to individuals performing screening functions. The rulemaking was in progress at the time Notice 97–12 was issued and therefore not addressed.

FAA response: This final rule includes the Employment History, Verification and Criminal History Records Check final rule and corrects an oversight that appeared in that final rule (63 FR 51204). Section § 108.229(b)(3) clarifies that when an individual has admitted to a conviction of a disqualifying crime, the investigative process ends and the individual is denied unescorted access and/or the privilege of performing any screening functions. Although this was the obvious implication of the section and the preamble, it was not clearly stated in the rule.

The FAA also clarified § 108.229 by stating that the section only applies to ''locations within the U.S.''

This added language will not have an economic impact on the regulated parties.

The FAA receives numerous calls requesting clarification on the use of automated telephone systems that provide employment information. The FAA has contacted several of these companies and found that the information being provided comes directly from the past employer.

These telephone services provide employment information that may be used to partially satisfy 14 CFR 108.33 regarding the employment history of those individuals seeking certain positions at an airport. The automated services provide the employment dates and does so only if the person calling has the past employer's company identification number and the specifically assigned identification number of the individual whose employment information is sought.

The use of the specifically assigned numbers reflects a level of security is being provided to the information contained within the system. The security is viewed as a means to protect the information from unauthorized changes. Since this method of providing past employment information is the ''current state of business'' the FAA will accept this method as an adequate means to verify past employment dates when the telephone services have security measures in place.

Therefore, the FAA interpretation of § 108.33(c)(4) includes the use of those automated telephone services that require the use of special information to access an individual's employment history. No language change is deemed necessary for this final rule.

Section 108.231 Airport-approved and Exclusive Area Personnel Identification Systems

Proposal: Notice 97–12 proposed that air carriers establish and implement a personnel identification system mirroring the standards for accountability of airport-issued identification media. A personnel identification system was proposed for flight and cabin crewmembers. The proposed system provided for the following: issuance of identification media after satisfactory completion of employment history and verification checks; and control and accountability standards for identification media. Additionally, the system provided a means to readily identify the currency of the medium. A method for providing the periodic review and re-certification of the identification medium for renewal or forfeiture was also needed.

Comments: Federal Express states that this could require one crewmember to have between 50 and 100 badges. A few commenters note that this proposal will require the manufacture and re-issuance of thousands of ID's at a considerable cost. Federal Express, Northwest, United Express, ATA, UPS, and RAA oppose including expiration dates on ID's issued to crewmembers and state that this requirement would necessitate issuing new badges to personnel. Federal Express suggests that establishing control and accountability standards is more important than an ID expiration date. All of the commenters request that the FAA allow a two-year phase-in period if this measure is implemented. Denver Airport supports the accountability that this requirement would provide, and supports the use of expiration dates for air carriers.

Continental Airlines comments that the proposed rule does not address the need for air carrier ground staff to have identification media to meet the proposed requirements of this section. The need for ground crews who are permanently stationed at certain airports to have the appropriate media exists and is usually dictated by the airport.

FAA response: The title of this section has been changed to clarify that the same requirements apply to ID media issued for use in exclusive areas as those issued by aircraft operators to flight crews and others who need media at different airports.

The intent of this proposal was to ensure that aircraft operator ID systems that are used by those with unescorted access to the SIDA meet the same requirements as systems used by airport operators under part 107. The same ID medium would be accepted by numerous airports, so the aircraft operator would not issue more than one to each person.

In Notice 97–12, the FAA clearly indicated its intent to mirror the standards for accountability that exists for airport-issued identification media. The regulatory language did not provide the amount of detail contained in part 107. The FAA has chosen to clarify the details in this final rule and believes that there will be no increased economic impact by adding this clarifying language. The intent is to minimize the opportunity for a breach of aircraft operator security procedures while in the airport environment.

The FAA agrees that the new ID requirements may present a challenge to

some aircraft operators and crewmembers, but believes that the requirements are necessary to ensure accountability and to minimize the opportunity for a breach of aircraft operator security procedures. Internal controls and accountability measures taken by the aircraft operator relative to identification media will certainly enhance the current system. The FAA sees no reason that aircraft operators' ID media should have fewer safeguards than airport-issued ID media that are used in the same manner.

The proposal referred to ID media used by cabin and flight crew, and these are the majority of personnel who receive such media from aircraft operators. However, there may be other aircraft operator personnel who travel frequently to various airports and need the aircraft operator ID media that will be accepted by airports for use in the SIDA. Therefore, the rule refers to a personnel identification system. Aircraft operator personnel who work at only one airport typically receive the necessary ID medium from the airport operator.

The FAA agrees that a 2-year phase-in period is reasonable for this requirement, and has changed the final rule to allow aircraft operators to present a plan to reach full implementation of this requirement.

Section 108.233 Security Coordinators and Crewmembers, Training

Proposal: Section 108.225 contained in Notice 97–12 has been changed to § 108.233 in the final rule. The proposal was based on current § 108.23. This section governs security training and knowledge of flight crewmembers and security coordinators.

Comments: Federal Express, UPS, ATA, and RAA state that applicability to all ''security related functions'' in proposed § 108.225(c) is too broad. These commenters suggest that the phrase ''appropriate to their job/classification'' be incorporated for clarification.

FAA response: The reference to security-related functions in proposed § 108.225(c) was only applicable to ground security coordinators. Such persons have important duties, and should be fully trained in all security duties with which they are charged. However, the FAA has omitted proposed § 108.225(c) because it is unnecessary. That paragraph stated that the duty to train applied whether the person is a direct employee or a contract employee. It is inherent that the responsibility rests with the aircraft operator, regardless if the person assigned those duties is an employee or contract employee.

Section 108.235 Training and Knowledge for Persons With Security-Related Duties

Proposal: Section 108.227 contained in Notice 97–12 has been changed to § 108.235 in the final rule. These requirements are largely in current § 108.29(a)(1). As proposed, the section would expand personnel training requirements in part 108 to require air carriers to train any person performing security functions in accordance with the air carrier's standard security program, as well as continuing the current requirement that such persons have knowledge of these provisions. The FAA proposed that required security training be approved by the Administrator.

Comments: Federal Express, UPS, ATA, and RAA state that applicability to all ''security related functions'' in proposed § 108.227(a) and (e) is too broad. These commenters suggest that the phrase ''appropriate to their job/classification,'' should be incorporated for clarification. This comment was provided in response to both proposed § § 108.225 and 108.227.

FAA response: The FAA requirements may periodically change via security program amendments or via the shorter notice of security directives. In either case, the requirements may involve anyone employed by the aircraft operator. In order to properly carry out any security-related function, the FAA believes that everyone, regardless of his or her primary job function for the aircraft operator, must be trained. The statement is broad for this reason. That training may not necessarily be formal classroom training, depending on the security duties involved. This rule leaves considerable latitude to the aircraft operator to determine what format the training will take.

The FAA does not agree that language addressing an individual's job or classification is needed. It seems plausible for an aircraft operator employee to have a security-related duty that is not clearly reflected in his or her formal job/classification position.

Subpart D

Section 108.301 Contingency Plan

Proposal: The FAA proposed in § 108.307 to require air carriers to adopt contingency measures in their security programs and implement them when directed by the Administrator. The FAA also proposed that air carriers test these contingency plans to ensure that all parties involved are aware of their responsibilities and that information contained in the plan is current. Furthermore, it was proposed to require air carriers to participate in any airport operator's sponsored exercise to ensure that they understand how to respond to incidents at each airport. Contingency plans contain security measures that can be immediately and flexibly applied to counter threats that arise quickly. The ''lessons learned'' from the Persian Gulf War threat, are a case-in-point on the need to retain this flexible response plan. Furthermore, it is an ICAO standard that the member states ensure that contingency plans are developed and tested.

Comments: Four commenters, TWA, UPS, ATA and RAA, state that contingency plans should be deleted entirely. Three of these four commenters state that the air carrier should not have to conduct and review exercises of its contingency plan if it participates in each airport operator's exercise. Two other commenters, AS and FedEx, support contingency plans, but do not think they should be addressed in the rule.

FAA response: The regulatory language pertaining to aircraft operator contingency plans has been moved to § 108.301 in the final rule.

The FAA will not delete this section, because it believes that contingency planning supports crisis management. The FAA and industry jointly developed the current contingency plan to ensure that the FAA, airport operators, and aircraft operators are able to respond on short notice to civil aviation threats. A well-exercised contingency plan ensures a timely response to these threats with temporary measures. The ASAC supported the codification of contingency plans.

The FAA has determined that individual testing, in isolation from the airport operator's testing, will not provide enough added benefit to offset the costs that might be incurred by the aircraft operator. Therefore, the FAA has decided not to include the proposed requirement for aircraft operators to independently conduct reviews and exercises of their contingency plans in the final rule. The final rule requires only that the aircraft operator participate in exercises sponsored by the airport. Such exercises are relatively low cost but ensure that the different entities understand their roles, know to whom to turn for assistance, and have current information, such as how to contact various agencies that may render assistance in an emergency.

Instead the details will be contained in the security program. The FAA has determined that it may be beneficial to

provide for reasonable alternatives, e.g., if measures were carried out in an actual event, to substitute elements of that incident for some portion or all of the exercises required within this section. What is determined to be a reasonable alternative will evolve as examples that come to the attention of the FAA on a case-by-case basis.

The FAA agrees with the commenters that in the interest of security, the security-sensitive details of the contingency plan cannot be included in a public regulation.

Section 108.303 Bomb or Air Piracy Threats

Proposal: Notice 97–12 proposed to expand the requirements in current § 108.19. To ensure proper coordination, the FAA proposed to include the existing air carrier security program requirement that the air carrier notify the airport operator immediately of a specific and credible bomb threat to its aircraft or ground facilities.

Additionally, the air carrier would be required to deplane all passengers from a specifically threatened aircraft to ensure their safety and a more effective search of the aircraft.

Comments: Several commenters submitted recommendations on how certain emergencies should be handled.

FAA response: The FAA will retain the proposed regulatory language in the final rule. The submitted comments are security specific and will not be addressed in this public rule.

Section 108.305 Security Directives and Information Circulars

Proposal: To ensure that Security Directives (SD) are received promptly, the FAA proposed to require air carriers to verbally acknowledge receipt of SD's immediately, and to follow up with written confirmation within 24 hours. The FAA also proposed that the air carrier submit to its Principal Security Inspectors (PSI) copies of written measures/implementing procedures issued to their stations. This latter requirement would assist the FAA in determining that the air carrier fully understands the security requirements in the SD and that the proposed implementation is correct.

Also proposed in Notice 97–12, within 72 hours after receipt of the SD, unless stated otherwise, the air carrier would give the FAA the implementation methods that are either in effect or will be in effect when the SD is implemented. In response, the FAA would either approve the air carrier's proposed alternative measures, or notify the air carrier to modify the alternative measures to comply with the requirements of the SD, within 48 hours after receiving proposed alternative measures.

Comments: Six commenters, AS, UPS, FedEx, United Express, RAA, and ATA, state that the requirement for submitting a written description within 72 hours of the issuance of a SD precludes the timely processing and implementation of this information. The commenters encourage the FAA to provide as much advance notice of potential SD issuance as possible. Additionally, the commenters support the sharing of threat information.

One commenter, RAA, strongly recommends a thorough briefing by the FAA to the affected carriers within an immediate timeframe of 12 to 24 hours after issuance of a SD, and urges the FAA to provide as much information on the threat as possible.

FAA response: Given that SD's are put in place when the FAA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, fast and thorough implementation is extremely important. The FAA supports the communication between the aircraft operators and their FAA contacts and believes that this communication appears to be going well in most cases. The FAA currently makes every effort to provide as much advance notification as possible.

The FAA found that in some instances, aircraft operators that do not receive SD's in a timely manner lose valuable time. The current 24-hour notification period needs to be shortened. However, the FAA has determined that all time requirements will be contained within each individual Security Directive. Depending on the individual circumstance, different time periods for acknowledging receipt of a SD may be acceptable. The final rule does not require the acknowledgement be followed up in writing, however. The final rule also omits the proposal to require that for each SD the aircraft operator provide the written implementing procedures to the FAA. This practice is not necessary in each case. The FAA may request copies of these procedures, if needed.

New § 108.305(a) sets out the practice of issuing a SD based either on a specific threat against aviation, or on a threat assessment. There are times when there is a threat assessment, but it is not known whether the specific target may be aviation. At such times it may be necessary to order measures to ensure the security of the traveling public.

The FAA also inserted a new paragraph (e) to clarify that aircraft operators may comment on SD's by submitting written data, views, or arguments to the FAA. Currently, the process entails ongoing verbal communications with the Administrator, which will not be discouraged. However, the FAA has chosen to add the language in the final rule to make it clear that the written comments are also acceptable for stating the aircraft operator's views or arguments. Submission of a comment, however, will not delay the effective date of the SD. As in the past, the FAA expects to continue to receive, and act as appropriate, verbal comments on SD's when the exigencies of the situation warrant.

Paperwork Reduction Act

Information collection requirements pertaining to this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0655. No comments were received on this information collection submission. 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.

International Compatibility

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 final rule 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.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended in May 1996, requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade.

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but is not considered to have a significant economic impact under Executive Order 12866. This rule is a significant action because of public interest rather than on the basis of economic impacts. This rule is not expected to have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this rule does not contain Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses, available in the docket, are summarized below.

Costs

The total cost of compliance of this rule, over the next 10 years, is estimated to be $40 million (or $29 million, discounted, 7 percent) in 1998 dollars (rounded). Of the 29 sections amended by the rule, only five sections will result in cost impacts. The other 24 sections will not impose costs because they contain minor definitional, clarification, and procedural changes. They also will codify a number of existing practices as contained in the aircraft operator standard security program (AOSSP). Those sections that will potentially impose costs are discussed below.

Section 108.101—Adoption and Implementation

The rule changes to this section will increase the number of aircraft operators that must adopt and maintain security programs. Specifically, section 108.101 will require that the following types of aircraft operators adopt and implement security programs:

A Full Security Program

- Applies to any U.S. scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of more than 60 seats.
- Applies to any U.S. scheduled passenger or public charter passenger operation using an aircraft having a seating configuration of less than 61 passenger seats when passengers are enplaned from or deplaned into a sterile area.

A Partial Program

- Applies to any scheduled passenger or public charter operation with an aircraft having a passenger-seating configuration of more than 30 and less than 61 seats inclusive that does not enplane from or deplane into a sterile area.
- A scheduled passenger or public charter operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

A Limited Program

- Applies to any other U.S. operator (such as an all-cargo carrier) holding a certificate under part 119 that chooses to have a security program. Such an operator shall carry out and meet the requirements of § 108.101(e).

A Private Charter Program

- Applies to any U.S. private charter operation (regardless of seating configuration) in which passengers are enplaned from or deplaned into a sterile area.

As the result of this rule, an estimated 51 existing operators will incur a potential cost of compliance of about $126,500 (or $91,700, discounted) over the next 10 years. Multiplying the one-time application cost of $239.50 and the recurring staff cost of $224 by the number of potentially impacted operators of 51 over the 10-year period derived this cost of about $126,500. Similarly, new applicants will also be impacted. This evaluation assumes that three to four new applicants will file for certification in this carrier or operator group annually. This action will result in an estimated potential cost of compliance of about $16,200 (or 11,400, discounted) over the next 10 years. This cost estimate of $16,200 was derived by multiplying the one-time application cost of $239.50 and the recurring staff cost of $224 by the number of potentially impacted new applicant operators of 35 (or 3 to 4 annually) over the 10-year period. Thus, the total potential cost of compliance (rounded) for this section is estimated to be about $142,700 ($126,500 + $16,200). Note: The cost estimates in this section and in each of the following sections may not add due to rounding.

Section 108.235—Training and Knowledge of Persons With Security-Related Duties

The FAA requires extensive training for personnel who perform extraordinary security procedures for aircraft operators under part 108, in accordance with their approved security programs. An instructor trained and approved by the Administrator will conduct security training. The potential incremental cost impact on this section is estimated to be about $14.1 million (or 10.6 million, discounted) over the next 10 years. This estimate of $14.1 million was derived in three steps. First, adding the cost of training employees ($4.7 million) to the cost for an instructor ($464,600) over the 10-year period derived in the Initial Aircraft Operator Training cost estimate of $5.2 million. Second, the cost estimate of $8.9 million for annual aircraft operator training requirements was derived by combining the employee training cost estimate ($8.1 million) with that for an instructor ($787,700) over the 10-year period. And last, both of these cost components were summed.

Section 108.301—Security Contingency Plan

This section will require aircraft operators to adopt contingency plans developed by the FAA to test them periodically in coordination with the respective airport operator testing of contingency plans. Based on the informed opinion of FAA security personnel, sixteen hours will be required for each test of the contingency plan each year; the new revisions to this section will impose an incremental cost of about $24 million (or $17 million, discounted) to operators over 10 years.

This estimate of $24 million to ensure conformity with airport plans was derived by a two-step process. The first step estimated the one-time cost for ensuring conformity by conducting aircraft operator initial review of contingency plans. In the first year (2000) only, cost for this step is estimated by multiplying the number of impacted aircraft operators (192) by the number of airports involved (25) by the number of hours of work required to review plan (16) by the hourly salary of aircraft operator security personnel ($28). For example, this computation will result in an estimated one-time compliance cost of $2,150,400 ($192 \times 25 \times 16 \times \$28$) for the initial review of contingency plans. And, the last step of ensuring conformity consists of testing the contingency plan. Over 10 years, cost estimation for this step represents multiplying the number of impacted aircraft operators ($1,920 = 192 \times 10$) by the number of airports involved (25) by the number of hours of work required to test plan (16) by the hourly salary of aircraft operator security personnel ($28). For example, this computation will result in an estimated compliance cost estimate of $21,504,000 ($1,920 \times 25 \times 16 \times \$28$), over the 10-year period, for testing of contingency plans. Thus, the total compliance cost estimate for this section was derived by summing the two cost components ($23,654,400 = $2,150,400 + $21,504,000).

Section 108.303—Bomb or Air Piracy Threats

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

As the result of the anticipated delay imposed during the inspection period and associated with complete deplaning and subsequent reboarding of passengers and crew, the potential incremental cost of compliance for this rule change to section 108.303 is estimated to be $1.2 million over the next 10 years (or 850,000, discounted).

Estimating and summing the estimates for three cost components over the next 10 years derived this figure of $1.2 million. The first component is Value of Time for Aircraft ($151,500 = 100 × 4.5 × $336.75). This estimate represents the number of credible threats (100 over 10 years) multiplied by the average number of hours an aircraft is down due to a threat (4.5) by the cost per hour of downtime ($336.75). The second component is Value of Flight Crew Time estimate ($80,640 = 448 × 4.5 × $40). This estimate represents the number of aircraft flight crew employees delayed by a threat (448 over 10 years) multiplied by the average number of hours delayed due to a threat (4.5) times the average flight crew employee salary cost per hour ($40.00). The third component is the Value of Passenger Time estimate ($979,000). This estimate represents the number of passengers delayed by a threat (7,770 over 10 years) multiplied by the average number of hours delayed due to a threat (4.5) times the passenger value of time per hour ($28).

Section 108.305—Security Directives and Information Circulars

This revision will require that all aircraft operators develop and implement standardized procedures to deal with security directives and information circulars issued by the FAA. The affected aircraft operator shall specify the method by which the measures in the security directive have been implemented by providing the FAA a copy of the written measures and implementation procedures when required by the Security Directive or upon request by the Administrator. The potential incremental cost of this rule change is estimated to be $666,200 (or $468,000, discounted). This cost estimate will be imposed, as the result of the staff time required processing and responding to a directive. Thus, aircraft operators receive on average 30 directives a year. This estimate of $666,200 to notify the FAA, including acknowledgment and forwarding of results, was derived by combining the cost estimates for Staff to Process Directives ($349,400) with that for phone calls and faxes ($316,800).

Benefits

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

It would be difficult to separate out any one change or set of changes in the rules to amend part 107 or part 108 and identify the extent that change or set of changes will have on preventing a criminal or terrorist act in the future. Nevertheless, these changes in both rules are an integral part of the total program needed by the airport operator, the aircraft operators, and the FAA to thwart such incidents.

It will also be extremely difficult to determine to what extent an averted terrorist incident can be credited to either airport operator security or to aircraft operator security. Accordingly, the benefits from the rules for parts 107 (airport operators) and 108 (aircraft operators) have been combined in this benefit-cost analysis. These benefits are comprised of the criminal and terrorist incidents that these rules are intended to prevent; hence, these benefits will be contrasted against the costs of the changes to parts 107 and 108. As shown in Table 1, the combined costs (rounded) of parts 107 and 108 sum to about $131 million (or $104 million, discounted).

TABLE 1.—COST SUMMARY OF PARTS 107 AND 108 FINAL RULES

[1998 dollars, rounded]

	Total costs	Discounted costs
Cost of rule for Part 107	$91.5	$74.9
Cost of rule for Part 108	39.8	29.2
Total cost of rules	131.3	104.1

Source: U.S. DOT, FAA, APO–310, June 1999.

Since 1987, the FAA has initiated rulemaking and promulgated 11 security-related amendments that have amended both parts 107 and 108. The amendments in these two rules combined with the previous rulemakings add to the effectiveness of both parts to augment aspects of the total security system to help prevent further criminal and terrorist activities.

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 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 twelve 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 two 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 twelve United States 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.

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 these rules.

Based on the above statement, the FAA concludes that these rules set forth the best method to provide increased security at the present time. The FAA considered to the limited extent possible, the benefits of these rules 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 these rules' benefits to be at least equal to these rules' costs. This is intended to allow the reader to judge the likelihood of benefits of these rules equaling or exceeding their 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.

Terrorist acts can result in the complete destruction of an aircraft with the loss of all onboard. The FAA considers a Boeing 737 as representative of a typical airplane flown domestically. The fair market value of a Boeing 737 is $16.5 million, and the typical 737 airplane has 113 seats. It flies with an average load factor of about 65 percent, which translates into 73 passengers per flight; the airplane will also have 2 pilots and 3 flight attendants.

A terrorist catastrophic event could also result in fatalities on the ground. There were 11 such fatalities in the Pan Am 103 explosion and 15 in a collision of an AeroMexico airplane with a Piper PA–28 airplane over Cerritos, California in 1986. However, looking at the number of accidents including aircraft covered by these rules and the number of fatalities on the ground over the last 10 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 of about $211 million (78 x $2.7 million). The discounted cost of these final rules is $104 million, while the discounted benefits for each Class I Explosion averted comes to about $191 million. Hence, if these rules prevent one Class I explosion, the benefits of these rules will exceed their costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

The FAA also used the same set of benefits in two proposed rulemakings, *Security of Checked Baggage on Flights Within the United States and Certification of Screening Companies;* all these rulemakings have the same goal—to significantly increase the protection to U.S. citizens and other citizens traveling on U.S. domestic aircraft operator flights from acts of terrorism as well as also increase protection for those operating aircraft. Because the combined discounted costs of all of these rules exceeds $191 million, the cost of one Class I Explosion, the FAA calculated the economic impact and the potential averted market disruption sufficient, in combination with safety benefits, to justify all these rulemakings.

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 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. By 1990, enplanements were at the level they were in 1988. 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 summation 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 these rules is a benefit.

The FAA is unable 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 rule. The discounted cost of these four rulemakings is $2.3 billion, while the discounted benefits for each Class I Explosion averted comes to $191 million. Hence, if one Class I Explosion is averted, the present value of losses due to market disruption must at least equal $3.1 billion ($3.3 billion less $191 million—one Class I Explosion). If two Class I Explosions are averted, the present value of losses due to market disruption must at least equal $2.9 billion ($3.3 billion less $400 million—two Class I Explosions).

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 a minimum of 13.3 million lost trips would be suffered, in combination with the safety benefits of one averted Class I Explosion, for the benefits of these rulemakings to equal costs. This represents less than 5 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 16.3 and 10.6 million lost trips, respectively, would need to occur for the benefits to equal the costs of these rulemakings, assuming one 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.

Table 2 presents combinations of the total number of trips not taken as a result of one to four Class I Explosions at alternative values per lost trip that would be sufficient to generate

monetary benefits in excess of the estimated costs of these rulemakings.

TABLE 2.—NUMBER OF TRIPS NOT TAKEN AS A RESULT OF ONE TO FOUR CLASS I EXPLOSIONS AVOIDED

[For Benefits to Equal Costs]

Number of Class I explosions avoided	Assumed net market loss per trip (in 1998 dollars)		
	$130 (in millions)	$160 (in millions)	$200 (in millions)
1	16.3	13.3	10.6
2	14.8	12.1	9.6
3	13.4	10.9	8.7
4	11.9	9.7	9.7

Source: FAA, APO–310, June 1999.

The FAA stresses that the range of trips discussed in Table 2 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 these rulemakings to some estimate of the benefit of increased security it will provide as that level of security relates to the threat level.

Based on changes in the domestic security risk, the White House Commission recommendation, recent Congressional mandates, and the known reaction of Americans to any aircraft operator disaster, the FAA believes that pro-active regulation is warranted to prevent terrorist acts (such as Class I Explosions) before they occur.

Comparison of Costs and Benefits

This rule, combined with the part 107 rule, will cost $131 million ($104 million, discounted) over 10 years. This cost needs to be compared to the possible tragedy that could occur if a bomb or some other incendiary device was to get onto an airplane and cause an explosion. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to 12 American airplanes being blown up in Asia in early 1995.

Since the cost of a Class I Explosion on a large domestic airplane is approximately $272 million, coupled with the relative low cost of compliance ($131 million), this rule (and the rule for part 107) will need to prevent one Class I Explosion over the next 10 years in order for quantified benefits to exceed costs. In view of the recent history of terrorist incidents in the United States, a potential catastrophic loss of at least this magnitude is considered to be plausible in the absence of this rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the proposed rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals or rules and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The Small Business Administration has defined small business entities relating to aircraft operators (Standard Industrial Codes 4512 and 4522) required to comply with part 108 as entities comprising 1,500 or fewer employees. These small entities include: (1) Scheduled aircraft operators whose fleet consists primarily (if not entirely) of aircraft with more than 60 passenger seats, (2) Other scheduled aircraft operators whose fleet consists primarily (if not entirely) of aircraft with less than 60 passenger seats (e.g., commuter operators and small majors/nationals types), and (3) Unscheduled aircraft operators. Unscheduled operators include primarily air taxi and charter types. These types of operators generally operate aircraft with less than 60 passenger seats.

The final rule will potentially impact small U.S. aircraft operators engaged in charter services and selected helicopter operators. These aircraft operators are engaged in services under parts 121 and 135. An examination of small entities under each of these parts, by size of aircraft, will be discussed by each amended change to a section as follows. Multiplying them by a capital recovery factor of .14238 [10 years, 7 percent], has annualized the non-annual costs of the rule.

For purposes of this evaluation, a significant economic impact refers to one percent of the annual median revenue ($222,200, at the 50th percentile, in 1998 dollars) of the small part 121 scheduled aircraft operators subject to part 108 requirements. In addition, a significant economic impact on unscheduled part 135 operators (2,718) refers to one percent their annual median revenue ($5,700, at the 50th percentile). The FAA has identified small operators ranging from 51 to 2,930 that may be impacted by this definition. Three of the five following sections impose potential costs only on scheduled operators. And the other two following sections impose costs on both groups of scheduled and non-scheduled aircraft operators.

Section 108.101—Adoption and Implementation

The rule change to Section 108.101 will only affect estimated 51 small aircraft operators. This estimate of 51 includes: 15 non-scheduled domestic service operators with greater than 60 seats, 11 scheduled international service

operators with fewer than 31 seats, and 25 non-scheduled international service operators (including air taxi operations). The rule change to this section will impose an annualized cost of compliance estimate of $288 for each of the 51 aircraft operators. Employing two steps derived the estimate of $288: First, by dividing the discounted cost of compliance estimate for this section ($103,100) by the number of potentially impacted aircraft operators (51). This calculation results in a discounted 10-year per entity cost estimate of $2,022. And last, the cost estimate of $2,022 was multiplied by the 10-year (7%) capital recovery factor of 0.14238. This same procedure was used for each of the following sections. This section of the rule will primarily impact small non-scheduled operators (40).

Given the nature of their operations (namely, private charters) and the size of their aircraft, each of these aircraft operators is considered to be a small entity. That is, each of these operators is assumed to have less than 1,500 employees. This same assessment applies equally to each of those aircraft operators discussed in the following sections, unless otherwise stated.

Section 108.235—Training and Knowledge of Persons with Security-related Duties

The rule change to Section 108.235 will affect an estimated 2,930 small aircraft operators. This estimate of 2,930 includes: 74 scheduled operators with between 31 and 60 passenger seats, 131 scheduled operators with less than 31 passenger seats, 15 non-scheduled operators with more than 60 passenger seats, and 2,710 non-scheduled operators with less than 61 passenger seats. This rule change to section 108.235 will impose an annualized cost of compliance estimate of $517 for each of the 2,930 small aircraft operators. This section of the rule will primarily impact non-scheduled operators (2,725).

Section 108.301—Contingency Plans

The rule change to Section 108.301 will affect an estimated 172 (192 less 20 large aircraft operators) small U.S. aircraft operators. This will impose an annualized cost of compliance estimate of $12,691 for each of the 172 small operators that will be affected by this section. This section of the rule will only impact domestic scheduled aircraft operators, regardless of the size of their aircraft (172).

Section 108.303—Bomb or Piracy Threats

The rule change to Section 108.303 will affect all 172 small U.S. aircraft operators. This rule change to section 108.303 will impose an annualized cost of compliance estimate of $629 for each of the 172 small aircraft operators.

Section 108.305—Information Circulars

The rule change to Section 108.305 will affect an estimated 172 U.S. aircraft operators. This rule change to section will impose an annualized cost of compliance of $347 for each of the 172 small operators that will be affected by this section.

The total annualized cost of compliance for each of the scheduled operators is expected to be nearly $14,470 and about $800 for each of the non-scheduled operators. Since the total annualized cost of compliance of about $14,470 is less than the significant economic impact amount of $222,200, this rule will not impose a significant economic impact on a substantial number of scheduled small entities. Similarly, the rule is not expected to impose a significant economic impact on a substantial number of small non-scheduled operators, since the annualized cost of compliance (about $800) for each operator will not exceed the significant economic impact amount ($5,700). In view of the aforementioned cost impact discussion and pursuant to the Regulatory Flexibility Act [5 U.S.C. 605(b)], the FAA certifies with reasonable certainty that the final rule will not impose a significant economic impact on a substantial number of small entities.

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.

The rule will have no impact on the competitive posture of either U.S. aircraft operators doing business in foreign countries or foreign aircraft operators doing business in the United States. This assessment is based on the fact that the rule will not have a significant economic impact on any of the potentially impacted operators. Most of the requirements imposed by this rule are aimed at strengthening the requirements of aircraft operators with existing full and partial security programs. However, this rule will require scheduled passenger or public charter aircraft operators, with more than 60 passenger seats, to adopt and implement full security programs. In addition, this rule will require those scheduled passenger or public charter aircraft operators, with less than 61 passenger seats, to adopt and implement security programs prior to enplaning or deplaning passengers into sterile areas at airports. Private charter aircraft operators will have to comply with a similar requirement. Those aircraft operators who do not routinely deplane or enplane passengers into sterile areas at airports will be the least impacted by this rule. Such operators will only have a partial security program. When engaged in foreign travel, these operators usually fly from the U.S. to a foreign destination and return. These operators do not have aircraft based in foreign countries for flights to the U.S. and other foreign countries. Thus, neither domestic nor foreign aircraft operators will be affected disproportionately by these new requirements. These new requirements, therefore, will not cause a competitive trade disadvantage for U.S. aircraft operators operating overseas or for foreign aircraft operators operating in the United States.

Federalism Implications

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. There are two sections that have an impact on the States, § 108.219, Carriage of accessible weapons, and § 208.221, Carriage of prisoners under the control of armed law enforcement officers. State and local law enforcement officers at times have a need to travel armed and to escort prisoners. The FAA has consulted extensively with representatives of State and local law enforcement agencies. In 1992 the carriage of Weapons Task Force was created as a committee within the Aviation Security Advisory Committee. The Task Force includes representatives from Federal, State, and local law enforcement, as well as aircraft operators and airport operators. Since that time the Task Force has met on many occasions. Their work includes a model training program developed in 1994 for the carriage of weapons and escort of prisoners, which most Federal and State agencies now use to train their personnel. The proposals in Notice 97–12 were based largely on Task Force recommendations, and the FAA continues to consult with them on these issues. The rules as adopted require little change from the practices that have been in place since the mid 1990's.

Accordingly, 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.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995, 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 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. In 1998 dollars, this estimate of $100 million translates into $105 million using the GDP implicit price deflators for 1995 and 1998. Section 204(a) of the Act, Title 2 of the United States Code 1534(a), requires the Federal agency to develop an effectiveness process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed or final rule ''significant intergovernmental mandate.'' A significant intergovernmental mandate under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. For the purpose of this evaluation, this estimate expressed in 1998 dollars translates into $105 million. Section 203 of the Act, Title 2 of the United States Code 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 any affected small governments to provide input in the development of rules.

Based on the evaluation and impacts reported herein, the final rule is not expected to meet the $100 million per year cost threshold ($105 million, in 1998 dollars). Consequently, it would not impose a significant cost on or uniquely affect small governments. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to the final rule.

Environmental Analysis

Federal Aviation Administration Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Distribution/Derivation Tables

The following distribution table is provided to illustrate how the current regulation relates to the revised part 108, and the derivation table identifies how the revised part 108 relates to the current rule.

DISTRIBUTION TABLE

Old Section	New Section
108.1(a)	108.1(a).
108.1(b)	Removed.
108.3	108.3.
108.4	108.7.
108.5(a)(1) and (2)	108.101(a)(1) and (2).
108.5(a)(3)	108.101(c)(1).
108.5(a)(4)	108.101(d)(3).
108.5(b)	108.101(d)(2) and (e).
108.7(a)	108.103(a).
108.7(b)	108.103(c).
108.7(c)	108.103(b).
108.9(a)	108.201(e).
108.9(b)	108.201(d) and 108.203(d).
108.9(c)	108.201(b).
108.9(d)	108.201(g).
108.10(a)(1)	108.215(b) and (c).
108.10(a)(2)	108.215(c).
108.10(b) and (c)	108.215(b) and (c).
108.11(a)	108.219(a)and (b).
108.11(a)(4)	108.223(e).
108.11(b)	108.219(a) and (b).
108.11(c) and (d)	108.203(e).
108.11(e)	108.219(c).
108.11(f)	Removed.
108.13 (introductory text).	108.225 (introductory text).
108.13(a)	108.225(b).
108.13(b) (first clause).	108.203.
108.13(b) (second clause).	Removed.
108.13(c)	108.203(c)(1) and 108.205(b)(1).
108.13(d)	108.225(c).
108.14(a)–(c)	108.223(b)–(d).
108.15(a) and (b)	108.217(a) and (b).
108.17(a)	108.209(a).
108.17(a)(1)	Removed.
108.17(a)(2) and (3)	108.209(a)(1) and (2).
108.17(a)(4)	Removed.
108.17(a)(5)	108.209(a)(3).
108.17(b)–(d)	108.209(b)–(d).
108.17(e)	108.211(b) and 108.209(e).
108.17(f)–(h)	108.209(f)–(h).

DISTRIBUTION TABLE—Continued

Old Section	New Section
108.18(a)–(c)	108.305(b)–(d).
108.18(d)	108.305(f).
108.19(a) and (b)	108.303(a) and (b).
108.19(c)	108.303(d).
108.20	108.211(a).
108.21 introductory text.	108.221(a)(1).
108.21(a)(1)	108.219(a)(1).
108.21(a)(2)	108.221(e)(1).
108.21(a)(3)	108.221(d)(3).
108.21(a)(4)	Removed.
108.21(a)(5)	108.221(d)(1) and (2).
108.21(a)(6)(i)	Removed.
108.21(a)(6)(ii)	108.221(e)(3).
108.21(a)(7)	108.221(f).
108.21(a)(8)	108.221(f).
108.21(a)(8)	108.221(e)(4).
108.21(b)(1) and (2)	108.221(h).
108.21(b)(2) clause on LEOs.	108.219(c)(1).
108.21(c)	108.221(e)(5).
108.21(d)	108.219(c)(2).
108.21(e)	108.221(a)(2).
108.23(a)	108.233(a) and 108.235(a).
108.23(b)	108.233(b).
108.25(a)	108.105(a).
108.25(b) introductory clause.	108.105(c).
108.25(b)(1) and (2)	108.105(c).
108.25(b)(3)	108.105(d).
108.25(c)	108.105(b).
108.27	108.5(b).
108.29(a)(1)	108.235(b).
108.29(a)(2)	108.215(b).
108.29(b)	108.235(a).
108.31	108.213.
108.33	108.229.

DERIVATION TABLE

New Section	Old Section
108.1(a)(1)–(3)	108.1(a)(1)–(3).
108.1(a)(4)	108.1(a)(5).
108.1(a)(5)	108.1(a)(4).
108.1(b)	New.
108.3	108.3.
108.5(a)	New.
108.5(b)	108.27.
108.5(c)	New.
108.5(d)	New
108.7	1108.4.
108.9	New.
108.101(a)	108.5(a)(1) and (2).
108.101(b)	New.
108.101(c)(1)	108.5(a)(3).
108.101(c)(2)	New.
108.101(d)(1)	108.5(a)(3).
108.101(d)(2)	108.5(b).
108.101(d)(3)	108.5(a)(4).
108.101(e)	108.5(b).
108.103(a)	108.7(a).
108.103(b)	108.7(c).
108.103(c)	108.7(b).
108.105(a)	108.25(a).
108.105(b)	108.25(c).
108.105(c)	108.25(b)(1) and (2).
108.105(d)	108.25(b)(3).
108.201(a)	108.9(a).
108.201(b)	108.9(c).

DERIVATION TABLE—Continued

New Section	Old Section
108.201(c)	107.20.
108.201(d)	108.9(b).
108.201(e)(1)	108.9(a).
108.201(e)(2)	107.21.
108.201(f)(1)	107.21(b)(1).
108.201(f)(2)	108.11(a).
108.201(f)(3)	New.
108.201(g)	108.9(d).
108.203(a)	108.9(a).
108.203(b)	108.13(b), first clause.
108.203(c)	108.13(c).
108.203(d)	108.9(b).
108.203(e)	108.11(c) and (d).
108.203(f)	108.11(c).
108.203(g)	New.
108.205(a)	Intent of 108.9(a).
108.205(b)	108.13 introductory text, (b) first clause, and (c).
108.205(c)	108.9(b).
108.207	New.
108.209(a)	108.17(a).
108.209(a)(1) and (2)	108.17(a)(2) and (3).
108.209(a)(3)	108.17(a)(5).
108.209(b)–(h)	108.17(b)–(h).
108.211(a)	108.20.
108.211(b)	108.17(e).
108.213	108.31.
108.215(a)	New.
108.215(b)	108.10(a)(1) and 108.29(a)(2).
108.215(b)(1) and (2)	108.10(b).
108.215(c)	108.10(a)(2) and (c).
108.217(a) and (b)	108.15(a) and (b).
108.219(a)	108.11(a) and (b).
108.219(b)	108.11(a) and (b).
108.219(c)	108.11(e).
108.219(d)	New.
108.221(a)(1)	108.21(a).
108.221(a)(2)	108.21(e).
108.221(a)(3)	New.
108.221(b)	New.
108.221(c)	New
108.221(d)(1) and (2)	108.21(a)(5).
108.221(d)(3)	108.21(a)(3).
108.221(e)(1)	108.21(a)(2).
108.221(e)(2)	New.
108.221(e)(3)	108.21(a)(6)(ii).
108.221(e)(4)	108.21(a)(8).
108.221(e)(5)	108.21(c).
108.221(f)	108.21(7).
108.221(g)	New.
108.221(h)	108.21(b).
108.223(a)	108.11(a).
108.223(b)–(d)	108.14(a)–(c).
108.223(e)	108.11(a)(4).
108.223(f)	New.
108.223(g)	108.7(c)(4).
108.223(h)	New.
108.225 introductory text.	108.13 introductory text.
108.225(a)	New.
108.225(b)	108.13(a).
108.225(c)	108.13(d).
108.227	New.
108.229	108.33.
108.231	New.
108.233(a)	108.23(a).
108.233(b) and (c)	108.23(b).
108.235(a)	108.23(a).
108.235(b)	108.29(a)(1).

DERIVATION TABLE—Continued

New Section	Old Section
108.301	New.
108.303(a)(1) and (2)	108.19(a).
108.303(a)(3)	New.
108.303(b)	108.19(b).
108.303(c)	New.
108.303(d)	108.19(c).
108.305(a)	New.
108.305(b)–(d)	108.18(a)–(c).
108.305(e)	New
108.305(f)	108.18(d).

List of Subjects in 14 CFR Part 108

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

The Amendment

In consideration of the foregoing, the Federal Aviation Administration revises 14 CFR part 108 to read as follows:

PART 108—AIRCRAFT OPERATOR SECURITY

Subpart A—General

Sec.
108.1 Applicability.
108.3 Definitions.
108.5 Inspection authority.
108.7 Falsification.
108.9 Security responsibilities of employees and other persons.

Subpart B—Security Program

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

Subpart C—Operations

108.201 Screening of persons and accessible property.
108.203 Acceptance and screening of checked baggage.
108.205 Acceptance and screening of cargo.
108.207 Use of metal detection devices.
108.209 Use of X-ray systems.
108.211 Use of explosives detection systems.
108.213 Employment standards for screening personnel.
108.215 Security coordinators.
108.217 Law enforcement personnel.
108.219 Carriage of accessible weapons.
108.221 Carriage of prisoners under the control of armed law enforcement officers.
108.223 Transportation of Federal Air Marshals.
108.225 Security of aircraft and facilities.
108.227 Exclusive Area Agreement.
108.229 Employment history, verification, and criminal history records checks.
108.231 Airport-approved and exclusive area personnel identification systems.
108.233 Security coordinators and crewmembers, training.
108.235 Training and knowledge for persons with security-related duties.

Subpart D—Threat and Threat Response

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

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

Subpart A—General

§ 108.1 Applicability.

(a) This part prescribes aviation security rules governing the following:

(1) The operations of aircraft operators holding operating certificates for scheduled passenger operations, public charter passenger operations, private charter passenger operations, and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

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

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

(4) Each person who files an application or makes entries into any record or report that is kept, made, or used to show compliance under this part, or to exercise any privileges under this part.

(5) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Assistant Administrator for Civil Aviation Security.

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

§ 108.3 Definitions.

The definitions in part 107 of this chapter apply to this part. For purposes of this part, part 107 of this chapter, and security programs under parts 107 and 108 of this chapter, the following definitions also apply:

Aircraft operator means a holder of an air carrier operating certificate or an operating certificate under part 119 of this chapter that conducts operations described in § 108.101 (a), (b), (c), and (e).

Aircraft operator security program means a security program approved by the Administrator under this part.

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

Cargo means 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. Aircraft operator security programs further define the term cargo.

Checked baggage means property tendered by or on behalf of a passenger and accepted by an aircraft operator for transport, which is inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

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

Private charter means any aircraft operator flight—

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

(2) For which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement conducted under contract with the Government of the United States or the government of a foreign country.

Public charter means any charter flight that is not a private charter.

Scheduled passenger operation means an air transportation operation (a flight) from identified air terminals at a set time, which is held out to the public and announced by timetable or schedule, published in a newspaper, magazine, or other advertising medium.

Sterile area means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with a security program.

§ 108.5 Inspection authority.

(a) Each aircraft operator shall allow the Administrator, at any time or place, to make any inspections or tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This part, parts 107, 109, 129, and 191 of this chapter and any security program approved under those parts; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each aircraft operator shall provide evidence of compliance with this part and its security program, including copies of records.

(c) The Administrator may enter and be present within secured areas, AOA's, and SIDA's without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as the Administrator may direct.

(d) At the request of the Administrator and the completion of SIDA training as required in a security program, each aircraft operator shall promptly issue to a FAA Special Agent access and identification media to provide the FAA Special Agent with unescorted access to, and movement within, areas controlled by the aircraft operator under an exclusive area agreement.

§ 108.7 Falsification.

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

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

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

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

§ 108.9 Security responsibilities of employees and other persons.

(a) No person may tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this part.

(b) No person may enter, or be present within, a secured area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence in, such areas.

(c) No person may use, allow to be used, or cause to be used any airport-approved or aircraft operator-issued access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's, in any other manner than that for which it was issued by the appropriate authority under this part, or part 107 or part 129 of this chapter.

(d) The provisions of this section do not apply to persons authorized by an airport operator, aircraft operator, or foreign air carrier in accordance with its security program, or by the Administrator to conduct inspections for compliance with this part, part 107, or part 129 of this chapter, or 49 U.S.C. Subtitle VII, while they are conducting inspections.

Subpart B—Security Program

§ 108.101 Adoption and implementation.

(a) *Full program.* Each aircraft operator shall carry out Subparts C and D of this part and shall adopt and carry out a security program that meets the requirements of § 108.103 for any of the following operations:

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

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

(b) *Private charter program.* Each aircraft operator shall carry out § § 108.201, 108.207, 108.209, 108.213, 108.215, 108.217, 108.219, 108.229, 108.233, 108.235, 108.303, and 108.305 and shall adopt and carry out a security program that meets the applicable requirements of § 108.103 for any private charter operation in which passengers are enplaned from or deplaned into a sterile area.

(c) *Partial program—adoption.* Each aircraft operator shall carry out the requirements specified in paragraph (d) of this section for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of more than 30 and less than 61 seats that does not enplane from or deplane into a sterile area.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

(d) *Partial program—content.* For operations described in paragraph (c) of this section, the aircraft operator shall carry out the following, and shall adopt and carry out a security program that meets the applicable requirements of § 108.103(c):

(1) The requirements of § § 108.215, 108.217, 108.219, 108.235, 108.301, 108.303, and 108.305.

(2) Such other provisions of Subparts C and D of this part as the Administrator has approved upon request.

(3) The remaining requirements of Subparts C and D of this part when the Administrator notifies the aircraft operator in writing that a security threat exists concerning that operation.

(e) *Limited program.* The Administrator may approve a security program after receiving a request by an aircraft operator, holding a certificate under part 119 of this chapter other than one identified in paragraphs (a), (b), or (c) of this section. The aircraft operator shall—

(1) Carry out selected provisions of Subparts C and D of this part,

(2) Carry out § 108.305, as specified in its security program, and

(3) Adopt and carry out a security program that meets the applicable requirements of § 108.103(c).

§ 108.103 Form, content, and availability.

(a) *General requirements.* Each security program shall:

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

(2) Be in writing and signed by the aircraft operator or any person delegated authority in this matter.

(3) Be approved by the Administrator.

(b) *Availability.* Each aircraft operator having a security program shall:

(1) Maintain an original copy of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each airport served. An electronic version of the program is adequate.

(3) Make a copy of the security program available for inspection upon request of the Administrator.

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

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

(c) *Content.* The security program shall include, as specified for that aircraft operator in § 108.101, the following:

(1) The procedures and description of the facilities and equipment used to perform screening functions specified in § 108.201 regarding persons and their accessible property.

(2) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.203 regarding the acceptance and screening of checked baggage.

(3) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.205 regarding the acceptance and screening of cargo.

(4) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.207 regarding the use of metal detection devices.

(5) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.209 regarding the use of x-ray systems.

(6) The procedures and description of the facilities and equipment used to comply with the requirements of § 108.211 regarding the use of explosives detection systems.

(7) The procedures used to comply with the requirements of § 108.213 regarding standards for screening personnel.

(8) The procedures used to comply with the requirements of § 108.215 regarding the responsibilities of security coordinators. The names of the Aircraft Operator Security Coordinator (AOSC) and any alternate, and the means for contacting the AOSC(s) on a 24-hour basis, as provided in § 108.215.

(9) The procedures used to comply with the requirements of § 108.217 regarding the requirements for law enforcement personnel.

(10) The procedures used to comply with the requirements of § 108.219 regarding carriage of accessible weapons.

(11) The procedures used to comply with the requirements of § 108.221 regarding carriage of prisoners under the control of armed law enforcement officers.

(12) The procedures used to comply with the requirements of § 108.223 regarding transportation of Federal Air Marshals.

(13) The procedures and description of the facilities and equipment used to perform the aircraft and facilities control function specified in § 108.225.

(14) The specific locations where the air carrier has entered into an exclusive area agreement under § 108.227.

(15) The procedures used to comply with the applicable requirements of § 108.229 regarding employment history investigations.

(16) The procedures used to comply with the requirements of § 108.231 regarding personnel identification systems.

(17) The procedures and syllabi used to accomplish the training required under § 108.233.

(18) The procedures and syllabi used to accomplish the training required under § 108.235.

(19) An aviation security contingency plan as specified under § 108.301.

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

§ 108.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the Assistant Administrator, each aircraft operator required to have a security program under this part shall submit its proposed security program to the Assistant Administrator for approval at least 90 days before the date of intended passenger operations. The proposed security program shall meet the requirements applicable to its operation as described in § 108.101. Such requests will be processed as follows:

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

(2) The aircraft operator may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration shall be filed with the Assistant Administrator.

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

directing the Assistant Administrator to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an aircraft operator.* An aircraft operator may submit a request to the Assistant Administrator to amend its security program as follows:

(1) The request for an amendment 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.

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

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

(4) Within 30 days after receiving a denial, the aircraft operator may petition the Administrator to reconsider the denial. A petition for reconsideration shall be filed with the Assistant Administrator.

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

(6) Any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

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

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

(2) After considering all relevant material, the Assistant Administrator notifies the aircraft operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the aircraft operator receives the notice of amendment, unless the aircraft operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The aircraft operator shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

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

(d) *Emergency amendments.* 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, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the aircraft operator receives notice of it. In such a case, the Assistant Administrator will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The aircraft operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

Subpart C—Operations

§ 108.201 Screening of persons and accessible property.

(a) *General requirements.* Each aircraft operator shall use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage of any explosive, incendiary, or deadly or dangerous weapon on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) *Screening of persons and accessible property.* Except as provided in its security program, each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program for detecting explosives, incendiaries, and deadly or dangerous weapons to inspect each person entering a sterile area at each preboard screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control.

(c) *Submission to screening.* No person may enter a sterile area without submitting to the screening of his or her person and accessible property in accordance with the procedures being applied to control access to that area under this section.

(d) *Refusal to transport.* Each aircraft operator shall deny entry into a sterile area and shall refuse to transport—

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

(e) *Explosive, incendiary, deadly or dangerous weapon: Prohibitions.* (1) Except as provided in § § 108.219, 108.221, and 108.223, no aircraft operator may permit any person to have an explosive, incendiary, or deadly or dangerous weapon, on or about the individual's person or accessible property when onboard an aircraft.

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

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

(ii) When entering or in a sterile area; or

(iii) When attempting to board or onboard an aircraft identified in § 108.101.

(f) *Explosive, incendiary, deadly or dangerous weapon: Exceptions.* The provisions of paragraph (d)(2) of this section with respect to firearms and weapons does not apply to the following:

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

(2) Persons authorized to carry a weapon in accordance with § § 108.219, 108.221, 108.223, or 129.27.

(3) Persons authorized to carry a weapon in a sterile area under a security program.

(g) *Staffing.* Each aircraft operator shall staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

§ 108.203 Acceptance and screening of checked baggage.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board aircraft in checked baggage.

(b) *Acceptance.* Each aircraft operator shall ensure that checked baggage carried in the aircraft is received by its authorized aircraft operator representative.

(c) *Control.* Each aircraft operator shall use the procedures in its security program to control checked baggage that it accepts for transport on an aircraft, in a manner that:

(1) Prevents the unauthorized carriage of any explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(d) *Refusal to transport.* Each aircraft operator shall refuse to transport any person's checked baggage or property if the person does not consent to a search or inspection of that checked baggage or property in accordance with paragraph (a) of this section.

(e) *Firearms in checked baggage.* No aircraft operator may knowingly permit any person to transport, nor may a person transport or offer for transport in checked baggage:

(1) Any loaded firearm(s);

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing before checking the baggage that any firearm carried in the baggage is unloaded;

(ii) The firearm is carried in a hard-sided container;

(iii) The container in which it is carried is locked, and only the person checking the baggage retains the key or combination; and

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

(3) Any unauthorized explosive or incendiary.

(f) *Loaded firearm.* For the purpose of this section, a loaded firearm means a firearm, which has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

(g) *Ammunition.* This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

§ 108.205 Acceptance and screening of cargo.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board a passenger aircraft in cargo.

(b) *Control.* Each aircraft operator shall use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

(1) Prevents the carriage of any unauthorized explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(c) *Refusal to transport.* Each aircraft operator shall refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with paragraph (a) of this section.

§ 108.207 Use of metal detection devices.

(a) No aircraft operator may use a metal detection device within the United States or under the aircraft operator's operational control outside the United States to inspect persons, unless specifically authorized under a security program under this part. No aircraft operator may use such a device contrary to its security program.

(b) Metal detection devices shall meet the calibration standards established by the FAA.

§ 108.209 Use of X-ray systems.

(a) No aircraft operator may use any X-ray system within the United States or under the aircraft operator's operational control outside the United States to inspect accessible property or checked baggage, unless specifically authorized under a security program under this part. No aircraft operator may use such a system in a manner contrary to its security program. The Administrator authorizes aircraft operators to use X-ray systems for inspecting accessible property or checked baggage under a security program if the aircraft operator shows that—

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

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of explosives, incendiaries, and deadly or dangerous weapons; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792–88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

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

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

(d) No aircraft operator 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 aircraft operator may use any X-ray system to inspect accessible property or checked baggage unless a sign is posted in a conspicuous place at the screening checkpoint or where checked baggage is accepted which notifies individuals that such items are being inspected by an X-ray and advises them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one milliroentgen during the inspection, the aircraft operator shall post a sign that advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

(f) Each aircraft operator 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 aircraft operator's principal business office; and

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

(g) The American Society for Testing and Materials (ASTM) Standard F792–88 (Reapproved 1993), ''Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas,'' was approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. ASTM Standard F792–88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at *http://dms.dot.gov/search* (under docket number FAA–2001–8725). Copies of the standard may be examined also at the Office of the Federal Register, 800 North Capitol St., NW, Suite 700, Washington, DC. In addition, ASTM Standard F792–88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

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

§ 108.211 Use of explosives detection systems.

(a) If the Administrator so requires by an amendment to an aircraft operator's security program, each aircraft operator required to conduct screening under a security program shall use an explosives detection system approved by the Administrator to screen checked baggage on international flights.

(b) No aircraft operator may use an explosives detection system that uses X-ray technology to inspect checked baggage unless a sign is posted in a conspicuous place where checked baggage is accepted, which notifies individuals that such items are being inspected by an explosives detection system and advises them to remove all X-ray, scientific, and high-speed film from checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an explosives detection system. If the explosives detection system exposes any checked baggage to more than one milliroentgen during the inspection the aircraft operator shall post a sign which advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an explosives detection system.

§ 108.213 Employment standards for screening personnel.

(a) No aircraft operator may use any person to perform any screening function, unless that person has:

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

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

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

(ii) 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;

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

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

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

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

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

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

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

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

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the aircraft operator's security program, except as provided in paragraph (b) of this section.

(b) The aircraft operator may use a person who has not completed the training required by paragraph (a)(4) of this section during the on-the-job portion of training to perform security functions provided that the person:

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No aircraft operator 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 aircraft operator's security program.

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

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

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

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

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

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

aircraft operator's passengers are undergoing security screening.

§ 108.215 Security coordinators.

(a) *Aircraft Operator Security Coordinator.* Each aircraft operator shall designate and use an Aircraft Operator Security Coordinator (AOSC). The AOSC and any alternates shall be appointed at the corporate level and shall serve as the aircraft operator's primary contact for security-related activities and communications with the FAA, as set forth in the security program. Either the AOSC, or an alternate AOSC, shall be available on a 24-hour basis.

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

(1) A review of all security-related functions for effectiveness and compliance with this part, the aircraft operator's security program, and applicable Security Directives.

(2) Immediate initiation of corrective action for each instance of noncompliance with this part, the aircraft operator's security program, and applicable Security Directives. At foreign airports where such security measures are provided by an agency or contractor of a host government, the aircraft operator shall notify the Administrator for assistance in resolving noncompliance issues.

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

§ 108.217 Law enforcement personnel.

(a) The following applies to operations at airports within the United States not required to hold a security program under part 107 of this chapter:

(1) For operations described in § 108.101(a) each aircraft operator shall provide for law enforcement personnel meeting the qualifications and standards specified in §§ 107.215 and 107.217 of this chapter.

(2) For operations described in § 108.101(b) or (c) each aircraft operator shall—

(i) Arrange for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to an incident; and

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

(b) The following applies to operations at airports required to hold security programs under part 107 of this chapter. For operations described in § 108.101(c), each aircraft operator shall—

(1) Arrange with the airport operator for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to incidents; and

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

§ 108.219 Carriage of accessible weapons.

(a) *Flights for which screening is conducted.* The provisions of § 108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a law enforcement officer (LEO) aboard a flight for which screening is required if the requirements of this section are met. This paragraph (a) does not apply to a Federal Air Marshal on duty status under § 108.223.

(1) Unless otherwise authorized by the Administrator, the armed LEO shall meet the following requirements:

(i) Be a Federal law enforcement officer or a full-time municipal, county, or state law enforcement officer who is a direct employee of a government agency.

(ii) Be sworn and commissioned to enforce criminal statutes or immigration statutes.

(iii) Be authorized by the employing agency to have the weapon in connection with assigned duties.

(iv) Has completed the training program ''Law Enforcement Officers Flying Armed.''

(2) In addition to the requirements of paragraph (a)(1) of this section, the armed LEO must have a need to have the weapon accessible from the time he or she would otherwise check the weapon until the time it would be claimed after deplaning. The need to have the weapon accessible shall be determined by the employing agency, department, or service and be based on one of the following:

(i) The provision of protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function.

(ii) The conduct of a hazardous surveillance operation.

(iii) On official travel required to report to another location, armed and prepared for duty.

(iv) Employed as a Federal LEO, whether or not on official travel, and armed in accordance with an agency-wide policy governing that type of travel established by the employing agency by directive or policy statement.

(v) Control of a prisoner, in accordance with § 108.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner.

(vi) FAA Federal Air Marshal on duty status.

(3) The armed LEO shall comply with the following notification requirements:

(i) All armed LEOs shall notify the aircraft operator of the flight(s) on which he or she needs to have the weapon accessible at least 1 hour, or in an emergency as soon as practicable, before departure.

(ii) Identify himself or herself to the aircraft operator by presenting credentials that include a clear full-face picture, the signature of the armed LEO, and the signature of the authorizing official of the agency, service, or department or the official seal of the agency, service, or department. A badge, shield, or similar device may not be used, or accepted, as the sole means of identification.

(iii) If the armed LEO is a State, county, or municipal law enforcement officer, he or she shall present an original letter of authority, signed by an authorizing official from his or her employing agency, service or department, confirming the need to travel armed and detailing the itinerary of the travel while armed.

(iv) If the armed LEO is an escort for a foreign official then this paragraph (a)(3) may be satisfied by a State Department notification.

(4) The aircraft operator shall do the following:

(i) Obtain information or documentation required in paragraphs (a)(3)(ii), (iii), and (iv) of this section.

(ii) Advise the armed LEO, before boarding, of the aircraft operator's procedures for carrying out this section.

(iii) Have the LEO confirm he/she has completed the training program ''Law Enforcement Officers Flying Armed'' as required by the FAA, unless otherwise authorized by the Administrator.

(iv) Ensure that the identity of the armed LEO is known to the appropriate personnel who are responsible for security during the boarding of the aircraft.

(v) Notify the pilot in command and other appropriate crewmembers, of the location of each armed LEO aboard the

aircraft. Notify any other armed LEO of the location of each armed LEO, including FAM's. Under circumstances described in the security program, the aircraft operator must not close the doors until the notification is complete.

(vi) Ensure that the information required in paragraphs (a)(3)(i) and (ii) of this section is furnished to the flight crew of each additional connecting flight by the Ground Security Coordinator or other designated agent at each location.

(b) *Flights for which screening is not conducted.* The provisions of § 108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a LEO aboard a flight for which screening is not required if the requirements of paragraphs (a)(1), (3), and (4) of this section are met.

(c) *Alcohol.* (1) No aircraft operator may serve any alcoholic beverage to an armed LEO.

(2) No armed LEO may:

(i) Consume any alcoholic beverage while aboard an aircraft operated by an aircraft operator.

(ii) Board an aircraft armed if they have consumed an alcoholic beverage within the previous 8 hours.

(d) *Location of weapon.* (1) Any person traveling aboard an aircraft while armed shall at all times keep their weapon:

(i) Concealed and out of view, either on their person or in immediate reach, if the armed LEO is not in uniform.

(ii) On their person, if the armed LEO is in uniform.

(2) No person may place a weapon in an overhead storage bin.

§ 108.221 Carriage of prisoners under the control of armed law enforcement officers.

(a) This section applies as follows:

(1) This section applies to the transport of prisoners under the escort of an armed law enforcement officer.

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

(3) This section does not apply to the escort of non-violent detainees of the Immigration and Naturalization Service. This section does not apply to persons who may be traveling with a prisoner and armed escort, such as the family of a deportee who is under armed escort.

(b) For the purpose of this section:

(1) *High risk prisoner* means a prisoner who is an exceptional escape risk, as determined by the law enforcement agency, and charged with, or convicted of, a violent crime.

(2) *Low risk prisoner* means any prisoner who has not been designated as ''high risk.''

(c) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless, in addition to the requirements in § 108.219, the following requirements are met:

(1) The agency responsible for control of the prisoner has determined whether the prisoner is considered a high risk or a low risk.

(2) Unless otherwise authorized by the Administrator, no more than one high risk prisoner shall be carried on the aircraft.

(d) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless the following staffing requirements are met:

(1) A minimum of one armed law enforcement officer shall control a low risk prisoner on a flight that is scheduled for 4 hours or less. No more than two low risk prisoners may be carried under the control of any one armed law enforcement officer.

(2) A minimum of two armed law enforcement officers shall control a low risk prisoner on a flight that is scheduled for more than 4 hours. No more than two low risk prisoners may be carried under the control of any two armed law enforcement officers.

(3) For high-risk prisoners:

(i) For one high-risk prisoner on a flight: A minimum of two armed law enforcement officers shall control a high risk prisoner. No other prisoners may be under the control of those two armed law enforcement officers.

(ii) If the Administrator has authorized more than one high-risk prisoner to be on the flight under paragraph (c)(2) of this section, a minimum of at least one armed law enforcement officer for each prisoner and one additional armed law enforcement officer shall control the prisoners. No other prisoners may be under the control of those armed law enforcement officers.

(e) An armed law enforcement officer who is escorting a prisoner—

(1) Shall notify the aircraft operator at least 24 hours before the scheduled departure, or, if that is not possible as far in advance as possible of the following—

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

(ii) Whether or not the prisoner is considered to be a high risk or a low risk.

(2) Shall arrive at the check-in counter at least 1 hour before to the scheduled departure.

(3) Shall assure the aircraft operator, before departure, that each prisoner under the control of the officer(s) has been searched and does not have on or about his or her person or property anything that can be used as a deadly or dangerous weapon.

(4) Shall be seated between the prisoner and any aisle.

(5) Shall accompany the prisoner at all times, and keep the prisoner under control while aboard the aircraft.

(f) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft unless the following are met:

(1) When practicable, the prisoner shall be boarded before any other boarding passengers and deplaned after all other deplaning passengers.

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

(g) Each armed law enforcement officer escorting a prisoner and each aircraft operator shall ensure that the prisoner is restrained from full use of his or her hands by an appropriate device that provides for minimum movement of the prisoner's hands, and shall ensure that leg irons are not used.

(h) No aircraft operator may provide a prisoner under the control of a law enforcement officer—

(1) With food or beverage or metal eating utensils unless authorized to do so by the armed law enforcement officer.

(2) With any alcoholic beverage.

§ 108.223 Transportation of Federal Air Marshals.

(a) A Federal Air Marshal on duty status may have a deadly or dangerous weapon accessible while aboard an aircraft for which screening is required.

(b) Each aircraft operator shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation, and public charter passenger operation designated by the Administrator.

(c) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on duty, including positioning and repositioning flights. When a Federal Air Marshal is assigned to a scheduled flight that is canceled for any reason, the aircraft operator shall carry that Federal Air Marshal without charge on another flight as designated by the Administrator.

(d) Each aircraft operator shall assign the specific seat requested by a Federal Air Marshal who is on duty status. If another LEO is assigned to that seat or

requests that seat, the aircraft operator shall inform the Federal Air Marshal. The Federal Air Marshal will coordinate seat assignments with the other LEO.

(e) The Federal Air Marshal identifies himself or herself to the aircraft operator by presenting credentials that include a clear, full-face picture, the signature of the Federal Air Marshal, and the signature of the Administrator. A badge, shield, or similar device may not be used or accepted as the sole means of identification.

(f) The requirements of § 108.219(a) do not apply for a Federal Air Marshal on duty status.

(g) Each aircraft operator shall restrict any information concerning the presence, seating, names, and purpose of Federal Air Marshals at any station or on any flight to those persons with an operational need to know.

(h) Law enforcement officers authorized to carry a weapon during a flight will be contacted directly by a Federal Air Marshal who is on that same flight.

§ 108.225 Security of aircraft and facilities.

Each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation:

(a) Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with § 107.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.

§ 108.227 Exclusive Area Agreement.

(a) An aircraft operator that has entered into an exclusive area agreement with an airport operator, under § 107.111 of this chapter shall carry out that exclusive area agreement.

(b) The aircraft operator shall list in its security program the locations at which it has entered into exclusive area agreements with an airport operator.

(c) The aircraft operator shall provide the exclusive area agreement to the Administrator upon request.

(d) Any exclusive area agreements in effect on November 14, 2001 shall meet the requirements of this section and § 107.111 of this chapter no later than November 14, 2002.

§ 108.229 Employment history, verification, and criminal history records checks.

(a) *Scope.* The following persons are within the scope of this section:

(1) Each employee or contractor employee covered under a certification made to an airport operator, pursuant to § 107.209(n)(1) of this chapter, made on or after November 24, 1998.

(2) Each individual issued aircraft operator identification media that one or more airports accept as airport approved media for unescorted access within a security identification display area (SIDA) as described in § 107.205 of this chapter.

(3) Each individual assigned, after November 24, 1998, to perform at locations within the United States the following functions:

(i) Screen passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(ii) Serve as an immediate supervisor (checkpoint security supervisor (CSS)), or the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(3)(i) of this section.

(b) *Employment history investigations required.* Each aircraft operator shall ensure that, for each individual described in paragraph (a) of this section, the following requirements are met:

(1) The individual has satisfactorily undergone Part 1 of an employment history investigation. Part 1 consists of a review of the previous 10-years of employment history and verification of the 5 employment years preceding the date the employment history investigation is initiated as provided in paragraph (c) of this section; and

(2) If required by paragraph (c)(5) of this section, the individual has satisfied Part 2 of the employment history investigation. Part 2 is the process to determine if the individual has a criminal record. To satisfy Part 2 of the investigation the criminal records check shall not disclose that the individual has been convicted or found not guilty by reason of insanity, in any jurisdiction, during the 10 years ending on the date of such investigation, of any of the crimes listed as follows:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation, 49 U.S.C. 46306;

(ii) Interference with air navigation, 49 U.S.C. 46308;

(iii) Improper transportation of a hazardous material, 49 U.S.C. 46312;

(iv) Aircraft piracy, 49 U.S.C. 46502;

(v) Interference with flightcrew members or flight attendants, 49 U.S.C. 46504;

(vi) Commission of certain crimes aboard aircraft in flight, 49 U.S.C. 46506;

(vii) Carrying a weapon or explosive aboard aircraft, 49 U.S.C. 46505;

(viii) Conveying false information and threats, 49 U.S.C. 49 46507;

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States, 49 U.S.C. 46502(b);

(x) Lighting violations involving transporting controlled substances, 49 U.S.C. 46315;

(xi) Unlawful entry into an aircraft or airport area that serves aircraft operators or foreign air carriers contrary to established security requirements, 49 U.S.C. 46314;

(xii) Destruction of an aircraft or aircraft facility, 18 U.S.C. 32;

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson; or

(xxv) Conspiracy or attempt to commit any of the aforementioned criminal acts.

(3) If an individual admits to a conviction, or to having been found not guilty by reason of insanity, in any jurisdiction within the preceding ten years of a crime listed in paragraph (b)(2) of this section, the investigative process shall end and the individual shall not be granted unescorted access or assigned to any functions listed in paragraph (a)(3) of this section.

(c) *Investigative steps.* Part 1 of the employment history investigations shall be completed on all persons described in paragraph (a) of this section. If required by paragraph (c)(5) of this section, Part 2 of the employment history investigation shall also be completed on all persons listed in paragraph (a) of this section.

(1) The individual shall provide the following information on an application:

(i) The individual's full name, including any aliases or nicknames;

(ii) The dates, names, phone numbers, and addresses of previous employers, with explanations for any gaps in employment of more than 12

consecutive months, during the previous 10-year period;

(iii) Any convictions during the previous 10-year period of the crimes listed in paragraph (b)(2) of this section.

(2) The aircraft operator shall include on the application form a notification that the individual will be subject to an employment history verification and possibly a criminal records check.

(3) The aircraft operator shall verify the identity of the individual through the presentation of two forms of identification, one of which shall bear the individual's photograph.

(4) The aircraft operator shall verify the information on the most recent 5 years of employment history required under paragraph (c)(1)(ii) of this section. Information shall be verified in writing, by documentation, by telephone, or in person.

(5) If one or more of the conditions (triggers) listed in paragraphs (c)(5)(i) through (iv) of this section exist, the employment history investigation shall not be considered complete unless Part 2 is accomplished. Only the aircraft operator may initiate Part 2. Part 2 consists of a comparison of the individual's fingerprints against the fingerprint files of known criminals maintained by the Federal Bureau of Investigation (FBI). The comparison of the individual's fingerprints shall be processed through the FAA. The aircraft operator may request a check of the individual's fingerprint-based criminal record only if one or more of the following conditions exist:

(i) The individual does not satisfactorily account for a period of unemployment of 12 consecutive months or more during the previous 10-year period.

(ii) The individual is unable to support statements made on the application form.

(iii) There are significant inconsistencies in the information provided on the application.

(iv) Information becomes available to the aircraft operator during the investigation indicating a possible conviction for one of the crimes listed in paragraph (b)(2) of this section.

(d) *Individual notification.* Prior to commencing the criminal records check, the aircraft operator shall notify the affected individuals and identify a point of contact for follow-up. An individual who chooses not to submit fingerprints may not be granted unescorted access privilege and may not be allowed to hold screener or screener supervisory positions.

(e) *Fingerprint processing.* If a fingerprint comparison is necessary under paragraph (c)(5) of this section to complete the employment history investigation the aircraft operator shall collect and process fingerprints in the following manner:

(1) One set of legible and classifiable fingerprints shall be recorded on fingerprint cards approved by the FBI and distributed by the FAA for this purpose.

(2) The fingerprints shall be obtained from the individual under direct observation by the aircraft operator or a law enforcement officer. Individuals submitting their fingerprints shall not take possession of their fingerprint card after they have been fingerprinted.

(3) The identity of the individual shall be verified at the time fingerprints are obtained. The individual shall present two forms of identification, one of which shall bear the individual's photograph.

(4) The fingerprint card shall be forwarded to FAA at the location specified by the Administrator.

(5) Fees for the processing of the criminal records checks are due upon application. Aircraft operators shall submit payment through corporate check, cashier's check, or money order made payable to ''U.S. FAA,'' at the designated rate for each fingerprint card. Combined payment for multiple applications is acceptable. The designated rate for processing the fingerprint cards is available from the local FAA security office.

(f) *Determination of arrest status.* In conducting the criminal record checks required by this section, the aircraft operator shall not consider the employment history investigation complete unless it investigates arrest information for the crimes listed in paragraph (b)(2) of this section for which no disposition has been recorded and makes a determination that the arrest did not result in a disqualifying conviction.

(g) *Availability and correction of FBI records and notification of disqualification.* (1) At the time Part 2 is initiated and the fingerprints are collected, the aircraft operator shall notify the individual that a copy of the criminal record received from the FBI will be made available to the individual if requested in writing. When requested in writing, the aircraft operator shall make available to the individual a copy of any criminal record received from the FBI.

(2) Prior to making a final decision to deny authorization to an individual described in paragraph (a) of this section, the aircraft operator shall advise the individual that the FBI criminal record discloses information that would disqualify him/her from positions covered under this rule and provide him/her with a copy of their FBI record if requested.

(3) The aircraft operator shall notify an individual that a final decision has been made to forward or not forward a letter of certification for unescorted access to the airport operator, or to grant or deny the individual authority to perform screening functions listed under paragraph (a)(3) of this section.

(h) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his/her record before the aircraft operator makes any decision to withhold his/her name from a certification, or not grant authorization to perform screening functions subject to the following conditions:

(1) Within 30 days after being advised that the criminal record received from the FBI discloses disqualifying information, the individual shall notify the aircraft operator, in writing, of his/her intent to correct any information believed to be inaccurate.

(2) Upon notification by an individual that the record has been corrected, the aircraft operator shall obtain a copy of the revised FBI record prior to making a final determination.

(3) If no notification is received within 30 days, the aircraft operator may make a final determination.

(i) *Limits on dissemination of results.* Criminal record information provided by the FBI shall be used solely for the purposes of this section, and no person may disseminate the results of a criminal record check to anyone other than:

(1) The individual to whom the record pertains or that individual's authorized representative;

(2) Aircraft operator officials with a need to know; and

(3) Others designated by the Administrator.

(j) *Employment status while awaiting criminal record checks.* Individuals who have submitted their fingerprints and are awaiting FBI results may perform work details under the following conditions:

(1) Those seeking unescorted access to the SIDA shall be escorted by someone who has unescorted SIDA access privileges;

(2) Those applicants seeking positions covered under paragraph (a)(3)(i) of this section, may not exercise any independent judgments regarding those functions.

(k) *Recordkeeping.* (1) The aircraft operator shall physically maintain and control Part 1 employment history

investigation file until 180 days after the termination of the individual's authority for unescorted access or termination from positions covered under paragraph (a)(3) of this section. Part 1 of the employment history investigation, completed on screening personnel shall be maintained at the airport where they perform screening functions. Part 1 of the employment history investigation file shall consist of the following:

(i) The application;

(ii) The employment verification information obtained by the employer;

(iii) The names of those individuals from whom the employment verification information was obtained;

(iv) The date and the method of how the contact was made; and

(v) Any other information as required by the Administrator.

(2) The aircraft operator shall physically maintain, control, and when appropriate, destroy Part 2 the criminal record file, for each individual for whom a fingerprint comparison has been made. Part 2 shall be maintained for 180 days after the termination of the individual's authority for unescorted access or after the individual ceases to perform screening functions. Only direct aircraft operator employees may carry out Part 2 responsibilities. Part 2 shall consist of the following:

(i) The results of the record check; or

(ii) Certification from the aircraft operator that the check was completed and did not uncover a disqualifying conviction.

(3) The files required by this paragraph shall be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(l) *Continuing responsibilities.* (1) Any individual authorized to have unescorted access privilege to the SIDA or who performs functions covered under paragraph (a)(3) of this section, who is subsequently convicted of any of the crimes listed in paragraph (b)(2) of this section shall, within 24 hours, report the conviction to the aircraft operator and surrender the SIDA access medium or any employment related identification medium to the issuer.

(2) If information becomes available to the aircraft operator indicating that an individual has a possible conviction for one of the disqualifying crimes in paragraph (b)(2) of this section, the aircraft operator shall determine the status of the conviction and, if the conviction is confirmed:

(i) Immediately revoke access authorization for unescorted access to the SIDA; or

(ii) Immediately remove the individual from screening functions covered under paragraph (a)(3) of this section.

(m) *Aircraft operator responsibility.* The aircraft operator shall:

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigation for those whom the aircraft operator has made a certification to an airport operator under § 107.209(n)(1) of this chapter and for destroying the criminal record files when their maintenance is no longer required by paragraph (k)(2) of this section.

(2) Designate an individual(s) to maintain and control Part 1 of the employment history investigations of screeners whose files shall be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) to serve as the contact to receive notification from an individual applying for either unescorted access or those seeking to perform screening functions of his/her intent to seek correction of his/her criminal record with the FBI.

(4) Designate an individual(s) to maintain and control Part 2 of the employment history investigation file for all employees, contractors, or others who undergo a fingerprint comparison at the request of the aircraft operator.

(5) Audit the employment history investigations performed in accordance with this section. The audit process shall be set forth in the aircraft operator security program.

§ 108.231 Airport-approved and exclusive area personnel identification systems.

(a) Each aircraft operator shall establish and carry out a personnel identification system for identification media that are airport-approved, or identification media that are issued for use in an exclusive area. The system shall include the following:

(1) Personnel identification media that—

(i) Convey a full face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year, or sooner, as necessary to ensure the integrity and accountability of all identification media.

(v) As specified in the aircraft operator security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or unretrieved, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost or stolen.

(b) The aircraft operator may request approval of a temporary identification media system that meets the standards in § 107.211(b) of this chapter, or may arrange with the airport to use temporary airport identification media in accordance with that section.

(c) Each aircraft operator shall submit a plan to carry out this section to the Administrator no later than May 13, 2002. Each aircraft operator shall fully implement its plan no later than November 14, 2003.

§ 108.233 Security coordinators and crewmembers, training.

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

(b) No aircraft operator may use any person as an in-flight security coordinator or crewmember on any domestic or international flight unless, within the preceding 12-calendar months or within the time period specified in an Advanced Qualifications Program approved under SFAR 58, that person has satisfactorily completed the security training required by § 121.417(b)(3)(v) or § 135.331(b)(3)(v) of this chapter, and as specified in the aircraft operator's security program.

(c) With respect to training conducted under this section, whenever a person completes recurrent training within one

calendar month earlier, or one calendar month after the date it was required, that person is considered to have completed the training in the calendar month in which it was required.

§ 108.235 Training and knowledge for persons with security-related duties.

(a) No aircraft operator may use any direct or contractor employee to perform any security-related duties to meet the requirements of its security program unless that person has received training as specified in its security program including their individual responsibilities in § 108.9.

(b) Each aircraft operator shall ensure that individuals performing security-related duties for the aircraft operator have knowledge of the provisions of part 108, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's security program to the extent that such individuals need to know in order to perform their duties.

Subpart D—Threat and Threat Response

§ 108.301 Contingency plan.

Each aircraft operator shall adopt a contingency plan and shall:

(a) Implement its contingency plan when directed by the Administrator.

(b) Ensure that all information contained in the plan is updated annually and that appropriate persons are notified of any changes.

(c) Participate in an airport operator-sponsored exercise of the airport contingency plan or its equivalent, as provided in its security program.

§ 108.303 Bomb or air piracy threats.

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

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any measures to be applied;

(2) Ensure that the in-flight security coordinator notifies all crewmembers of the threat, any evaluation thereof, and any measures to be applied; and

(3) Immediately notify the appropriate airport operator.

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

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

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

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

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

(1) Immediately notify the appropriate airport operator.

(2) Inform all other aircraft operators and foreign air carriers at the threatened facility.

(3) Conduct a security inspection.

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

§ 108.305 Security Directives and Information Circulars.

(a) The Administrator may issue an Information Circular to notify aircraft operators of security concerns. When the Administrator determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, the Administrator issues a Security Directive setting forth mandatory measures.

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

(c) Each aircraft operator that receives a Security Directive shall—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to the Administrator.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the aircraft operator is unable to implement the measures in the Security Directive, the aircraft operator shall submit proposed alternative measures and the basis for submitting the alternative measures to the Administrator for approval. The aircraft operator shall submit the proposed alternative measures within the time prescribed in the Security Directive. The aircraft operator shall implement any alternative measures approved by the Administrator.

(e) Each aircraft operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to the Administrator. The Administrator may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular shall:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

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

Issued in Washington, DC, on July 2, 2001.

Jane F. Garvey,

Administrator.

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