

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 107 and 108**

[Docket No. 26522; Notice No. 91-9]

RIN 2120-AD95

Employment Standards**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to establish minimum standards for the hiring, continued employment and contracting for air carrier and airport employees engaged in security-related activities. Actions proposed in this notice respond to the Aviation Security Improvement Act of 1990 (Pub. L. 101-604). The proposed requirements are intended to enhance the effectiveness of U.S. civil aviation security systems in providing safety and security from terrorism and other criminal acts against civil aviation to passengers of U.S. air carriers.

DATES: Comments must be received on or before May 2, 1991.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26522, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26522. Comments may be examined in room 915G weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Robert J. Cammaroto, Office of Policy and Planning (ACP-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591; telephone (202) 267-7723.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will

be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in the notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing to have the FAA acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26522." The postcard will be dated, stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On December 21, 1988, Pan American World Airways Flight 103 was destroyed by a terrorist bomb while in flight above Lockerbie, Scotland. That tragedy resulted in the deaths of 259 passengers and crew aboard the Boeing 747, and 11 residents of Lockerbie on the ground. It was the worst disaster of its type in U.S. civil aviation history.

In response to the Pan Am 103 bombing, President Bush signed Executive Order 12686 on August 4, 1989, establishing the President's Commission on Aviation Security and Terrorism (Commission). The Commission was tasked not only to investigate the Pan Am 103 bombing, but to review and evaluate the state of U.S. civil aviation security systems.

The Commission's final report, filed on May 15, 1990, made several recommendations for improvement of the civil aviation security program conducted by the FAA's Office of Civil Aviation Security. The Commission's recommendations formed the basis of the Aviation Security Improvement Act

of 1990 (Pub. L. 101-604) (the Aviation Security Improvement Act), enacted on November 16, 1990.

Section 105(a) of the Aviation Security Improvement Act amends section 316 of the Federal Aviation Act of 1958 (Pub. L. 85-726) (FA Act) by adding a new subsection "(h)," captioned "Employment Standards." This subsection directs the FAA Administrator to prescribe minimum standards for the hiring and continued employment of air carrier and airport security personnel, including contractor personnel. The prescribed standards must address training and retraining requirements, language skills, staffing levels, and education levels.

The FAA proposes to amend parts 107 and 108 of the Federal Aviation Regulations (FAR) by adding minimum employment standards mandated under the Aviation Security Improvement Act. Part 107 prescribes FAA airport security regulations, while part 108 prescribes airplane operator security regulations. The FAR is a public document that is available to anyone. Thus, under the proposed rule, the FAA's general, minimum employment standards would be available to the public through the FAR. However, the security-sensitive, detailed implementing instructions would be set forth separately in FAA-approved, non-public security programs required of airport operators under § 107.3, and of air carriers under § 108.5. Those security programs are protected from disclosure under the provisions of FAR part 191, which implements section 316(d)(2) of the FA Act (49 U.S.C. 1357(d)(2)). In effect, section 316(d)(2) provides, among other things, that security-sensitive information may be withheld if its disclosure would be detrimental to the safety of persons traveling in air transportation.

Thus, while this rulemaking action proposes general requirements for minimum employment standards for airport operators and air carriers, the security-sensitive instructions tailored to the particular needs of each airport and air carrier and contained in FAA-approved security programs are not specified in the rule. Those instructions, which involve sensitive security requirements, must, however, be consistent with this rule.

Discussion of Proposed Rule**General**

Part 107 contains security requirements for airport operators. It addresses access control, law enforcement support, and the submission of airport security programs

for FAA approval. In addition to current airport security rules and procedures, section 105 of the Aviation Security Improvement Act mandates that the FAA Administrator prescribe employment standards for the hiring, and continued employment of airport security personnel, including contractor personnel, by not later than 270 days after the date of enactment (November 18, 1990). Although some airports have voluntarily instituted employment standards, the FAA does not require such standards through its current rules. The proposals in this rulemaking would enhance the current system.

Because training in airport security involves maintaining the integrity of employee identification systems, the proposed revisions to part 107 seek to improve various aspects of airport-issued identification media usage and systems. Specifically, the proposal would standardize training related to issuance of identification media for those airport operators that currently provide training, and would require training where it does not now exist. The proposal also would restrict an individual from using identification media which was not issued to him or her by airport authorities, and would require that records of training be maintained. Further, the proposal provides a vehicle to ensure the FAA's prompt and unobstructed access to evidence of compliance with the proposed requirements, as well as with all other aspects of the regulation. Lastly, the proposal requires the designation of an official at each airport subject to part 107 who would serve as the point of contact with the FAA for coordination, communications, and other activities. That official, the Airport Security Coordinator, would facilitate not only the implementation of this proposed rule, but would perform a similar role for the overall security program.

Section 105 of the Aviation Security Improvement Act also mandates that the FAA Administrator promulgate employment standards for air carrier security personnel. Part 108 prescribes security rules for domestic air carriers. The Commission report indicated that the FAA should place increased emphasis on the recruiting, training, and motivation of a qualified security work force. It recommended that the FAA take the lead in stressing the role of human factors in the security equation and that training be improved. The Aviation Security Improvement Act also requires improved personnel training, adequate staffing, and appropriate

education levels for air carrier security personnel.

The FAA proposes to amend part 108 to incorporate employment standards to implement this legislative mandate. While air carriers are currently required to develop and implement non-public, FAA-approved security programs in the same manner as airports, the proposed rulemaking is intended to establish the type of employment standards that would be required.

A major portion of this proposed rulemaking affects preboarding passenger screening as currently performed by U.S. air carriers in accordance with part 108 and their security programs. Foreign air carriers, regulated for security purposes by part 129 (§§ 129.25 through 129.27), are also required to conduct screening, and they often comply with that requirement by using checkpoints operated by U.S. carriers in accordance with part 108. However, a number of checkpoints are operated exclusively by and for foreign carriers. The FAA anticipates that revisions to part 129 and the foreign air carriers' security programs will be necessary to ensure consistency with the employment standards proposed in this rulemaking.

Section-by-Section Analysis

Section 107.7 Changed Conditions Affecting Security

The proposal makes an important technical modification to § 107.7 by adding a new paragraph (a)(5) that would include any changes in the designation of Airport Security Coordinators (proposed § 107.29) among the conditions requiring both notification to the FAA and a conforming security program amendment under § 107.7(b).

Section 107.25 Airport Identification Media

Proposed § 107.25 would establish standards for the issuance and use of airport identification media. The proposal focuses on training of persons issued identification that permits unescorted access to certain airport areas.

Most airports regulated under part 107 rely on identification and other systems to control access to and movement in areas controlled for security purposes. Some airports historically have conducted training on the use of these systems. However, that training generally has not been as comprehensive as the training proposed under this section.

The FAA is keenly aware of the important role these systems play in

controlling access to those portions of airports which provide potential targets for terrorists and other criminals. Similarly, the agency recognizes that the systems can be undermined by the failure to provide any training or by ineffective training of individuals who use them.

Inadequate training results in the inconsistent application of security procedures. In other words, the system can only work if appropriate training is provided to a well-targeted audience. The audience must then be monitored to ensure consistent and effective application of the training. Thus, an initial goal in a training proposal is to define the target audience.

After careful consideration of the many differences which characterize airports, the FAA has decided that the best approach is to target for training those individuals having unescorted access within what would be termed the "security identification display area" (SIDA). The SIDA is defined as any area identified in the individual airport security program as requiring each person to continuously display an airport-approved identification, unless the person is under airport-approved escort (§ 107.25(a)). The SIDA generally would include secured areas under § 107.14, air operations areas (§ 107.1(b)(2)), cargo/baggage make-up areas, as well as other areas specified in individual airport security programs.

The SIDA is defined in terms of "airport-approved" identification media since there are media which signify unescorted access to the SIDA, but which are not issued by airport authorities. These media include the FAA Form 8000-39 issued to certain FAA employees, and air carrier identification displayed in accordance with exclusive area agreements or by working flight crews in the immediate vicinity of their aircraft. Under the proposed rule, the airport operators would be required to train only those individuals receiving airport-issued identification. The training of holders of airport-approved media issued by the FAA, carriers, or others is the responsibility of the issuing entity and is not a part of this proposed rulemaking.

Having established the target audience, the FAA seeks to standardize both the substance and delivery of the training. Significantly, the specified training (§ 107.25(e)) represents the minimum required. Because of the unique nature of each airport, the FAA understands that training specified in a wide-reaching regulation could speak only to general concepts. Hence, the agency has chosen to present a list of

required topics around which airport operators must build customized curricula. They also would be encouraged to enhance the curricula by adding topics of local concern.

In providing the training, airport operators are offered a phased approach (§§ 107.25 (b)-(d)). As proposed, the regulation would require specified training for all persons to whom the subject identification media are issued after October 1, 1991. Then, all other holders of airport-issued identification would have to be trained, regardless of when their media were issued, by not later than July 1, 1992. Of this latter group, not less than 50 percent must be trained by March 1, 1992.

Significantly, the proposal also places upon persons the responsibility to use only the media issued to them to gain access to or be present in the SIDA (§ 107.25(f)). By fixing the individual's accountability, the FAA expects to greatly strengthen the deterrence to the use of borrowed, stolen, or lost identification media.

The need to document training required by this proposal is obvious and unavoidable; however, recognizing the many demands for recordkeeping systems airport operators already face, the agency has sought to limit additional requirements here. Given its necessity, though, such a system will provide a data base for the FAA's oversight role and will provide the airport operator with a means to document compliance. In the case of actual incidents, these records would play an important role during investigative efforts. Therefore, § 107.25(g) would require airport operators to maintain records to document the required training. Also, in the interest of minimizing historical files, the records of each individual's training would need to be maintained for only 180 days following the termination of that individual's unescorted access privileges.

The net effect of § 107.25 is to specify training and procedures that would promote more effective use of critical security systems.

Section 107.27 Evidence of Compliance

Over the years, the security program embodied in part 107 has grown in scope and complexity. Related administrative and operational demands have caused airport operators to establish recordkeeping systems to document their compliance. As a result of this proposed rulemaking, some airport operators may have to institute new or expanded recordkeeping systems. These systems are frequently reviewed during FAA inspections or investigative efforts. Thus, to fulfill its responsibility, the

FAA needs to have unobstructed and immediate access to those records that document compliance with regulatory requirements. The proposed § 107.27 would assure this access.

Through the proposed § 107.27, the FAA seeks to place into part 107 an evidence of compliance requirement the counterpart of which was placed upon the air carriers, through an amendment in part 108 (50 FR 136; July 16, 1985.) The amendment, which requires the air carriers to provide the FAA evidence of compliance when requested, became effective on December 12, 1986 (51 FR 239). In explaining the need for the reporting requirement, the agency noted:

* * * In an age of heightened terrorism, [a] reporting requirement is necessary to ensure the highest level of safety in air transportation for Americans, in accordance with the Federal Aviation Act of 1958 * * *. The size and complexity of the current security effort make this cooperation essential for the FAA's performance of its role in aviation security. Section 108.27 is intended to provide a sanction for the small number of persons who would impede the task of monitoring that effort. It is not expected to result in an increased burden on either part 108 certificate holders or the FAA.

In 1991, the FAA believes even more strongly in these concepts.

Section 107.29 Airport Security Coordinator

The FAA has long held that constant vigilance is both a price and a defining characteristic of an effective security system. Such vigilance, however, can be maintained only if the responsible party supports it through constant oversight and adjustments as necessary. Although the FAA believes the leadership to provide that support already exists within the airport management community, a consistent and identifiable structure needs to be established to enhance the vigilance the FAA seeks. This structure was accomplished for the air carriers through the Ground and Inflight Security Coordinator roles established under § 108.10. In a similar initiative, the FAA now proposes to require airport operators to appoint an "Airport Security Coordinator" (ASC). The proposal appears as § 107.29.

In the context of this proposal, an ASC would provide a readily available and consistent communications link to the FAA. Further, many security-related functions which may now be fragmented within airport organizations could be centralized under the ASC, or through the ASC's oversight. Such functions might include records maintenance, compliance oversight, program

development and training, as well as the facilitation of security-related communications between the airport and the FAA, the airport's tenants, and other appropriate parties. The specifics of the ASC's responsibilities at a given airport would be identified in the security program.

Significantly, the FAA does not expect the ASC program to require a full-time position. Rather, at most airports, the ASC duties could be collateral, especially where the individual's primary duties already involve security-related matters, e.g., operations officers. At the few airports where the ASC duties may require a full-time position, it is most likely that at least one position is already dedicated to security matters full-time, and most ASC functions would fall within the purview of the current full-time security position.

The thrust of § 107.29 is to centralize security-related functions in a standard manner through a designated individual. This more consistent approach should facilitate both the security-related operations of the airport operators as well as the FAA's oversight.

Section 108.9 Screening of Passengers and Property

The FAA proposes to add a subparagraph (d) to § 108.9 to require air carriers to staff their security checkpoints with both supervisory and non-supervisory screening personnel in accordance with the standards specified in the carriers' security programs. As previously noted, the security programs are sensitive documents not available to persons who do not have a bona fide operational need-to-know. Specific staffing criteria are being developed and will be presented in a proposed revision to the carriers' security programs. Since these criteria could assist anyone attempting to breach security, they cannot be publicly disclosed. However, the standards incorporated in the security programs would improve the level of first-line supervision over screening activities and limit the number of security duties that any individual screener can be responsible for at any one time. The FAA's experience indicates that the most effective security checkpoints have been those with strong and capable supervision, where potential or actual weaknesses are detected immediately and strong remedial action is taken. Similarly, the most effective checkpoints often are those where individual screeners focus on one aspect of the screening process rather than attempting to perform several functions simultaneously.

Section 108.17 Use of X-ray Systems

The proposed rule would add a new subparagraph (h) to § 108.17, which would require carriers to comply with X-ray baggage-inspection-systems operator-duty-time limitations specified in their security programs. The FAA recognizes that X-ray operators' attention spans are drastically shortened under peak workload conditions when operators must make decisions every few seconds, with potentially fatal implications if a mistake is made. Conversely, under low through-put conditions, the operator's stress level is much less and the attention span is extended considerably. The proposed security program change mandates specific rotation frequencies under differing conditions. A long-standing requirement in security programs mandates the creation and retention of X-ray operator duty time logs, which are routinely reviewed by FAA special agents during security inspections. Accordingly, the FAA would be able to monitor compliance with the duty time limitations. In the past, the FAA recommended, but did not require, a specific rotation frequency to improve the human factors in the screening process. This regulatory change, in concert with the security program amendment, would make rotation mandatory and foster increased X-ray operator vigilance.

In proposing § 108.17(h), the FAA believes that there will be no significant economic impact. In the past, the common practice has been that screeners are qualified to function at most, if not all, the positions at the checkpoint to which they are assigned. During the course of a shift, they will rotate through the positions to provide relief and a variety of duties to sustain vigilance. As noted above, this practice, however, has not been mandated by the FAA, but practiced pursuant to company or local management policy. As such, the rotation and its benefits are sometimes sacrificed to the exigencies of the moment, e.g., inadequate staffing, unusually heavy workloads, equipment outages, etc. Therefore, the FAA seeks specific comment on the cost consequences of the operator duty-time proposal.

The proposed § 108.17(h) will ensure a rotation, and one that is frequent enough to have a positive effect. Managers of the screening operations will have to properly plan and staff to accommodate the rotation during both routine operations and such exigencies as may be reasonably foreseen.

Section 108.29 Standards for Security Oversight

The FAA further proposes to add a new § 108.29 to the regulation to buttress new training and staffing requirements. This section would explicitly require several actions by air carriers that have been implicit in part 108 and the air carrier security programs. Proposed § 108.29(a)(1) requires that carriers provide, on a need-to-know basis, employees and contractors with complete and current information on security requirements (that is, the requirements of part 108, the carrier's security program, and applicable Security Directives) and Information Circulars applicable to the individual station. Proposed § 108.29(a)(2) requires the carriers' Ground Security Coordinators (GSC) to evaluate the effectiveness of the station's security-related functions semiannually on a formal, written basis; these written evaluations would become available to the FAA under § 108.27. Proposed § 108.29(a)(30) requires a daily review of security operations by a GSC. Proposed § 108.29(b) makes explicit the carrier's responsibility, even where a security function is performed by a contractor.

The FAA believes that the proposed language of §§ 108.29(a)(1) and (b) is needed because FAA security inspections have disclosed that where several carriers share a screening contractor at a given airport, frequently each carrier assumes another carrier will pass on security information. The solution is to require rapid dissemination of such information or requirements to all affected parties, including screening contractors, for immediate implementation.

Proposed §§ 108.29(a)(2) and (a)(3) seek to establish effective oversight at the air carrier station level by specifically requiring daily and semiannual self-evaluations of security functions including screening functions performed by contractors.

The FAA believes that the individual GSC who is most heavily involved in security issues at a given station would be the best person to perform the oversight function required under proposed § 108.29. Usually, an air carrier station manager is a trained and qualified GSC and by virtue of his/her position is the senior GSC. While the FAA is not proposing to formally impose these duties on station managers per se, where feasible, the FAA would encourage appointment of a station manager who is a qualified GSC to perform the oversight function. The requirement that these oversight

functions be accomplished by a qualified GSC ensures that air carrier station personnel extensively trained in security functions perform these self-evaluations, rather than the function being delegated in whole or in part to a contractor representative, such as the site manager of a screening company.

Where several air carriers share the same screeners, only one such carrier would be required to conduct the screening portion of the evaluations. However, the FAA expects that all using carriers would maintain copies of the documentation of the semiannual evaluations and of any daily evaluations that reflect deficiencies. Screening portions of the daily evaluations reflecting no deficiencies might be retained at the checkpoint or at the screening contractor's on-airport office.

Section 108.31 Hiring Standards, Training, and Testing—Screening Personnel

The proposed § 108.31 addresses the heart of the employment standard requirements mandated by section 105 of the Aviation Security Improvement Act of 1990. The FAA believes that requirements need to be established to ensure that screeners and screening supervisors are selected for, and retained in, those positions only after affirmative determinations of their fitness have been made. Such fitness includes mental acuity, sensory capabilities, trustworthiness, ability to communicate effectively in English, interpersonal skills, and above all, vigilance.

A significant amount of the content of this section already exists in air carriers' security programs but, on review, not all is so sensitive as to preclude its placement in the publicly available rule. The FAA believes that, to a limited degree, screener employment standards and training and testing requirements should be available to the public to (1) advise potential applicants for screener positions of the basic qualifications required, and (2) foster confidence in the system and in the people who make it work. Obviously, detailed training curricula and the criteria used by both air carriers and the FAA to test screener effectiveness are extremely security-sensitive. If such information became available to a person with criminal or terrorist intent, it could focus that person's attention on specific techniques to counter otherwise effective security systems. In conjunction with this rulemaking action, current standards for pre-employment qualifications, training and recurrent training, and testing of screening personnel would be

strengthened through a corollary proposed security program revision, as well.

Screener applicants are routinely hired while undergoing initial training and on-the-job training (OJT). For a number of years, however, carriers' non-public security programs have required that certificate holders not use new screeners to make independent screening judgments until they have completed initial training and OJT, and have been tested on their knowledge and detection capability. This requirement would become part of proposed § 108.31(a).

The Aviation Security Improvement Act mandates that the FAA prescribe education levels "as appropriate," and proposed § 108.31(a)(1) is a new requirement for non-supervisory screening personnel, on which the FAA specifically requests public comment. The proposed educational requirement can be satisfied by either (1) a high school diploma, (2) a General Equivalency Diploma (GED), or (3) a combination of education and experience which has been evaluated by the air carrier as having suitably equipped the applicant to perform the duties of the position. The latter option will accommodate those persons who, for one reason or another, did not complete high school or a GED program, but whose previous employment and life experience have demonstrably equipped them for the position. The FAA requests comments on whether a nexus exists between formal education and the knowledge, skills, and abilities required of a screener. The FAA's experience is that a number of current screeners who do not have diplomas or GEDs have performed very acceptably, and in many cases display better oral and written communications skills than some high school graduates.

The employment standards in proposed § 108.31(a)(2), which will be detailed in the non-public security programs, are performance-based; that is, trainees must demonstrate that they meet each standard directly related to the duties which a screener may be called upon to perform. Visual acuity and color perception are particularly important for X-ray operators, and those performance standards are keyed to actual duty requirements and screening equipment, rather than to arbitrary standards. The FAA believes that performance-based standards provide a more practical and legally justifiable basis for screener selection than other types of standards. Similarly, certain motor skills are necessary for the physical search of persons and hand-

carried items. These skills must be demonstrated in performance-based tests during the required initial training.

The FAA specifically invites comments on the issue of screeners' language capabilities that are addressed in proposed § 108.31(a)(3) (domestic airports) and § 108.31(f) (screening functions performed at airports outside the United States over which the carrier has operational control). In the United States, the FAA's experience indicates that many passengers have complained of great frustration, inconvenience, and confusion at not being able to make themselves understood to, or to understand communications from, screening personnel. Screening jobs in major cities are generally entry-level positions which attract substantial numbers of recent immigrants whose English language skills are frequently poor, despite literacy in their native tongue and their often considerable professional or educational achievements in their native countries. Because English is the predominant language of the United States, the FAA requests comments from the public on the reasonableness of the proposed rule as it would apply in the United States in areas such as Miami, where English may not be the predominant language.

Since screener training materials used in the United States, including audio-visual media, employ the English language, the issue of language skills as a prerequisite for screener selection cannot be avoided. Persons with minimal English language skills might be particularly disinclined to ask questions during training that would betray their lack of understanding of written materials or of spoken instruction in English, believing that such questions might threaten retention in the job. The effect could be that the trainee may not be sufficiently knowledgeable of his or her duties, responsibilities, and the procedures to be employed. Within a corollary proposed security program revision to be disseminated for air carrier comment during this NPRM process, the FAA has approached this sensitive issue from the perspective of (1) whether the individual has those language skills necessary for understanding and carrying out essential English language instructions, (2) whether the individual has the language skills necessary for essential communication with persons undergoing screening, and (3) requiring written testing at the end of initial classroom and recurrent training that focuses on the screening environment and written materials that will be encountered there. Also note that very limited English

language requirements are proposed for U.S. air carrier stations outside the United States in § 108.31(f), which is discussed below.

Proposed § 108.31(a)(4) would require that a screener complete initial training before he or she may be used to perform any screening function. The section also would require the satisfactory completion of all recurrent training and, if appropriate, specialized training required by the carrier's security program.

Initial training of new employees consists of formal classroom and OJT. In the latter training, the new employee becomes more familiar with equipment and procedures while working under the tutelage of an experienced, fully-qualified screener. The key element is that the new employee is not viewed as having completed initial training and is not permitted to make "independent judgments" until (1) classroom training has been completed and the individual has demonstrated retention of the required knowledge in a written test, (2) a period of on-the-job (i.e., application of skills) training has been completed, and (3) the individual has demonstrated his or her capabilities by successfully detecting, under realistic operational conditions, each of the FAA-specified test objects, which simulate weapons and explosive devices. A record of successful completion of initial training means that a decision has been made by the air carrier that the new employee is qualified to make independent screening judgments. The critical aspect is that the certificate holder shall not use a person to perform any screening function requiring independent judgments until competence has been demonstrated and recorded. In effect, placing an individual on a payroll during the basic training period is probationary hiring. A person who fails to demonstrate the required knowledge and detection capability has not compromised the screening system because he or she has not made independent judgments. Accordingly, the proposed rule complies with the Aviation Security Improvement Act in that "employment," in the sense of the carrier's utilization of the individual for making independent screening judgments, commences only after the air carrier has affirmed in writing that the individual has demonstrated that he or she has the appropriate knowledge and detection ability to properly perform screening duties.

Thus, tests during training will determine whether each screener (1) has absorbed the information taught, and (2) can demonstrate the practical application of the knowledge imparted

by actually detecting FAA-approved test objects designed to simulate weapons, explosive devices, and other items that require physical examination. Existing testing procedures have been strengthened in the concurrent proposed amendment to air carriers' security programs.

Recurrent training involves mandatory refresher training conducted at intervals specified in the carriers' security programs to reinforce the screener's knowledge and abilities.

"Specialized training" refers primarily to training in advanced screening techniques that is required to be implemented at designated airports. A training curriculum for application at these airports is already detailed in air carrier security programs.

The FAA and the air carriers conduct unannounced tests of the effectiveness of screening systems by attempting to pass FAA test objects through screening. Precise procedures for both FAA and air carrier testing of this nature, termed "screening system evaluations," are delineated in the carriers' security programs. Although the detection rate has steadily improved, occasionally a test object is not detected or a bag containing the test object is not properly controlled. When a failure occurs, the air carrier is presently required to counsel the screener and take corrective action.

Proposed § 108.31(c) and the corollary amendment to the air carriers' security programs seek to strengthen the corrective actions required following a test failure. The proposed rule provides that the air carrier may not continue to use a screener in a function, such as X-ray screening, after failing a test until the screener has successfully completed the remedial training specified in the security program for that function. The proposed security program revision would mandate the nature of remedial training to ensure that the person has the required detection ability. Upon satisfactory completion of the remedial training, the screener may make "independent screening judgments" in the function in which he or she failed the test.

The Aviation Security Improvement Act specifically requires that standards for "continued employment" be established. In the past, no explicit standards were promulgated beyond the requirement for recurrent training. However, the realities of the marketplace often results in the termination of ineffective screeners to prevent their poor performance from causing violations that could result in FAA civil penalties. The FAA agrees that retention standards are necessary

and proposes standards in § 108.31(d). Possibly, the most significant provision is the requirement that semiannual written evaluations of each screener be performed, with an affirmative decision to permit the continued employment of the screener. The proposed rule would require that these evaluations be conducted by a Ground Security Coordinator rather than by a contractor representative, such as a guard company supervisor or site manager. As in the case of evaluations conducted pursuant to proposed § 108.29(a)(2), where several carriers share the same screeners only one such carrier would be required to conduct the screener evaluations.

One of the determinations in these semiannual evaluations is that, since the last such evaluation, a screener has not suffered a significant diminution of any physical ability required to perform a screening function (§ 108.31(d)(1)). The FAA does not seek to impose a significant burden on carriers in this regard, and does not foresee a need for medical evaluations. The FAA believes that this portion of the evaluation can be accomplished in approximately 5 minutes. For example, visual acuity may be checked in moments by having the screener identify the official FAA imaging standard on an X-ray screen. This procedure also may indicate whether a screener must routinely wear corrective lenses while serving as an X-ray reader to be effective in that capacity. Likewise, the hearing acuity and physical coordination standards can be checked in moments at the checkpoint without resorting to specialized equipment.

A second element of the evaluation is whether the screener has had, since the last evaluation, a satisfactory record of job performance and attention to duty (§ 108.31(d)(2)). This element focuses on the screener's performance in detections of actual weapons and dangerous objects, unannounced FAA and air carrier tests, and interactive skills with the public and co-workers. The factor "attention to duty" is highlighted in the rule to reflect the FAA's concern that each screener must be fully alert at all times.

The third element is the carrier's determination that the screener continues to demonstrate the current knowledge and skills necessary to perform screening functions courteously, vigilantly, and effectively (§ 108.31(d)(3)). That is, the fact that a screener has passed the written and operational tests in discrete training periods is not enough; the screener must continually apply the knowledge and skills in the day-to-day environment. Courtesy to the public is essential and

is, in fact, mandated by section 316(a) of the FAA Act. Vigilance must be the screener's stock in trade. Effectiveness is achieved through constant, vigilant application of the knowledge and skills.

Proposed § 108.31(e) affords U.S. air carrier stations in foreign countries relief from the requirements of paragraphs (a) through (d) (screener qualifications, aptitudes, physical abilities, English language capability, the U.S. screener training program, and semiannual evaluations of screeners) for those functions over which the U.S. air carrier does not exercise operational control.

The FAA recognizes that, outside the United States, a U.S. air carrier may not have "operational control" over some or all screening processes. For example, at many foreign airports a U.S. air carrier may share a security checkpoint and its screening personnel with several foreign carriers, but may have little or no control over the selection, training, and evaluation of the screening personnel. In fact, the screening personnel may be national police or other government employees, rather than private individuals employed by the air carrier or a contract agency. In such cases, the FAA views the U.S. carrier as not having operational control over the screening process. However, the FAA continues to conduct foreign airport security assessments pursuant to The International Security and Development Cooperation Act of 1985 (Pub. L. 99-83) at all foreign airports served by U.S. air carriers. These assessments include, among other things, appraisals of the efficacy of the screening processes and determinations of whether the processes and their application meet international aviation security standards and recommended practices.

In other instances, the U.S. carrier may use its own direct-hire employees to perform screening functions, or may be the sole or controlling contracting party. In such cases, the U.S. carrier does have operational control.

In a third possibility, at certain foreign airports, the FAA has directed U.S. carriers to implement enhanced or extraordinary measures in addition to those mandated by the host government. The U.S. air carrier may use its own direct-hire employees to perform only these specialized screening functions, or may be the sole or controlling contracting party for those functions. In such cases, the U.S. air carrier has operational control of the specialized functions irrespective of any lack of operational control of the primary screening functions mandated by the host government.

For U.S. carrier stations outside the United States, proposed § 108.31(f) would establish a very limited English language requirement, even when the U.S. air carrier has operational control over a screening function. Recognizing that acquiring screener personnel who can read, speak, and write in English (§ 108.31(a)(3)) may be difficult if not impossible in some locations, this provision permits the use of screeners who do not meet the English language requirement, provided that at least one person with the ability to functionally read and speak (but not necessarily write) English is present while the carrier's passengers are undergoing security processing. The proposal is so worded that the person with English language capability need not be a qualified screener. The FAA's experience indicates that U.S. air carrier stations outside this country customarily provide this service as a matter of course, often using their passenger service agents. The FAA seeks to codify this practice as a requirement to ensure that American citizens can be accommodated in their country's predominant language while undergoing security processing that is under the operational control of a U.S. flag carrier.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences

of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore a full regulatory analysis, that includes the identification and evaluation of cost reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document, termed a regulatory evaluation, that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination as required by the 1980 Regulatory Flexibility Act (Pub. L. 96-354) and an

international trade impact assessment. If more detailed economic information is desired than is contained in this summary, the reader is referred to the full regulatory evaluation contained in the docket.

The FAA has made several economic assumptions in the estimation of the proposed amendment's benefits and costs. Public comment on these assumptions is requested and will be considered for the final rule.

Cost

The proposed rule would improve airport security, but it also would impose additional costs on airport operators and on airlines. Tables 1.a and 1.b outline the proposed changes, the type of costs associated with that change, and the estimated costs. All costs are presented in 1990 dollars and are discounted using a 10 percent discount rate.

The proposed rule would impose discounted costs of approximately \$36.4 million over the period 1992 through 2001; the annualized costs would be approximately \$5.8 million. About \$4.4 million in annualized costs would result from enhanced training requirements for personnel authorized for unescorted access to SIDs, and approximately \$1.2 million in costs would come from enhanced checkpoint staffing requirements at small airports. In addition, the proposal would impose \$263,000 in administrative and other costs on airports and air carriers.

TABLE 1.A.—CHANGES IN FAR PART 107 "AIRPORT SECURITY"

Section	Proposal	Annualized costs
107.7	Would require reporting changes in security liaison personnel.....	No incremental costs.
107.25	Would require training in security procedures for persons authorized unescorted access to restricted areas at airports.	Training costs for security personnel include wages paid during training and cost of instruction: \$4,405,000.
107.27	Would clarify the responsibility of airport operators to provide evidence of compliance of this Part.	No incremental costs.
107.29	Would require appointment of an Airport Security Coordinator	Small administrative costs of \$22,400.

TABLE 1.B.—CHANGES IN FAR PART 108 "AIRPLANE OPERATOR SECURITY"

Section	Proposal	Annualized costs
108.9	Would require airlines to staff checkpoints in accordance with their security programs. (Changes in ACSSP imply additional security checkpoint staffing.)	Additional checkpoint staffing would cost \$1.2 million.
108.17	Would require carriers to comply with x-ray operator duty time limitations.....	No incremental costs. This codifies existing policy.
108.29	Would require that air carriers assign a person as the principal ground security coordinator to have security oversight functions including daily informal and semi-annual formal self-evaluations of security functions.	Administrative costs related to evaluations equal \$179,000.
108.31	Would require hiring, training and testing of security personnel to a standard outlined in their ACSSP.	This mostly codifies existing practices. However the administrative costs related to assuring that personnel meet standards and enhanced remedial training costs are \$61,800.

Benefits

The potential benefits from the proposed rule would be a reduced risk

of terrorist incidents and other criminal acts against U.S. civil aviation. Although the proposed regulation would affect

mostly U.S. airports, this evaluation estimates the benefits based on the potential danger of terrorist activity

throughout the world because terrorists may strike anywhere. The range of terrorists' acts extends from an inflight bombing that destroys an aircraft killing all passengers to a hijacking that results in the diversion of an aircraft from its scheduled route.

Table 2 lists acts of aviation sabotage since 1986 where an explosion occurred aboard the airplane. The seven explosions produced an average of 84 fatalities. Between 1980 and 1985, 18 bombing incidents occurred aboard civil aircraft accounting for 505 fatalities. These data reveal the extent of terrorist activity and the risk of a major terrorist bombing incident.

TABLE 2.—TERRORIST BOMBINGS ABOARD CIVIL AIRCRAFT—1986/1989

Date	Airline	Killed	Injured
04/02/86	TWA.....	4	9
05/03/86	Air Lanka.....	16	41
10/26/86	Thai Airways.....	0	62
03/01/88	BCP Air (S. Africa).....	17	0
12/21/88	Pan Am.....	270	0
09/19/89	UTA.....	171	0
11/27/89	Avianca.....	107	0
	Total.....	585	112

Although terrorist incidents are unpredictable, the potential economic loss from such an event can be measured based on avoided fatalities and the replacement costs for aircraft. To give the public and Government officials a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period of time with estimated costs in dollars, the FAA currently uses a value of \$1.5 million to statistically represent a human fatality avoided.

Table 3 presents a range of the potential benefits from avoiding just one terrorist incident during the next 10 years. The destruction of a Boeing 727 could result in a death toll of 91 persons. The estimated benefits of avoiding these deaths are \$137 million. The replacement value of a Boeing 727 in 1990 dollars is approximately \$6 million. The present value of such a disaster is valued at \$92 million with an annualized value of \$14 million over the period 1992 through 2001. On the other end of the scale, the loss of a DC10 would have a discounted value of \$198 million and an annualized value of \$30.7 million.

TABLE 3.—ESTIMATED BENEFITS FROM PREVENTION OF TERRORIST ACT

Aircraft type	Boeing 727	DC10
Capacity.....	148.8	275.4
Load Factor.....	61.4	68.5
Passengers.....	91	189
Value of Avoided Fatalities.....	\$137,045,000	\$282,974,000
Value of Aircraft.....	5,994,000	23,712,000
Total Value.....	143,039,000	306,685,000
Discounted Value.....	92,181,000	197,643,000
Annualized Value.....	14,304,000	30,669,000

Prevention of a hijacking that detours an airplane from its scheduled route but results in no aircraft damage or injuries has an estimated annualized benefits that range from \$27,000 to \$54,000.

Benefit-Cost Comparison

A comparison of benefits and costs of the proposed rule is presented in Table 4. On the low side, the potential net benefits from the proposed rule would be \$8.5 million; on the high side, net benefits would be \$24.8 million. The benefit derived from the added deterrence of a potential hijacking is not specifically included in these estimates. However, this benefit simply strengthens the argument that this rule is cost beneficial.

TABLE 4.—BENEFIT COST COMPARISON

Category	Annualize value	Ten year discounted value
Cost.....	\$5,846,000	\$36,352,000
Low Benefit.....	14,303,000	92,181,000
Low Net Benefits.....	8,457,000	55,829,000
High Benefit.....	30,668,000	197,600,000
High Net Benefits.....	24,822,000	161,248,000

The FAA, therefore, has determined that the proposed rule is cost beneficial.

International Trade Impact

The proposed NPRM would have little or no impact on international trade. This proposal is not likely to affect foreign operators except where their personnel have unescorted access to SIDAs. In this instance, the operator would be expected to make its employees available for recurrent training which is to be provided by the airport operator. This training requirement is estimated to require only 2 hours a year per person, a minor cost. This cost would be the same for international carriers and domestic carriers.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act sections 603(b) and 603(c) of 1980 (RFA) ensures that government regulations do not needlessly and disproportionately

burden small businesses. The RFA requires the FAA to review each rule that may have "a significant economic impact on a substantial number of small entities."

FAA criteria sets a "substantial number" as not less than 11 and more than one-third of the small entities subject to the proposed rule. About 220 small airports would be affected by this rule. The affected small airports are those operated by towns, cities, or counties whose populations are each less than 50,000 which is the size threshold for these small entities as determined by the FAA Regulatory Flexibility Criteria and Guidance. The Criteria defines a threshold value for "a significant economic impact" as \$6,950 in 1990 dollars.

Of the 220 airports which qualify as small entities, none incur costs that exceed the threshold. These airports would experience some additional costs resulting from proposed requirements for training personnel having unescorted access to airport secure areas. The estimated costs for these airports range from about \$100 to \$2,000 a year with a median value of \$150. These costs amount from security training and administrative requirements. (Costs to airports come from §§ 107.25 and 107.29).

Air carriers also would incur some additional costs as a result of the proposed rule. The threshold size for air carriers is nine aircraft operated by the certificate holder; and the cost threshold ranges from \$51,000 for scheduled part 135 carriers to \$107,900 for part 121 carriers.

Additional costs to small entities in these two air carrier groups would result from hiring additional checkpoint supervisors. Since these small entities operate only nine aircraft or fewer, they seldom have checkpoints at more than one or two airport and administrative costs would be small. (Costs to airlines would come from their compliance with the airports' requirements under §§ 107.25, and with 108.29 and 108.31). Hence, the additional cost would not exceed one-half of the threshold for part 135 operators or one-fourth the threshold for part 121 operators. Hence, the proposed rule would not have a significant economic impact on a substantial number of part 121 and part 135 small entities.

Hence, the FAA certifies that the proposed regulatory action would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The paperwork and recordkeeping burden associated with this notice will be submitted to the Office of Management and Budget for review.

Lists of Subjects

14 CFR Part 107

Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 108

Air carriers, aircraft, Law enforcement officers, Reporting and recordkeeping requirements, Security measures, X-rays.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 107 and 108 of the Federal Aviation Regulations (14 CFR parts 107 and 108) as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for part 107 is revised to read as follows, and all other authority citations in this part have been removed:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g); Sec. 101, et seq., Pub. L. 101-604, 104 Stat. 3066.

2. A new paragraph (a)(5) is added to § 107.7 to read as follows:

§ 107.7 Changed conditions affecting security.

(a) * * *

(5) Any changes to the designation of the Airport Security Coordinator (ASC) required under § 107.29.

3. Section 107.25 is added to read as follows:

§ 107.25 Airport identification media.

(a) As used in this section, "security identification display area" means any area identified in the airport security program as requiring each person to continuously display an airport-approved identification medium unless the person is under airport-approved escort.

(b) After October 1, 1991, an airport operator may not issue to any person any identification media that provides unescorted access to any security identification display area unless the person has successfully completed training in accordance with an FAA-approved curriculum specified in the security program.

(c) By March 1, 1992, not less than 50 percent of all individuals possessing airport-issued identification that

provides unescorted access to any security identification display area at that airport shall have been trained in accordance with an FAA-approved curriculum specified in the security program.

(d) After July 1, 1992, an airport operator may not permit any person to possess any airport-issued identification medium that provides unescorted access to any security identification display area at that airport unless the person has successfully completed training in accordance with a curriculum specified in the security program.

(e) The curriculum specified in the security program shall include instruction on at least the following topics:

(1) Control, use, a display of airport-approved identification or access media;

(2) Challenge procedures and the associated law enforcement support;

(3) Restrictions on divulging information concerning an act of unlawful interference with civil aviation if such information is likely to jeopardize the safety of domestic or international aviation;

(4) Non-disclosure of information regarding the airport security system or any airport tenant's security systems; and

(5) Any other topics deemed necessary by the Assistant Administrator for Civil Aviation Security.

(f) No person may use any airport-issued identification medium that provides unescorted access to any security identification display area to gain such access unless that medium was issued to that person by the appropriate airport authority.

(g) The airport operator shall maintain a record of all training given to each person under this section until 180 days after the termination of that person's unescorted access privileges.

4. Section 107.27 is added to read as follows:

§ 107.27 Evidence of compliance.

On request of the Assistant Administrator for Civil Aviation Security, each airport operator shall provide evidence of compliance with this Part and its approved security program.

5. Section 107.29 is added to read as follows:

§ 107.29 Airport Security Coordinator.

Each airport operator shall designate in its security program an Airport Security Coordinator (ASC). The ASC shall serve as the airport operator's primary contact for security-related

activities and communications with FAA as set forth in the security program.

PART 108—AIRPLANE OPERATOR SECURITY

6. The authority citation for part 108 is revised to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g); Sec. 101, et seq., Pub. L. 101-604, 104 Stat. 3066.

7. A new paragraph (d) is added to § 108.9 to read as follows:

§ 108.9 Screening of passengers and property.

* * * * *

(d) Each certificate holder shall staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

8. A new paragraph (h) is added to § 108.17 to read as follows:

§ 108.17 Use of X-ray systems.

* * * * *

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

9. Section 108.29 is added to read as follows:

§ 108.29 Standards for security oversight.

(a) Each certificate holder shall ensure that:

(1) Each person performing a security-related function for the certificate holder has knowledge of the provisions of part 108, applicable Security Directives and Information Circulars promulgated pursuant to § 108.18, and the certificate holder's security program to the extent that the performance of the function imposes a need-to-know.

(2) Semiannually, a Ground Security Coordinator at each station conducts a thorough evaluation of all security-related functions at that station and documents the results.

(3) Daily, a Ground Security Coordinator reviews the performance of all security-related functions for effectiveness and compliance with this Part, the certificate holder's security program, and applicable Security Directives.

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

10. Section 108.31 is added to read as follows:

§ 108.31 Employment standards for screening personnel.

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

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

(2) The aptitudes and physical abilities to pass the screener performance tests and evaluations contained in the training program specified in the certificate holder's security program. Those aptitudes and physical abilities include color perception, visual and aural acuity, physical coordination, and motor skills;

(3) The ability to read, speak, and write in English; and

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

(b) Notwithstanding the provisions of paragraph (a)(4) of this section, the certificate holder may use a person

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

(c) No certificate holder 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 certificate holder's security program.

(d) A Ground Security Coordinator shall conduct and document a semiannual evaluation of each person assigned screening duties and shall continue that person's employment in a screening capacity upon the determination that a 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; 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 certificate holder does not have operational control.

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

Issued in Washington, DC on March 27, 1991.

Lynne A. Osmus,

Acting Director, Office of Civil Aviation Security Policy and Planning.

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