

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 108**

[Docket No. 26459; Amendment No. 108-9]

RIN 2120-AD92

**Flight and Cabin Crew Notification Guidelines****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Federal Aviation Regulations and implements a statutory requirement for the notification of flight and cabin crewmembers of threats to the security of their flight. The Aviation Security Improvement Act of 1990 amended title III of the Federal Aviation Act of 1958 and directed the Administrator of the FAA to implement guidelines for such notification. This amendment is needed to clarify an air carrier's responsibility to disseminate threat information to inflight security coordinators and establishes new requirements to disseminate this information to flight and cabin crewmembers. Air carriers are also required to provide any evaluation of the threat information and countermeasures to be applied. This action is intended to enhance civil aviation security.

**EFFECTIVE DATE:** July 17, 1991.

**FOR FURTHER INFORMATION CONTACT:** Frederick P. Falcone, Office of Civil Aviation Security Policy and Plans, Policy and Standards Division (ACP-110), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-7296.

**SUPPLEMENTARY INFORMATION:****Background and Discussion of the Rule**

The Federal Aviation Administration (FAA) undertook this rulemaking to comply with a legislative mandate imposed by the Aviation Security Improvement Act of 1990 (the Act), Public Law 101-604, which was signed into law on November 16, 1990. Section 109 of the Act amended title III of the Federal Aviation Act of 1958 (49 U.S.C. app. 1341-1358) and directed the Administrator of the FAA to develop guidelines for ensuring notification of the flight and cabin crews of an air carrier flight of threats to the security of such flight in appropriate cases.

On January 28, 1991, the FAA issued a notice of proposed rulemaking (NPRM) (56 FR 4322; February 4, 1991) to amend § 108.19 of the Federal Aviation

Regulations, 14 CFR 108.19, to provide such guidelines. Under the proposed rule, upon receipt of a specific and credible threat to the security of a flight, a certificate holder would be required immediately to notify the ground and inflight security coordinators of the threat, any evaluation thereof, and any countermeasures to be applied. In addition, the certificate holder would be required to ensure that the inflight security coordinator (which is the pilot in command under 14 CFR 108.10) notifies the flight and cabin crews of the same threat information.

The current system for evaluating and responding to threats to civil aviation is founded on the principle that it is best for intelligence experts to filter threat information before providing it to aviation personnel directly responsible for dealing with those threats. The air carrier's security experts, generally in consultation with the FAA and other government entities, evaluate threat information against specific FAA-established criteria to determine "specificity" and "credibility." (The terms "specific" and "credible" are not interdependent and are commonly applied by intelligence experts to threat information involving a well defined target and which has been authenticated.)

Excluding those threats which are judged to be groundless or not requiring the application of specific countermeasures is a practical approach, given the hundreds of bogus threats received annually. Eliminating bogus threats is also critical to ensure that real threats are perceived as serious, not diluted in impact by a multiplicity of false alarms. This limited distribution of threat information helps ensure that genuine threats are handled as thoroughly and expeditiously as possible. In the FAA's view, it is not appropriate to provide notification to flight and cabin crews unless the threat information has been judged by security professionals to be specific and credible.

Interested persons were invited to participate in the rulemaking by submitting written comments.

*Discussion of Comments*

The FAA received seven comments from entities representing regional airlines, major air carriers, pilots, and flight attendants. One comment was received from a member of the general public. No comments were received from Congress or other government agencies. The commenters who express some criticism of FAA's proposed rule address policy choices the FAA described in its NPRM, while not contradicting the factual bases for the

FAA's choices. None of the commenters address the Regulatory Evaluation Summary, which concerns the economic consequences of the proposed rule as published in the NPRM.

One commenter has no criticism of the proposed rule and urges that it be adopted as a final rule.

Another commenter supports the essence of the proposed rule, but with one change. This commenter, the Air Transport Association, proposes that the pilot in command decide on a case by case basis whether the crew should be notified of threat information. The FAA does not accept this suggestion. As noted in the preamble of the NPRM, the proposed rule was intended to "eliminate any discretion on this issue, and require the carrier to ensure that the inflight security coordinator provides the flight and cabin crew with threat information along with any evaluation and the countermeasures to be applied." (56FR 4324) Adoption of this commenter's suggestion would be contrary to the interests of other crewmembers in receiving timely and accurate threat notification and runs counter to the spirit of the Act. Two commenters representing cabin crew members specifically endorse the FAA's policy choice on this issue.

A third supporting commenter urges adoption of the proposed regulatory language without change, and suggests the FAA consider appropriate amendments to the Air Carrier Standard Security Program (ACSSP), which was referenced in the NPRM. The FAA is currently evaluating the need to amend the ACSSP and may do so in connection with implementation of the final rule.

Three commenters accept the limitation in the proposed rule to credible threat information, but suggest that all credible information, even if non-specific, should be communicated to crewmembers. One of the commenters requests clarification of the FAA's definition of "specific." As explained in the NPRM, "specific" in this context refers to threat information that involves a well defined target or targets. A well defined target may include a single flight or series of flights spanning a particular period of time or geographic location. Specific threat information includes positive details describing an individual, airplane, aviation operation, or facility which suggests a particular knowledge of the intended target or targets not widely held by the general public.

If the scope of crew notification is not limited to threat information involving a well defined target, carriers would find it impossible to determine which threat information should be presented to the

crew of a given flight. It would not be appropriate for carriers to relay all known, credible threat information to the crews of all flights, regardless of whether the threat information applied to that particular flight. Doing so would run the risk of inundating crews with a large quantity of irrelevant material, while obscuring the truly useful information.

This conclusion is supported by the legislation, which requires notification of the "crews of an air carrier flight of threats to the security of such flight in appropriate cases" (emphasis added). Congress did not direct the Administrator to develop guidelines for crew notification of threats to the security of *all* or *any* flights, and such notification would not be appropriate. However, carriers may provide notification to flight and cabin crews of any non-specific threats beyond the scope of this rule, if they deem it appropriate.

One commenter suggests that the FAA substitute the term "relevant" for "specific" in the language of the rule. As explained above, "specific" in this context includes information which is relevant to a single flight or series of flights. The term "specific" is preferable because it is a term of art used by security professionals.

One commenter recommends that, when practicable, a cabin crew briefing with the in-flight security coordinator should be held prior to boarding the aircraft of a flight affected by a security threat. This commenter observes that most carriers already follow this procedure and flight attendants have found briefings to be an appropriate opportunity to discuss their concerns. The FAA agrees that such briefings are an appropriate procedure for notification of threat information, and that they should be held when practicable.

Two commenters suggest that crews should be notified of all threat information, whether bogus or credible. The FAA explained in detail in the NPRM why it is inappropriate to notify crews of threat information that has not been determined to be credible. As noted in the preamble, the Report of the President's Commission on Aviation Security and Terrorism supported limiting notification to credible threats. Six commenters, all of whom represent entities directly affected by the proposed rule, either affirmatively endorse or take no exception to this conclusion.

One of these commenters expresses the opinion that security information is comparable to weather or mechanical information, and proposes that all such

information should be made available to the pilot to assist him or her in dealing with various eventualities. While the FAA is sensitive to this commenter's concerns, the agency does not agree with this suggestion. The FAA recognizes that a wide diversity of skills and complex training are needed in order to serve as a pilot in command in today's environment. A pilot's training and experience equip him or her to interpret and use a wide variety of information, including weather and mechanical data, in making crucial decisions.

The interpretation of intelligence-based security information, however, has not historically been within the purview of the pilot in command. Instead, responsibility for filtering and interpreting this information has rested with airline and government intelligence and security professionals. The FAA believes it is essential that threat information be filtered and assessed by those professionals if it is to be useful to the pilot in command and crew.

As explained in the preamble to the NPRM, the FAA agrees with the Report of the President's Commission that "the professionals who analyze threat information—the intelligence and law enforcement communities" should retain authority to determine the credibility of threat information (56 FR 4324). This commenter suggests that crews should be trained to perform this evaluation. The FAA believes this suggestion is not practical and would lead to an unproductive duplication of resources.

The rule as proposed will make the most effective use of both professional security and crew resources. This measure will help ensure that crews are thoroughly informed, so that they can focus their attention on possible security problems and perform their security-related functions with a heightened level of care and awareness.

One commenter criticizes the short period allowed for comment. This comment was considered although it was received after the closing date. The FAA issued the NPRM in response to a Congressional mandate to establish crewmember notification guidelines not later than 180 days after the enactment of the Aviation Security Improvement Act. The 30 day comment period reflects the time available to promulgate this expedited rulemaking.

After careful consideration of the comments and available data, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

## Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides more detailed estimates of the economic consequences of this final rule. 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. This determination is normally made on the basis of a regulatory evaluation. In this case, however, the Congress has already determined that this rule is in the public interest; that is, its collective public benefits outweigh its costs to the public, because Congress has required the rule to be promulgated (The Aviation Security Improvement Act of 1990: Pub. L. 101-604). Nevertheless, the FAA has prepared this conventional regulatory evaluation of the rule. The purpose of this evaluation is not to justify this rulemaking action (which has already been done through Congressional action), but to estimate potential costs and benefits (either qualitatively or quantitatively) to promote a better understanding of the impact of the rule. 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, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order, therefore a full regulatory analysis, including the identification and evaluation of cost-reducing alternatives to the 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 a final regulatory flexibility determination 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.

#### Costs

The rule is expected to impose a negligible incremental cost of compliance on U.S. air carriers. In addition, the rule is not expected to impose any monetary costs on the flying public. This assessment is based on the rationales contained in the following paragraphs.

The FAA expects the costs of the rule to be negligible based on two assumptions. First, the rule is assumed not to substantially increase the costs associated with the current flow of specific and credible security threat information between air carrier management and ground and in-flight security coordinators. This is because air carriers are already providing most of the security information required by the rule to ground and in-flight security coordinators on a routine basis.

The second assumption is that air carriers will not incur additional costs beyond current industry practice, as the result of ensuring that in-flight security coordinators notify flight and cabin crewmembers of *all* specific and credible security threats. This is also true of the requirement that air carriers provide any evaluation of the threat information and countermeasures to be applied. Disclosure of this information to flight and cabin crewmembers will impose only a negligible cost of compliance on air carrier operators because they already compile specific and credible security threat information on a routine basis.

Although the FAA contends that the rule will impose a negligible cost of compliance for the notification process, it recognizes that the potential for significant costs does exist in some cases. The reason for this assessment is that in-flight security coordinators (pilots in command) have the authority to request additional countermeasures if they consider them to be justified. The magnitude of this potential cost impact will depend on the extent to which flight and cabin crews expand the field of information available to security experts, who could then decide to take additional countermeasures based upon all security information available. These measures could include delaying scheduled flights from departing or requesting airborne flights to land for the purpose of conducting additional security checks or applying countermeasures.

The average time required to conduct a security check for narrow and wide-body aircraft on the ground ranges between 3 and 5 hours. If an aircraft is

airborne and forced to land for a security check, there would be an additional cost for landing fees and delay time. Another cost factor (qualitative) associated with this potential situation could be the inconvenience imposed on passengers in the form of delays. According to one air carrier, the cost of an aircraft delay as the result of conducting additional security countermeasures could be as high as \$200,000 to over \$1 million (in 1990 dollars) per security check. The reader is cautioned that this range should not be considered precise and incorporates a number of general assumptions. Some of the assumptions include: The delayed aircraft is the only one connected to departures from other areas, additional flight crews may be needed due to time and duty limitations, lawsuits may be filed by some passengers, costs may be incurred for another slot at the gate, plus a multitude of other factors.

Over the past 10 years, on average, air carriers have received between 650 and 750 security threats annually. An estimated 600 to 700 of these threats were anonymous that were not determined to be specific and credible. None of these anonymous threats resulted in an explosion or the discovery of a bomb. During the same period, on an annual basis 30, out of 50 credible aircraft security threats were specific. To date, there is no evidence of an explosion or discovery of a bomb relating to a specific and credible security threat.

#### Benefits

The final rule will generate benefits by ensuring that the current high level of aviation safety remains intact. Under the rule, air carriers will be required to provide all credible and specific security threats, as well as any evaluation thereof and countermeasures to be applied, to the ground and in-flight security coordinators. In turn, the in-flight security coordinator will notify the flight and cabin crewmembers. The flight and cabin crewmembers will benefit directly from the rule. As the "eyes and ears" of an air carrier, flight and cabin crewmembers are trained to be alert to possible security threats and to apply security procedures when a threat is suspected. The rule will better enable flight and cabin crewmembers to conduct their security responsibilities by enhancing their alertness to indications that a threat may be actually carried out. The enhanced awareness of the flight and cabin crews will subsequently benefit the in-flight security coordinator by enhancing the information he or she has as the pilot in command. The rule

will benefit the traveling public by reducing the possibility that security threats to a U.S. air carrier not disclosed to flight and cabin crewmembers will result in casualty losses (namely, aviation fatalities and property damage).

#### Conclusions

The rule will impose only negligible incremental costs on air carriers and could result in benefits to the aviation community and flying public in the form of ensuring that the current high level of aviation safety remains intact. Therefore, the FAA concludes that the rule is cost-beneficial.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of this rule are scheduled air carrier operators for hire that own but do not necessarily operate nine or fewer aircraft. A significant economic impact for these small entities will be an annualized cost that exceeds \$105,000 (in 1990 dollars). Since the incremental cost of compliance is expected to be negligible (less than \$105,000 annually for each air carrier operator), the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

#### International Trade Impact Assessment

The rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule is expected to impose only negligible costs on U.S. air carrier operators. This action will not result in a competitive disadvantage to U.S. carriers engaged in international flight operations.

#### Federalism Implications

The rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

#### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not major under Executive Order 12291. In addition, it is certified that this regulation will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This regulation is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the

person identified under "For Further Information Contact."

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

Airplane operator security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

#### The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends part 108 of the Federal Aviation Regulations (14 CFR part 108) as follows:

#### PART 108—[AMENDED]

1. 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.

2. Section 108.19 is amended by redesignating paragraphs (a) and (b) as

(b) and (c) respectively; by adding a new paragraph (a); and by revising the section heading to read as follows:

#### § 108.19 Security Threats and Procedures.

(a) Upon receipt of a specific and credible threat to the security of a flight, the certificate holder shall—

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

(2) Ensure that the in-flight security coordinator notifies the flight and cabin crewmembers of the threat, any evaluation thereof, and any countermeasures to be applied.

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Issued in Washington, DC, on June 11, 1991.

**James B. Busey,**

*Administrator.*

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