

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket No. 26522; Amdt. Nos. 107-6 and 108-10]

RIN 2120-AD95

Employment Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes minimum standards for the hiring, continued employment, and contracting for air carrier and airport employees engaged in security-related activities. The requirements in this rule respond to the Aviation Security Improvement Act of 1990. The 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.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

The destruction of Pan American World Airways Flight 103 on December 21, 1988, by a terrorist bomb while in flight above Lockerbie, Scotland, resulted in the loss of 270 lives and remains the worst aviation disaster of its kind in U.S. civil aviation history. The U.S. Government's response to this tragedy included the establishment, by President Bush on August 4, 1989, of the President's Commission on Aviation Security and Terrorism (Commission). The Commission was tasked with making an assessment of the overall effectiveness of the U.S. civil aviation security system.

The Commission, in its final report filed on May 15, 1990, made a number of recommendations to the President for improvement of the U.S. civil aviation security program which is administered by the FAA's Office of Civil Aviation Security. Many of the recommendations addressed enhanced security procedures that had been or subsequently were implemented by the FAA on its own initiative. Others required legislative action. Subsequent to the Commission's report, Congress enacted the Aviation Security Improvement Act of 1990 (Pub.

L. 101-604), which was signed by President Bush 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's response to this mandate resulted in a notice of proposed rulemaking (NPRM), Notice No. 91-9 (56 FR 13552; April 2, 1991). In the NPRM, the FAA proposed that parts 107 and 108 of the Federal Aviation Regulations (FAR) (14 CFR parts 107, 108) be amended by adding minimum employment standards as required by the Aviation Security Improvement Act. Part 107 prescribes FAA airport security regulations, and part 108 prescribes airplane operator security regulations. The proposed rule included general and specific security standards. Security-sensitive information was shielded from disclosure. Such security-sensitive information routinely is restricted to non-public security programs required of airport operators under § 107.3 and air carriers under § 108.5 of the FAR.

These security programs are protected from disclosure by the provisions of part 191, which implements section 316(d)(2) of the FA Act (49 U.S.C. 1357(d)(2)).

Discussion of Comments

As of May 9, 1991, 42 commenters had responded to Notice 91-9. Commenters included 23 airport operators and airport authorities, 10 employee groups, 3 public interest groups, an air carrier, a medical laboratory, and 4 individuals. The comments are summarized and addressed below.

Section 107.7 Changed Conditions Affecting Security

This final rule amends § 107.7 as proposed in the NPRM by adding a requirement that airport operators notify the FAA when the person designated as Airport Security Coordinator (ASC) changes. Five comments to the provisions in the NPRM were received, three of which supported the proposal.

Two commenters stated that it would be burdensome for airport operators to notify the FAA whenever the person designated as the ASC changes. One of these commenters said that this proposal would mean amending,

publishing, and distributing the "Airport Operations Security Plan" each time the ASC changed. The commenter also said that the proposal would not be necessary because security-related changes are already communicated at periodic local airport security meetings.

Both commenters also had different interpretations on whether the name of the ASC would have to be communicated to the FAA. For example, one commenter said the proposed section was unclear on whether the ASC must be specified by name or is simply "the person holding a specific classification on the airport management organization structure." The commenter asked whether the airport operator must seek approval from the local FAA security office to make a personnel change in the ASC position.

Response: The final rule remains unchanged from the proposal. The language of the rule is clear that the FAA considers a change in the designation of Airport Security Coordinator to be a changed condition affecting security. The FAA must know the name of each person serving in the ASC position to ensure that immediate and effective communication with the responsible person can be made. Obviously, if the ASC designation is changed, communication between the airport and the FAA could be adversely affected unless the FAA is promptly notified of the change.

Neither is the FAA persuaded that merely designating a job title (such as "facilities manager") is adequate, since at smaller locations the position may be only part-time. Confusion may arise over whom to contact unless a specific person is identified. Most commenters on the proposal supported this requirement as a reasonable and logical addition to § 107.7.

Regarding the commenter's concern that it would be burdensome to communicate ASC changes to the FAA, airport operators are already responsible for keeping the FAA informed of changed conditions affecting security under the existing language of § 107.7. Since changes in the designation of an ASC would not be expected to be frequent, it should not be burdensome for the airport operator to report such changes to the FAA. Lastly, such minor changes should not necessitate reprinting and distributing an entire airport security program document. The inconvenience of distributing updated information would be minimized if the security program documents are designed to permit for the ready removal or replacement of

individual pages or sections without disturbing the entire document.

Section 107.25 Airport Identification Media

This final rule establishes standards for the issuance and use of airport identification media. The proposal focused on the training of persons issued identification that permits unescorted access to certain airport areas. The final rule has been revised in several respects in response to comments received.

Since there were a large number of comments on this section, the following discussion is organized by several subtopics: Security Identification Display Area (SIDA), applicability, time frame for compliance, curriculum, individual accountability, records, and cost.

Security Identification Display Area (SIDA)

The FAA has adopted the definition of SIDA as it was proposed in the NPRM. The final rule defines the SIDA as "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."

Six commenters, including the Airline Pilots Association (ALPA) and the National Air Transport Association (NATA), focused on the definition. Most of the comments expressed some confusion about how SIDA related to the Air Operations Area (AOA) defined in § 107.1(b)(2). Two commenters stated that the SIDA would not necessarily be consistent with AOA, allowing stricter regulations to be directed at the air carrier risk areas and greater flexibility in general aviation areas. ALPA stated that SIDA should not encompass the sterile concourse. NATA recommended that airports be given flexibility in defining SIDA "so that alternative systems may be allowed in areas of the airport where general aviation operations are conducted."

ALPA had a related comment on use of the term "airport-approved" in the SIDA definition. It stated that despite the explanation in the preamble of the distinction between "airport-approved" and "airport-issued," FAA field personnel and airport operators might interpret the language of the rule to mean that only "airport-issued" identification is acceptable for unescorted access to the AOA. ALPA recommended clarifying the intent in the rule by using "airport- or airline-approved security identification medium."

Response: The definition of SIDA in the final rule remains unchanged from the proposal. As was explained in the preamble of the NPRM, the SIDA at any airport generally would include secured areas of airports as set forth under § 107.14, most and perhaps all of the AOA defined under § 107.1, and any other areas specified in the airport's individual airport security program. Unless under airport-approved escort, each and every person within the SIDA is required to continuously display airport-approved identification. In adopting the definition of the SIDA, the FAA reaffirms the intention that the requirement to display airport-approved identification media in the SIDA applies to everyone without exception and regardless of duties, affiliation, position, or past practices. The SIDA would not include the sterile area since the latter are intended for access by members of the public without escort.

Because each airport has peculiar physical and organizational attributes, the SIDA for each airport can only be adequately set out in an airport's individual airport security program. This approach satisfies the flexibility concern of airport operators while allowing for the protection of security-sensitive information that should not be publicly disclosed.

The proposed SIDA definition purposely allows for the flexibility that the comments mention. While the SIDA generally would encompass the AOA, the definition would allow for site-specific provisions at those airports where general aviation and other areas are positively separated from air carrier operations, and appropriate security provisions acceptable to the FAA are in place.

The FAA does not agree with the comment that the term "airport-approved" will be misinterpreted to mean "airport-issued" by FAA field personnel or airport operators. Airport security programs already explain that the term "airport-approved identification media" could include media that is not necessarily issued by an airport. Examples of such media include FAA Form 8000-39, and air carrier identification displayed according to agreements with the airport. Thus, FAA field personnel and airport operators are well aware of the long accepted distinction.

Applicability

The proposed training requirements which are adopted unchanged in the final rule apply to any person who is issued airport operator identification media providing unescorted access to the SIDA. Nineteen commenters

addressed the scope of applicability. Most of the commenters were airport operators or airport associations. The ATA, NATA, and National Weather Service also commented.

Comments from airport operators and associations stated that they did not understand their area of responsibility for training. These commenters wanted to know whether they would be responsible for tenant-employee training, the training of any individual they authorized to have access to secured areas, and whether they could require air carrier employees to attend airport training.

The ATA stated that it will be costly to airlines to pay for employees to attend duplicate airport training. Their concern was that air carrier personnel performing development, construction, or inspection duties might have to go through redundant training, and in their comment requested that such personnel be excluded from the rule.

NATA requested that training standards for general aviation area users and fixed-based operators (FBO) and FBO customers be not more than a verbal briefing with a handout of written materials. It also requested that an industry task force work out standards for fixed-based customers and FBO employees.

One commenter was concerned about the interrelationship between SIDA training and other possible rule changes, specifically future rulemaking related to criminal background checks of individuals with unescorted access to air carrier aircraft. The commenter wondered if individuals should receive SIDA training before the criminal background checks are completed or would this be giving out security information improperly.

One commenter referred to the preamble statement that limits applicability to only those individuals receiving airport-issued identification, thereby excluding certain FAA personnel and air carrier personnel who hold airport-approved media. The commenter states that to be secure, all individuals with access to secured areas should have the required training and identification, including U.S. Customs officials.

Response: As previously noted, airport-approved identification media include not only identification media issued by airport operators but also identification media issued by other entities that an airport operator accepts for unescorted access into the SIDA. Examples of identification media normally approved for use at airports include identification media issued by

the FAA and air carriers. Under the proposal, the airport only would be responsible for training individuals, regardless of their employers, to whom it issues identification media which provide unescorted access privileges. The airport operator is not responsible for training individuals who obtain identification media from other entities. Training for these other individuals is the responsibility of the issuing entities. This training can be accomplished through a variety of methods such as through local agreements, air carrier security programs, or under internal FAA guidance in the case of individuals having access authority via FAA Form 8000-39.

To the extent that some air carrier employees performing development, construction or other duties at airports are issued identification media providing access to the SIDA by an airport, limited site-specific airport training would be required for each person issued such identification. FAA is sensitive to the fact that an air carrier employee may be required to hold one or more airport-issued identification media because of job duties and that the employee might have already received airport security training through a previous airport-operator. In light of this possibility, FAA will approve training programs that only require site-specific training for individuals who completed SIDA training elsewhere when that training can be verified by the airport operator at the temporary site. This limited instruction would include coverage of topics peculiar to the airport issuing the identification media, such as the procedures for contacting local law enforcement and the airport's physical layout.

In response to the NATA comment and others concerning general aviation areas and FBO's, the rule provides flexibility in defining the SIDA so that FBO and general aviation areas need not be included within the definition, given FAA approval of other security provisions.

Regarding the interrelationship of SIDA training to possible criminal background check requirements, the FAA will determine at the point that criminal background checks are required what restrictions, if any, should be imposed on temporary issuance of unescorted access media. However, identification media providing unescorted access to the SIDA, whether temporary or permanent, may not be issued to anyone who has not undergone the training in accordance with § 107.25.

An airport-operator could condition its approval of identification media issued by other entities on the provision

that those entities provide adequate training for their personnel. Such training could be provided by the airport-operator or through a training program of equivalent quality provided by another organization.

Time Frame for Compliance

The NPRM proposed the following phased compliance schedule:

(1) After October 1, 1991, an airport operator may not issue identification media to anyone who has not successfully completed the required training.

(2) By March 1, 1992, at least 50 percent of all persons who possess airport-issued identification must have successfully completed the required training.

(3) After July 1, 1992, an airport operator may not permit anyone to possess any airport-issued identification unless that person has successfully completed the required training.

Nine commenters addressed the compliance time for the required training. Commenters believed that the time frame is not realistic, particularly the October 1, 1991, deadline. They stated that the deadline is too burdensome and too difficult to comply with. A few commenters requested that the training time schedule be coordinated with implementation of an access control system to that training would not have to be conducted by the deadline and then repeated once an access control system is in place. One commenter stated that since no curriculum has been developed, the October 1 deadline is unrealistic. One commenter stated that in recent months administrative and operational security forces have been stretched to excessive workload limits. In addition, most major airports are implementing new § 107.14 on access control systems. Adding another requirement with a short deadline is not in the best interests of the aviation industry or the traveling public. Furthermore, for many airports, budgets for fiscal year 1991 have already been established without including any of the costs associated with this rulemaking.

Response: In an effort to be responsive to the views of the commenters, while at the same time providing for definitive and timely improvements in security at the nation's airports, the FAA has revised the phased training schedule to provide additional time for compliance. In the final rule, a new January 1, 1992, deadline provides an additional 3 months over the proposed deadline by when all airport operators will be required to train employees prior to

issuance of identification media for the first time. Under the revised schedules, at least one-half of the individuals in possession of such identification media prior to January 1, 1992, will have to be trained by October 1, 1992, with the balance of training to be completed not later than May 1, 1993.

The training requirement under this section is a one-time requirement. The rule does not establish any type of retraining requirement. If an airport does not have its § 107.12 access control system in operation when SIDA training commences, then the airport operator may find it necessary to provide supplemental training on use of the new access control system when it becomes operational. Note, however, that the fundamental nature of the training required under § 107.25 should be readily compatible with an applicable to any access control technology adopted into an airport security system.

Curriculum

Proposed § 107.25(e) lists topics that must be included in the curriculum of an airport's security program. These topics are: (1) Control, use, and display of airport-approved identification access media; (2) challenge procedures and associated law enforcement support; (3) restriction in divulging information or an act of unlawful interference with civil aviation; (4) non-disclosure of information in the security system; and (5) any other topics deemed necessary by the Assistant Administrator for Civil Aviation Security.

The nature of the comments received fell into two broad categories. The first groups of commenters expressed the belief that current training methods are adequate and that no additional training curriculum is necessary. For example, the Port Authority of New York and New Jersey stated that at Kennedy International Airport each individual issued a new identification (as part of their new automated system mandated by § 107.14) must acknowledge receipt of the airport's general security regulations. It stated that this procedure should qualify as meeting the proposed training standard.

The other category of commenters expressed the option that the proposal inadequately detailed the content of the curriculum that would be required. Most of these comments requested a more detailed curriculum or guidance on developing such a curriculum. According to these commenters, the proposed curriculum was too basic. It did not specify the number of hours required. It was silent on issues, such as concealment of weapons, sabotage,

profiles, screening equipment, and levels of security. They said that the minimum curriculum was too general to establish a standard and that it did not allow for public comment on the details of a curriculum, and that costs could not be accurately anticipated. APANA commented that "by failing to establish uniform, minimum standards in a public forum * * * the proposed rule fails to meet Congress' mandate contained in section 1357(h)."

The commenters raised the following questions about the proposed curriculum:

- (1) How many hours?
- (2) Is it annual or otherwise recurring?
- (3) Is it formal classroom training or can video tapes be used?
- (4) What "other topics" might be necessary and for whom? When will these other topics be identified?
- (5) Who is responsible for the training—tenants or airports?

The City of Chicago asked if video training of individuals would be acceptable in light of the number of people who would need training.

The Indianapolis Port Authority proposed that a badge recipient be given a training document and verbal explanation of the use of the badge when he or she is given the badge.

The State of Alaska stated that, as part of its photo identification system, at small airports subject to part 107 it provides a 1½-page document that explains the system. When signed by the badge holder, the document becomes a contract between the badge holder and the airport.

NATA recommended that fixed-base customers at airports receive a verbal briefing with written materials on airport security regulations, the access system, and limitations that would apply. NATA also recommended that developing a set of training standards for FBO's and customers of FBO's be assigned to the FAA's Aviation Security Advisory Committee.

One commenter requested more information on the meaning of "associated law enforcement." The National Weather Service (NWS) stated that it does not want its people trained in "challenge procedures" or in any way involved in challenging. (See the additional discussions relating to the NWS' comments, below.)

Response: The FAA disagrees with the comment that not enough detail on curriculum content or development was disclosed in the proposed rule. To the contrary, the full range of curriculum content with specific topical areas was set out in the NPRM and appears in the final rule. Those persons required to display airport-issued identification for

the most part, are not security professionals and the training for them is not expected to involve any more than preparing them to function in a security-sensitive environment. Thus, there is no need for them to receive training on screening equipment, sabotage, or profiles. These are separate, more detailed training topics for people whose job function is to provide security.

Due to the individual configuration, size, types of operations, extent of risks, and law enforcement procedures of each airport, it is not possible to set out in the public rule every aspect of each training program. Additionally, much of the site-specific information, as well as details of challenge procedures and other security procedures, are security-sensitive and cannot be disclosed without compromising the integrity of the airport security system. Thus, the FAA has met the legislative mandate to establish uniform standards through this public rulemaking action while maintaining the integrity and efficacy of the aviation security system. In the immediate future, FAA expects to provide additional guidance directly to airport operators through local FAA special agents.

While the precise cost of providing training will vary from one airport to another, the curriculum requirements and cost estimates disclosed in the NPRM reasonably portray actual expected costs. As discussed in the regulatory evaluation included in the docket of this rulemaking and summarized in the preamble of the NPRM, the FAA expects that a maximum of 2 hours of training per employee will be sufficient at most airports. The FAA does not agree with the commenters who believed that inadequate hours and cost-per-hour data were provided in this rulemaking.

In response to queries as to whether video tapes or oral briefings may be used in providing training, the rule does not prohibit the use of any particular training methods; however, prior to conducting training, the anticipated method of instruction and curriculum must be approved by the FAA as a part of the airport operator's security program.

In this regard, the FAA recently produced and distributed to most airports affected by this rulemaking, a series of videotapes entitled "Airport Security: A Team Approach." One segment of that series specifically addresses security in the AOA and most of the required major topics. Use of this video tape could constitute a major component of an acceptable training program.

The curriculum set out in the NPRM and adopted in the final rule is intended to make employees having unescorted access privileges to the SIDA aware of their responsibilities regarding their individual role in airport security. Such basic concepts as not loaning identification media to others, reporting lost or stolen identification to the appropriate authorities immediately, and the critical nature of and correct procedures for exercising a challenge when required, are viewed as essentials. Written material may be used to supplement oral or video presentations on these subjects. However, language has been added to § 107.25(e) of the final rule to clarify that an opportunity for attendees to ask questions must be provided.

In response to other commenters, the requirement for training on associated law enforcement support is an important part of knowing what to do if an individual without proper identification media is encountered in a secure area. Law enforcement support requirements are specified in §§ 107.15, 107.17, and 107.19.

In response to the comment that these requirements should come under the authority of the Administrator of the FAA, the agency is guided by the Aviation Security Improvements Act of 1990. The legislation created the position of the Assistant Administrator of Civil Aviation Security and makes the person holding that position responsible for implementing and enforcing these regulations. In carrying out these responsibilities, this person is subject to the Administrator's direction and authority.

Finally, the U.S. Department of Commerce (National Weather Service) objected to "any attempt to characterized its employees who regularly perform their duties in areas within the airport controlled for security purposes as 'security personnel.'" The objection deals especially with the obligation to challenge aspect of the training required under § 107.25.

Historically, the challenge procedure has been a responsibility shared by all individuals with unescorted access privileges of airports having security programs in accordance with § 107.3(b). Since it is unreasonable to expect law enforcement officers to be present at all times throughout the airports' controlled areas, a supplemental method, i.e., the challenge procedure, was developed.

Challengers are not expected to place themselves or others in situations they consider dangerous. Rather, they are expected to contact law enforcement authorities under appropriate

procedures when a threat is perceived. The FAA sees no valid reason why all persons having unescorted access to a SIDA should not be trained on and be expected to carry out the challenge procedures at those airports where such a procedure is a part of the security plan.

Individual Accountability

Proposed § 107.25(f) prohibits a person from using any airport-issued identification media to gain access to an SIDA unless the media was issued to that person by the appropriate airport authority.

One comment was received on paragraph (f). It supported the requirement if it holds the individual responsible directly to the FAA.

Response: The intent of this provision is to prohibit an individual from using someone else's identification media for access to the SIDA, whether such identification is issued by the airport operator or another entity. In the proposal, the prohibition was limited to only airport-issued identification when, in fact, the intent also was to prohibit the misuse of identification media issued by other entities that is airport approved. The final rule has been changed to prohibit an individual from using not only someone else's "airport-issued" identification, but also from using "airport-approved" identification. This change comports with the intent of the proposal and clarifies the scope of the prohibition. Of course any individual violating the identification media use restrictions under this section would be subject to an FAA enforcement investigation, and potentially a civil penalty.

Records

Proposed § 107.25(g) requires an airport operator to 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.

Five commenters addressed the proposed recordkeeping requirement. All commenters believed that the proposed requirement will be burdensome. One commenter was concerned that the FAA may use the records to hold airports accountable for security breaches. Another commenter was concerned that the records will be held by the airport rather than the employer of the individual and that the airport may be liable for releasing this information. One commenter questioned the benefit of the requirement to the airport operator. Will the record of security training for an individual serve

as a defense for an airport operator for a purported part 107 violation?

One commenter referred to this requirement as an "administrative nightmare" because of the high turnover rate and the 6-month retention. The commenter requested allowance to purge the data base after the individual's unescorted access privileges are terminated. Another commenter said the 180-day retention requirement will overload an already strained recordkeeping system.

Response: This provision is adopted as proposed. As stated in the preamble of the NPRM, records must be maintained to document compliance. Such records would provide vital information regarding training during investigations of security-related matters. Since airport operators are required to provide training, it is consistent to require that they also maintain records of training.

This requirement is not intended to be an administrative burden. It is not expected that such basic information as the name, date, place and extent of training received by an individual would be time consuming to compile or take too much space in a data bank. These records would greatly improve the management of the airport security system and should not include anything other than training record details. They should not be accessible to anyone not having a bona fide "need to know" training record details.

The requirement to keep records is not intended to serve as a defense for any purported part 107 violation. However, a charge that required training has not been provided might be refuted by current and accurate records to the contrary. In this respect, compliance with the record requirement is a great benefit to the airport operators.

The 6-month retention is primarily for investigation purposes. The FAA believes that, since each record contains only a minimal amount of information, the 6-month retention creates only a slight burden on the operator.

Cost

Ten comments addressed the cost of § 107.25. Commenters stated that the requirements would be a burden and that the FAA's estimate for the cost of training is low. Commenters asked if the FAA will reimburse airports, if the FAA will make grant money available, or if Airport Improvement Program funds will pay for the training. One commenter questioned how the FAA estimates \$4,405,000 without having determined guidelines for the number of hours and methods of training. One pointed out that the cost is ongoing, not one-time.

Two commenters provided specific figures. Training at Tampa International Airport would be for 4,000 employees with an annual turnover rate of 1,500. The required training would necessitate one additional manager and support facilities for a cost of \$60,000 annually. Man-hour allocations for all employees to be trained would be \$180,000.

Raleigh-Durham expects the cost to be \$7,889,275 over 10 years or in excess of three-quarters of a million dollars per year. These figures are based on 3,500 persons for a 6-hour class having access to the secured areas. Initial curriculum development is estimated at \$141,275; updated over 9 years at \$472,500; materials at \$500,500 for 10 years, labor costs for the class at \$475,000, and record maintenance at \$6,300,000.

Response: The cost estimates in the Regulatory Evaluation accompanying the NPRM were reviewed in response to comments regarding the accuracy of proposed training costs. The initial cost figures have been confirmed as being accurate. The projected cost of training is based on the scope of training, as set out in the NPRM and final rule, and the fact that training sessions are not expected to exceed 2 hours per person at almost all airports. This information was fully disclosed in the NPRM and is repeated herein. Some commenters improperly based projected costs on training times far in excess of 2 hours and with the expectation that all personnel would require training. In fact, only individuals with airport-issued identification providing unescorted access to the SIDA are required to undergo security training. In the interest of reducing possible training costs, each airport operator subject to this action should carefully reassess which employees have a genuine need to have unescorted access privileges. It may be possible to reduce costs by withdrawing the privilege from some individuals.

The FAA does not anticipate the availability of funding grants of any kind to cover the cost of providing training under this rule.

Section 107.27 Evidence of Compliance

This section proposes that airport operators provide the FAA with evidence of compliance when requested. This should not require airport operators to institute new or expanded recordkeeping systems beyond those required elsewhere in part 107. The final version of § 107.27 is intended merely to guarantee FAA access to existing records when necessary.

Eight commenters addressed this proposal; one, the AFA, supported it. The remaining commenters represented

airport operators who felt that the administrative burden and cost of this proposal (e.g., additional storage space and staff) will be excessive and will compete with funds for improving the safety and efficiency of airports. Some commenters stated that the airport operator should not be responsible for documenting and maintaining records on airline employees who disregard security rules. Such documentation should be the responsibility of the airlines.

One of the commenters asked, "Is the record retention requirement really necessary under the absolute liability standard now so unfairly imposed by certain segments of the FAA upon airport operators facing liability for the culpable conduct of independent third parties?"

Another commenter said that it is unrealistic to require airports to provide the FAA with immediate access to training records; most airports do not have 24-hour or weekend and holiday pass and identification coverage for the offices where security records are maintained. Another commenter said that FAA access to security records has never been a problem; therefore, the proposed section is unnecessary.

Response: The concerns expressed by airport operators about the administrative burden of documenting and maintaining records to show employee compliance with security programs do not relate to the intent of this section, which deals with airport compliance with security programs not employee compliance. Airports must show evidence of compliance with security programs by making records available to the FAA on request. The kinds of records that relate to the security program are records on security training (as required under proposed § 107.25(g)) and records on law enforcement actions (as required under existing § 107.23). The airport may physically keep these records or individual entities may keep records for their employees. Either way the airport is responsible for knowing where the records are and for providing immediate access to them. The FAA prefers that the airport physically maintain the records, but it is not requiring airports to do so. Law enforcement records subject to FAA review under § 107.23 may be kept in accordance with local or state requirements, so long as the records are available to the FAA upon request.

The comment regarding airport operator liability for security violations committed by third parties represent a justifiable concern. However, the intent of the proposal, which has been adopted without change in the final rule, is to

provide reasonable assurance that current and accurate information regarding airport operator compliance with security rules and directives is maintained and available for any reason. This requirement is not intended to place nor excuse liability for security violations.

In terms of FAA access to records, this rule does not require that records be made available on a 24-hour basis. Rather, records should be available during normal work hours, during FAA inspections or during an investigation, in which case immediate access may be required.

Section 107.29 Airport Security Coordinator

This section proposes that airport operators appoint an Airport Security Coordinator (ASC) to act as a liaison between the airport and the FAA. The ASC would oversee airport security functions, e.g., records maintenance, compliance, and program development and training.

Twelve commenters addressed this proposal; four of the commenters supported the proposal, including the AFA and three airport operators. Some commenters stated that airports already have a director or manager responsible for airport security and FAA liaison and that an additional position for this purpose would be costly and burdensome. Commenters also stated that determining who should fulfill this role should be left to each individual airport.

One commenter said that the proposed section needs clarification "as to the degree of 'designation' and how any changes of said designation relate to § 107.7(b)."

An airport authority said that the FAA should provide a better definition of the duties and responsibilities of the ASC. Also, the FAA should determine the effect of a recent rule requiring airport access control systems (§ 107.14) on the ASC position.

ATA stated that, if an ASC position were to be created, the position should be limited to part 107 responsibilities. ATA maintains that if the ASC were to exercise air carrier responsibilities under part 108 as well, then "air carriers would be exposed to a welter of uncoordinated security demands, which would contradict the efforts of the air carrier industry and the FAA to assure that security matters be dealt with in a uniform fashion."

Response: The FAA disagrees with the commenters' concerns that the ASC position would be in addition to other security positions and would thus be costly and burdensome. As stated in the

preamble of the NPRM, most ASC positions are not expected to be either fulltime or to require additional positions at most airports. Rather, the ASC would most likely be someone who is already fulfilling some security-related functions, either as his or her sole duties or as a collateral assignment. Significantly, the ASC position is not intended to embody any authority or responsibility which does not already fall to airport operators under the current part 107 program.

The requirement to designate an ASC is intended, in part, to provide program oversight and continuity. Further, as the airport operator's recognized contact point for security matters, the ASC can contribute toward a more effective FAA-industry network, both locally and nationally.

Regarding ATA's comment that uncoordinated security demands could ensue if the ASC were to exercise air carrier security responsibilities, the rule is clear that the ASC's only role is to serve as the airport operator's primary security contact with the FAA. FAA does not anticipate the ASC as having an operational or oversight role regarding part 108 requirements.

In terms of the "degree of designation" and "changes of said designation" of the ASC, the FAA's position is that the name of the ASC (or name of a new ASC) should be reported to the FAA to ensure that the FAA has contact with the correct person. As already discussed in the FAA's response to comments on § 107.7, as well as above, the ASC is likely to be filling several security positions; therefore, the FAA would need the name of the current ASC to make appropriate and timely contact.

In considering the comments received which related to this aspect of the ASC designation, the FAA also concluded that it is appropriate to require that the designation include a method to contact the ASC on a 24-hour basis. In order to be acceptable, the designation should include such information as home and work telephone numbers, and where appropriate, pager and facsimile machine numbers. The FAA will permit designation of one or more alternate ASC's to be contacted in the event of the unavailability of the ASC.

Regarding the comment that the FAA should provide more definition of the ASC's duties and responsibilities, the FAA already described in the preamble of the NPRM the functions appropriate to the ASC. These functions include records maintenance, compliance oversight, program development and consistency, training, and

communication with the FAA, airport tenants, and others. The FAA did not set specific standards for the ASC because that role will differ from one airport to another, based on such factors as airport size, organizational structure, and existing security program features. Regarding the same commenter's point that the FAA should determine the effect of § 107.14 (access to secured areas of airports) on the ASC position, the FAA does not see that need to relate each individual section of part 107 to the ASC. The ASC serves as the primary contact for all part 107 security matters. The FAA expects that the ASC's will work closely and cooperatively with their FAA and tenant counterparts to facilitate the effective implementation of the full range of security provisions.

The intent of § 107.29 is to ensure that there is a primary contact person who oversees part 107 security functions. As mentioned in the preamble of the NPRM, there are positions under part 108 which are already intended to serve the air carriers in a similar capacity, i.e., the Ground Security Coordinator and Inflight Security Coordinator under existing § 108.10. Ideally, the ASC's should serve as the liaison or contact point for their air carrier counterparts, as well as for communications with the FAA. Additionally, the ASC's will be in a position to seek resolution of security-related issues not only for the airport operator's part 107 concerns, but also as tenants' security concerns are impacted by the airport operator responsibilities under that part.

Section 108.9 Screening of Passengers and Property

This section proposes that air carriers staff their security checkpoints with both supervisory and non-supervisory screening personnel in accordance with the standards specified in the air carriers' security programs. These standards are new to carriers' security programs.

Six commenters addressed this proposal; AFA supported it. Two commenters, one of which was the Independent Union of Flight Attendants (IUFA), objected to the proposal's lack of specific staffing requirements on the basis that the public was denied an opportunity to comment on the specifics. The IUFA said that the proposed rule will limit the number of security duties per individual, but did not specify the limit.

ALPA said that the proposal would duplicate what is already required in FAA-approved security programs pursuant to § 108.5. ATA stated that requiring additional layers of personnel will not automatically enhance security

and that this proposed section does not reflect demonstrable security needs.

The Regional Airline Association (RAA) said that additional staffing at regional airports may not be warranted due to the lower numbers of passengers passing through security checkpoints which allows for more effective screening of all persons. The costs of full-time supervisory coverage would be high for regional airports. RAA recommended that the FAA make this staffing requirement applicable only to airports enplaning more than 500,000 persons annually.

Response: The final rule is unchanged from the proposal. The FAA is convinced that improved supervision is critical to enhanced screening effectiveness. Section 108.9(d) requires air carriers to staff their security checkpoints with supervisory and non-supervisory personnel in accordance with standards specified in the air carriers' security programs. The actual staffing requirements would be in the security program and are not set out in the public rule because the staffing requirements at a particular checkpoint must be specific to the peculiar needs of the location involved. Specific staffing requirements are related to airport activity and threat factors. The particularized need of each individual checkpoint, coupled with the fact that knowledge of the actual staffing details could assist anyone attempting to breach security, necessitates placing the detailed standards for each checkpoint in the security programs.

Section 108.9 is not duplicative of § 108.5 because it adds a specific new standard that requires supervisory staff at checkpoints. For the first time, part 108 explicitly requires supervision of checkpoints so that screeners have regular and consistent supervision. Criteria for the number of supervisors and screening personnel and the pattern of supervision will continue to be contained in each security program under § 108.5, which will allow latitude geared to the level of activity at the checkpoint. Supervision at low activity airports is required, but the number of supervisors and degree of supervision required in the security program will be appropriate to the size of the airport and the degree of security threat.

Section 108.17 Use of X-ray Systems

The proposal adds a new subparagraph (h) which would require that air carriers comply with X-ray operator duty-time limitations as specified in the carriers' security programs. X-ray operators would be guaranteed scheduled job rotation

frequencies for the purpose of sustaining vigilance.

Four commenters addressed this proposal. The AFA supported the proposal. ALPA said that the proposal would duplicate what is already required in § 108.5 in FAA-approved security programs.

IUFA commented that the duty limits for operators of X-ray systems are undisclosed; therefore, the public is unable to comment on duty limits.

ATA stated that X-ray operator duty limitations will be dealt with in the Air Carrier Standard Security Program, but any limitations should also ensure that job rotations are not so frequent as to disrupt screener performance.

Response: The final rule is adopted as proposed. As with other portions of this proposal, the rule language makes the general standard mandatory. The specific standards for frequency of rotation and duty limits will be established in the air carriers' security programs. Specific limits are not specified in the rule out of the need for flexibility to develop and amend standards to fit the requirements of particular checkpoints and because this information is security-sensitive.

The FAA agrees that rotation frequency should be based on attention span and should be neither too long nor too short for maximum alertness. Attention span varies according to workload conditions. Therefore, rotation frequency and duty times will generally vary according to work conditions.

This requirement does not duplicate existing requirements in either § 108.5 or air carrier security programs, neither of which specifically mandates duty-time limits.

Section 108.29 Standards for Security Oversight

The NPRM proposed that air carriers ensure that employees and contractors, on a need-to-know basis, have knowledge of certain specified information on security requirements. In addition, it proposed that each carrier's Ground Security Coordinator (GSC) be required to perform and document formal semi-annual evaluations of the station's security provisions and to conduct daily informal reviews of the same.

Four commenters, including AFA, ATA and ALPA, addressed this proposed section; two of those (AFA and ALPA) were in support.

ALPA commented that this proposed section would ensure greater visibility of GSC's. AFA supported the proposal as necessary for the effective gathering and dissemination of security related

information, as well as evaluating the effectiveness of the station's security functions. ATA commented that existing procedures already provide adequate security oversight, i.e., passenger screening points currently undergo frequent tests of their effectiveness, and that carrier station personnel are aware of the heightened need for vigilance in recent years. In addition, the evaluation and review requirements imposed on the GSC, coupled with personnel evaluation requirements under § 108.31, would be burdensome. The ATA was concerned that the proposed standards for security oversight are not based on a demonstrated need.

Another commenter, an air carrier, was unsure of the level of detail of the proposed evaluation and whether this function could be rotated among carriers. The air carrier also said that the GSC currently conducts annual evaluations of security. The commenter asked whether the proposed requirement for semiannual evaluations would be in addition to the annual evaluation.

Response: As stated in the preamble of the NPRM, the section would require several actions by air carriers. The proposal was based on the FAA's determination that existing procedures do not provide adequate oversight. Additional oversight is needed to ensure an improved security system. As an example, FAA security inspections have revealed that, when several carriers share a screening contractor at the same airport, some carriers have assumed that another carrier has passed on the security information to employees of the contractor. This assumption occasionally has proven to be incorrect, and none of the carriers have passed on such information. Proposed § 108.29 (a)(1) and (b) have been adopted in this final rule and address this problem.

Notwithstanding the benefits associated with the proposed standards for security oversight, the FAA recognized the potential for a duplication of effort in requiring both daily reviews and semiannual evaluations. As the ATA pointed out, current procedures include scheduled air carrier station inspections conducted by FAA special agents and periodic tests of checkpoint weapons-detection effectiveness. In addition, the final rule establishes oversight and accountability at the air carrier station level by requiring GSC's to conduct daily reviews of all security related functions (§ 108.29(a)(2)). No specific documentation requirements accompany § 108.29(a)(2). Following careful evaluation of comments regarding the

added burden the proposed rule would have placed on carriers without significant benefit, the FAA has deleted the proposed requirement to conduct semiannual evaluations. Significantly, however, the final rule also has been modified (§ 108.29(a)(2)(ii)) to explicitly require the air carrier to detect and immediately correct instances of noncompliance identified during the daily reviews. The identification and correction of weaknesses is the essence of improved security. This action is intended to ensure that air carriers maintain an increased awareness, first hand, of the effectiveness of their security activities.

While the FAA remains firmly convinced that the application of unique layers of security countermeasures (redundancy) is justified, it does not intend to promote additional layers of administrative oversight without corresponding benefits. This focus on daily oversight, while deleting the proposed requirement for semiannual evaluations, reduces the administrative burden while retaining significant improvements to operational effectiveness. This approach also is consistent with both ALPA's and AFA's general support of standards for security oversight in that it would ensure greater visibility of GSC's and would enhance the gathering and disseminating of security related information as well as evaluating effectiveness.

Section 108.31 Employment Standards

This proposed section establishes employment and training standards for screening personnel, including requirements for educational or experience levels; aptitude and physical abilities; the ability to read, speak, and write English; and completion of security program training. Further, the proposal provides for on-the-job training, remedial training, and evaluations. The proposal also provides for certain exceptions to the employment standards for screening functions conducted outside the United States.

None of the 11 commenters in this area fully supported this proposed section.

Most of the commenters, including the Joint Council of Flight Attendants Union, the Aviation Consumers Action project (ACAP), IUFA, RAA, AFA, and APANA, said that the proposed standards provide little detail in terms of training curricula, methods, and hours.

Many commenters objected to the FAA's decision not to publish the specifics of these standards. ACAP, IUFA, AFA, and an individual commenter said that there would be no

security risk in publishing standards, such as the aptitudes and physical abilities required of screening personnel; by not doing so, the FAA is denying the public the right to fully evaluate the proposed rule.

ATA objected to the requirement that the GSC conduct semiannual evaluations of screeners, stating that the GSC is not fully qualified to judge such areas as physical abilities and skill levels. ATA recommended that this function be assigned to the provider of screening services, "which would have the experience to make evaluations that affect not only the quality of screening but also the continued employment of individual screeners."

RAA commented that the FAA's lack of specific standards might cause air carrier concern about possible violations of Federal and state laws relating to discrimination. It stated that "Carriers should not be forced to defend the objectivity and relevance of any tests/examinations they may require in order to comply with necessity, but vague, hiring standards."

One commenter, a medical laboratory, noted that the proposed section does not mention standards for urine drug testing of applicants and employees, and that such standards should be a part of the proposed rule.

Another commenter said that employment standards for screening personnel could adversely affect the labor force eligible for employment. The proposed section also could result in higher wages which would affect airline costs and airport wage rates.

Response: In response to the many comments regarding non-disclosure of the specifics of screening personnel employment standards in the NPRM, the FAA carefully reviewed the current standards contained in the security program. The security program has for over a decade had training standards for screening personnel. Prior to this rulemaking, the FAA had amended air carriers' approved security programs to strengthen the training and employment standards for security screeners. The provisions in the Aviation Security Improvement Act mandating the establishment of standards did not expand the FAA's authority to issue such standards, since that authority can be found in the preexisting FAA Act. The FAA's review of the security program resulted in a determination that certain elements of the existing security program requirements could be included in the public rule without jeopardizing the security of the civil aviation. Thus, the following preambular discussion and final rule language, itself, provides more

details regarding the standards for screener personnel. Section 108.31(a)(2) has been expanded to include more information about aptitude and physical ability requirements. These are performance-based standards designed to measure an individual's functional ability to successfully complete job tasks related to security duties.

Section 108.31(a)(2)(i) requires that persons used as X-ray operators (i.e., interpreters of X-ray images) must be able to see and distinguish the imaging standard used to determine the performance of the X-ray system itself. For those X-ray images which contain colors (through computer enhancement), the operator must be able to distinguish those colors and to explain their significance. A person with some color perception defect may well be able to perceive the three or four strong colors used in current equipment. The FAA expects that a screener will only be able " * * * to explain what each color signifies * * *" after undergoing initial training. This is in keeping with § 108.31(b), which provides that a screener undergoing on-the-job training may not make independent screening judgments. For those security checkpoints which do not employ color-enhanced X-ray equipment, color perception is not required for the X-ray position except as provided in § 108.31(a)(2)(ii).

The latter requirement requires all screeners to perceive each color used for a visual alarm or off/on switch by each unit of screening equipment at each checkpoint at which they serve. This equipment consists of X-ray baggage inspection systems and walk-through metal detection devices ("metal detectors"). Both usually have color-illuminated off/on switch indicators, and the walk-through metal detectors customarily are equipped with color alarm indicators as well as audible alarms. X-ray systems customarily include red warning lights to indicate that an X-ray beam has been energized. It is essential that screeners be able to ascertain, for example, that a metal detector has not become unplugged and that a metal detector is indicating an excess amount of metal on an individual's person. Visual alarm indicators on metal detectors become very important at a crowded, noisy checkpoint, especially where several parallel metal detectors may be emitting a number of similar audible alarms.

In § 108.32(a)(2)(iii), screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment. Screeners must

be able to hear not only the audible alarms of the equipment they use, but also spoken communications from their co-workers, supervisors, and the public.

Screeners performing physical searches of baggage and other objects must have dexterity and some measure of strength. Such searches must be done both thoroughly and efficiently. No specific quantification is provided in § 108.31(a)(2)(iv). A screener must be able to efficiently and thoroughly manipulate items to be searched.

Under § 108.31(a)(2)(v), screeners performing pat-downs or hand-held metal detector searches of persons must have the dexterity and capability to perform those procedures. This standard will not prevent individuals with physical limitations or impairments from becoming screeners provided they can perform the duties of the position.

The English language requirement proposed in § 108.31(a)(3) is a new requirement. The NPRM specifically invited comments on the language issue, but none were received. While no one commented on this issue, the final rule includes additional language to clarify the intent of the requirement. The additional detail will be useful to persons interested in seeking employment as screeners. As with basic aptitudes and physical abilities, English language qualifications are measured against the requirements of screener duties, rather than standardized academic tests.

Section 108.31(a)(3)(i) requires the screeners must be able to understand and carry out written and oral instructions in English regarding the proper performance of their screening functions. Because security training and supervision in the United States is presented in English, it is essential that screeners understand written and oral instruction in all phases of their jobs.

Section 108.31(a)(3)(ii) requires that screeners be able to read English-language identification media; credentials; airline tickets; and labels on bottles, aerosol cans, packages, and other items normally encountered in the screening process.

Section 108.31(a)(3)(iii) requires that screeners speak and understand English well enough to understand and answer questions and to give comprehensible directions to persons undergoing screening. These skills are very basic in a position with such considerable public contact, yet the FAA has often received complaints from the public concerning the lack of such skills.

Finally, § 108.31(a)(3)(iv) requires that screening personnel, when charged with recordkeeping duties, be able to write

incident reports, statements, and log entries in the English language. This is intended to ensure that no person incapable of writing in English is assigned recordkeeping duties. In response to comments on § 108.31(d), the FAA has reevaluated the benefits that would have accrued from the proposed requirement that GSC's conduct semiannual evaluations of screeners. The FAA has concluded that an annual evaluation, coupled with the requirement of immediate remedial training for screeners who fail an operational test, are sufficient safeguards to ensure the desired level of security effectiveness. Thus, in the final rule, the requirement for semiannual screener evaluations has been changed to an annual evaluation. Further, the FAA doesn't agree with ATA's comment that GSC's lack the qualifications to conduct the evaluation of screeners. GSC's are an integral part of the security system and are tasked in the final rule to conduct daily reviews of all security-related functions.

With respect to the comment on the need to drug test security screeners, drug testing is already required by FAA regulations.

Contrary to the suggestion that this rulemaking might adversely impact the labor force, the FAA does not anticipate that these employment standards will have a significant impact on the availability of persons to fill screener positions. While the final rule has established appropriate security-related standards, these standards do not prevent the majority of U.S. residents from qualifying. If the establishment of appropriate security standards has the effect of requiring higher salaries to attract qualified applicants, the resulting professionalism is both beneficial and consistent with the purposes of the Aviation Security Act.

Proposed § 108.31(f), which addressed locations outside the United States where the certificate holder has operational control over a screening function, has been modified slightly in the final rule. No comments on this section were received. The NPRM language that " * * * at least one person with the ability to functionally read and speak English is present * * *" has been changed to " * * * at least one representative of the certificate holder * * * is present * * *. This change is to clarify that the English speaking person must be a representative of the certificate holder. A "representative of the certificate holder" could include the certificate holder's direct employee, an employee of another carrier (foreign or U.S. flag),

or a screener or other contract employee as long as such a person is acting on behalf of the certificate holder.

Public's Right to Comment

Six commenters objected to the FAA's decision not to publish the specifics of employment and training standards for security purposes. The Independent Union of Flight Attendants (IUFA), Association of Flight Attendants (AFA), Airline Passengers Association of North America (APANA), Public Citizen/Aviation Consumer Action Project (ACAP), Families of Pan-Am 103/Lockerbie, and an individual argued that these standards should be subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (APA).

While agreeing that Congress gave the FAA authority under the FA Act to restrict public disclosure of information obtained or developed in the conduct of security activities, commenters stated that the Freedom of Information Act does not exempt the development of minimum security employment standards from the requirements of the APA. Commenters felt that such standards as training curricula and hours do not pose a security threat and that by omitting these specifics from the NPRM, the FAA denied the public an opportunity to comment fully on matters affecting public safety. Families of Pan-Am 103/Lockerbie recommended, at an absolute minimum, that the following areas be included in the rule: Minimum physical standards, criminal history standards, mental and educational standards, hours of training, and screening standards.

Some commenters recommended that the FAA either withdraw the NPRM and issue another proposed rule, or issue a supplemental NPRM, either of which should set forth sufficient minimum standards to allow for full public comment on employment and training standards. These commenters, as well as airport operators, provided similar comments about the lack of specifics in various sections of the proposed rule; these comments are discussed within each applicable section.

Response. The FAA disagrees with the commenters who expressed the opinion that APA notice and comment requirements were not complied with because some details of specific security program standards were not disclosed in the proposed rule. Very few requirements were withheld from public disclosure. Those few areas withheld were of a security-sensitive nature or involve individualized details of specific security programs. With few exceptions, the content, scope, and associated costs

for every aspect of this rulemaking were disclosed in the NPRM for notice and comment purposes.

In the part 107 portion of the NPRM, for example, a full definition of the security identification display area and the content of the training curriculum and recordkeeping requirements were fully disclosed for public review and comment. Likewise, the duties of an ASC were set out in the NPRM.

In the part 108 portion of the NPRM, a significant amount of detailed information regarding security screener qualifications was disclosed for public notice and comment. The fundamental aptitudes and physical abilities for screeners were enunciated and discussed in both the preamble and rule language itself. The standards for security oversight were also fully detailed in the proposed rule, including the scope and content of security knowledge required of security personnel, the frequency of security evaluations, and the applicability of these standards to contractor personnel.

Thus, the FAA does not agree with commenters who stated that there was insufficient disclosure of details of the proposed security standards in the NPRM. In all instances, either the details were fully disclosed or withheld for legitimate security reasons.

Miscellaneous

Two commenters representing the interests of smaller or regional airports, argued that the users of these airports do not face the same level of security risk as those using large or international airports. One of the commenters felt that the additional manpower costs of providing increased training and security at smaller airports will be burdensome and will result in decreased airport maintenance and airline service.

One commenter suggested that aviation security could be strengthened if the focus were on increasing employee retention, thereby resulting in a stable, qualified work force. This commenter suggests that airport authorities should impose fines on employers who have excessive turnover rates.

One commenter recommended wider use of its computerized security equipment in training security screeners and persons with unescorted access to the SIDA. It says that its equipment would be cost effective and is currently used by some U.S. air carriers, foreign governments, and airport authorities to test, document, and evaluate security delivery systems.

Another commenter stated that the proposed rule will add costly training and reporting requirements into a system that is already overtaxed; the

commenter suggested that resources would be better spent on developing more sophisticated intelligence gathering methods and equipment.

One commenter, while supporting the proposed rule, felt that the comment period allowed for this NPRM was too brief and that it should be adjusted.

ATA recommended that the proposed requirements be made applicable to the U.S. operations of foreign air carriers; this would enhance the safety of the large number of U.S. citizens who fly internationally on foreign-flag airlines.

Finally, Families of Pan-Am 103/Lockerbie said that the public has lost confidence in the FAA's aviation security system and does not trust the FAA to effectively establish and enforce security standards.

Response: Regarding the first comment about the appropriateness of standards for small airports, it is the FAA's long held position that security standards are necessary for all airports to ensure the public safety. A security problem originating at one airport may also affect other airports by the very nature of the transportation system. However, these standards are designed to be flexible and geared to the particularities of each airport. Therefore, the cost of complying with these standards are expected to be in proportion to the size and scope of the operations at each airport and should not adversely affect other airport functions.

Regarding the concern about employee retention, the FAA has long held that employee retention, notably in screening operations, is desirable. However, there is no evidence to support the proposition that the imposition of fines on employers with high turnover rates would result in increased employee retention or better qualified employees. Retention rates may improve as a result of this rulemaking since it establishes comprehensive employment and training standards.

The use of computerized security training equipment is an area of development that has potential. However, until further research and evaluations are completed, it would be premature to impose a requirement on airport operators and air carriers to use computerized security training equipment at this time. Of course, airport operators and air carriers may elect to use computerized systems if the FAA determines the systems are effective in meeting security-related responsibilities.

The FAA recognizes that an effective civil aviation security system can be

expensive. However, the current security requirements are absolutely essential to counter the current level and sophistication of threats to civil aviation.

Regarding the length of the comment period, the FAA agrees that the time frame was brief. The FAA usually provides a longer comment period; however, in this case, the FAA was constrained by the congressional mandate of the Aviation Security Improvement Act.

Concerning ATA's comment about applicability of the requirements to U.S. operations of foreign air carriers, the FAA issued a final rule on July 1, 1991, amending part 129, to require that the security programs of foreign air carriers provide a level of protection similar to U.S. air carriers (56 FR 30122). This action was taken in response to section 105(a)(k)(2) of the Aviation Security Improvement Act. The FAA is evaluating changes that may be necessary to these foreign air carrier security programs to provide a similar level of protection.

Finally, the FAA is fully aware of the position taken by the Families of Pan-Am 103/Lockerbie. The FAA also appreciates the unique perspective that this organization brings to the security arena. The agency seeks to assure the Families of Pan-Am 103/Lockerbie, as well as all other interested parties, that the FAA has moved on several fronts to strengthen the aviation security system. The FAA has worked with the Congress and a number of groups (e.g., President's Commission on Aviation Security and Terrorism and the Aviation Security Advisory Committee) to clearly define areas needing improvement. The FAA has initiated action in response to identified problems. In addition, the FAA can point with pride to the major advances initiated since 1985 in the aviation security field.

The FAA's quick and sure reaction to the crisis which surrounded the Iraqi invasion of Kuwait in August of 1990, and the agency's efforts to safeguard the aviation system during Operations

Desert Shield and Desert Storm, proved both effective and only minimally disruptive to the traveling public. Just as surely, the cooperation of the industry and the public was key to that success. This achievement provides a firm footing to make further progress in safeguarding aviation. This rulemaking is a major step in that direction. The agency will continue to work with the Congress, the International Civil Aviation Organization, the industry, public groups, and private individuals to maintain that momentum.

In addition to the changes made in response to the commenters and noted previously, minor editorial changes to the rule have been made for the sake of clarity.

Paperwork Reduction Act

Information collection requirements in the amendments to parts 107 and 108 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0554.

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, when practical, 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 meets one of the following criteria if it: Has an annual effect on the economy of \$100 million or more; causes a major increase in consumer costs; has 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.

Cost

Commenters on the cost of the rule focused on the training cost of persons with unescorted access to security identification display areas (SIDAs). The commenters primarily wanted more detail on the curriculum and hours requirement of the training. The specific content of the training will vary from airport to airport. Hence, the contents of this training will be spelled out in each airport security plan. However, the length of training will be only 2 hours or less.

The rule will improve airport security, but it will also impose additional costs on airport operators and on airlines. Tables 1.a and 1.b outline the 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.

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

Section	Rule	Annualized costs
107.7.....	Will require reporting changes in security liaison personnel.....	No incremental costs.
107.25.....	Will 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: \$4,456,000.
107.27.....	Will clarify the responsibility of airport operators to provide evidence of compliance of this part.	No incremental costs.
107.29.....	Will 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	Rule	Annualized costs
108.9.....	Will require airlines to staff checkpoints in accordance with their security programs. (Changes in ACSSP imply additional security checkpoint staffing.)	Additional checkpoint staffing will cost \$1.2 million.
108.17.....	Will require carriers to comply with x-ray operator duty time limitations.	No incremental costs. This codifies existing policy
108.29.....	Will require that air carriers assign a person as the principal ground security coordinator to have security oversight functions including daily reviews of security functions.	Administrative costs related to evaluations equal \$134,000.
108.31.....	Will 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.

The rule will impose discounted costs of approximately \$37.7 million over the period 1992 through 2001; the annualized costs will be approximately \$5.9 million. About \$4.5 million in annualized costs result from enhanced training requirements for personnel authorized for unescorted access to SIDA's. Approximately \$1.2 million in costs come from enhanced checkpoint staffing requirements at small airports. In addition, the amendment will impose \$218,000 in administrative and other costs on airports and air carriers.

Benefits.

The primary benefit from this rule is a reduced risk of terrorist incidents and other criminal acts against civil aviation within the U.S. Although this regulation affects U.S. airports, benefit estimates are based on the potential for terrorist activity throughout the world. Terrorists' activity ranges from an inflight bombing that destroys an aircraft to a hijacking.

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	BOP 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

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 (7 incidents resulted in fatalities or injuries) 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.

Although terrorist incidents are unpredictable, the potential economic loss from such an event can be measured based on avoided fatalities, injuries, and aircraft damage. To give the public and Government officials a benchmark comparison of the expected safety benefits of rulemaking actions over an extended period with estimated costs in dollars, the FAA currently uses a value of \$1.5 million to represent statistically an avoided human fatality (according to guidelines issued by the Office of the Secretary of Transportation dated June 22, 1990).

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	\$137,044,0800	\$282,973,500
Value of Aircraft	\$5,994,310	\$23,711,670
Total Value.....	\$143,039,110	\$306,685,170
Annualized Value ...	\$14,303,900	\$30,668,600
Discounted Value...	\$92,181,216	\$197,642,532

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 could cause the loss of 189 lives and aircraft damage of \$24 million. The discounted value of preventing such an incident is \$198 million with an annualized value is \$30.7 million.

Historically, a domestic hijacking that detours an airplane from its scheduled

route but results in no aircraft damage or injuries has an estimated annualized benefit that ranges from \$27,000 to \$54,000.

TABLE 4.—Benefit Cost Comparison

Category	Annualized value	Ten year discounted value
Cost	\$5,852,000	\$37,655,000
Low Benefit.....	\$14,303,000	\$92,181,000
Low Net Benefits ...	\$8,451,000	\$54,526,000
High Benefit.....	\$30,668,000	\$197,600,000
High Net Benefits...	\$24,816,000	\$159,945,000

Benefit-Cost Comparison

A comparison of potential benefits and costs of the rule is presented in Table 4. On the low side, the potential discounted net benefit from the amendment could be \$55 million (\$8.5 million annualized net benefit); on the high side, discounted net benefit could be \$160 million (\$24.8 million annualized net benefit). The benefit that may be derived from the added deterrence of a potential hijacking is not specifically included in these estimates. Prevention of hijacking simply strengthens the argument about rule benefits.

The FAA, therefore, has determined that it is reasonable to expect the potential benefits of the rule to exceed its costs.

International Trade Impact

The rule will have little or no impact on international trade. This amendment is not likely to affect foreign operators except where their personnel have access to unescorted areas of the airport. In this instance, the operator must provide training as stated in the amendment. This cost will 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 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 rule. About 220 small airports will 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 according to the FAA Regulatory Flexibility Criteria and Guidance. This Criteria defines a threshold value for "a significant economic impact" as \$8,950 in 1990 dollars.

Of the 220 airports which qualify as small entities, none incur costs that exceed the threshold. These airports will experience some additional costs resulting from 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 are the result of increased security training and administrative requirements. (Costs to airports come from §§ 107.25, 107.29, and 108.29.)

Air carriers also will incur some additional costs as a result of the 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 operators of aircraft for hire with at least one airplane having fewer than 60 seats, to \$107,900, for operators where the entire fleet has a seating capacity of over 60.

Additional costs to small entities in these two groups will result from the hiring of additional checkpoint supervisors. Since these small entities operate only nine aircraft or fewer, they seldom have checkpoints at more than one or two airports and administrative costs will be small. The annual cost of staffing two airport checkpoints with a supervisor for 4 hours a day, 5 days per week will be approximately \$24,000. (Costs to airlines will come from §§ 107.25, 107.29, and 108.31.) Therefore, the additional cost will not exceed one-half the threshold for part 135 operators or one-fourth the threshold for part 121 operators. Hence, the rule will not have a significant economic impact on a substantial number of part 121 and part 135 small entities.

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

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, the FAA certifies 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) because of substantial public and congressional interest in the enhancement of aviation security. 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."

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 Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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. 3088.

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 on their outermost garment, an airport-approved identification medium unless under airport-approved escort.

(b) After January 1, 1992, 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 October 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 May 1, 1993, 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 FAA-approved training in accordance with a curriculum specified in the security program.

(e) The curriculum specified in the security program shall detail the methods of instruction, provide attendees the opportunity to ask questions, and include at least the following topics:

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

(2) Challenge procedures and the law enforcement response which supports the challenge procedure;

(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-approved 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 or other entity whose identification is approved by the airport operator.

(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 an Airport Security Coordinator (ASC) in its security program. The designation shall include the name of the ASC, and a description of the means by which to contact the ASC on a 24-hour basis. 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 this 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) Daily, a Ground Security Coordinator at each airport:

(i) Reviews all security-related functions for effectiveness and compliance with this part, the certificate holder's security program, and applicable Security Directives; and
 (ii) Immediately initiates corrective action for each instance of noncompliance 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) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

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

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

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

(iv) Screeners performing physical searches or other related operations

must be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subjects to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons must have sufficient dexterity and capability to conduct those procedures on all parts of the persons' bodies.

(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 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 judgments 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) Each certificate holder 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 that 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; and

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

