

108-2

**Monday
July 8, 1985**

Registered Federal Aircraft

Part V

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 108

**Transportation of Federal Air Marshals;
Final Rule With Request for Comments**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 108****[Docket No. 24714; Amdt. No. 108-2]****Transportation of Federal Air Marshals****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule with request for comments.

SUMMARY: This emergency regulation requires each certificate holder to whom the airplane operator security rules apply to carry Federal Air Marshals, in the number and manner specified by the Administrator, on designated scheduled and public charter passenger operations. This regulation is needed to respond to recent terrorist activity against U.S. civil aviation. It is intended to ensure that U.S. civil aviation and U.S. citizens are not impeded by international terrorism.

DATES: Effective date of this amendment is July 8, 1985.

Comments must be received on or before August 11, 1985.

ADDRESS: Send comments on this final rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24714, 800 Independence Avenue, SW., Washington, D.C. 20591; or deliver comments in duplicate to: Federal Aviation Administration Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Hunter, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Because of the emergency need for this regulation, it is being adopted without notice and public comment. However, the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide notice and an opportunity to comment to the public on such emergency regulations after their issuance. Accordingly, interested persons are invited to comment on this final rule by submitting

such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-204, 800 Independence Avenue, SW., Washington, D.C. 20591. All communications received on or before August 11, 1985, will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number _____". The postcard will be date and time stamped and returned to the commenter.

Background

The June 14, 1985, hijacking of Trans World Airlines Flight 847 resulting in the murder and torture of U.S. citizens is the latest of a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe and the Middle East during the 1980's. Accordingly, it has become necessary to undertake certain actions necessary to protect U.S. aviation in addition to those already mandated by Part 108 of the Federal Aviation Regulations. To that end, the Secretary of Transportation has directed the FAA to undertake immediately certain actions necessary to protect U.S. airline flights in high-risk areas and to expand the FAA Federal Air Marshal Program to the extent necessary to ensure safety aboard U.S. air carriers traveling in all threatened areas.

The purpose of this final rule is to ensure that Federal Air Marshals are used effectively and efficiently aboard those high-risk flights that the Federal Aviation Administrator determines should be protected.

Federal officers were first used in the early 1960's to combat the initial spate of hijackings of U.S. aircraft to Cuba. Following the hijacking and destruction of four airliners in the Jordanian desert in 1970, "sky marshals" were used in significant numbers on threatened domestic and international flights. After the implementation of 100 percent passenger screening in 1970, their use in large numbers was considered unnecessary. Since then these Federal officers have been used from time to time when their special understanding

of aviation security was needed to fulfill an inflight security function.

There have always been certain critical elements in the effective and efficient use of Federal Air Marshals. They include ensuring that marshals will be carried aboard those flights that intelligence information indicates are seriously threatened. This sometimes requires carriage with very short notice and the "bumping" of a passenger holding a reservation. Also critical to the effectiveness of the marshal is his or her location in the passenger cabin. It is important that the marshal or marshals be able to select their seats so that they may observe and respond to any incident.

This need for access to specific flights was recognized in 1970 when the Civil Aeronautics Board (CAB) adopted a rule requiring the free transportation of these officers. That rule is currently contained in § 223.3 of Title 14 of the Code of Federal Regulations, which has been transferred from the CAB to the Department of Transportation (DOT) (50 FR 451; January 4, 1985). Section 223.3 provides that every air carrier shall carry, without charge, on any aircraft that it operates, among other persons, "security guards who have been assigned to the duty of guarding such aircraft against unlawful seizure, sabotage or other unlawful interference, upon the exhibition of such credentials as may be prescribed by the Administrator of the Federal Aviation Administration."

Section 223.3 has not been completely successful in meeting the need to properly position marshals. Some air carriers have denied seating to marshals to accommodate full-fare passengers. "Dead heading" marshals, who need to reposition themselves for immediate reassignment, are not expressly covered by the rule. Finally, it does not require the carrier to assign the marshal the seat he or she selects.

The Final Rule

New § 108.14 provides that each certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation and public charter passenger operation specified by the Administrator. In administering the Federal Air Marshal Program, the FAA intends to provide maximum coordination with the air carriers involved. This will be done through a national coordinating center. Consistent with the specific threat to be met, as much notice as possible will be given of the flights on which marshals will be carried. It is expected that only

in an extreme emergency will it be necessary to deny a confirmed passenger transportation on a particular flight in order to carry a Federal Air Marshal.

The FAA also plans to carefully coordinate the repositioning of marshals with the air carriers. It may be occasionally necessary, however, to provide priority transportation to a marshal to position him or her for response to a specific threat condition. In such an emergency, it may be necessary to deny transportation to a confirmed passenger. The FAA will make every effort to avoid such a situation.

Sections 108.14(b) and (c) make it clear that on designated flights marshals must be carried on a first priority basis and be assigned a seat selected by the marshal. While the marshal may have some flexibility in accepting certain seating, the final decision as to seat selection must be made by the marshal.

Finally, § 108.14 restates the provision in § 223.3 that transportation of Federal Air Marshals while on duty shall be without charge.

Need for Immediate Adoption

Because of the need to respond immediately to the heightened threat to aviation safety from terrorist hijacking and sabotage of international flights, I find that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this amendment effective in less than 30 days.

Economic Assessment

Because of the emergency need for this regulation, no regulatory evaluation

has been prepared. In accordance with section 11(a) of the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), a regulatory evaluation will be prepared and placed in the public docket, unless an exception is granted by the Secretary of Transportation. For this same reason and in accordance with section 8(a)(1) of Executive Order 12291, I find that following the procedures of that Executive Order is impracticable.

Because none of the certificate holders affected by this regulation is a small entity, this regulation will not have a significant economic impact on a substantial number of small entities.

Conclusion

In accordance with section 8(a)(1) of Executive Order 12291, because of the emergency need for this regulation, the procedures in that Executive Order have not been followed. In view of the substantial public interest in the matter of aviation security as a result of the current threat situation, this regulation is considered significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities will be affected by the proposed rule, it is certified that, under the criteria of the Regulatory Flexibility Act, the rule will not have a significant economic impact on a substantial number of entities. A copy of the regulatory evaluation to be prepared for this project will be placed in the public docket, unless an exception is granted by the Secretary of Transportation.

List of Subjects in 14 CFR Part 108

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Law enforcement officers, Police, Security measures.

The Amendment

PART 108—[AMENDED]

Accordingly, Part 108 of the Federal Aviation Regulations (14 CFR Part 108) is amended as follows, effective July 8, 1985:

1. The authority citation for Part 108 is revised to read as follows:

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, and 1424; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

2. By adding a new § 108.14 to read as follows:

§ 108.14 Transportation of Federal Air Marshals.

(a) Certificate holder shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled and public charter passenger operation designated by the Administrator.

(b) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on official duty, including repositioning flights.

(c) Each certificate holder shall assign the specific seat requested by a Federal Air Marshal who is on official duty.

Issued in Washington, D.C., on July 3, 1985.

Donald D. Engen,
Administrator.

[FR Doc. 85-16300 Filed 7-5-85; 8:45 am]

BILLING CODE 4910-13-M