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Federal Register

Part IV

**Department of
Transportation**

Federal Aviation Administration

**14 CFR Parts 107 and 108
Airport and Airplane Operator Security
Rules; Final Rule**

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

[Docket No. 24883; Amdt. Nos. 107-3 and 108-4]

Airport and Airplane Operator Security Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule makes a number of minor substantive and editorial changes in the airport and airplane operator security rules regarding the carrying of an explosive, an incendiary, or a deadly or dangerous weapon and the entry of person into sterile areas. They are needed to provide consistency within the rules and to ensure that the rules are given their intended effect. These amendments are being adopted to further enhance airport and air carrier security in response to the current heightened threat of U.S. civil aviation throughout the world.

DATES: Effective date of this amendment is January 10, 1986. Comments must be received on or before February 10, 1986.

ADDRESSES: Send comments on this amendment in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24883, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC 20591. Comments may be examined in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Donnie Blazer, Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION:**Comments Invited**

These regulations are being adopted without notice and public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, DOT operating administrations should provide an opportunity for public comment, after issuance, for regulations issued without prior notice. 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, Docket No. 24883, 800 Independence Avenue SW., Washington, DC 20591. All comments submitted will be available in the Rules Docket for examination by interested persons. This amendment may be changed in light of the comments received.

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 No. _____." 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 resulted in the torture and kidnapping of U.S. citizens and the murder of one U.S. citizen. It was one of the latest in a continuing series of terrorist attacks against U.S. aviation and U.S. interests, Government officials, and tourists in Europe, the Middle East, and throughout the world during the 1980's. To combat this threat, the FAA undertook certain actions to protect U.S. civil aviation and U.S. citizens in designated areas and throughout the world.

On July 3, 1985, the FAA issued Amendment No. 108-2 (50 FR 27924; July 8, 1985) providing for the transportation of Federal Air Marshals, in the number and manner specified by the Administrator, on designated scheduled and public charter passenger operations. The purpose of that rule is to ensure that Federal Air Marshals are used effectively and efficiently for those high-risk flights that the Federal Aviation Administrator determines should be protected.

On July 11, 1985, the FAA issued Amendment No. 108-3 (50 FR 28892; July 16, 1985) requiring each certificate holder to whom the airplane operator security rules apply to have individuals identified and trained as Security Coordinators for international and domestic flights, in accordance with its approved security program. It also required certificate holders to provide security training for all crewmembers to the extent necessary to prepare each crewmember to respond adequately to various levels and types of threats.

This final rule is being issued with a number of minor changes to Part 107 and 108 of the Federal Aviation Regulations (FAR) that will provide consistency within the rules and ensure that they are given their intended effect.

Submission to Screening

For the most part, the general public now accepts the screening of their person and carry-on articles as a minor inconvenience. They view it as a small price to pay for the security of their persons while flying. Nonpassengers entering a sterile area generally understand that they too must be screened in order to ensure the security of the area.

There have been instances, however, in which nonpassengers have refused to be screened and intentionally entered a sterile area. Even when these persons turn out to be unarmed and have no intention of hijacking or sabotaging an aircraft, their presence requires an appropriate security response. That need to respond disrupts the orderly conduct of passenger screening and requires the diversion of security personnel from other duties. Should another incident constituting a genuine security threat occur at the same time, the ability to respond could be seriously compromised.

To prevent such occurrences, Part 107 is being amended to add a new § 107.20 that provides that no person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area by a U.S. air carrier under § 108.9 of a foreign air carrier under § 129.25. Persons violating this prohibition would be subject to a civil penalty of \$1,000 for each violation.

Deadly or Dangerous Weapon

Section 107.21 provides that, with certain exceptions, no person may have a firearm, an explosive, or an incendiary device on or about the individual's person or accessible property when presenting himself or herself for screening or when entering or in a sterile area. It states precisely the point at which a person may not have a prohibited item in his or her possession.

The prohibited items were intended to correspond to those which the certificate holder must keep out of the sterile area in accordance with Part 108 of the FAR and its approved security program. Section 108.9 requires the certificate holder to use the procedures in its security program to prevent or deter the carriage aboard its airplanes of any explosive, incendiary device, or

"deadly or dangerous weapon." A similar provision in § 129.25 applies to foreign air carriers.

The FAA has determined that the term "firearm" in § 107.21 should be replaced with "deadly or dangerous weapon," in order to be consistent with the terminology that is used elsewhere in the security regulations. Accordingly, § 107.21 is being amended to prohibit passengers from presenting themselves for screening with a deadly or dangerous weapon accessible to them. The effect of this amendment will be to broaden the rule to prohibit certain items at the screening point in addition to firearms. They would include such items as mace and certain knives. The passenger, however, already is prohibited from carrying any deadly or dangerous weapon on board the aircraft under § 108.11.

Incendiary Devices

Parts 107 and 108 currently prohibit the possession of an incendiary device while passing through the screening point, in a sterile area, or aboard the airplane. An "incendiary device" is generally considered to be anything which can cause a fire by ignition. An incendiary, such as gasoline, whether or not a means of ignition is attached to it, has been considered an incendiary "device" for purposes of the rule because cigarette lighters and other ignition sources are readily available. To avoid too narrow an interpretation of the rule, "incendiary device" is being replaced by "incendiary" wherever the phrase appears in Part 107 and Part 108.

Applicability of Part 108

A number of provisions in Part 108 apply to passengers and to certain persons on airports. Section 108.11 (a) and (b) prohibit the carriage of a deadly or dangerous weapon on or about the person of a passenger aboard an airplane unless certain conditions are met. This prohibition specifically applies to a certificate holder in the conduct of an operation with an airplane for which security screening is required by Part 108. The prohibition applies to passengers aboard airplanes for which screening is required and also to passengers on airplanes for which screening is not required. In the latter case, the rule does not apply to the certificate holder since it does not screen passengers.

Section 108.11(c) prohibits certificate holders from transporting, and passengers from tendering for transport, in checked baggage any explosive, incendiary device, or loaded firearm. An unloaded firearm may be tendered for

transport and transported, if the conditions in § 108.11(d) are met.

Section 108.21 prescribes requirements for the carriage of passengers under the control of armed law enforcement escorts. In addition to requirements imposed on the certificate holder, paragraph (c) of the section requires the law enforcement officer at all times to accompany and keep under surveillance the escorted person while aboard the airplane. Paragraph (d) prohibits the law enforcement escort and any passenger under his or her control from drinking any alcoholic beverage while aboard the airplane.

It is clear on the face of these provisions that they apply to persons aboard airplanes being operated by certificate holders, not just to certificate holders themselves, and to persons at airports where operations by certificate holders are being conducted. However, the general statement of the applicability of Part 108 (§ 108.1) does not include reference to these persons. To remedy this editorial oversight, this section is being amended to state that the part applies not only to certificate holders, but also to persons aboard their airplanes and at airports where certificate holders conduct their operations.

Editorial Correction

This final amendment replaces the reference in § 107.21 to former § 121.585. This reference should have been replaced with § 108.11 when Part 108 was adopted.

Need for Immediate Adoption

These amendments are needed to ensure the overall effectiveness of the aviation security regulations in a time of heightened threat. The minor substantive changes conform to the general public understanding of the meaning and purpose of security screening requirements. The current behavior of the public and certificate holders already conforms to these changes. Other changes are of an editorial nature.

For these reasons, notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days. Moreover, publication for prior comment would not reasonably be expected to result in the receipt of useful information on these changes to the regulations. In accordance with DOT Regulatory Policies and Procedures, an opportunity for public comment after publication is being provided.

Economic Assessment

These are minor substantive and editorial amendments. They are not expected to change the behavior patterns of passengers and other persons on airports who comply with them or to impose any additional burdens. For this reason, no economic impact is expected to result. In addition, the amendments would have no impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

Conclusion

These amendments are not expected to change the behavior patterns of passengers and other persons on airports who comply with them or to impose any additional burdens. Therefore, the FAA has determined that this amendment involves a regulation which is not major under Executive Order 12291 or significant under the Department of the Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because of the absence of any costs connected with the proposal, the FAA has determined that the expected impact of the amendment is so minimal that it does not warrant an evaluation.

List of Subjects

14 CFR Part 107

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Arms and munitions, Firearms, Weapons, Security measures, Guns, Baggage, Security measures.

14 CFR Part 108

Transportation, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Airlines, Arms and munitions, Firearms, Weapons, Law enforcement officers, Police, Security measures, Guns, Baggage, Security measures.

The Amendment

Accordingly, Parts 107 and 108 of the Federal Aviation Regulations (14 CFR Parts 107 and 108) are amended as follows, effective January 10, 1986:

PART 107—AIRPORT SECURITY

1. The authority citation for Part 107 is revised to read as follows:

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

2. By adding a new § 107.20 to read as follows:

§ 107.20 Submission to screening.

No person may enter a sterile area without submitting to the screening of his or her person and property in accordance with the procedures being applied to control access to that area under § 108.9 or § 129.25 of this chapter.

3. By amending § 107.21 by removing the phrase "§ 121.585" in paragraph (b)(2) and inserting, in its place, the phrase "§ 108.11", and by revising the title and introductory language of paragraph (a) to read as follows:

§ 107.21 Carriage of an explosive, incendiary, or deadly or dangerous weapon.

(a) Except as provided in paragraph (b) of this section, no person may have an explosive, incendiary, or deadly or dangerous weapon on or about the

individual's person or accessible property—

* * * * *

4. By amending § 107.23(b)(1) by removing the words "incendiary devices" and inserting, in their place, the word "incendiaries."

PART 108—AIRPLANE OPERATOR SECURITY

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

Authority: 49 U.S.C. 1354, 1356, 1357, 1358, 1421, 1424, and 1511; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

6. By revising § 108.1 to read as follows:

§ 108.1 Applicability.

(a) This part prescribes aviation security rules governing—

(1) The operations of holders of FAA air carrier operating certificates or operating certificates engaging in scheduled passenger operations or public charter passenger operations;

(2) Each person aboard an airplane operated by a certificate holder described in paragraph (a)(1) of this section; and

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

(b) This part does not apply to helicopter or to all-cargo operations.

§ 108.9 [Amended]

7. By amending § 108.9(a) by removing the word "device" wherever it appears.

§ 108.11 [Amended]

8. By amending § 108.11(c) by removing the word "device".

§ 108.19 [Amended]

9. By amending § 108.19(a) by removing the word "device".

Issued in Washington, DC, on January 3, 1986.

Donald D. Engen,
Administrator.

[FR Doc. 86-508 Filed 1-9-86; 8:45 am]

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