

108-6 Federal Register

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Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 108

Security Directives and Information
Circulars; Final Rule and Request for
Comment

~~Explosives Detection Systems for
Checked Baggage; Notice of Proposed
Rulemaking~~

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 108****[Docket No. 25953; Amdt. No. 108-6]****RIN 2120-AD14****Security Directives and Information Circulars****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule and request for comment.

SUMMARY: This final rule provides for the issuance of Security Directives and Information Circulars to enable air carriers and the security community to coordinate responses to threats against civil aviation. This rule also requires mandatory compliance with the countermeasures prescribed in Security Directives and prohibits the release of the information contained in both Security Directives and Information Circulars to unauthorized persons. This action is necessary to simplify and expedite existing procedures, to ensure that appropriate officials take specific measures to counter terrorism directed at civil aviation, and to prohibit the unauthorized disclosure of sensitive security information. This regulation is intended to increase protection of passengers and crewmembers traveling in air transportation and air commerce.

DATES: Effective July 10, 1989. Comments must be submitted by August 9, 1989.

ADDRESSES: Comments on this final rule should be mailed or delivered, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Room 915-G, Docket No. [25953], 800 Independence Ave. SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, Room 915-G, weekdays (except Federal holidays) between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Quinten T. Johnson, Civil Aviation Security Division (ACS-100), Office of Civil Aviation Security, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; telephone (202) 267-8058.

SUPPLEMENTARY INFORMATION:**Background**

The dramatic increase in international terrorism since the 1970's has also affected civil aviation. The explosion and crash of Pan American World Airways (Pan Am) Flight 103 in

Lockerbie, Scotland, in December 1988 illustrate the vulnerability of civil aviation to terrorist acts. The threat is both sophisticated and multifaceted.

In order to support aviation security efforts, the FAA Intelligence Division analyzes classified and unclassified information on threats against civil aviation. This information comes from a variety of sources, including air carriers, law enforcement agencies, and other Federal agencies. If the Intelligence Division determines the information is credible, it disseminates it to air carriers. Prior to the adoption of today's regulation, notification was made through Security Bulletins that discussed both general security concerns, for which there were no specific remedies, and specific threats which could be countered by particular remedies. Since 1986, 93 bulletins have been issued, approximately one-third of which addressed specific threats for which countermeasures were possible. Air carriers, however, were not required to acknowledge Security Bulletins or comply with the actions recommended in them.

Security Bulletins were sent to U.S. air carrier corporate security officers, the Air Transport Association of America, certain other Federal agencies, and FAA security personnel. In addition, the State Department transmitted the Security Bulletins to appropriate overseas posts. Upon receipt of the Security Bulletins, each air carrier's corporate security officer determined whether any further dissemination was necessary. Occasionally, the FAA included its own recommendations for specific actions. Although the FAA believes the air carriers have been responsive to the actions recommended by Security Bulletins, mandatory compliance requires amendments to the air carrier's overall security program.

The Civil Aviation Security Program, referenced in the Federal Aviation Regulations (FAR), was initiated in 1973. Part 108 of the FAR was promulgated in 1981 (46 FR 3782; January 15, 1981) and requires certain U.S. air carriers to adopt and use FAA-approved security programs to screen passengers and property, control access to airplanes and facilities, and prevent criminal acts against civil aviation. The FAA can amend an individual carrier's security program if it determines that there is an emergency requiring immediate action to protect safety in air transportation or air commerce (see § 108.25), and compliance with such amendments is mandatory. It is not customary, however, for the FAA to amend a carrier's overall security program with flight-specific, date-specific, or site-

specific information. Information of this type has been distributed through the Security Bulletin system.

On April 3, 1989, Secretary of Transportation Samuel K. Skinner announced a number of aviation security initiatives to ensure protection of travelers on U.S. air carriers. Among these initiatives, and the subject of a separate rulemaking action, was the commitment to propose requiring the widespread deployment of explosives detection systems. Another initiative, the establishment of a mandatory Security Directive system, is the subject of this rulemaking action.

Discussion of the Amendments

When threats against civil aviation become known, it is crucial that the information and any appropriate countermeasures be disseminated as soon as possible to air carrier security personnel. A system that will allow the FAA to disseminate critical threat information and, when necessary, establish mandatory security countermeasures responsive to that threat in a single document, will improve and simplify the current process. In order to ensure that the wide variety of threats can be effectively countered, the FAA will issue two kinds of security alerts—Information Circulars and Security Directives.

Information Circulars will be used to notify U.S. air carriers of general situations for which FAA will not prescribe mandatory countermeasures. The purpose of Information Circulars will be to provide air carriers with general information relevant to a civil aviation security.

Security Directives will be used to notify U.S. air carriers of information on specific credible threats that are limited by such factors as location, number or identity of carriers, method of attack, or duration of time. Security Directives will set forth mandatory countermeasures and will eliminate the need to amend the air carriers' ongoing security programs. Air carriers will be required to acknowledge receipt of Security Directives and to notify the FAA of how they implemented the countermeasures prescribed by the FAA. In unusual situations, such as when an air carrier is precluded from implementing the prescribed countermeasures, the air carrier shall submit alternative countermeasures for the approval of the Director of Civil Aviation Security. The air carrier is required to submit any proposed alternative measures within the time period specified in the Security Directive. Air carriers will also be required to distribute the information to

the personnel specified in Security Directives and to others with an operational need to know. Personnel with an operational need to know are those personnel with security-related responsibilities for air transportation operations affected by the Security Directive. Such personnel could include the in-flight security coordinator (ISC) (pilot in command), the ground security coordinator (GSC), airline and airport security personnel, and Federal, State, or local law enforcement officials.

In order to protect the sensitive nature of Security Directives and Information Circulars, their availability will be restricted to air carriers and personnel with an operational need to know, and release of any information contained in them without the prior written authorization of the Director of Civil Aviation Security will be prohibited.

By adopting a two-tiered system for disseminating threat information, the FAA believes the civil aviation security community will be better able to distinguish between information that is general in nature and that which has been assessed to require a specific security response. As a result, the security community and the air carriers will have a better understanding of how to coordinate their actions in response to specific threats. By prohibiting unauthorized disclosure, the FAA will be able to protect intelligence sources and ensure that countermeasures can be effectively implemented.

Good Cause Justification for Immediate Adoption and No Notice

Under the current regulatory scheme, the FAA may amend an air carrier's approved security program and require the carrier to take certain steps that address a specific threat to civil aviation security. However, the FAA has determined that the most effective method of ensuring that threats are addressed in a complete and uniform manner requires amendment of Part 108 of the Federal Aviation Regulations. Because the general level of the threat to U.S. air carriers operating in air commerce and air transportation could rapidly increase, the FAA has determined that good cause exists to make this final rule effective in less than 30 days. In addition, this final rule is being adopted without prior notice and opportunity for public comment. For the reasons stated above and because immediate action is necessary to protect passengers and crewmembers traveling in air transportation, the FAA believes prior notice and opportunity for public comment are impracticable and, furthermore, are contrary to the public interest.

The Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, operating administrations of the Department of Transportation (DOT) should provide an opportunity for public comment on regulations issued without prior notice. Thus, the FAA has provided a 30-day period during which interested persons may comment on the final rule.

Procedure for Submitting Comments

In accordance with the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979), interested persons are invited to comment on this final rule by August 9, 1989. Comments should identify the regulatory docket number and be submitted in triplicate to the Rules Docket (see **ADDRESSEES**). Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard containing the following statement: "Comments to Docket No. 25953". All comments will be available for examination, both before and after the closing date, in the Rules Docket.

Paperwork Reduction Act

Information collection requirements in Part 108 have previously 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 has been assigned OMB control number 2120-0098. The slight additional paperwork burden associated with § 108.18 was approved by OMB as an amendment to 2120-0098.

Regulatory Evaluation Summary

The following is a summary of the final cost impact and benefit assessment of a regulation amending FAR Part 108, Airplane Operator Security, to require that U.S. air carrier operators comply with measures to counter terrorist threats against civil aviation as prescribed in FAA Security Directives. Under the new requirements, air carriers will be required to acknowledge receipt of Security Directives within the time specified, distribute Security Directives to the appropriate individuals, implement mandatory countermeasures as furnished by individuals, implement mandatory countermeasures as furnished by the FAA (or, in unusual situations, alternative countermeasures if approved by the Director of Civil Aviation Security), and report to the FAA on those actions taken to comply with the Security Directives.

The FAA has determined that these amendments will affect approximately

20 air carriers, including both scheduled air carriers and demand charter service air carriers. The major impact is expected to be on six of these air carriers with significant operations to the Middle East, Europe, and South Asia, since most of the threats pertain to these parts of the world. These air carriers will receive most of the Security Directives issued by the FAA. The remaining air carriers have infrequent service to these areas, and thus, are expected to receive and be required to process only a small share of the Security Directives issued. The regulatory evaluation prepared for this rule estimates that the total cost of compliance to the affected U.S. air carriers is \$48,260 in 1989 dollars; the present value of this amount is \$29,654 over a 10-year period using a discount rate of 10 percent.

The primary benefits of these amendments will be the prevention of potential fatalities, injuries, and property losses resulting from criminal acts and acts of terrorism perpetrated against domestic aviation interests. The FAA has not been able to quantitatively estimate the extent to which this rule will be effective in deterring acts of criminal violence, air piracy, and sabotage. The FAA believes, however, that the estimated costs of compliance will be fully recovered if only one life, based on a generally accepted statistical value of a minimum of \$1,000,000, is saved during that period as a result of the prevention of such acts. In addition to the estimated quantifiable benefits associated with the prevention of fatalities, injuries, and property losses during the 10-year period following its implementation, an unquantifiable benefit of this amendment will accrue to the affected air carriers based on the public perception of the additional safety. The increase in public confidence will likely result in increased air travel and revenues. The FAA recognizes that the benefits of these amendments are derived from both the system of distributing and processing Security Directives to U.S. carriers and implementation of mandatory security measures contained in Security Directives by U.S. air carriers. The FAA has estimated the cost to U.S. air carriers associated with distributing and processing Security Directives because this system is an essential part of, and integrally related to, achievement of the benefits of reduced fatalities, injuries, and property losses.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility

Act (RFA), these amendments will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review rules that may have a "significant economic impact on a substantial number of small entities." None of the scheduled air carriers impacted by this rule are small entities. A portion of the charter air carriers which will be impacted by this rule are small entities. The estimated annual cost to these charter carriers from this regulation is \$127 per company. This is significantly less than the threshold for significant economic impact. Even if twice the number of Security Directives were issued to these small entities, the total cost would still be significantly less than the threshold. Accordingly, it is certified that the amendment to Part 108 will not have a significant economic impact, positive or negative, on a substantial number of small entities and no further regulatory flexibility analysis is required.

Trade Impact Statement

This rule is expected to have no impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. These amendments affect only certain domestic air carriers subject to Part 108 of the FAR. Since the cost to these air carriers is small, there is expected to be no impact on trade opportunities for either U.S. firms overseas or foreign firms in the United States.

Federalism Implications

The amendments contained in this final rule revise the manner by which the FAA communicates security information and mandatory procedures to U.S. carriers. The FAA has determined that the final rule adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. In accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, it is certified that this final rule 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. In addition, because the final rule will not result in an annual effect on the economy of \$100 million or more or result in a significant increase in consumer prices, the FAA has determined that the final rule is not a major rule under the criteria of Executive Order 12291. Since the final rule involves issues of substantial interest to the public, however, the FAA has determined that it is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 108

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

The Amendments

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

PART 108—AIRPLANE OPERATOR SECURITY

1. The authority citation for Part 108 continues 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).

2. Section 108.1 is amended by adding paragraph (a)(4) to read as follows:

§ 108.1 Applicability.

(a) * * *

(4) Each certificate holder who receives a Security Directive or Information Circular and each person who receives information from a Security Directive or an Information Circular issued by the Director of Civil Aviation Security.

* * * * *

3. Part 108 is amended by adding § 108.18 to read as follows:

§ 108.18 Security Directives and Information Circulars.

(a) Each certificate holder required to have an approved security program for passenger operations shall comply with each Security Directive issued to the certificate holder by the Director of Civil Aviation Security, or by any person to whom the Director has delegated the authority to issue Security Directives,

within the time prescribed in the Security Directive for compliance.

(b) Each certificate holder who receives a Security Directive shall—

(1) Not later than 24 hours after delivery by the FAA or within the time prescribed in the Security Directive, acknowledge receipt of the Security Directive;

(2) Not later than 72 hours after delivery by the FAA or within the time prescribed in the Security Directive, specify the method by which the certificate holder has implemented the measures in the Security Directive; and

(3) Ensure that information regarding the Security Directive and measures implemented in response to the Security Directive are distributed to specified personnel as prescribed in the Security Directive and to other personnel with an operational need to know.

(c) In the event that the certificate holder is unable to implement the measures contained in the Security Directive, the certificate holder shall submit proposed alternative measures, and the basis for submitting the alternative measures, to the Director of Civil Aviation Security for approval. The certificate holder shall submit proposed alternative measures within the time prescribed in the Security Directive. The certificate holder shall implement any alternative measures approved by the Director of Civil Aviation Security.

(d) Each certificate holder who receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular shall—

(1) Restrict the availability of the Security Directive or Information Circular and information contained in the Security Directive or the Information Circular to those persons with an operational need to know; and

(2) Refuse to release the Security Directive or Information Circular and information regarding the Security Directive or Information Circular to persons other than those with an operational need to know without the prior written consent of the Director of Civil Aviation Security.

(Approved by the Office of Management and Budget under control number 2120-0098)

Issued in Washington, DC, on July 6, 1989

James B. Busey,
Administrator.

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