

## Federal Aviation Administration, DOT

## § 108.1

maintain and administer effective security measures. This information shall be posted in the manner specified in the security program and for such a period of time determined by the Secretary of Transportation.

### § 107.307 Incident management.

(a) Each airport operator shall establish procedures to evaluate bomb threats, threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(b) Immediately upon direct or referred receipt of a threat of any of the incidents described in paragraph (a) of this section, each airport operator shall—

(1) Evaluate the threat in accordance with its security program;

(2) Initiate appropriate action as specified in the Airport Emergency Plan under § 139.325 of this chapter; and

(3) Immediately notify the Administrator of acts, or suspected acts, of unlawful interference to civil aviation operations, including specific bomb threats to aircraft and airport facilities.

(c) Airport operators required to have a security program under § 107.103(c) but not subject to part 139 of this chapter, shall develop emergency response procedures to incidents of threats identified in paragraph (a) of this section.

(d) To ensure that all parties know their responsibilities and that all procedures are current, at least once every 12 calendar months each airport operator shall review the procedures required in paragraphs (a) and (b) of this section with all persons having responsibilities for such procedures.

## PART 108—AIRCRAFT OPERATOR SECURITY

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### Subpart A—General

#### § 108.1 Applicability.

(a) This part prescribes aviation security rules governing the following:

(1) The operations of aircraft operators holding operating certificates for scheduled passenger operations, public charter passenger operations, private charter passenger operations, and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

(2) Each person aboard an aircraft operated by an aircraft operator described in paragraph (a)(1) of this section.

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

(4) Each person who files an application or makes entries into any record or report that is kept, made, or used to show compliance under this part, or to exercise any privileges under this part.

(5) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Assistant Administrator for Civil Aviation Security.

(b) Except as provided in § 108.105, the authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in their capacity. The authority of the Assistant Administrator, including matters under § 108.105, may be further delegated.

#### § 108.3 Definitions.

The definitions in part 107 of this chapter apply to this part. For purposes of this part, part 107 of this chapter, and security programs under parts 107 and 108 of this chapter, the following definitions also apply:

*Aircraft operator* means a holder of an air carrier operating certificate or an operating certificate under part 119 of this chapter that conducts operations described in § 108.101 (a), (b), (c), and (e).

*Aircraft operator security program* means a security program approved by the Administrator under this part.

*Assistant Administrator* means the FAA Assistant Administrator for Civil Aviation Security as described in 49 U.S.C. 44932.

*Cargo* means property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Aircraft operator security programs further define the term cargo.

*Checked baggage* means property tendered by or on behalf of a passenger and accepted by an aircraft operator for transport, which is inaccessible to

passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

*Passenger seating configuration* means the total maximum number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight, regardless of the number of seats actually installed, and includes that seat in certain aircraft which may be used by a representative of the Administrator to conduct flight checks but is available for revenue purposes on other occasions.

*Private charter* means any aircraft operator flight—

(1) For which the charterer engages the total passenger capacity of the aircraft for the carriage of passengers; the passengers are invited by the charterer; the cost of the flight is borne entirely by the charterer and not directly or indirectly by any individual passenger; and the flight is not advertised to the public, in any way, to solicit passengers.

(2) For which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement conducted under contract with the Government of the United States or the government of a foreign country.

*Public charter* means any charter flight that is not a private charter.

*Scheduled passenger operation* means an air transportation operation (a flight) from identified air terminals at a set time, which is held out to the public and announced by timetable or schedule, published in a newspaper, magazine, or other advertising medium.

*Sterile area* means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by an aircraft operator or foreign air carrier through the screening of persons and property in accordance with a security program.

#### § 108.5 Inspection authority.

(a) Each aircraft operator shall allow the Administrator, at any time or place, to make any inspections or

tests, including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This part, parts 107, 109, 129, and 191 of this chapter and any security program approved under those parts; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of the Administrator, each aircraft operator shall provide evidence of compliance with this part and its security program, including copies of records.

(c) The Administrator may enter and be present within secured areas, AOA's, and SIDA's without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as the Administrator may direct.

(d) At the request of the Administrator and the completion of SIDA training as required in a security program, each aircraft operator shall promptly issue to a FAA Special Agent access and identification media to provide the FAA Special Agent with unescorted access to, and movement within, areas controlled by the aircraft operator under an exclusive area agreement.

#### § 108.7 Falsification.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this part.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this part, or to exercise any privileges under this part.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this part.

#### § 108.9 Security responsibilities of employees and other persons.

(a) No person may tamper or interfere with, compromise, modify, at-

tempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this part.

(b) No person may enter, or be present within, a secured area, AOA, SIDA, or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence in, such areas.

(c) No person may use, allow to be used, or cause to be used any airport-approved or aircraft operator-issued access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's, in any other manner than that for which it was issued by the appropriate authority under this part, or part 107 or part 129 of this chapter.

(d) The provisions of this section do not apply to persons authorized by an airport operator, aircraft operator, or foreign air carrier in accordance with its security program, or by the Administrator to conduct inspections for compliance with this part, part 107, or part 129 of this chapter, or 49 U.S.C. Subtitle VII, while they are conducting inspections.

### Subpart B—Security Program

#### § 108.101 Adoption and implementation.

(a) *Full program.* Each aircraft operator shall carry out Subparts C and D of this part and shall adopt and carry out a security program that meets the requirements of § 108.103 for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of more than 60 seats.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of less than 61 seats when passengers are enplaned from or deplaned into a sterile area.

(b) *Private charter program.* Each aircraft operator shall carry out §§ 108.201, 108.207, 108.209, 108.213, 108.215, 108.217, 108.219, 108.229, 108.233, 108.235, 108.303, and 108.305 and shall adopt and carry

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out a security program that meets the applicable requirements of §108.103 for any private charter operation in which passengers are enplaned from or deplaned into a sterile area.

(c) *Partial program—adoption.* Each aircraft operator shall carry out the requirements specified in paragraph (d) of this section for any of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of more than 30 and less than 61 seats that does not enplane from or deplane into a sterile area.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of less than 61 seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

(d) *Partial program—content.* For operations described in paragraph (c) of this section, the aircraft operator shall carry out the following, and shall adopt and carry out a security program that meets the applicable requirements of §108.103(c):

(1) The requirements of §§108.215, 108.217, 108.219, 108.235, 108.301, 108.303, and 108.305.

(2) Such other provisions of Subparts C and D of this part as the Administrator has approved upon request.

(3) The remaining requirements of Subparts C and D of this part when the Administrator notifies the aircraft operator in writing that a security threat exists concerning that operation.

(e) *Limited program.* The Administrator may approve a security program after receiving a request by an aircraft operator, holding a certificate under part 119 of this chapter other than one identified in paragraphs (a), (b), or (c) of this section. The aircraft operator shall—

(1) Carry out selected provisions of Subparts C and D of this part,

(2) Carry out §108.305, as specified in its security program, and

(3) Adopt and carry out a security program that meets the applicable requirements of §108.103(c).

§ 108.103 Form, content, and availability.

(a) *General requirements.* Each security program shall:

(1) Provide for the safety of persons and property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or deadly or dangerous weapons aboard an aircraft.

(2) Be in writing and signed by the aircraft operator or any person delegated authority in this matter.

(3) Be approved by the Administrator.

(b) *Availability.* Each aircraft operator having a security program shall:

(1) Maintain an original copy of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each airport served. An electronic version of the program is adequate.

(3) Make a copy of the security program available for inspection upon request of the Administrator.

(4) Restrict the distribution, disclosure, and availability of information contained in the security program to persons with a need-to-know as described in part 191 of this chapter.

(5) Refer requests for such information by other persons to the Administrator.

(c) *Content.* The security program shall include, as specified for that aircraft operator in §108.101, the following:

(1) The procedures and description of the facilities and equipment used to perform screening functions specified in §108.201 regarding persons and their accessible property.

(2) The procedures and description of the facilities and equipment used to comply with the requirements of §108.203 regarding the acceptance and screening of checked baggage.

(3) The procedures and description of the facilities and equipment used to comply with the requirements of §108.205 regarding the acceptance and screening of cargo.

(4) The procedures and description of the facilities and equipment used to

comply with the requirements of §108.207 regarding the use of metal detection devices.

(5) The procedures and description of the facilities and equipment used to comply with the requirements of §108.209 regarding the use of x-ray systems.

(6) The procedures and description of the facilities and equipment used to comply with the requirements of §108.211 regarding the use of explosives detection systems.

(7) The procedures used to comply with the requirements of §108.213 regarding standards for screening personnel.

(8) The procedures used to comply with the requirements of §108.215 regarding the responsibilities of security coordinators. The names of the Aircraft Operator Security Coordinator (AOSC) and any alternate, and the means for contacting the AOSC(s) on a 24-hour basis, as provided in §108.215.

(9) The procedures used to comply with the requirements of §108.217 regarding the requirements for law enforcement personnel.

(10) The procedures used to comply with the requirements of §108.219 regarding carriage of accessible weapons.

(11) The procedures used to comply with the requirements of §108.221 regarding carriage of prisoners under the control of armed law enforcement officers.

(12) The procedures used to comply with the requirements of §108.223 regarding transportation of Federal Air Marshals.

(13) The procedures and description of the facilities and equipment used to perform the aircraft and facilities control function specified in §108.225.

(14) The specific locations where the air carrier has entered into an exclusive area agreement under §108.227.

(15) The procedures used to comply with the applicable requirements of §108.229 regarding employment history investigations.

(16) The procedures used to comply with the requirements of §108.231 regarding personnel identification systems.

(17) The procedures and syllabi used to accomplish the training required under §108.233.

(18) The procedures and syllabi used to accomplish the training required under §108.235.

(19) An aviation security contingency plan as specified under §108.301.

(20) The procedures used to comply with the requirements of §108.303 regarding bomb and air piracy threats.

#### § 108.105 Approval and amendments.

(a) *Initial approval of security program.* Unless otherwise authorized by the Assistant Administrator, each aircraft operator required to have a security program under this part shall submit its proposed security program to the Assistant Administrator for approval at least 90 days before the date of intended passenger operations. The proposed security program shall meet the requirements applicable to its operation as described in §108.101. Such requests will be processed as follows:

(1) The Assistant Administrator, within 30 days after receiving the proposed aircraft operator security program, will either approve the program or give the aircraft operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The aircraft operator may either submit a modified security program to the Assistant Administrator for approval, or petition the Administrator to reconsider the notice to modify within 30 days of receiving a notice to modify. A petition for reconsideration shall be filed with the Assistant Administrator.

(3) The Assistant Administrator, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) *Amendment requested by an aircraft operator.* An aircraft operator may submit a request to the Assistant Administrator to amend its security program as follows:

(1) The request for an amendment shall be filed with the Assistant Administrator at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Assistant Administrator.

(2) Within 30 days after receiving a proposed amendment, the Assistant Administrator, in writing, either approves or denies the request to amend.

(3) An amendment to an aircraft operator security program may be approved if the Assistant Administrator determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the aircraft operator may petition the Administrator to reconsider the denial. A petition for reconsideration shall be filed with the Assistant Administrator.

(5) Upon receipt of a petition for reconsideration, the Assistant Administrator either approves the request to amend or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to approve the amendment, or affirm the denial.

(6) Any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

(c) *Amendment by the FAA.* If safety and the public interest require an amendment, the Assistant Administrator may amend a security program as follows:

(1) The Assistant Administrator notifies the aircraft operator, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the aircraft operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Assistant Administrator notifies the aircraft operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the aircraft operator receives the

notice of amendment, unless the aircraft operator petitions the Administrator to reconsider no later than 15 days before the effective date of the amendment. The aircraft operator shall send the petition for reconsideration to the Assistant Administrator. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the Assistant Administrator either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Administrator for reconsideration. The Administrator disposes of the petition within 30 days of receipt by either directing the Assistant Administrator to withdraw or amend the amendment, or by affirming the amendment.

(d) *Emergency amendments.* If the Assistant Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the Assistant Administrator may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the aircraft operator receives notice of it. In such a case, the Assistant Administrator will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The aircraft operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

### Subpart C—Operations

#### § 108.201 Screening of persons and accessible property.

(a) *General requirements.* Each aircraft operator shall use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage of any explosive, incendiary, or deadly or dangerous weapon on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) *Screening of persons and accessible property.* Except as provided in its security program, each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program for detecting explosives, incendiaries, and deadly or dangerous weapons to inspect each person entering a sterile area at each preboard screening checkpoint in the United States for which it is responsible, and to inspect all accessible property under that person's control.

(c) *Submission to screening.* No person may enter a sterile area without submitting to the screening of his or her person and accessible property in accordance with the procedures being applied to control access to that area under this section.

(d) *Refusal to transport.* Each aircraft operator shall deny entry into a sterile area and shall refuse to transport—

(1) Any person who does not consent to a search or inspection of his or her person in accordance with the screening system prescribed in this section; and

(2) Any property of any person who does not consent to a search or inspection of that property in accordance with the screening system prescribed by this section.

(e) *Explosive, incendiary, deadly or dangerous weapon: Prohibitions.* (1) Except as provided in §§108.219, 108.221, and 108.223, no aircraft operator may permit any person to have an explosive, incendiary, or deadly or dangerous weapon, on or about the individual's person or accessible property when onboard an aircraft.

(2) Except as provided in paragraph (f) 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—

(i) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area;

(ii) When entering or in a sterile area; or

(iii) When attempting to board or onboard an aircraft identified in §108.101.

(f) *Explosive, incendiary, deadly or dangerous weapon: Exceptions.* The provisions of paragraph (d)(2) of this sec-

tion with respect to firearms and weapons does not apply to the following:

(1) Law enforcement personnel required to carry a firearm or other weapons while in the performance of their duty at the airport.

(2) Persons authorized to carry a weapon in accordance with §§108.219, 108.221, 108.223, or 129.27.

(3) Persons authorized to carry a weapon in a sterile area under a security program.

(g) *Staffing.* Each aircraft operator shall staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

#### § 108.203 Acceptance and screening of checked baggage.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board aircraft in checked baggage.

(b) *Acceptance.* Each aircraft operator shall ensure that checked baggage carried in the aircraft is received by its authorized aircraft operator representative.

(c) *Control.* Each aircraft operator shall use the procedures in its security program to control checked baggage that it accepts for transport on an aircraft, in a manner that:

(1) Prevents the unauthorized carriage of any explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(d) *Refusal to transport.* Each aircraft operator shall refuse to transport any person's checked baggage or property if the person does not consent to a search or inspection of that checked baggage or property in accordance with paragraph (a) of this section.

(e) *Firearms in checked baggage.* No aircraft operator may knowingly permit any person to transport, nor may a person transport or offer for transport in checked baggage:

(1) Any loaded firearm(s);

(2) Any unloaded firearm(s) unless—

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(i) The passenger declares to the aircraft operator, either orally or in writing before checking the baggage that any firearm carried in the baggage is unloaded;

(ii) The firearm is carried in a hard-sided container;

(iii) The container in which it is carried is locked, and only the person checking the baggage retains the key or combination; and

(iv) The baggage containing the firearm is carried in an area, other than the flightcrew compartment, that is inaccessible to passengers;

(3) Any unauthorized explosive or incendiary.

(f) *Loaded firearm.* For the purpose of this section, a loaded firearm means a firearm, which has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

(g) *Ammunition.* This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

## § 108.205 Acceptance and screening of cargo.

(a) *General requirements.* Each aircraft operator shall use the procedures, facilities and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries on board a passenger aircraft in cargo.

(b) *Control.* Each aircraft operator shall use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

(1) Prevents the carriage of any unauthorized explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(c) *Refusal to transport.* Each aircraft operator shall refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with paragraph (a) of this section.

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### § 108.207 Use of metal detection devices.

(a) No aircraft operator may use a metal detection device within the United States or under the aircraft operator's operational control outside the United States to inspect persons, unless specifically authorized under a security program under this part. No aircraft operator may use such a device contrary to its security program.

(b) Metal detection devices shall meet the calibration standards established by the FAA.

### § 108.209 Use of X-ray systems.

(a) No aircraft operator may use any X-ray system within the United States or under the aircraft operator's operational control outside the United States to inspect accessible property or checked baggage, unless specifically authorized under a security program under this part. No aircraft operator may use such a system in a manner contrary to its security program. The Administrator authorizes aircraft operators to use X-ray systems for inspecting accessible property or checked baggage under a security program if the aircraft operator shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of explosives, incendiaries, and deadly or dangerous weapons; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792-88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

(b) No aircraft operator may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted that shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) No aircraft operator may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the aircraft operator shows that it can be moved without altering its performance.

(d) No aircraft operator may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless the FDA has advised the FAA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) No aircraft operator may use any X-ray system to inspect accessible property or checked baggage unless a sign is posted in a conspicuous place at the screening checkpoint or where checked baggage is accepted which notifies individuals that such items are being inspected by an X-ray and advises them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one milliroentgen during the inspection, the aircraft operator shall post a sign that advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an X-ray system.

(f) Each aircraft operator shall maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and shall make it available for inspection upon request by the Administrator at each of the following locations—

(1) The aircraft operator's principal business office; and

(2) The place where the X-ray system is in operation.

(g) The American Society for Testing and Materials (ASTM) Standard F792-88 (Reapproved 1993), "Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," was approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. ASTM Standard F792-88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at <http://dms.dot.gov/search> (under docket number FAA-2001-8725). Copies of the standard may be examined also at the Office of the Federal Register, 800 North Capitol St., NW, Suite 700, Washington, DC. In addition, ASTM Standard F792-88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

(h) Each aircraft operator shall comply with the X-ray operator duty time limitations specified in its security program.

**§ 108.211 Use of explosives detection systems.**

(a) If the Administrator so requires by an amendment to an aircraft operator's security program, each aircraft operator required to conduct screening under a security program shall use an explosives detection system approved by the Administrator to screen checked baggage on international flights.

(b) No aircraft operator may use an explosives detection system that uses X-ray technology to inspect checked baggage unless a sign is posted in a conspicuous place where checked baggage is accepted, which notifies individuals that such items are being inspected by an explosives detection system and advises them to remove all X-ray, scientific, and high-speed film from checked baggage before inspection. This sign shall also advise individuals that they may request that an inspection be made of their photographic equipment and film packages

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without exposure to an explosives detection system. If the explosives detection system exposes any checked baggage to more than one milliroentgen during the inspection the aircraft operator shall post a sign which advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages shall be inspected without exposure to an explosives detection system.

**§ 108.213 Employment standards for screening personnel.**

(a) No aircraft operator may 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 that the aircraft operator 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 shall be able to distinguish on the X-ray monitor the appropriate imaging standard specified in the aircraft operator's security program. Wherever the X-ray system displays colors, the operator shall be able to perceive each color;

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

(iii) Screeners shall 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 shall be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons shall have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

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(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 aircraft operator's security program, except as provided in paragraph (b) of this section.

(b) The aircraft operator may use a person who has not completed the training required by paragraph (a)(4) of this section during the on-the-job portion of training to perform security functions provided that the person:

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No aircraft operator 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 aircraft operator's security program.

(d) Each aircraft operator 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 the 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 based on the standards and requirements in its security program; and

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

(e) Paragraphs (a) through (d) of this section do not apply to those screening functions conducted outside the United States over which the aircraft operator does not have operational control. In the event the aircraft operator is unable to implement paragraphs (a) through (d) of this section for screening functions outside the United States, the aircraft operator shall notify the Administrator of those aircraft operator stations so affected.

(f) At locations outside the United States where the aircraft operator has operational control over a screening function, the aircraft operator may use screeners who do not meet the requirements of paragraph (a)(3) of this section, provided that at least one representative of the aircraft operator who has the ability to functionally read and speak English is present while the aircraft operator's passengers are undergoing security screening.

#### § 108.215 Security coordinators.

(a) *Aircraft Operator Security Coordinator.* Each aircraft operator shall designate and use an Aircraft Operator Security Coordinator (AOSC). The AOSC and any alternates shall be appointed at the corporate level and shall serve as the aircraft operator's primary contact for security-related activities and communications with the FAA, as set forth in the security program. Either the AOSC, or an alternate AOSC, shall be available on a 24-hour basis.

(b) *Ground Security Coordinator.* Each aircraft operator shall designate and use a Ground Security Coordinator for each domestic and international flight departure to carry out the Ground Security Coordinator duties specified in the aircraft operator's security program. The Ground Security Coordinator at each airport shall conduct the following daily:

(1) A review of all security-related functions for effectiveness and compliance with this part, the aircraft operator's security program, and applicable Security Directives.

(2) Immediate initiation of corrective action for each instance of noncompli-

ance with this part, the aircraft operator's security program, and applicable Security Directives. At foreign airports where such security measures are provided by an agency or contractor of a host government, the aircraft operator shall notify the Administrator for assistance in resolving noncompliance issues.

(c) *In-flight Security Coordinator.* Each aircraft operator shall designate and use the pilot in command as the In-flight Security Coordinator for each domestic and international flight to perform duties specified in the aircraft operator's security program.

#### § 108.217 Law enforcement personnel.

(a) The following applies to operations at airports within the United States not required to hold a security program under part 107 of this chapter:

(1) For operations described in § 108.101(a) each aircraft operator shall provide for law enforcement personnel meeting the qualifications and standards specified in §§ 107.215 and 107.217 of this chapter.

(2) For operations described in § 108.101(b) or (c) each aircraft operator shall—

(i) Arrange for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to an incident; and

(ii) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

(b) The following applies to operations at airports required to hold security programs under part 107 of this chapter. For operations described in § 108.101(c), each aircraft operator shall—

(1) Arrange with the airport operator for law enforcement personnel meeting the qualifications and standards specified in § 107.217 of this chapter to be available to respond to incidents; and

(2) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

**§ 108.219**

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**§ 108.219 Carriage of accessible weapons.**

(a) *Flights for which screening is conducted.* The provisions of §108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a law enforcement officer (LEO) aboard a flight for which screening is required if the requirements of this section are met. This paragraph (a) does not apply to a Federal Air Marshal on duty status under §108.223.

(1) Unless otherwise authorized by the Administrator, the armed LEO shall meet the following requirements:

(i) Be a Federal law enforcement officer or a full-time municipal, county, or state law enforcement officer who is a direct employee of a government agency.

(ii) Be sworn and commissioned to enforce criminal statutes or immigration statutes.

(iii) Be authorized by the employing agency to have the weapon in connection with assigned duties.

(iv) Has completed the training program "Law Enforcement Officers Flying Armed."

(2) In addition to the requirements of paragraph (a)(1) of this section, the armed LEO must have a need to have the weapon accessible from the time he or she would otherwise check the weapon until the time it would be claimed after deplaning. The need to have the weapon accessible shall be determined by the employing agency, department, or service and be based on one of the following:

(i) The provision of protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function.

(ii) The conduct of a hazardous surveillance operation.

(iii) On official travel required to report to another location, armed and prepared for duty.

(iv) Employed as a Federal LEO, whether or not on official travel, and armed in accordance with an agency-wide policy governing that type of travel established by the employing agency by directive or policy statement.

(v) Control of a prisoner, in accordance with §108.221, or an armed LEO on

a round trip ticket returning from escorting, or traveling to pick up, a prisoner.

(vi) FAA Federal Air Marshal on duty status.

(3) The armed LEO shall comply with the following notification requirements:

(i) All armed LEOs shall notify the aircraft operator of the flight(s) on which he or she needs to have the weapon accessible at least 1 hour, or in an emergency as soon as practicable, before departure.

(ii) Identify himself or herself to the aircraft operator by presenting credentials that include a clear full-face picture, the signature of the armed LEO, and the signature of the authorizing official of the agency, service, or department or the official seal of the agency, service, or department. A badge, shield, or similar device may not be used, or accepted, as the sole means of identification.

(iii) If the armed LEO is a State, county, or municipal law enforcement officer, he or she shall present an original letter of authority, signed by an authorizing official from his or her employing agency, service or department, confirming the need to travel armed and detailing the itinerary of the travel while armed.

(iv) If the armed LEO is an escort for a foreign official then this paragraph (a)(3) may be satisfied by a State Department notification.

(4) The aircraft operator shall do the following:

(i) Obtain information or documentation required in paragraphs (a)(3)(ii), (iii), and (iv) of this section.

(ii) Advise the armed LEO, before boarding, of the aircraft operator's procedures for carrying out this section.

(iii) Have the LEO confirm he/she has completed the training program "Law Enforcement Officers Flying Armed" as required by the FAA, unless otherwise authorized by the Administrator.

(iv) Ensure that the identity of the armed LEO is known to the appropriate personnel who are responsible for security during the boarding of the aircraft.

(v) Notify the pilot in command and other appropriate crewmembers, of the location of each armed LEO aboard the

aircraft. Notify any other armed LEO of the location of each armed LEO, including FAM's. Under circumstances described in the security program, the aircraft operator must not close the doors until the notification is complete.

(vi) Ensure that the information required in paragraphs (a)(3)(i) and (ii) of this section is furnished to the flight crew of each additional connecting flight by the Ground Security Coordinator or other designated agent at each location.

(b) *Flights for which screening is not conducted.* The provisions of §108.201(e), with respect to accessible deadly or dangerous weapons, do not apply to a LEO aboard a flight for which screening is not required if the requirements of paragraphs (a)(1), (3), and (4) of this section are met.

(c) *Alcohol.* (1) No aircraft operator may serve any alcoholic beverage to an armed LEO.

(2) No armed LEO may:

(i) Consume any alcoholic beverage while aboard an aircraft operated by an aircraft operator.

(ii) Board an aircraft armed if they have consumed an alcoholic beverage within the previous 8 hours.

(d) *Location of weapon.* (1) Any person traveling aboard an aircraft while armed shall at all times keep their weapon:

(i) Concealed and out of view, either on their person or in immediate reach, if the armed LEO is not in uniform.

(ii) On their person, if the armed LEO is in uniform.

(2) No person may place a weapon in an overhead storage bin.

**§ 108.221 Carriage of prisoners under the control of armed law enforcement officers.**

(a) This section applies as follows:

(1) This section applies to the transport of prisoners under the escort of an armed law enforcement officer.

(2) This section does not apply to the carriage of passengers under voluntary protective escort.

(3) This section does not apply to the escort of non-violent detainees of the Immigration and Naturalization Service. This section does not apply to persons who may be traveling with a pris-

oner and armed escort, such as the family of a deportee who is under armed escort.

(b) For the purpose of this section:

(1) *High risk prisoner* means a prisoner who is an exceptional escape risk, as determined by the law enforcement agency, and charged with, or convicted of, a violent crime.

(2) *Low risk prisoner* means any prisoner who has not been designated as "high risk."

(c) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless, in addition to the requirements in §108.219, the following requirements are met:

(1) The agency responsible for control of the prisoner has determined whether the prisoner is considered a high risk or a low risk.

(2) Unless otherwise authorized by the Administrator, no more than one high risk prisoner shall be carried on the aircraft.

(d) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless the following staffing requirements are met:

(1) A minimum of one armed law enforcement officer shall control a low risk prisoner on a flight that is scheduled for 4 hours or less. No more than two low risk prisoners may be carried under the control of any one armed law enforcement officer.

(2) A minimum of two armed law enforcement officers shall control a low risk prisoner on a flight that is scheduled for more than 4 hours. No more than two low risk prisoners may be carried under the control of any two armed law enforcement officers.

(3) For high-risk prisoners:

(i) For one high-risk prisoner on a flight: A minimum of two armed law enforcement officers shall control a high risk prisoner. No other prisoners may be under the control of those two armed law enforcement officers.

(ii) If the Administrator has authorized more than one high-risk prisoner to be on the flight under paragraph (c)(2) of this section, a minimum of at

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least one armed law enforcement officer for each prisoner and one additional armed law enforcement officer shall control the prisoners. No other prisoners may be under the control of those armed law enforcement officers.

(e) An armed law enforcement officer who is escorting a prisoner—

(1) Shall notify the aircraft operator at least 24 hours before the scheduled departure, or, if that is not possible as far in advance as possible of the following—

(i) The identity of the prisoner to be carried and the flight on which it is proposed to carry the prisoner; and

(ii) Whether or not the prisoner is considered to be a high risk or a low risk.

(2) Shall arrive at the check-in counter at least 1 hour before to the scheduled departure.

(3) Shall assure the aircraft operator, before departure, that each prisoner under the control of the officer(s) has been searched and does not have on or about his or her person or property anything that can be used as a deadly or dangerous weapon.

(4) Shall be seated between the prisoner and any aisle.

(5) Shall accompany the prisoner at all times, and keep the prisoner under control while aboard the aircraft.

(f) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft unless the following are met:

(1) When practicable, the prisoner shall be boarded before any other boarding passengers and deplaned after all other deplaning passengers.

(2) The prisoner shall be seated in a seat that is neither located in any passenger lounge area nor located next to or directly across from any exit and, when practicable, the aircraft operator should seat the prisoner in the rear-most seat of the passenger cabin.

(g) Each armed law enforcement officer escorting a prisoner and each aircraft operator shall ensure that the prisoner is restrained from full use of his or her hands by an appropriate device that provides for minimum movement of the prisoner's hands, and shall ensure that leg irons are not used.

(h) No aircraft operator may provide a prisoner under the control of a law enforcement officer—

(1) With food or beverage or metal eating utensils unless authorized to do so by the armed law enforcement officer.

(2) With any alcoholic beverage.

**§ 108.223 Transportation of Federal Air Marshals.**

(a) A Federal Air Marshal on duty status may have a deadly or dangerous weapon accessible while aboard an aircraft for which screening is required.

(b) Each aircraft operator shall carry Federal Air Marshals, in the number and manner specified by the Administrator, on each scheduled passenger operation, and public charter passenger operation designated by the Administrator.

(c) Each Federal Air Marshal shall be carried on a first priority basis and without charge while on duty, including positioning and repositioning flights. When a Federal Air Marshal is assigned to a scheduled flight that is canceled for any reason, the aircraft operator shall carry that Federal Air Marshal without charge on another flight as designated by the Administrator.

(d) Each aircraft operator shall assign the specific seat requested by a Federal Air Marshal who is on duty status. If another LEO is assigned to that seat or requests that seat, the aircraft operator shall inform the Federal Air Marshal. The Federal Air Marshal will coordinate seat assignments with the other LEO.

(e) The Federal Air Marshal identifies himself or herself to the aircraft operator by presenting credentials that include a clear, full-face picture, the signature of the Federal Air Marshal, and the signature of the Administrator. A badge, shield, or similar device may not be used or accepted as the sole means of identification.

(f) The requirements of §108.219(a) do not apply for a Federal Air Marshal on duty status.

(g) Each aircraft operator shall restrict any information concerning the presence, seating, names, and purpose of Federal Air Marshals at any station

or on any flight to those persons with an operational need to know.

(h) Law enforcement officers authorized to carry a weapon during a flight will be contacted directly by a Federal Air Marshal who is on that same flight.

**§ 108.225 Security of aircraft and facilities.**

Each aircraft operator shall use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation:

(a) Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with §107.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.

**§ 108.227 Exclusive Area Agreement.**

(a) An aircraft operator that has entered into an exclusive area agreement with an airport operator, under §107.111 of this chapter shall carry out that exclusive area agreement.

(b) The aircraft operator shall list in its security program the locations at which it has entered into exclusive area agreements with an airport operator.

(c) The aircraft operator shall provide the exclusive area agreement to the Administrator upon request.

(d) Any exclusive area agreements in effect on November 14, 2001 shall meet the requirements of this section and §107.111 of this chapter no later than November 14, 2002.

**§ 108.229 Fingerprint-based criminal history records checks (CHRC).**

(a) *Scope.* The following persons are within the scope of this section—

(1)(i) Each employee or contract employee covered under a certification made to an airport operator on or after December 6, 2001, pursuant to §107.209(n) of this chapter.

(ii) Each individual issued on or after December 6, 2001, aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in §107.205 of this chapter (referred to as unescorted access authority).

(iii) Each individual, on or after December 6, 2001, granted authority to perform the following screening functions at locations within the United States (referred to as authority to perform screening functions)—

(A) Screening passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(B) Serving as an immediate supervisor (checkpoint security supervisor (CSS)), and the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(1)(iii)(A) of this section.

(2)(i) Each employee or contract employee covered under a certification made to an airport operator pursuant to §107.31(n) as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or pursuant to §107.209(n) of this chapter before December 6, 2001.

(ii) Each individual who holds on December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in §107.205 of this chapter.

(iii) Each individual who is performing on December 6, 2001, a screening function identified in paragraph (a)(1)(iii) of this section.

(b) *Individuals seeking unescorted access authority or authority to perform screening functions.* Each aircraft operator must ensure that each individual identified in (a)(1) of this section has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section, before—

(1) Making a certification to an airport operator regarding that individual;

(2) Issuing an aircraft operator identification medium to that individual; or

(3) Authorizing that individual authority to perform screening functions.

(c) *Individuals who have not had a CHRC.* (1) Each aircraft operator must ensure that, on and after December 6, 2002:

(i) No individual retains unescorted access authority, whether obtained as a result of a certification to an airport operator under §107.31(n) as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or under §107.209(n) of this chapter before December 6, 2001, or obtained as a result of the issuance of an aircraft operator's identification media, unless the individual has been subject to a fingerprint-based CHRC for unescorted access authority under this part.

(ii) No individual continues to have authority to perform screening functions described in paragraph (a)(1)(iii) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(2) When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after December 6, 1991, the aircraft operator must immediately suspend that individual's unescorted access authority or authority to perform screening functions.

(d) *Disqualifying criminal offenses.* An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in this paragraph in any jurisdiction during the 10 years before the date of the individual's application for unescorted access authority or authority to perform screening functions, or while the individual has unescorted access authority or authority to perform screening functions. The disqualifying criminal offenses are as follows—

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—

(i) Willful destruction of property;

(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph.

(e) *Fingerprint application and processing.* (1) At the time of fingerprinting, the aircraft operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 14 CFR 108.229 impose a continuing obligation to disclose to the aircraft operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has unescorted access authority.

(iv) A statement reading, “The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)”

(v) A line for the printed name of the individual.

(vi) A line for the individual’s signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The aircraft operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The aircraft operator must:

(i) Advise the individual that a copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) Identify a point of contact if the individual has questions about the results of the CHRC.

(5) The aircraft operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation by the aircraft operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by the FAA for that purpose.

(7) The fingerprint submission must be forwarded to the FAA in the manner specified by the Administrator.

(f) *Fingerprinting fees.* Aircraft operators must pay for all fingerprints in a form and manner approved by the FAA. The payment must be made at the designated rate (available from the local FAA security office) for each set of fingerprints submitted. Information about payment options is available through the designated FAA headquarters point of contact. Individual personal checks are not acceptable.

(g) *Determination of arrest status.* (1) When a CHRC on an individual described in paragraph (a)(1) of this section discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting unescorted access authority or authority to perform screening functions.

(2) When a CHRC on an individual described in paragraph (a)(2) of this section discloses an arrest for any disqualifying criminal offense without indicating a disposition, the aircraft operator must suspend the individual’s unescorted access authority or authority to perform screening functions not later than 45 days after obtaining the CHRC unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense.

(3) The aircraft operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, unescorted access authority; individuals for whom it is issuing, or has issued, authority to perform screening functions; and individuals who are covered by a certification from an aircraft operator under

§107.209 (n) of this chapter. The aircraft operator may not make determinations for individuals described in §107.209 (a) of this chapter.

(h) *Correction of FBI records and notification of disqualification.* (1) Before making a final decision to deny authority to an individual described in paragraph (a)(1) of this section, the aircraft operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining unescorted access authority or authority to perform screening functions and provide the individual with a copy of the FBI record if he or she requests it.

(2) The aircraft operator must notify an individual that a final decision has been made to grant or deny unescorted access authority or authority to perform screening functions.

(3) Immediately following the suspension of unescorted access authority or authority to perform screening functions, the aircraft operator must advise the individual that the FBI criminal record discloses information that disqualifies him or her from retaining his or her authority, and provide the individual with a copy of the FBI record if he or she requests it.

(i) *Corrective action by the individual.* The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority or authority to perform screening functions on or after December 6, 2001, the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record or a certified true copy of the information from the appropriate court, prior to granting unescorted access authority or authority to perform screening functions.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the aircraft operator may make a final determination to deny unescorted access authority or authority to perform screening functions.

(2) For an individual with unescorted access authority or authority to perform screening functions before December 6, 2001, the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating unescorted access authority or authority to perform screening functions.

(j) *Limits on dissemination of results.* Criminal record information provided by the FBI may be used only to carry out this section and §107.209 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of airport operators who are determining whether to grant unescorted access to the individual under part 107 of this chapter when the determination is not based on the aircraft operator's certification under §107.209 (n) of this chapter.

(3) Other aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under this part.

(4) Others designated by the Administrator.

(k) *Recordkeeping.* The aircraft operator must maintain the following information.

(1) *Investigation conducted before December 6, 2001.* The aircraft operator must maintain and control the access or employment history investigation files, including the criminal history

records results portion, for investigations conducted before December 6, 2001.

(2) *Fingerprint application process on or after December 6, 2001.* The aircraft operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct aircraft operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) *Protection of records—all investigations.* The records required by this section must be maintained in a manner that is acceptable to the Administrator and in a manner that protects the confidentiality of the individual.

(4) *Duration—all investigations.* The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's unescorted access authority or authority to perform screening functions. When files are no longer maintained, the criminal record must be destroyed.

(1) *Continuing responsibilities.* (1) Each individual with unescorted access authority or the authority to perform screening functions on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the aircraft operator and surrender the SIDA access medium to the issuer and cease performing screening functions, as applicable.

(2) Each individual with unescorted access authority or authority to perform screening functions who has a disqualifying criminal offense must report the offense to the aircraft operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the aircraft operator indicating that an individual with unescorted access authority or authority to perform screening functions has a possible conviction for any disqualifying criminal offense in paragraph (d) of this section, the aircraft operator must determine the status of the conviction. If a disqualifying criminal offense is confirmed the aircraft operator must im-

mediately revoke any unescorted access authority and authority to perform screening functions.

(m) *Aircraft operator responsibility.* The aircraft operator must—

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigations for those whom the aircraft operator has made a certification to an airport operator under §107.209 (n) of this chapter, and for those whom the aircraft operator has issued identification media that are airport-accepted. The aircraft operator must designate a direct employee to maintain, control, and, as appropriate, destroy criminal records.

(2) Designate an individual(s) to maintain the employment history investigations of individuals with authority to perform screening functions whose files must be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) at appropriate locations to serve as the contact to receive notification from individuals seeking unescorted access authority or authority to perform screening functions of their intent to seek correction of their FBI criminal record.

(4) Audit the employment history investigations performed in accordance with this section and §108.33 as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001). The aircraft operator must set forth the audit procedures in its security program. Section 138 of ATSA removes the exemption for the individuals with access to U.S. Customs' secured areas.

[Doc. FAA-2001-10999, 66 FR 63484, Dec. 6, 2001]

**§108.231 Airport-approved and exclusive area personnel identification systems.**

(a) Each aircraft operator shall establish and carry out a personnel identification system for identification media that are airport-approved, or identification media that are issued for use in an exclusive area. The system shall include the following:

(1) Personnel identification media that—

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(i) Convey a full face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year, or sooner, as necessary to ensure the integrity and accountability of all identification media.

(v) As specified in the aircraft operator security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or unretrieved, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost or stolen.

(b) The aircraft operator may request approval of a temporary identification media system that meets the standards in §107.211(b) of this chapter, or may arrange with the airport to use temporary airport identification media in accordance with that section.

(c) Each aircraft operator shall submit a plan to carry out this section to the Administrator no later than May 13, 2002. Each aircraft operator shall fully implement its plan no later than November 14, 2003.

**§ 108.233 Security coordinators and crewmembers, training.**

(a) No aircraft operator may use any person as a Ground Security Coordinator unless, within the preceding 12-calendar months, that person has satisfactorily completed the security training as specified in the aircraft operator's security program.

(b) No aircraft operator may use any person as an in-flight security coordinator or crewmember on any domestic or international flight unless, within the preceding 12-calendar months or within the time period specified in an Advanced Qualifications Program approved under SFAR 58, that person has satisfactorily completed the security training required by §121.417(b)(3)(v) or §135.331(b)(3)(v) of this chapter, and as specified in the aircraft operator's security program.

(c) With respect to training conducted under this section, whenever a person completes recurrent training within one calendar month earlier, or one calendar month after the date it was required, that person is considered to have completed the training in the calendar month in which it was required.

**§ 108.235 Training and knowledge for persons with security-related duties.**

(a) No aircraft operator may use any direct or contractor employee to perform any security-related duties to meet the requirements of its security program unless that person has received training as specified in its security program including their individual responsibilities in §108.9.

(b) Each aircraft operator shall ensure that individuals performing security-related duties for the aircraft operator have knowledge of the provisions of part 108, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's security program to the extent that such individuals need to know in order to perform their duties.

### Subpart D—Threat and Threat Response

#### § 108.301 Contingency plan.

Each aircraft operator shall adopt a contingency plan and shall:

(a) Implement its contingency plan when directed by the Administrator.

(b) Ensure that all information contained in the plan is updated annually and that appropriate persons are notified of any changes.

(c) Participate in an airport operator-sponsored exercise of the airport contingency plan or its equivalent, as provided in its security program.

#### § 108.303 Bomb or air piracy threats.

(a) *Flight: Notification.* Upon receipt of a specific and credible threat to the security of a flight, the aircraft operator shall—

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

(2) Ensure that the in-flight security coordinator notifies all crewmembers of the threat, any evaluation thereof, and any measures to be applied; and

(3) Immediately notify the appropriate airport operator.

(b) *Flight: Inspection.* Upon receipt of a specific and credible threat to the security of a flight, each aircraft operator shall attempt to determine whether or not any explosive or incendiary is present by doing the following:

(1) Conduct a security inspection on the ground before the next flight or, if the aircraft is in flight, immediately after its next landing.

(2) If the aircraft is on the ground, immediately deplane all passengers and submit that aircraft to a security search.

(3) If the aircraft is in flight, immediately advise the pilot in command of all pertinent information available so that necessary emergency action can be taken.

(c) *Ground Facility.* Upon receipt of a specific and credible threat to a specific ground facility at the airport, the aircraft operator shall:

(1) Immediately notify the appropriate airport operator.

(2) Inform all other aircraft operators and foreign air carriers at the threatened facility.

(3) Conduct a security inspection.

(d) *Notification.* Upon receipt of any bomb threat against the security of a flight or facility, or upon receiving information that an act or suspected act of air piracy has been committed, the aircraft operator also shall notify the Administrator. If the aircraft is in airspace under other than U.S. jurisdiction, the aircraft operator shall also notify the appropriate authorities of the State in whose territory the aircraft is located and, if the aircraft is in flight, the appropriate authorities of the State in whose territory the aircraft is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

#### § 108.305 Security Directives and Information Circulars.

(a) The Administrator may issue an Information Circular to notify aircraft operators of security concerns. When the Administrator determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, the Administrator issues a Security Directive setting forth mandatory measures.

(b) Each aircraft operator required to have an approved aircraft operator security program shall comply with each Security Directive issued to the aircraft operator by the Administrator, within the time prescribed in the Security Directive for compliance.

(c) Each aircraft operator that receives a Security Directive shall—

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to the Administrator.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the aircraft operator is unable to implement the measures in the Security Directive, the aircraft operator shall submit proposed alternative measures and the basis for

submitting the alternative measures to the Administrator for approval. The aircraft operator shall submit the proposed alternative measures within the time prescribed in the Security Directive. The aircraft operator shall implement any alternative measures approved by the Administrator.

(e) Each aircraft operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to the Administrator. The Administrator may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each aircraft operator that 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 either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with an operational need-to-know without the prior written consent of the Administrator.

## PART 109—INDIRECT AIR CARRIER SECURITY

Sec.

109.1 Applicability.

109.3 Security program.

109.5 Approval of security programs and amendments.

AUTHORITY: 49 U.S.C. 106(g), 5103, 40113, 40119, 44701-44702, 44705, 44901-44905, 44907, 44913-44914, 44932, 44935-44936, 46105.

### § 109.1 Applicability.

(a) This part prescribes aviation security rules governing each air carrier, including each air freight forwarder and each cooperative shippers' association, engaged indirectly in air transportation of property;

(b) For the purposes of this part, *property* means any package cargo.

[Doc. No. 19840, 44 FR 72345, Dec. 13, 1979]

### § 109.3 Security program.

(a) Each indirect air carrier shall adopt and carry out a security program that—

(1) Is designed to prevent or deter the unauthorized introduction of any explosive or incendiary device into any package cargo intended for carriage by air;

(2) Is in writing and signed by the carrier or any person delegated authority in this matter;

(3) Includes a system of security safeguards acceptable to the Administrator; and

(4) Has been approved by the Administrator.

(b) Each indirect air carrier shall maintain at least one complete copy of its security program at its principal business office, and a complete copy or the pertinent portions of its security program or appropriate implementing instructions at each office where package cargo is accepted, and shall make those documents available for inspection upon request of any Civil Aviation Security Special Agent.

(c) Each indirect air carrier shall—

(1) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 191 of this chapter, to persons with a need-to-know; and

(2) Refer requests for sensitive security information by other persons to the Assistant Administrator for Civil Aviation Security.

[Doc. No. 19840, 44 FR 72345, Dec. 13, 1979, as amended by Amdt. 109-1, 54 FR 39293, Sept. 25, 1989; Amdt. 109-3, 62 FR 13744, Mar. 21, 1997]

### § 109.5 Approval of security programs and amendments.

(a) Each indirect air carrier shall submit its security program to the Administrator for approval. Each carrier engaged in the air transportation of property before December 13, 1979, shall submit its program no later than January 14, 1980. Each carrier not engaged in air transportation or intrastate air transportation of property before December 13, 1979, shall submit its program at least 30 days before the date it intends to engage in that transportation.