

127-6

---

**Thursday  
March 16, 1989**

**Registered  
Federal Report**

---

**Part III**

**Department of  
Transportation**

---

**Federal Aviation Administration**

---

**14 CFR Part 129  
Security Programs for Foreign Air  
Carriers; Final Rule**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 129**

[Docket No. 25693; Amdt. No. 129-18]

RIN 2120-AC42

**Security Programs for Foreign Air Carriers****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Federal Aviation Regulations to require foreign air carriers that land or take off in the United States to submit a written security program to the FAA that is acceptable to the Administrator. The security program must describe the procedures, facilities, and equipment that the foreign air carrier will use to ensure the safety of persons and property traveling in air transportation. The final rule is needed to ensure that adequate security measures are being implemented by foreign air carriers that land or take off in the United States. The final rule is intended to reduce the risk of fatalities and property damage attributable to acts of criminal violence directed against civil aviation and to prevent acts of air piracy.

**EFFECTIVE DATE:** The final rule is effective on April 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. David A. Smith, Manager, Domestic Civil Aviation Security Division (ACS-100), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3947.

**SUPPLEMENTARY INFORMATION:****Availability of the Final Rule**

Any person may obtain a copy of the final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

**Background**

On August 31, 1988, the Federal Aviation Administration (FAA) issued a notice of proposed rulemaking (NPRM) (53 FR 34874; September 8, 1988) that set

forth a proposed amendment to Part 129 of the Federal Aviation Regulations. Part 129 governs the operations of foreign air carriers that hold a permit issued by the Civil Aeronautics Board or the Department of Transportation under section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by those entities. In the NPRM, the FAA proposed to amend § 129.25 of the regulations that currently requires each foreign air carrier that lands or takes off in the United States to adopt and to use a security program for each scheduled and public charter passenger operations as defined in that section.

**Discussion of the Comments**

As of January 5, 1989, the FAA received over 50 comments in response to the proposal contained in the NPRM. Thirty of these comments were received by November 7, 1988, the formal closing date of the comment period. An additional 16 comments were received within days of November 7, 1988. One comment, dated December 20, 1988, was received on December 22, 1988. All comments received by January 5, 1989 have been considered in the development of the final rule.

The largest group of commenters is that of foreign air carriers who would be affected by the proposed rule. More than 30 comments from foreign air carriers are in the docket. Several of those comments were filed on behalf of more than one foreign air carrier. A number of the comments contain virtually identical arguments, although separately filed on behalf of several foreign air carriers. These commenters generally were opposed to the proposed rule. However, several foreign air carriers expressed support for the proposed rule, although at least one of those recommended modifications to the proposal. Several others did not express any opinion on the basic concept of the proposed rule, but suggested that changes be made to the proposed rule if issued as a final rule. Several commenters, apparently believing that the NPRM was a final rule, submitted their security program or other security-sensitive documents. The FAA did not include these materials in the docket. Letters were sent to the commenters, copies of which are in the docket, inviting comments on the NPRM. The FAA's letters indicated that material included in the docket is available to the public, a consequence that FAA believed the commenters did not realize. Indeed, public disclosure of security-sensitive material, such as an air carrier's security plan or program, would be completely inconsistent with the common goal of all participants in

this rulemaking; namely, to ensure the safety of persons and property traveling in air transportation against acts of criminal violence and air piracy.

Comments were received from five individuals who are considering traveling as passengers on foreign air carrier flights operating to or from the United States. These commenters endorsed the proposal, usually with little elaboration, as a means of assuring that security measures are followed. Several of these commenters stated that foreign air carriers should follow the same security procedures as U.S. air carriers.

Another group of commenters, comprised of organizations representing various segments of the U.S. aviation community, supported the proposed rule. This group includes the Air Transport Association of America (ATA), the Air Line Pilots Association (ALPA), the American Association of Airport Executives (AAAE), and the Airport Operators Council International (AOCI), which commented on behalf of its U.S.-member airports.

Comments were received from a number of foreign governments and organizations. The British Embassy and the Embassy of Switzerland sent diplomatic notes to the U.S. Department of State for inclusion in the docket. Comments also were received from the Civil Aviation Bureau of Japan, the Department of Civil Aviation of Malaysia, the Soviet Union through the U.S. Embassy in Moscow, the European Civil Aviation Conference (ECAC), the International Air Transport Association (IATA), the Association of European Airlines (AEA), and the Air Transport Association of Canada (ATAC). This group of commenters generally were opposed, in whole or in substantial part, to the proposed rule. In particular, there was concern expressed about application of the rule to airports located outside the United States.

Finally, the docket includes a letter of inquiry about the rulemaking, a copy of a summary of the proposal published in a periodical, and a comment from an entity that operates several airports in the United States concerning the relationship of the proposal to the security requirements applicable to airport operators under 14 CFR Part 107.

The commenters addressed a variety of specific issues. However, the issues fall into two broad categories. The first category, and the one that generated the largest volume of comments, involves the proposal's impact on relationships between the United States and other countries. The specific issues in this category include the legality and

consistency of the proposal with the Convention on International Civil Aviation ("Chicago Convention"), particularly Annex 17; the legality and consistency of the proposal with current bilateral air transport agreements; and the impact of the proposal on the sovereignty of countries. The second category involves issues of implementation and other specific aspects of the proposed rule. The issues in the second category include the time frames for submission and acceptance of a security program, the adequacy of the statement of need for the proposal, and concerns about the preparation and availability of a model standard security program.

#### International Issues

The majority of commenters who objected to the proposal raised concerns about the extent of U.S. authority over the security of foreign air carrier operations. None of these commenters questioned the jurisdiction of the United States to require foreign air carriers to submit their security programs for acceptance by the Administrator with respect to the activities of those air carriers at U.S. airports. Their concerns were based upon the application of the requirement to foreign air carrier operations at foreign airports that are the last point of departure prior to landing in the United States. The comments on this point generally focused on five issues.

First, a few commenters questioned the FAA's statutory authority to apply the proposed rule to the foreign air carrier's last point of departure to the United States. One commenter argued that sections 315 and 316 of the Federal Aviation Act apply to aviation security only at U.S. airports and do not authorize the regulation of foreign air carrier activities at points outside the United States. Other commenters, remarking upon discussion in the preamble to the NPRM, cited the International Security and Development Cooperation Act (ISDCA) for different propositions. Some argued that ISDCA failed to provide any authority for the proposed rule; others believed that the ISDCA eliminated any need for the proposed rule, and that the rule, therefore, was redundant and unnecessary.

Sections 315 and 316 of the Federal Aviation Act are specific and comprehensive and provide ample authority for the proposed rule. Section 315 provides that the FAA shall require \* \* \* that all passengers and all property intended to be carried in the aircraft cabin in air transportation \* \* \* be screened by weapon-detecting procedures or facilities

employed or operated by employees or agents of the air carrier, intrastate air carrier, or foreign air carrier prior to boarding the aircraft for such transportation [49 U.S.C. 1356(a)].

Section 316 is even more comprehensive in scope: it provides that the FAA

\* \* \* shall prescribe such reasonable rules and regulations requiring such practices, methods, and procedures \* \* \* as [it] may deem necessary to protect persons and property aboard aircraft operating in air transportation \* \* \* [49 U.S.C. 1357(a)].

If these sections applied only to operations at U.S. airports, as argued by one commenter, these sections would provide no authority for the FAA to regulate the security of U.S. air carriers abroad, a result clearly not intended by Congress. As another commenter rightly pointed out, the definition of the term "air transportation" is defined to include "foreign air transportation" [49 U.S.C. 1301(10)]. In turn, "foreign air transportation" is defined as

the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between \* \* \* a place in the United States and any place outside thereof \* \* \* [49 U.S.C.App. 1301(24)].

These terms clearly indicate that sections 315 and 316 of the Federal Aviation Act were intended to apply to operations to and from the United States. The FAA, in promulgating § 129.25 in 1975, implemented these provisions of the Federal Aviation Act, and in so doing clearly expressed its understanding that the law applied to inbound operations of foreign air carriers, as well as to their operations from U.S. airports. The FAA agrees that ISDCA does not provide specific statutory authority to require foreign air carriers to submit their security programs to the FAA for acceptance. The FAA did not cite ISDCA as statutory authority for the NPRM. The FAA, nevertheless, believes that the final rule is necessary to make Part 129 more consistent with the provisions of ISDCA. Evaluations of the effectiveness of the security measures used by foreign air carriers at the foreign airports covered by ISDCA is integral to the airport assessments required by that law. The final rule will provide an additional means of ensuring that the purpose of ISDCA is fulfilled.

Second, several commenters argued that the extension of U.S. jurisdiction to the foreign air carrier's last point of departure to the United States is inconsistent with the Chicago Convention and Annex 17 thereto. The commenters cite no specific provision of

the Convention to support this contention but generally argue that the rule somehow undermines the fact that each Contracting State to the Chicago Convention has the basic responsibility for the security of all international civil aviation operations within its territory. These commenters do cite provisions of Annex 17, calling upon States to establish a national civil aviation security program, to ensure the establishment of airport security programs for airports in their respective territories, and to cooperate with other States in adapting their respective national civil aviation security programs. The commenters argue that these provisions prohibit a Contracting State from exercising any jurisdiction over the security of foreign aircraft entering its territory from a foreign airport.

The FAA believes that the final rule is consistent with the Chicago Convention and Annex 17. As many commenters pointed out, Article 1 of the Convention recognizes the complete and exclusive sovereignty of each State over the airspace above its territory. An inherent aspect of this sovereignty is the right of each State to protect its inhabitants from potential threats to their safety from foreign aircraft entering its airspace from foreign locations. The very real potential exists that an aircraft that has not been subjected to adequate security precautions at the last point of departure to another country may be the target of an act of unlawful interference or sabotage and that the aircraft may therefore pose a hazard to the safety of the inhabitants of the country into which the aircraft operates. The Chicago Convention recognizes this fundamental right in Article 11. That Article provides that

\* \* \* the laws and regulations of a contracting State relating to the admission to or departure from its territory of aircraft engaged in international air navigation, or to the operation and navigation of such aircraft while within its territory, \* \* \* shall be complied with by such aircraft upon entering or departing from or while within the territory of that State."

Nothing in the Convention detracts from this basic right with respect to issues of aviation security.

Annex 17 to the Chicago Convention, which contains international standards and recommended practices on aviation security, does not preclude a State from requiring that foreign air carrier security programs with respect to operations into, within, and from its territory be submitted for its acceptance. On the contrary, Chapter 5 of Annex 17 specifically states that

[e]ach Contracting State shall require operators providing service to or from that State to adopt a security programme and to apply it in proportion to the threat to international civil aviation and its facilities \* \* \*

The FAA, therefore, believes that the final rule is not only consistent with, but is contemplated by, the provisions of Annex 17.

Third, several commenters raised questions as to the consistency of the proposed rule with various U.S. bilateral air transport agreements. Those commenters argue that the air transport agreements do not contemplate one State unilaterally imposing on the airlines of another State security requirements to be implemented in the territory of that other State. Some commenters stated that the air transport agreements are even more restrictive and provide no authority for one State to regulate the security procedures employed by the airline of the other. Some commenters also believed that certain air transport agreements require governmental consultations before action may be taken to require a foreign air carrier to make changes to its security program.

The FAA is very much aware of the obligations contained in the various U.S. bilateral air transport agreements and intends that the final rule be implemented consistent with the commitments made in those agreements. U.S. bilateral air transport agreements are not identical in their provisions. There is uniformity, however, with respect to certain provisions. Among these is an obligation which tracks the obligation in Article 11 of the Chicago Convention; that is, the airlines of one contracting Party to the air transport agreement are obligated to comply with the rules governing entry into, departure from, and operation within the territory of the other contracting Party. As discussed, the requirement in the final rule regarding acceptance of security programs for operations into, within, and from the United States is consistent with this universal provision of U.S. bilateral air transport agreements.

Many of these agreements also contain specific articles regarding aviation security. Some security articles contain specific language acknowledging the obligations of the airlines of one contracting Party to abide by the security requirements of the other. All of these security articles recognize the obligation of the airlines of the contracting Parties to adhere to International Civil Aviation Organization (ICAO) standards and recommended practices for aviation security. These security articles in no

way detract from the ability of each Party to require compliance with these international measures by the air carrier of the other. The security articles do impose the obligation that, absent an emergency, the Parties will consult regarding possible breaches of aviation security obligations prior to either Party taking unilateral action to withhold operating rights under the bilateral air transport agreements.

Fourth, a few commenters objected to the rule on the grounds that security measures in some countries are only to a certain extent within the control of the airlines. The commenters stated that, in those countries, many aspects of aviation security, including the screening of passengers and carry-on baggage, are the responsibility of governmental authorities and that it is unfair to require those airlines to inform the FAA of all relevant aspects of the aviation security program for that airline or to hold the air carrier accountable for adherence to that program.

The FAA notes that similar objections were made when the current regulation on foreign air carrier security, § 129.25, was proposed. That regulation currently requires each foreign air carrier taking off or landing in the United States to adopt and to use a security program that meets the requirements listed in § 129.25(c) and to provide the FAA with information on its security program, if requested. For almost 14 years, the FAA has required compliance with that regulation by foreign air carriers with respect to their operations at U.S. airports and foreign airports that are a last point of departure to the United States. Foreign air carriers, with very few exceptions, have consistently complied with these requirements.

This is not surprising because the basic security requirements in the current § 129.25 are reflective of the international standards and recommended practices contained in Annex 17. The host governments of foreign air carriers that do not comply with the provisions of that section arguably would not be carrying out their commitments under the Chicago Convention or bilateral air transport agreements with the United States. The final rule does not alter this fact and many commenters who object to the proposed rule hail the current rule as workable.

Fifth, but in the same vein, several commenters expressed concern that the proposed rule would undermine international cooperation in the area of aviation security; would be the first step toward the promulgation of overlapping, inconsistent security requirements across the world and, hence, would be

an impediment to international air transportation; and would provide a disincentive for other States to carry out their responsibilities in this important area. Some of these commenters express the belief that the FAA has forgotten the importance of cooperative international efforts in achieving effective international civil aviation security.

The FAA believes that international cooperation is absolutely essential to combatting the continuing threats to civil aviation security. The FAA places the utmost importance on its work with other countries in the context of ICAO to achieve the highest and most effective international standards on this subject. The FAA also has worked, and will continue to work, closely with its aviation partners to improve the level of international aviation security through technical assistance and consultations. In this regard, the FAA notes that the February 15, 1989 meeting of the members of the International Civil Aviation Organization resulted in unanimous passage of a resolution calling upon all member states to intensify their efforts for the implementation of existing standards, recommended practices and procedures relating to aviation security, to monitor such implementation, and to take all necessary steps to prevent acts of unlawful interference against international civil aviation. This United Nations organization recognized that terrorism in the skies is a global threat that must be addressed independently and collectively by all nations.

The FAA does not believe that the final rule undermines any of these important international efforts. Rather, the rule is a vehicle for the FAA to fulfill its obligations under the Federal Aviation Act, the ICAO resolution, and Chapter 5 of Annex 17 with respect to the operations of foreign air carriers to, within, and from the United States. The rule will accomplish this by allowing the FAA to assure itself that these foreign air carriers are implementing security programs adequate to meet the threat to international civil aviation and its facilities. The FAA recognizes that conditions at the various foreign airports around the world are not identical and that the details of security programs for foreign air carriers will vary, depending on local conditions. In this respect, the FAA will take due regard of concerns that may be expressed by foreign air carriers faced with differing requirements under U.S. and local law. The FAA expects to work closely with civil aviation safety authorities in other countries in order to keep them advised of any proposed changes to foreign air

carrier security programs. However, consistent with the provisions of Annex 17, the FAA expects that the critical requirements of § 129.25 will continue to be met by foreign air carriers operating to or from the United States.

#### Rule Implementation and Other Issues

A number of comments address the schedule for submission and acceptance of a foreign air carrier security program. The NPRM envisioned a 150-day period from publication of a final rule to the use of a security program acceptable to the Administrator. The preamble of the NPRM anticipated that the effective date of the rule would be 60 days after the date of publication. The NPRM proposed to require a foreign air carrier subject to the rule to submit its proposed security program by the effective date. The preamble further indicated that the use of a security program acceptable to the Administrator would not be required until 90 days after the effective date. (The proposed rule language is confusing with regard to the date by which a security program acceptable to the Administrator must be used by each foreign air carrier. The *Federal Register* mistakenly inserted "December 7, 1988," a date 90 days after publication of the NPRM, in several places in the printed NPRM in lieu of the phrase, "90 days after the effective date of the final rule," that was in the FAA's document sent for publication.)

There is support in the comments both for the proposition that the schedule is reasonable and for the proposition that the time intervals should be lengthened. The FAA is not convinced that the 150-day interval in the proposed rule, from publication of the final rule to use of a security program acceptable to the Administrator, is unreasonably short, although the interval is predicated on diligence and cooperation by foreign air carriers and the FAA.

As noted in the preamble of the NPRM, § 129.25(b) of the Federal Aviation Regulations currently requires each foreign air carrier that lands or takes off in the United States to adopt and to use a security program for each scheduled and public charter passenger operation as defined in § 129.25 (a)(5) and (a)(6). The FAA does not believe that submission of the security program for acceptance by the Administrator necessarily requires anything more than identifying what is currently done by a foreign air carrier. In many cases, it may involve submitting only an existing document detailing the security procedures of the foreign air carrier. The requirement to submit a security program for acceptance, however, will ensure that adequate security measures

are being implemented by foreign air carriers with respect to operations to, within, and from the United States. The process of acceptance will provide an opportunity for the FAA to assess whether the existing security programs, adopted and used by foreign air carriers, adequately meet the requirements of § 129.25 (c) and (d), in light of current international standards and recommended practices and the current level of threat to international aviation.

The FAA's view of the basic reasonableness of the time frame is reinforced by its commitment to provide a model standard security program (MSSP). The MSSP, which is not identical to the security program of the U.S. carriers, will provide substantial assistance to foreign air carriers who do not have such a written document now. The FAA believes that a 90-day period between submission of a proposed security program and use of a program acceptable to the Administrator provides sufficient time for the FAA and a foreign air carrier to identify possible inadequacies and make appropriate modifications. Since the FAA will notify the foreign air carrier of the security program's acceptability, or the need to modify the program, within 30 days after receiving it, 60 days, at a minimum, will remain for further discussion and program modification.

The final rule is modified from the proposal, however, to clarify the compliance dates in the final rule and to extend the implementation schedule by 30 days. The final rule is effective 30 days after publication. A foreign air carrier must submit a proposed security program not later than 60 days after the effective date. A foreign air carrier must use a security program acceptable to the Administrator by 150 days after the effective date. Thus, the interval from publication of the final rule to use of a security program acceptable to the Administrator is 180 days. The final rule also would permit the Administrator to allow deviations from the security program submission schedule. Deviations from the 90-day advance submission requirement, for example, may be needed in some circumstances to prevent the delay or disruption of air service between the United States and a foreign country.

The statement in the NPRM that the FAA would prepare an MSSP for use by foreign air carriers in the event of the issuance of a final rule generated a number of comments. One commenter expressed concern that the MSSP would not be available in time to prepare its proposed security program. Several commenters indicated that foreign air

carriers should be able to see the MSSP in order to formulate their response to the NPRM. Another commenter, presuming that FAA intended to require all foreign air carriers to conform to the MSSP, stated it would be contrary to the Administrative Procedure Act for the FAA to "promulgate" the MSSP without giving foreign air carriers the opportunity to comment on a draft. Still another commenter, anticipating that the MSSP would become the *de facto* standard, felt that the MSSP need not and should not be introduced into this rulemaking, further noting that it is premature to seek comments regarding a commitment to subscribe to such a program.

While the FAA understands the various concerns expressed by the different commenters regarding the MSSP, many comments appear to be based on a misperception of the legal and practical effects of the MSSP. First, the MSSP, which will be available to foreign air carriers on or before the effective date of this final rule, is a "model" security plan. The purpose of the MSSP is to provide guidance, if needed, to foreign air carriers in preparing their proposed security programs. The MSSP itself is not regulatory. Second, as stated in the NPRM, the MSSP will meet "the requirements of the final rule and is based on the international security provisions established by ICAO" (53 FR 34875). The FAA believes that most foreign air carriers have established and carry out a security program responsive to current § 129.25 and international standards. As previously noted, the process of acceptance of security programs of foreign air carriers will provide an opportunity for the FAA to assess whether they are consistent with § 129.25 in light of all circumstances bearing on civil aviation security. Security programs may be found acceptable to the Administrator without regard to whether they are identical to the MSSP. However, for some foreign air carriers, adoption of the MSSP may be quite useful. The MSSP also may aid the drafting or structuring of portions of other foreign air carriers' proposed security programs. Third, even if the FAA intended to make the MSSP mandatory on all foreign air carriers under § 129.25, the FAA would not publish the MSSP in the *Federal Register*. Rather, the FAA would provide notice of the proposed action directly to affected foreign air carriers.

Except in the case of an emergency, the FAA would receive comments from the foreign air carrier or carriers before taking final action on any change to a

security program previously found to be acceptable. The final rule includes the procedures in the NPRM regarding amendments to security programs, both on a nonemergency and an emergency basis [§ 129.25 (e)(2) and (e)(3)]. As previously noted, the FAA intends to keep foreign civil aviation safety authorities advised of any proposed changes to foreign air carrier security programs.

Several commenters note the absence in the NPRM preamble of an expansive justification for the proposed amendment. These commenters believe that a detailed and specific statement of weaknesses in the current security arrangements is necessary to justify the proposed rule. The FAA agrees that the NPRM does not contain an extensive analysis of specific security problems; but the FAA believes that such an analysis is unnecessary. The rule does not expand the scope of § 129.25 to include additional foreign air carriers that were not subject to § 129.25 previously. The justification that the NPRM identifies for this rulemaking action is to ensure that adequate security measures are being implemented by foreign air carriers with respect to operations to and from the United States. It is unnecessary to restate that a security threat to civil aviation exists or that reasonable requirements, designed to ensure that security measures are implemented, are justified.

#### Discussion of the Amendments

The final rule is substantially similar to the proposed amendment contained in the NPRM. The FAA has kept the basic requirement that certain foreign air carriers must submit proposed security programs to the FAA for acceptance by the Administrator. The final rule also contains the proposed procedures regarding amendment of a foreign air carrier security program, on a nonemergency and an emergency basis.

The FAA modified the proposal in several respects. As previously noted, the FAA clarified the effective date of the final rule, the date by which each foreign air carrier must submit a proposed security program, and the date by which each foreign air carrier must use the security program that has been accepted by the Administrator. The FAA also simplified the proposed regulation by directly stating the requirement that the foreign air carrier security program must be acceptable to the Administrator in § 129.25(e), the same section that addresses the procedures for acceptance and amendment of a security program. As a result of this revision, it is unnecessary

to amend § 129.25 (b), (c), and (d) of the regulations to include a date in these sections. This revision also eliminates any uncertainty about the status of § 129.25 (b), (c), and (d), and the requirements contained on those sections, after this final rule is effective but before a foreign air carrier security program has been accepted by the Administrator and must be used by the foreign air carrier.

After reviewing the existing requirements and the proposed amendments, the FAA retained the current language of § 129.25(e) in the final rule. That section states that the FAA can request information about the implementation and operation of the security program used by each foreign air carrier. The FAA must know and understand the methods and procedures used by a foreign air carrier under the security program that was submitted and found to be acceptable. With this information, the FAA can ensure that the foreign air carrier complies with the security program that is acceptable to the Administrator.

#### Economic Summary

In accordance with the requirements of Executive Order 12291, the FAA reviewed the cost impact and the benefits that may accrue as a result of promulgation of the final rule. The FAA has determined that the final rule does not meet the criteria of a "major" rule under Executive Order 12291 because it is not likely to have an annual effect on the economy of \$100 million or more. A regulatory evaluation containing the FAA's estimates of costs and benefits of the final rule has been prepared and placed in the public docket.

The FAA has determined that the final rule will affect 111 foreign air carriers currently operating scheduled flights into the United States under Part 129. The final regulatory evaluation prepared for this rule states that the total cost of compliance with the requirements of the final rule to the 111 affected foreign air carriers is \$749,340 in 1988 dollars. Costs associated with possible future amendments to foreign air carrier security programs are not identified here because these costs are speculative and nonquantifiable and they would be the result of actions separate from this rulemaking. An additional 200 entities, whose operations are not included in § 129.25(b), are involved in small aircraft charter and air taxi operations to the United States on a nonscheduled basis. They are not now required to have security programs, and this final rule will not require them to have security programs.

The primary benefits of this final rule will be the prevention of potential fatalities, injuries, and property losses resulting from criminal acts, acts of terrorism, and air piracy directed against U.S. and foreign civil aviation interests. The FAA has not been able to quantitatively estimate the extent to which the final rule will be effective in deterring or preventing these acts against civil aviation. However, the FAA believes that the \$749,340 estimated cost of compliance with the final rule will be fully recovered if only a single life is saved by promulgating the final rule and preventing criminal acts and terrorism against civil aviation interests. If only one fatality is prevented as a result of the requirements of the final rule during the 10-year period following implementation of the rule by foreign air carriers, the benefits of the final rule will be 1.3 times greater than the cost, assuming that the statistical economic value of a human life is at least \$1.0 million, as is generally agreed by economists. Moreover, additional benefits will accrue to affected foreign air carriers based on the public perception of the additional safety provided by this rulemaking. The FAA believes that increased public confidence in the safety of air travel likely will result in increased air travel and revenues.

#### Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a Federal agency to review each final rule to assess its impact on small, domestic enterprises and businesses. The requirements of the final rule apply only to foreign air carriers operating under the authority of a permit or other economic or exemption authority issued by the Civil Aeronautics Board or the Department of Transportation. Therefore, the FAA certifies that the final rule will not have a significant impact, positive or negative, on a substantial number of small, domestic entities.

#### International Trade Impact Analysis

This final rule affects foreign air carriers operating under Part 129. The average one-time cost impact of \$6,750 for each of the affected foreign air carriers is considered negligible in comparison to the annual operating budgets of these carriers. Accordingly, this final rule will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

### Paperwork Reduction Act Approval

Section 129.25(e)(1) requires each foreign air carrier landing or taking off in the United States to submit a security program acceptable to the Administrator of the FAA. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the recordkeeping and reporting provisions contained in this final rule have been submitted to the Office of Management and Budget (OMB) for approval. Notification of the OMB approval number will be published in the *Federal Register* upon receipt from OMB.

### Federalism Implications

The amendments contained 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. Thus, in accordance with Executive Order 12612, the FAA has determined that such regulation does not have Federalism implications warranting the preparation of a Federalism Assessment.

### Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not a major rule under the criteria of Executive Order 12291. Additionally, 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. This final rule is considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11023; February 26, 1979). A regulatory evaluation of the final rule, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "For Further Information Contact."

### List of Subjects in 14 CFR Part 129

Aircraft, Air carrier, Airports, Aviation safety, Weapons.

### The Amendment

Accordingly, the FAA amends Part 129 of the Federal Aviation Regulations (14 CFR Part 129) as follows:

#### **PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S. REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE**

1. The authority citation for Part 129 continues to read as follows:

**Authority:** 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 129.25 is amended by revising paragraph (e) to read as follows:

#### **§ 129.25 Airplane security.**

\* \* \* \* \*

(e) After September 14, 1989, each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have a security program acceptable to the Administrator. The following procedures apply for acceptance of a security program by the Administrator:

(1) Unless otherwise authorized by the Administrator, each foreign air carrier required to have a security program by paragraph (b) of this section shall submit its proposed security program to the Administrator by June 16, 1989, or at least 90 days before the intended date of passenger operations, whichever is later. The proposed security program must be in English unless the Administrator requests that the proposed program be submitted in the official language of the foreign air carrier's country. The Administrator will notify the foreign air carrier of the security program's acceptability, or the need to modify the proposed security program for it to be acceptable under this part, within 30 days after receiving the proposed security program. The foreign air carrier may petition the Administrator to reconsider the notice to modify the security program within 30 days after receiving a notice to modify.

(2) In the case of a security program previously found to be acceptable pursuant to this section, the Administrator may subsequently find that the program will become unacceptable unless appropriate

revisions are made in the interest of safety in air transportation or in air commerce and in the public interest within a specified period of time. In making such a finding the following procedures apply:

(i) The Administrator notifies the foreign air carrier, in writing, of a proposed finding of unacceptability, fixing a period of not less than 45 days within which the foreign air carrier may submit written information, views, and arguments on the proposed finding.

(ii) At the end of the comment period, after considering all relevant material, either the Administrator issues a finding of unacceptability, specifying appropriate revisions to make the program acceptable, or rescinds the proposed finding. If the Administrator issues a finding of unacceptability, the program becomes unacceptable 45 days thereafter, unless the foreign air carrier either—

(A) Revises the program so that it becomes acceptable to the Administrator and submits the revised programs to the Administrator; or

(B) Petitions the Administrator to reconsider the finding of unacceptability, in which case the program remains unacceptable until the Administrator reconsiders the matter.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce, the Administrator may issue an emergency notice of unacceptability. In such a case, the Administrator incorporates in the notice the finding of unacceptability, a brief statement of the reasons for proposed revisions, and appropriate revisions that would make the security program acceptable to the Administrator. The security program is considered to be unacceptable when the foreign air carrier receives the emergency notice of unacceptability unless immediate revisions are made to the security program. To ensure acceptability of revisions, the foreign air carrier must submit a copy of any revisions to the Administrator.

(4) A foreign air carrier must submit any amendments to its security program to the Administrator for a finding of acceptability. The proposed amendment must be filed with the Administrator at least 45 days before the date the foreign

air carrier proposes for the amendment to become effective, unless a shorter period is allowed by the Administrator. Within 30 days after receiving a proposed amendment, the Administrator will notify the foreign air carrier whether the amendment is acceptable. The foreign air carrier may petition the Administrator to reconsider a notice of unacceptability of the proposed amendment within 45 days after receiving notice of unacceptability.

(5) Each foreign air carrier required to use a security program by paragraph (b) of this section shall, upon request of the Administrator, and in accordance with applicable law, provide information regarding the implementation and operation of its security program.

\* \* \* \* \*

Issued in Washington, DC, on March 13, 1989.

**Robert E. Whittington,**  
*Acting Administrator.*

[FR Doc. 89-6054 Filed 3-14-89; 8:45 am]

BILLING CODE 4910-13-M