

14 CFR Part 159

[Docket No. 25123; Amdt. No.]

Carriage of Weapons and Other Dangerous Objects at Washington National Airport and Washington Dulles International Airport; Restricted Areas**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; clarification.

SUMMARY: This final rule clarifies the rule governing the carriage of weapons and other dangerous objects on Washington National Airport and Washington Dulles International Airport. It also clarifies the rule governing restricted areas on the Airports. The revisions are intended to make the rules more closely conform to Federal Aviation Regulations governing aviation security. They are necessary to preserve airport security, as well as to make it easier for the traveling public to comply with the airports' rules without compromising airport security.

DATE: Effective date of this amendment is June 5, 1987.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, or Jana M. Phillips, Legal Counsel, AMA-7, Hanger 9, Washington National Airport, Washington, DC 20001, Telephone: (703) 557-8123.

SUPPLEMENTARY INFORMATION:**Background**

On November 13, 1986, FAA requested comments on a proposal to change the regulation governing the carriage of weapons at the Metropolitan Washington Airports (Notice 86-18, 51 FR 41290; November 13, 1986). All interested persons were given an opportunity to participate in the rulemaking and consideration has been given to all of the matters presented by the commenters.

Washington National Airport and Washington Dulles International Airport (the "airports") are owned and presently operated by the Federal Government. The Secretary of Transportation has control over and responsibility for the care, operation, maintenance, and protection of the airports, and has the authority to promulgate rules and regulations necessary for this purpose. This authority has been delegated to the Administrator of the Federal Aviation Administration.

On October 18, 1986, the Metropolitan Washington Airports Act of 1986, Title VI of Pub. L. 99-591 ("the Act") was enacted. The Act authorized the long-term lease of the Airports from the

Government to a regional authority, the Metropolitan Washington Airports Authority. The Act provides that the regulations of the FAA shall become the regulations of the new Airports Authority when the transfer is effective. The Authority may amend these rules and adopt new ones. The FAA has concluded that the existing airport rule on the carriage of weapons should not be continued for the reasons stated herein and that it is, therefore, appropriate to complete the instant rulemaking despite the impending transfer of the airports. The final rule as adopted by FAA will transfer to the new Authority when its lease becomes effective on or about June 7, 1987.

The existing FAA regulation for National and Dulles Airports, 14 CFR 159.79(a), prohibits any person, except a Peace Officer, an authorized post office, Airport, or air carrier employee, or a member of an Armed Force on official duty, from carrying any weapon, explosive or inflammable material on or about his person, openly or concealed, on the airports without the written permission of the airport manager. This regulation was designed to assist airport law enforcement and security efforts by maintaining tight control over the presence of weapons and other dangerous objects on the airports.

The existing regulation has created confusion among persons who are carrying weapons on the airport for the lawful purpose of checking these weapons with their baggage or who are carrying them after retrieving them from lawfully checked baggage. The Federal Aviation Regulations (FAR's) in 14 CFR Parts 107 and 108, which are generally applicable to all air carrier airports, forbid the carriage of weapons on or about an individual's person or accessible property when that person enters the sterile area of an airport (§ 107.21), the area behind the security screening point. The regulations, however, to allow air carriers to develop their own rules permitting passengers to ship unloaded weapons aboard the aircraft. Among other requirements, the weapons must be carried in a container deemed by the carrier to be appropriate for air transportation and the weapons must be placed in an area of the aircraft that is inaccessible to passengers (§ 108.11(d)). Many passengers, although aware of these generally applicable security regulations, are unaware that under the particular regulation at National and Dulles Airports they may be prosecuted if they fail to have the airport manager's permission to carry weapons onto the airport, even weapons securely packed in baggage, for the purpose of checking them in an

inaccessible part of the aircraft. The FAA therefore, has determined that the existing airport regulation needs to be clarified.

This amendment will permit persons to bring weapons onto these airports without prior permission of the manager, but only if the weapons are unloaded or deactivated to the extent possible, and are packed in a secure container for shipment. Persons carrying weapons properly prepared for air transportation do not pose a threat to the security of the airport because their weapons are unloaded and carried in containers which are suitable for air transportation. This rule will control the presence of weapons on the airports, but will not unduly interfere with the legitimate shipment of weapons or law enforcement. Further, once a person, other than law enforcement officers and certain other persons specifically authorized under the final rule, reaches a security screening point or enters a sterile area, however, there is no legitimate reason to carry a weapon. Therefore, with limited exceptions, all persons will be prohibited by the airport's regulation as well as generally applicable Federal Aviation Regulations from carrying even unloaded, securely packaged weapons when an inspection has begun before entering a sterile area or while in a sterile area of the airport. The adopted regulation applies to both unconcealed and concealed weapons.

Comments

Four comments were received from the Airline Pilots Association (ALPA), the National Rifle Association (NRA), the Department of the Army and Air Atlanta. ALPA and the NRA generally supported the proposed rule while the Department of the Army and Air Atlanta limited their comments to specific portions of the proposal.

Paragraph (a)(1) of the Proposed Rule. One commenter suggested that the word "about" in paragraph (a)(1) of the proposed rule be defined to mean "readily accessible for immediate use." The FAA believes that this portion of the rule is sufficiently clear as written and that adding such a definition could create confusion concerning the scope of the phrase "accessible for immediate use." The FAA considers a weapon to be carried on or "about" his or her person or accessible property if it is carried on the body or within or on luggage, handbags, carry-on baggage or any other property from which the person may retrieve the weapon.

It was also suggested that the proposed regulation should read "on or about his or her person or within his or

her accessible property." The rewording suggested in the comment would cause enforcement difficulties, particularly if a person were carrying a weapon on the outside of his accessible property. The FAA believes that this portion of the proposed rule is sufficiently clear as written. The phrase "on or about his or her person or accessible property" encompasses weapons carried within luggage, carry-on baggage or any other accessible property.

A comment concerning paragraph (a)(1)(i) suggested that the word "deactivated" creates confusion because some of the weapons listed, such as a black jack and metal knuckles, cannot be deactivated. This paragraph is sufficiently clear as written because it states that if the weapon is not a firearm, it must be deactivated "to the extent possible." The rule clearly does not require deactivation where it is not possible to do so.

Another comment suggested that the term "pellet pistol or rifle" be inserted after the word "firearm" in paragraph (a)(1)(i). This is appropriate because pellet pistols or rifles, while not technically firearms, are capable of being loaded and unloaded. This suggestion has been incorporated into the final rule.

Paragraphs (a)(2) and (a)(3). One commenter suggested that the terms "explosive" and "incendiary" are too vague and that the phrase "bomb or similar explosive or incendiary device" be used instead. The FAA agrees that the phrase "incendiary" is too broad for airport-wide application and has included the suggested phrase in the final rule.

Paragraph (c). The comments received on the definition of the term "weapon" used in the proposed rule objected to the use of the word "knife" as being too broad, because it could apply to dinner knives and small pocket knives. The comments point out that most state laws define weapons as including switchblade knives, daggers, razors, stilettos, or knives with blades longer than three inches. The FAA has modified the final rule for airport purposes to enumerate the types of knives prohibited by the regulation.

The comments also suggested deleting pellet guns and bows and arrows from the rule because these articles may be innocently carried by young travelers or other persons on the airports. The FAA concludes that it is necessary to include these within the scope of the rule because these articles are dangerous weapons that may inflict serious bodily harm, even if carried by "innocent" persons. The rule does not apply to toy

guns and other toys that resemble weapons.

One commenter also suggested that the phrase "includes, but is not limited to" be replaced with "or any weapon of like kind." The FAA agrees that the suggested phrase is clearer and gives better notice of what may be prohibited under the rule.

One commenter suggested that a "sling shot" is not a weapon and that the correct term for the weapon is "sling shot." However, sling shots can inflict serious bodily harm. Therefore, they are considered dangerous weapons under this rule. A "sling shot" appears to be a different type of dangerous weapon. In order to be as comprehensive as possible, the FAA has included both types of weapons in the final rule.

Paragraph (d). The Department of the Army has requested that the rule specifically state that members of the Armed Forces on official duty may carry weapons on the airports. It acknowledges that the rule's reference to 14 CFR 108.11 permits an "official or employee of the United States * * * to carry weapons on the airport if the person is authorized by his or her agency to have the weapon," but says that laymen would not consider military personnel to be employees of the United States. The FAA disagrees. Airport police officers are aware that military personnel are employees or officials of the United States and will be advised that such personnel may carry weapons on the airports if authorized to do so by the agency employing them and if they possess authorizing credentials bearing a full face picture of themselves, their signature, and the signature of the authorizing official or the official seal of the authorizing organization. A badge, shield or similar device will not be acceptable as the sole means of identification.

Another comment concerning this paragraph criticizes the regulation for eliminating authorized air carrier employees and Post Office employees from carrying any kind of personal protection equipment when apprehending thieves, drunks or addicts on the airport property. The FAA notes that the final rule does not change the existing situation with respect to air carrier personnel or Post Office employees. It is not necessary to add language to the rule permitting Post Office employees or authorized air carrier employees to carry weapons on the airports. Post Office personnel authorized by the United States Postal Service to carry weapons are considered officials of the United States and may, therefore, carry weapons on the airport subject to the conditions of 14 CFR

108.11. Moreover, under § 108.11, air carriers may authorize certain employees to carry weapons.

Paragraph (e). One comment suggested that the definition of "unloaded" be expanded to state that, in the case of a pellet pistol or rifle, "unloaded" means that it contains no pellet in the chamber with compressed gas or compressed and latched spring. This has been incorporated into the amendment in order to make this paragraph consistent with the modifications made to paragraph (a)(1)(i).

Clarification of "Restricted Area"

Existing 14 CFR 159.89(a) prohibits persons from entering any restricted area on the airport that is posted as closed to the public unless otherwise authorized by the airport manager. The term "restricted area" is not defined in Part 159. "Restricted area" in the Federal Aviation Regulations generally refers to airspace restrictions. See 14 CFR 1.1. The FAA therefore finds it necessary to state the definition of the term "restricted area" that is applicable to § 159.89. This amendment is consistent with the FAA's longstanding practice on the airports and it is not considered to be a substantive addition to the rule. This amendment clarifies 14 CFR 159.89, and, therefore, notice and public procedure on this amendment are unnecessary. Publication for prior comment would not reasonably be expected to result in the receipt of useful information on this minor change.

Regulatory Evaluation

The final rule is not expected to have any significant impact because it will not impose any significant additional requirements on persons carrying dangerous objects on the airports and will not require any significant changes in the airports' security enforcement procedures or restricted area procedures. A minimal economic benefit would accrue to those who previously would have sought written permission to legitimately carry weapons on the airports. The rule is not expected to affect most passengers and other persons on the airports who do not have a reason to bring a weapon onto the airport. For this reason, it has been determined that the expected economic impact of this amendment is so minimal that a full Regulatory Evaluation is not warranted.

The various regulations in the final rule will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure, among other things, that small entities are not disproportionately affected by government regulations. The final rule will have only a minimal cost impact on affected persons. Therefore, the FAA has determined that, under the criteria of the RFA, the final rule will not have a significant economic impact on a substantial number of small entities.

Conclusions

The final rule is not expected to impose any significant economic impact because it will not impose significant additional requirements on persons complying with the rules and will not impose any major changes in the activities it addresses. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures. (44 FR 1034; February 26, 1979). For the same reasons, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the cost of this amendment is so minimal it does not warrant a full regulatory evaluation.

Reason for Immediate Adoption

The Administrative Procedure Act allows a rule to be made effective immediately for good cause. The Metropolitan Washington Airports Act of 1986 requires the authority to adopt the Airports' regulations upon the date of transfer of the Airports to the Authority (June 7, 1987). Because these modifications to the existing Airports' weapons regulation are necessary to eliminate confusion and enhance the enforceability of the regulation, and because this regulation must be made effective prior to June 7, 1987, in order to be adopted by the Authority, good cause exists for making this regulation effective in less than 30 days.

List of Subjects in 14 CFR Part 159

Weapons.

The Amendment

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR Part 159) is amended as follows:

PART 159—(AMENDED)

1. By revising the authority citation for Part 159 to read as follows:

Authority: 49 U.S.C. 2402, 2404, 2424 and 2428.

2. By revising § 159.79 of this chapter of the Code of Federal Regulations to read as follows:

§ 159.79 Weapons, explosives and incendiaries.

(a) Except as provided in paragraph (d) of this section, no person may—

(1) Carry on the airport any deadly or dangerous weapon, concealed or unconcealed, on or about his or her person or accessible property on the airport unless the weapon—

(i) If a firearm, or a pellet pistol or pellet rifle, is unloaded or, if another type or weapon, is deactivated to the extent possible; and

(ii) Is packaged for shipment in a container that is locked or otherwise secure;

(2) Carry any bomb or similar explosive or incendiary device, concealed or unconcealed, on or about his or her person or accessible property on the airport; or

(3) Carry any bomb, or similar explosive or incendiary device, or deadly or dangerous weapon on or about his or her person or accessible property—

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

(ii) When entering or in a sterile area.

(b) No person may furnish, give, sell, or trade a weapon on the airport.

(c) For the purposes of this section, a weapon includes a firearm, pellet pistol or rifle, dagger, razor, stiletto, knife with a blade longer than three inches, blackjack, bow and arrow, sling shot, slung shot, metal knuckles, or any object of a like kind.

(d) Paragraph (a) of this section does not apply to Special Agents and Security Officers of the Department of Transportation, persons authorized to carry a weapon aboard an aircraft as described in §§ 107.21, 108.11 and 129.27 of this chapter of the Code of Federal Regulations or to a law enforcement officer on official duty. Paragraph (a)(1) of this section does not apply to any person who has received the written permission of the airport manager to carry a weapon on the airport. Paragraph (a)(2) of this section does not apply to any person who has received the written permission of the airport manager to carry an explosive or incendiary device on the airport.

(e) For the purpose of this section, "unloaded" means the firearm has no live round of ammunition, cartridge, detonator or powder in the chamber or in a clip, magazine or cylinder inserted in it, or, in the case of a pellet pistol or rifle, contains no pellet in the chamber with compressed gas or compressed and latched spring.

(f) For the purpose of this section, "sterile area" means "sterile area" as defined in § 107.1 of this chapter.

3. By amending § 159.89 by revising paragraph (a) and adding new paragraph (c) to read as follows:

§ 159.89 Restricted areas.

(a) Except as otherwise provided in this part, no person, may, without the written permission of the airport manager, enter any restricted area on the airport.

(c) "Restricted area" under this section means an area of the airport where entry is prohibited or limited to certain persons by means of a barrier, a sign, or a verbal statement of an airport security agent, operations officer, or law enforcement officer.

Issued in Washington, DC, on May 29, 1987.

Donald D. Engen,
Administrator.

[FR Doc. 87-12774 Filed 6-5-87; 8:45 am]

BILLING CODE 4910-13-M