

Title 14—Aeronautics and Space
CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 13057; Admt. No. 121-118]

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

Carriage of Weapons and Escorted Persons

The purpose of these amendments to Part 121 of the Federal Aviation Regulations is to provide rules for the carriage of deadly or dangerous weapons and persons in the custody of law enforcement personnel aboard aircraft operated by Part 121 certificate holders. These amendments also apply to air travel clubs certificated under Part 123 and to air taxi operators certificated under Part 135, when conducting operations governed by those parts with large airplanes.

These amendments are based on a Notice of Proposed Rule Making (Notice No. 73-21) published in the FEDERAL REGISTER on July 27, 1973 (38 FR 20098). Interested persons have been afforded an opportunity to participate in the making of these amendments and due consideration has been given to all comments received in response to that Notice. Except as discussed hereinafter, these amendments and the reasons therefor are the same as those contained in Notice 73-21.

After the issue of Notice 73-21, Congress enacted Pub. L. 93-366, which, among other things, amended section 902 (1) of the Federal Aviation Act of 1958 adding a prohibition against a person not excepted by that section having on or about his property (as well as his person) a concealed deadly or dangerous weapon accessible to him in flight. To conform the amendments to Part 121 proposed in Notice 73-21 to the language in Pub. L. 93-366, the phrase "carry-on baggage" has been replaced with the word "property", and prohibited weapons have been described as those "accessible to the passenger while aboard the aircraft."

Fourteen of the public comments received in response to Notice 73-21 agreed with the proposals as set forth in the Notice and sixty-five of the commentators agreed with the proposal in general but recommended certain changes.

In response to certain comments, it should be pointed out that the safety regulations adopted herein are intended to provide for safety in air commerce and do not compel the carriage of any person. They do, however, specify the safety requirements which must be met when a certificate holder carries armed law enforcement officers or persons in the custody of those officers.

Several commentators made recommendations with respect to the identity of the escorted person and his classification by the governmental entity having custody of him. The recommendation was made that the term "dangerous person" should be defined, since a law enforcement agency might classify an escorted person as not considered dangerous in order to avoid the additional costs that would be incurred by § 121.584

(a) (3), which requires at least two escorts for any escorted person considered dangerous. Since the FAA believes that determinations regarding the management of a person in the custody of law enforcement personnel can best be made by persons trained in law enforcement, and that problems such as classification of prisoners can best be handled by trained personnel, it is adopting § 121.584 (a) (3) as proposed.

The substance of proposed § 121.584(b) has been transferred to § 121.584(a) (2) of this amendment, since upon further consideration it is believed appropriate that the escort should have the responsibility for assuring the certificate holder that he is equipped with adequate restraining devices to be used in the event the escorted person becomes unruly.

Another recommendation that was made regarding restraint of the person in custody, namely that he be handcuffed securely not only while on the aircraft but also while in the airport terminal, has not been included in the regulations adopted herein. The recommendation that the escorted person be handcuffed while in the airport is considered to be beyond the scope of Notice 73-21 and the FAA is unable to agree with the recommendation that the escorted person be handcuffed in all cases while aboard the aircraft. Since the purpose of handcuffs is to restrain the person in custody, the FAA believes that, unless the law enforcement escort determines that restraint is necessary, in the event of an emergency evacuation the interests of safety are better served if that individual is not physically restrained. Moreover, the FAA believes that the decision whether the person being escorted should be physically restrained should be left to the law enforcement escort.

Comments received expressed concern that as proposed § 121.585(a) would make the certificate holder a violator even when the certificate holder did not know that a person had boarded the aircraft with a weapon contrary to the regulations. Section 121.585(a), as adopted, provides that no certificate holder may permit any person to have, on or about his person or property accessible to him in flight, a deadly or dangerous weapon while aboard the certificate holder's aircraft unless the conditions set out in that paragraph are met. Therefore, it will be a violation of new § 121.585(a) if the certificate holder gives permission for a person to board the aircraft with a weapon without the conditions in that paragraph being met. If a person carrying a weapon aboard the aircraft did not have the certificate holder's permission to board the aircraft with the weapon, the certificate holder would not be in violation of § 121.585(a). However, it should be noted that an air carrier is required under § 121.538 to have in use a passenger screening system approved by the Administrator that is designed to prevent or deter the carriage aboard its aircraft of any weapon in carry-on baggage or on or about the person of passengers.

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Comments also pointed out that the wording of proposed § 121.585 (a) (1) (i) and (a) (2) (ii) would omit county sheriffs and their deputies who are not law enforcement officials or employees of a municipality or of a State. It was not the intent of the FAA to exclude those employees and officials and, accordingly, the wording of § 121.585(a) has been changed to include officials and employees of a political subdivision of a State, as well as those of a municipality or of a State.

Comments objected to the wording of proposed § 121.585 (a) (1) (i) and (a) (2) (ii) on the grounds that the words "official duty while aboard the certificate holder's aircraft" may be read as limiting the permission to carry a weapon aboard an aircraft to only those persons having an official function to perform while aboard the aircraft, such as escorting a prisoner. The wording of those provisions, as adopted in new § 121.585 (a) (2) (ii), has been changed to make clear an intent to require only that the armed person have a need for the weapon in connection with the performance of his duty during the period from the time he would have checked it in accordance with new § 121.585(b) until the time it would have been returned to him after deplaning.

In addition, comments objected to proposed § 121.585(a) (2) (ii) because it would require officials and employees of States, political subdivisions of States, and of municipalities to show to the satisfaction of the certificate holder that their carriage of a weapon is authorized and necessary. After further consideration, the FAA has concluded that the determination as to whether the official or employees needs to have the weapon accessible to him should be made by the governmental agency that has authorized him to carry the weapon. Accordingly, the requirement that this need be shown to the certificate holder's satisfaction has not been adopted. However, new § 121.585(a) (3), as adopted, does provide for notice to be given to the certificate holder of this need so that the certificate holder can be assured that the requirement of § 121.585(a) (2) (ii) is being complied with.

The requirements of new § 121.585(a) (2) and (3), as adopted, apply to persons described in new § 121.585 (a) (1) (ii) as well as (a) (1) (i), namely persons who are authorized to have the weapon aboard the aircraft by the certificate holder and the Administrator. This has been done in lieu of making these requirements conditions of authorizations issued to those persons by the Administrator.

Some commentators expressed concern that the proposed § 121.585(a) (1) (ii) would not permit continued use of armed courier services for security when carrying cargo of great value. The FAA wishes to point out that these amendments are not intended to curtail armed courier services. Section 121.585(a) (1) (ii), as adopted, has been changed to require only that the course of training that must have been completed by the

(As published in the Federal Register / 40 F.R. 17551/ on April 21, 1975)

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armed person be acceptable to the Administrator. Thus, the rule, as adopted, does not require FAA approval of the training course before that person's participation in it, but allows for a determination of acceptability at the time when authorization is given by the Administrator for that person to carry a weapon aboard the aircraft.

There were several objections to the proposal in § 121.585(a)(3) to require that the means of identification of the armed person include, in addition to his full-face picture and signature, the signature of his supervisor. Many law enforcement agencies pointed out that their identification credentials do not contain the signature of anyone but the person identified by the credential. Further review of this matter indicates that many U.S. Government law enforcement agencies also issue identification credentials that bear an official seal but not the signature of a supervisor. Accordingly, as adopted, § 121.585(a)(3) requires that the armed person's identification credentials carry either the signature of an authorizing official of the law enforcement agency he represents or the official seal of his agency.

Two commentators objected to the proposal in § 121.585(b) to prohibit a certificate holder from permitting a person to carry a deadly or dangerous weapon in checked baggage unless the conditions set forth in the regulations were met. The basis for the objection was that since the prohibition would apply even if the certificate holder did not have knowledge of the existence of a weapon in checked baggage, it would necessitate a search by the certificate holder of every piece of checked baggage offered for air carriage. Comments also expressed concern over the fact that, as proposed, § 121.585(b) would not permit any person to carry a weapon in checked baggage without compliance with the applicable conditions. They contend that it would be an undue burden on the public to make them responsible for knowing that they must reveal to the certificate holder the presence of a weapon in checked baggage in order that compliance with the conditions set forth in § 121.585(b) could be ensured.

It was not the intent of the proposed regulation to require a search of every article of baggage checked for carriage. The wording of proposed § 121.585(b) has been changed in the amendment to make it clear that the passenger must notify the certificate holder of the presence of the weapon before checking the baggage. This notification requirement is consistent with the Congressional intent expressed in Pub. L. 93-366, which amended section 902(1) of the Act to provide for a declaration by the passenger to the air carrier of the presence of a weapon in baggage which is not accessible to passengers in flight. In addition, the word "knowingly" has been added to the lead-in sentence in § 121.585(b), as adopted, to make it clear that the certificate holder is not responsible for complying with the conditions of that para-

graph unless he has knowledge that the baggage being checked contains a deadly or dangerous weapon.

Numerous commentators objected to the requirement in § 121.585(b)(1) requiring the certificate holder to ensure that a weapon carried in checked baggage is unloaded. They contend that it is more dangerous for the certificate holder to determine whether a gun is loaded, especially in the event that an employee of the certificate holder who is unfamiliar with the use of firearms must perform the check, than it is to carry a loaded gun in checked baggage. After further consideration, the FAA agrees, and the rule, as adopted, requires only that passenger notify the certificate holder that the weapon is unloaded.

Certain comments objected to the provision of proposed § 121.585(b)(3) that would permit checked baggage containing a weapon to be carried in the crew compartment. Upon further consideration of the proposal, the FAA believes that, to prevent the use of the weapon by a hijacker, such baggage should not be carried in the crew compartment, but should be carried in another area that is inaccessible to passengers. Section 121.585(b)(3) has been changed accordingly in this amendment.

Upon further consideration, a provision similar to proposed § 121.585(c) has been added as § 121.584(e) to prohibit a person escorting another person and a person being escorted from drinking any alcoholic beverage while aboard an aircraft operated under Part 121.

(Secs. 313(a), 601, 604, 902(1), Federal Aviation Act 1958 (49 U.S.C. 1354(a), 1421, 1424, and 1472(1)), sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

In consideration of the foregoing, Part 121 of the Federal Aviation Regulations is amended, effective June 20, 1975, as follows:

1. By amending paragraph (c) of § 121.538 by striking out the word "and" at the end of subparagraph (2) and the period at the end of subparagraph (3), and by adding the phrase "; and" at the end of subparagraph (3) and a new subparagraph (4) to read as follows:

§ 121.538 Aircraft security.

(c) * * *

(4) Assure that only persons authorized under § 121.585(a) are permitted to have on or about their persons or property a deadly or dangerous weapon accessible to them while aboard any of its aircraft.

2. By revising paragraph (b) of § 121.575 to read as follows:

§ 121.575 Alcoholic beverages.

(b) No certificate holder may serve any alcoholic beverage to any person aboard any of its aircraft who—

- (1) Appears to be intoxicated;
- (2) Is escorting a person or being escorted in accordance with § 121.584; or

(3) Has a deadly or dangerous weapon accessible to him while aboard the aircraft in accordance with § 121.585(a).

3. By adding a new § 121.584 to Part 121 to read as follows:

§ 121.584 Carriage of person in the custody of law enforcement personnel.

(a) No certificate holder may carry a person in the custody of law enforcement personnel, unless the following conditions are met:

(1) The certificate holder has been notified at least one hour, or in an emergency as soon as practicable, before departure—

(i) Of the identity of the escorted person and the flight on which he will be carried; and

(ii) Whether the escorted person is considered dangerous by the governmental entity having custody of him.

(2) The escort has assured the certificate holder that—

(i) The escorted person does not have on or about his person or property any article that could be used as a deadly or dangerous weapon and would be accessible to him while aboard the aircraft; and

(ii) The escort is equipped with adequate restraining devices to be used in the event the escort determines that restraint is necessary.

(3) The escorted person is in the custody of at least two escorts, if the certificate holder has been notified that the escorted person is considered dangerous by the governmental entity having custody of him.

(b) The escorted person and his escort shall be—

(1) Boarded before all other enplaning passengers board, and deplaned after all other deplaning passengers have left the aircraft; and

(2) Seated in the rearmost passenger seats that are neither located in any lounge area, nor located next to or directly across from any aircraft exit.

(c) At least one escort shall—

(1) Sit between the escorted person and any aisle; and

(2) At all times accompany the escorted person and keep him under surveillance.

(d) The certificate holder may not—

(1) Carry more than one person who it has been notified is considered dangerous, and his escorts, on an aircraft carrying other passengers; or

(2) Serve food or beverages, or provide metal eating utensils, to an escorted person unless authorized by the escort.

(e) No person escorting a person or being escorted in accordance with this section may drink any alcoholic beverage while aboard an aircraft being operated under this part.

4. By revising § 121.585 to read as follows:

§ 121.585 Carriage of weapons.

(a) No certificate holder may permit any person to have, nor may any person

have, on or about his person or property, a deadly or dangerous weapon, either concealed or unconcealed, accessible to him while aboard an aircraft being operated by the certificate holder, unless the following conditions are met:

(1) The person having the weapon is either—

(i) An official or employee of the United States, of a State or political subdivision of a State, or of a municipality; or

(ii) A person who is authorized to have the weapon by the certificate holder and the Administrator, and who has successfully completed a course of training in the use of arms acceptable to the Administrator.

(2) The person having the weapon—

(i) Is authorized to have the weapon; and

(ii) Needs to have the weapon accessible to him in connection with the performance of his duty during the period from the time he would otherwise have checked it in accordance with paragraph (b) of this section until the time it would have been returned to him after deplaning.

(3) The certificate holder has been notified—

(i) Of the flight on which the armed person intends to have the weapon accessible to him at least one hour, or in an emergency as soon as practicable, before departure; and

(ii) When the armed person is other than an employee or official of the United States, that he needs to have the weapon accessible to him in connection with the performance of his duty during the period from the time he would otherwise have checked it in accordance with paragraph (b) of this section until the time it would have been returned to him after deplaning.

(4) The armed person has identified himself to the certificate holder by presenting credentials that include his clear, full-face picture, his signature, and the signature of an authorizing official of his service or the official seal of his service. A badge, shield, or similar device may not be used as the sole means of identification.

(5) The certificate holder—

(i) Has ensured that the armed person is familiar with its procedures for the carriage of a deadly or dangerous weapon aboard its aircraft prior to the time such person boards the aircraft;

(ii) Has ensured that the identity of the armed person is known to each law enforcement officer and each employee of the certificate holder responsible for security during the boarding of the aircraft; and

(iii) Has notified the pilot in command and any other person authorized to have a weapon accessible to him aboard the aircraft of the location of each authorized armed person aboard the aircraft.

(b) No certificate holder may knowingly permit any passenger to carry, nor may any passenger carry, while aboard

an aircraft being operated by that certificate holder, in checked baggage, a deadly or dangerous weapon, unless the following conditions are met:

(1) The passenger has notified the certificate holder before checking the baggage that the weapon is in the baggage and that it is unloaded.

(2) The baggage in which the weapon is carried is locked, and only the passenger checking the baggage retains a key.

(3) The baggage is carried in an area other than the flight crew compartment that is inaccessible to passengers.

(c) No person having a deadly or dangerous weapon accessible to him may drink any alcoholic beverage while aboard an aircraft operated under this part.

Issued in Washington, D.C., on April 12, 1975.

JAMES E. DOW,
Acting Administrator.

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