

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

(Docket No. 17142; Amdt. No. 433)

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

Aviation Security; Carriage of Weapons and Armed Escorts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment specifies requirements governing the carriage of persons in the custody of armed escorts and the carriage of firearms in checked baggage aboard aircraft. Administrative experience indicates that this amendment is necessary to provide adequately for safety in air commerce.

EFFECTIVE DATE: April 24, 1978.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This amendment is based on a notice of proposed rulemaking issued as Notice No. 77-16 and published in the FEDERAL REGISTER on August 25, 1977.

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all matter presented.

DISCUSSION OF COMMENTS

A majority of the comments received supported the proposed amendment. However, certain comments recommended changes in the wording of the proposal. One commentator suggested that the term "law enforcement officer" should be defined in § 121.584 in a manner similar to the definition in the airport security regulations prescribed in Part 107 of the Federal Aviation Regulations. The FAA does not consider the definition in Part 107 to be appropriate for the purposes of § 121.584. For example, there does not appear to be the same justification for a law enforcement officer escorting a passenger under § 121.584 to have the public power of arrest required under Part 107. Moreover, the FAA believes adoption of the more specific requirements

prescribed in Part 107 for a law enforcement officer would go beyond the scope of Notice No. 77-16. Accordingly, that recommendation is not adopted in this amendment.

Nor does there appear to be any need to include a requirement in § 121.584, as comment recommended, for an armed law enforcement officer to provide the certificate holder with a statement that he meets the definition prescribed. Section 121.585 currently requires an armed law enforcement officer to satisfy the certificate holder with respect to the officer's identity, authority to carry a weapon, and his familiarity with procedures for carrying a weapon aboard aircraft.

The FAA believes the combined provisions of §§ 121.584 and 121.585 provide adequate procedures to ensure the safety of an aircraft operation when armed law enforcement officers with passengers in their custody are carried.

Two commentators expressed opposition to the proposal to amend § 121.585(b) and require firearms in checked baggage to be carried in containers the certificate holder considers appropriate. However, experience indicates that firearms inadvertently left loaded in checked baggage have discharged while the baggage was being handled. It is the opinion of the FAA that requiring firearms to be carried in appropriate containers will reduce the likelihood of any loaded firearm in checked baggage discharging and causing serious injury to personnel of the certificate holder or to passengers.

As suggested in comments received, the FAA has taken action to ensure that law enforcement agencies and carriers subject to this amendment are fully informed about it.

DRAFTING INFORMATION

The principal authors of this document are Robert P. Jones, Civil Aviation Security Service and R. G. Leary, Office of the Chief Counsel.

In consideration of the foregoing, Part 121 of the Federal Aviation Regulations is amended, effective April 24, 1978, as follows:

1. By revising § 121.584 to read as follows:

§ 121.584 Carriage of passengers under the control of armed law enforcement officers, other than passengers under voluntary protective escort.

(a) Except as provided in paragraph (e) of this section, no domestic or flag air carrier may knowingly carry a passenger in the custody of an armed escort on an airplane in scheduled passenger operations unless—

(1) The armed escort is a law enforcement officer. For the purpose of this paragraph, "law enforcement officer"

means an official or employee (including military personnel) of the United States, of a State or political subdivision of a State, or of a municipality who is required by appropriate authority to maintain custody and control over an individual aboard an airplane;

(2) The air carrier is notified by the responsible government entity at least one hour, or in case of emergency as soon as possible, before departure—

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

(ii) Whether the passenger is considered to be in a maximum risk category or not;

(3) If the passenger is considered to be in a maximum risk category, the passenger is under the control of at least two armed law enforcement officers and no other passengers are under the control of those two law enforcement officers;

(4) No more than one passenger who the certificate holder has been notified is in a maximum risk category is carried on the airplane;

(5) If the passenger is considered to be not in a maximum risk category, the passenger is under the control of at least one armed law enforcement officer. No more than two of these persons may be carried under the control of any one law enforcement officer;

(6) The air carrier is assured, prior to departure, by each law enforcement officer that—

(i) The officer is equipped with adequate restraining devices to be used in the event restraint of any passenger under the control of the officer becomes necessary; and

(ii) Each passenger under the control of the officer has been searched and does not have on or about their person or property anything that could be used as a deadly or dangerous weapon;

(7) Each passenger under the control of a law enforcement officer is—

(i) Boarded before any other passengers when boarding at the airport where the flight originates and deplaned at the destination after all other deplaning passengers have deplaned.

(ii) Seated in the rear-most passenger seat when boarding at the airport where the flight originates; and

(iii) Seated in a seat that is neither located in any lounge area, nor located next to or directly across from any exit; and

(8) A law enforcement officer having control of a passenger is seated between the passenger and any aisle.

(b) No air carrier operating an airplane under paragraph (a) of this section may—

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(1) Serve food and beverage or provide metal eating utensils, to a passenger under the control of a law enforcement officer aboard the airplane unless authorized to do so by the law enforcement officer; or

(2) Serve a law enforcement officer or the passenger under the control of the officer any alcoholic beverages while aboard the airplane.

(c) Each law enforcement officer carried under the provisions of paragraph (a) of this section shall, at all times, accompany the passenger under the control of the officer and keep the passenger under surveillance while aboard the airplane.

(d) No law enforcement officer carried under paragraph (a) of this section or any passenger under the control of the officer may drink any alcoholic beverages while aboard the airplane.

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

2. In § 121.585 by redesignating paragraph (c) as (d), by adding a new paragraph (c), and by revising paragraph (b) to read as follows:

§ 121.585 Carriage of weapons.

(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 loaded firearm.

(c) 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, any unloaded firearm unless the following conditions are met:

(1) The passenger has declared to the certificate holder before checking the baggage that a firearm is in the baggage; and the certificate holder has obtained from the passenger, before checking the baggage, a declaration that any firearm carried in the baggage is unloaded. The declaration may be oral or written, as the certificate holder considers appropriate.

(2) The firearm is carried in a container the certificate holder considers appropriate for air transportation.

(3) When the firearm is other than a shotgun, rifle, or other firearm normally fired from the shoulder position, the baggage in which it is carried is locked, and only the passenger checking the baggage retains the key.

(4) The baggage containing any firearm is carried in an area that is inaccessible to passengers, other than the flight crew compartment.

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

(Secs. 313(a), 316, 601, 604, and 902(l) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1357, 1421, 1424, and 1472(l)); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

NOTE: The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Issued in Washington, D.C., on March 16, 1978.

LANGHORNE BOND,
Administrator.

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(As published in the Federal Register [43 F.R. 11974] on March 23, 1978)