

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

[Docket No. 17676; Amdt. Nos. 121-145 and 129-9]

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

PART 129—OPERATIONS OF FOREIGN AIR CARRIERS

Aircraft Security; Charter Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends the regulations governing aircraft security to cover: (1) Public charter flights conducted by domestic, flag, supplemental and foreign air carriers, and (2) all intrastate public charter flights conducted in large aircraft by a commercial operator engaging in intrastate common carriage operations with a frequency specified in the regulations. In addition, this amendment requires that these flights be provided with appropriate law enforcement support by airport operators or certificate holders to support passenger screening operations. The FAA considers these security requirements to be necessary due to the increased threat of criminal violence and air piracy and the recent liberalization of charter requirements by the Civil Aeronautics Board.

DATE: Effective date: July 25, 1978.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. BACKGROUND

In Notice No. 78-4 (43 FR 9160, March 6, 1978), the FAA proposed to amend Parts 121 and 129 of the Federal Aviation Regulations and extend the rules pertaining to aircraft security to cover charter flights conducted by domestic, flag, supplemental and foreign air carriers, and all intrastate charter operations conducted by a commercial operator engaging in common carriage operations governed

by § 121.7. In addition, it was proposed to require the aircraft operators to provide law enforcement support for charter operations conducted at airports not governed by Part 107 of the regulations.

In response to requests of several organizations that petitioned the agency for additional time to study the proposal prior to submitting their comments, the FAA issued a notice on March 30, 1978, which extended for 15 days the period for submitting comments in response to Notice No. 78-4.

II. DISCUSSION OF COMMENTS

The FAA received more than 100 comments from members of the general public, individual air carriers and airport operators, and organizations representing air carriers, foreign air carriers, airport operators, pilots and flight attendants.

Expressions of general support for the proposal were received from most members of the general public who commented, the National Air Carrier Association, the Air Line Pilots Association, and the Association of Flight Attendants.

Comments received from representatives of foreign air carriers were about equally divided in their expressions of approval and disapproval of the proposals.

The Air Transport Association of America (ATA), which represents most of the U.S. scheduled air carriers, and the Airport Operators Council International (AOCI) acknowledged that recent changes and proposed changes in the regulations of the Civil Aeronautics Board (CAB) governing charter flights will remove certain security safeguards which have served to protect charter flights without the use of security procedures prescribed by regulation in the interest of safety. However, these organizations and certain individual air carriers pointed out that although the changes made in CAB regulations may eliminate security safeguards for "public charters", they will not have such an effect upon single entity charters and military charters. They recommend, therefore, that single entity and military charters be excluded from coverage of the proposal for screening passengers and providing law enforcement support.

After further study of the situation, the FAA agrees that this recommendation has merit. Accordingly, the proposal has been changed in this amendment to limit coverage of the regulation to "public charters" and exclude "private charters." The "private charter" excluded from coverage of the regulation is defined as a charter for which the charterer engages the total capacity of an aircraft for the carriage of only passengers in civil or military air movements conducted for

the United States or foreign Governments; or for the carriage only of passengers invited by a charterer who bears the entire cost of the charter, none of it being borne directly or indirectly by the individual passengers.

Comments on behalf of air carriers, foreign air carriers, and airport operators expressed concern about the added costs which the proposal will impose upon carriers and airport operators required to provide law enforcement support at Part 107 and non-Part 107 airports.

Initially, it should be noted that costs which the proposal would have imposed on carriers and airport operators have been reduced under this amendment by virtue of the exclusion of "private charters" from coverage of the requirements for screening and law enforcement support.

The FAA recognizes that the adoption of the proposal requiring law enforcement support for the screening of passengers boarding public charter flights will probably result in additional costs for carriers and airport operators. However, the FAA is convinced there is adequate justification in the interest of safety in air transportation and air commerce to adopt the proposed security measures for public charters. The protection such security measures will afford passengers on those charters will, in the opinion of the agency, justify any unavoidable costs they impose on carriers and airport operators. However, judging from comments received from individuals in response to Notice No. 78-4, most people appear to be willing to pay these additional costs.

Certain comments contained objections to the proposal making the carriers responsible for law enforcement support at non-Part 107 airports. They contend that law enforcement support should be the responsibility of the operator of those airports rather than the air carrier. The FAA does not agree with that contention. Considering that airport selection normally rests with the carrier and that charter flights are unscheduled, we believe it is more practicable to impose the responsibility for providing law enforcement support on the carrier at non-Part 107 airports. Under the circumstances, the FAA has determined that such comments do not justify supplemental rulemaking action, as requested, to make non-Part 107 airport operators responsible for providing law enforcement support rather than the carriers. Accordingly, the petition for such action is denied.

As previously mentioned, the amendment adopted herein excludes "private charters" from the screening and law enforcement support requirements. Furthermore, FAA review of information on file with the Civil Aeronautics Board regarding world-wide charter

operations for the period July 1978 through June 1977, indicates that non-Part 107 airports handle a very small portion of the total number of charter flights conducted. Accordingly, the FAA believes the adoption of this amendment is likely to have a minimal economic impact on carriers and airport operators.

Certain comments contained objections to the fact that the proposal does not apply the security regulation to air taxi operators certificated under FAR Part 135. The agency cannot extend coverage of the regulation to air taxi operators by this amendment because such action would go beyond the scope of Notice No. 78-4. However, the need for extending security requirements to air taxi operations will be re-evaluated. At the present time approximately 26 air taxi operators have elected to screen their passengers under an FAA-approved program set forth in their operations specifications.

In response to comments from representatives of the State of Alaska, it should be pointed out that exemptions currently in effect for operators in that State will be extended, as appropriate, and made applicable to certain of the requirements prescribed in this amendment.

It should also be noted that the security regulations prescribed in § 121.538 currently apply to only large aircraft operations. Small aircraft operations are excluded from coverage of the security regulation by virtue of § 121.9 which requires Part 121 certificate holders to comply with the operating rules in FAR Part 135 in lieu of those in FAR Part 121.

III. 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.

IV. EFFECTIVE DATE

In order to provide adequately for the safety and security of public charter flights during the approaching Summer charter season, this amendment must be made effective at the earliest practicable time. Accordingly, this amendment becomes effective on July 25, 1978. However, the FAA urges each Part 121 certificate holder to submit its public charter screening program for FAA approval by June 25, 1978, if it can reasonably do so. The FAA will endeavor to approve security programs within 15 days after submission.

THE AMENDMENT

In consideration of the foregoing, Parts 121 and 129 of the Federal Aviation Regulations (14 CFR Parts 121 and 129) are amended, effective July 25, 1978, as follows:

1. By amending paragraphs (a) and (d) of § 121.538 and by adding a new paragraph (1) to that section to read as follows:

§ 121.538 Aircraft security.

(a) For the purposes of this section:

(1) "Certificate holder" means a domestic, flag, or supplemental air carrier, when it engages with large aircraft in scheduled or public charter operations; and means a commercial operator engaging in a frequency of operations governed by § 121.7 when it engages with large aircraft in those operations or in any public charter operations under this part. The term does not include an air carrier when it engages in all-cargo operations under a certificate issued by the Civil Aeronautics Board pursuant to Section 418 of the Federal Aviation Act of 1958, or an air taxi operator of large aircraft governed by § 135.2 of this chapter.

(2) "Public charter" means any charter that is not a private charter. A "private charter" is a charter for which the charterer engages the total capacity of an aircraft for the carriage only of:

(i) Passengers in civil or military air movements conducted under contract with the Government of the United States or the Government of any foreign country; or

(ii) Passengers invited by the charterer, the cost of which is borne entirely by the charterer and not directly or indirectly by the individual passengers.

(d) Each certificate holder shall submit its security program to the Administrator. Each certificate holder holding certificate authority under this part on June 25, 1978, shall submit a security program for its public charter operations no later than July 25, 1978. Each certificate holder issued a certificate under this part after June 25, 1978, shall submit its entire security program at least 60 days before the date of intended operations.

(1) Unless otherwise authorized by the Administrator, each certificate holder engaging in operations from airports within the United States not governed by Part 107 of this chapter shall, as part of its security program, provide for law enforcement support, as specified in Part 107, to support passenger screening operations required by this section for flights at those airports.

2. By amending paragraph (a) of § 129.25 and by adding new paragraphs (f) and (g) to the same section to read as follows:

§ 129.25 Aircraft security.

(a) Each foreign air carrier landing or taking off a large aircraft in the United States shall:

- (1) In scheduled operations; and
- (2) After July 25, 1978, in public charter operations;

use a security program in the conduct of those operations that requires all passengers and all property to be carried in the aircraft cabin to be screened by weapon-detecting procedures or facilities prior to boarding and that meets the requirements prescribed in paragraph (b) of this section.

(f) Unless otherwise authorized by the Administrator, each foreign air carrier engaging in the operation of large aircraft from airports within the United States not governed by Part 107 of this chapter shall, as part of its security program, provide for law enforcement support, as specified in Part 107, to support passenger screening operations required by this section for public charter flights at those airports.

(g) For the purposes of this section, "public charter" means any charter that is not a private charter. A "private charter" is a charter for which the charterer engages the total capacity of an aircraft for the carriage only of:

(1) Passengers in civil or military air movements conducted under a contract with the Government of the United States or the Government of any foreign country; or

(2) Passengers invited by the charterer, the cost of which is borne entirely by the charterer and not directly or indirectly by the individual passengers.

§ 129.25 [Amended]

3. By deleting the word "scheduled" from the introductory clause in paragraph (d) of § 129.25.

(Secs. 313(a), 315, 316, and 601 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1356, 1357, and 1421), 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 June 6, 1978.

LANGHORNE BOND,
Administrator.

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