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**REGISTERED
FEDERAL EXPRESS**

Part VI

**Department of
Transportation**

Federal Aviation Administration

Indirect Air Carrier Security; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 109, 191**

[Docket No. 19840; New Part 109; Amdt. No. 191-1]

Indirect Air Carrier Security**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Final Rule with request for comments.

SUMMARY: This regulation requires all indirect air carriers to prepare and carry out a security program designed to prevent or deter the introduction into package cargo of any unauthorized explosive or incendiary device. This emergency regulation is necessary to combat an immediate threat to safety in air commerce from explosives and incendiary devices concealed in this manner.

DATES: Effective Date: December 13, 1979. Comments By: February 11, 1980.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn.: Rules Docket (AGC-24), Docket No. 19840, 800 Independence Avenue, SW, Washington, D.C. 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW, Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Mr. John Hunter, Acting Chief, Air Operations Security Division, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591, Telephone: (202) 426-8798.

SUPPLEMENTARY INFORMATION:**Background**

On November 15, 1979, a U.S. air carrier was forced to make an unscheduled landing following the detonation of an explosive device in the cargo hold of the aircraft. The device was concealed in parcel mail, which was transported by the carrier. This incident, together with bomb incidents at New York, Miami, and Los Angeles airports, the destruction by bombs of passenger aircraft both in the air and on the ground, and the discovery of active bombs in passenger checked baggage and in air cargo facilities demonstrates the need for adequate security measures to prevent and deter the introduction of explosive devices into the air transportation system. The public has a right to expect security measures which

will ensure a safe and secure flight. Security measures currently in use have brought about a reduction in scheduled air carrier hijackings. However, the number and threat of sabotage type incidents involving parcel airmail and air cargo has increased to a point where positive and practical security measures are needed to meet this threat. It is vital that the aviation industry develop and implement improved and effective security measures which ensure safe air transportation and which are operationally sound and economically acceptable.

Direct Air Carriers

Section 121.538 of the Federal Aviation Regulations, 14 CFR 121.538, presently requires that direct air carriers implement and put into use security procedures which ensure that baggage is checked in by a responsible agent or representative and prevent checked baggage and cargo from being loaded aboard their aircraft unless handled in accordance with their procedures. Air carrier security programs now in effect are designed to prevent unauthorized access to checked baggage and cargo, to preclude tampering with or adding to the contents of the baggage and cargo and to ensure that baggage is accepted from only ticketed passengers. These programs have also included cautionary measures to be taken by the airlines with regard to acceptance of cargoes, including small package service cargo. To further satisfy the urgent need for improved aviation security, direct air carrier security programs have been strengthened with regard to the acceptance of package cargo. These programs have been approved by the FAA.

Procedures now in effect appear adequate to ensure the security of property when it is submitted directly to the direct air carrier by the shipper or passenger. An urgent need exists to ensure, however, that the property received by the direct air carrier from an indirect air carrier does not contain bombs or other explosive or incendiary devices. The best and least expensive means or satisfying this need is to increase surveillance and inspections of this cargo at the most appropriate handling point prior to the transfer of the property to the direct air carrier.

Indirect Air Carriers

Accordingly, to reduce the possibilities of an act of sabotage, including an in-flight bomb explosion, the FAA has found it necessary to require, by regulation, all indirect air carriers to put into use a system acceptable to the Administrator, which

is intended to prevent or deter the introduction into package cargo of any unauthorized explosive or incendiary device. This regulation has been coordinated with the United States Postal Service and the requirements of this rule are fully consistent with similar requirements with respect to parcel air mail set forth in a Memorandum of Understanding on this subject between the United States Postal Service and the Federal Aviation Administration. A model standard security program which meets the requirements of this regulation is available upon request to authorized representatives of indirect air carriers from the Federal Aviation Administration, Office of Civil Aviation Security, ACS-100, 800 Independence Avenue, SW, Washington, D.C. 20591.

This regulation implements section 316 of the Federal Aviation Act (49 U.S.C. 1357), which requires, among other things, the Administrator to prescribe such reasonable rules and regulations requiring such practices, methods and procedures as he may deem necessary to protect persons and property aboard aircraft operating in air transportation against acts of criminal violence. This regulation also is consistent with the most recent expression of Congressional concern for maintaining the highest standard of aviation safety, as stated in Section 5(a) of the Airline Deregulation Act of 1978, (49 U.S.C. 1307(a)).

Disclosure of Information

Part 191 of the Federal Aviation Regulations, "Withholding Security Information From Disclosure Under the Air Transportation Security Act of 1974," is being amended to limit the public availability of security programs of any indirect air carriers and the United States Postal Service.

Emergency Rulemaking

Since a safety emergency exists which requires immediate action in the interest of ensuring safety in air commerce and air transportation, the Administrator finds that notice and public procedure are impracticable and contrary to the public interest and that good cause exists for making this amendment effective in less than 30 days.

Invitation to Comment

Interested persons are invited to submit such written data, views, or arguments as they may desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC-24, 800 Independence Avenue,

SW, Washington, D.C. 20591. All communications received on or before February 11, 1980, will be considered by the Administrator and this FAR may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 19840." The postcard will be date/time stamped and returned to the commenter.

Adoption of the Amendment

Accordingly, the Federal Aviation Regulations (14 CFR Chapter I) are amended effective December 13, 1979, as follows:

1. By adding to Subchapter F (14 CFR Chapter I) a new Part 109 to read as follows:

PART 109—INDIRECT AIR CARRIER SECURITY

Sec.

109.1 Applicability.

109.3 Security program.

109.5 Approval of security programs and amendments.

Authority.—Secs. 313(a), 316, 601, 1005, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1357, 1421, and 1485); and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c))

§ 109.1 Applicability.

(a) This part prescribes aviation security rules governing each air carrier, including each air freight forwarder and each cooperative shippers' association, engaged indirectly in air transportation of property;

(b) For the purposes of this part, "property" means any package cargo.

§ 109.3 Security program.

(a) Each indirect air carrier shall adopt and carry out a security program that—

(1) Is designed to prevent or deter the unauthorized introduction of any explosive or incendiary device into any package cargo intended for carriage by air;

(2) Is in writing and signed by the carrier or any person delegated authority in this matter;

(3) Includes a system of security safeguards acceptable to the Administrator; and

(4) Has been approved by the Administrator.

(b) Each indirect air carrier shall maintain at least one complete copy of

its security program at its principal business office, and a complete copy or the pertinent portions of its security program or appropriate implementing instructions at each office where package cargo is accepted, and shall make those documents available for inspection upon request of any Civil Aviation Security Inspector.

(c) Each indirect air carrier shall—

(1) Restrict the distribution, disclosure, and availability of information contained in the security program to persons with an operational need-to-know;

(2) Require those persons to keep that information confidential; and

(3) Refer requests for such information to the Director of the Office of Civil Aviation Security Service of the FAA.

§ 109.5 Approval of security programs and amendments.

(a) Each indirect air carrier shall submit its security program to the Administrator for approval. Each carrier engaged in the air transportation of property before December 13, 1979, shall submit its program no later than January 14, 1980. Each carrier not engaged in air transportation or intrastate air transportation of property before December 13, 1979, shall submit its program at least 30 days before the date it intends to engage in that transportation.

(b) Within 30 days after receipt of the program, the Administrator either approves the program or notifies the carrier as to modifications necessary for the program to comply with this part.

(c) Any person notified pursuant to paragraph (b) of this section may petition the Administrator to reconsider the notice to modify within 30 days after receipt of the notice and, except in the case of any emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(d) The Administrator may order amendment of an approved security program, if it is determined that safety and the public interest require the amendment, as follows:

(1) The Administrator notifies the carrier, in writing, of the proposed amendment, fixing a period of not less than 30 days within which it may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the Administrator notifies the carrier of any amendment adopted, or rescinds the notice of the proposed amendment. The amendment becomes effective not less than 30 days after such person receives the notice, unless it petitions the Administrator to reconsider the amendment, in which

case the effective date is stayed by the Administrator.

(3) If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes the procedure in this paragraph impracticable or contrary to the public interest he may issue an amendment, effective on the date the carrier receives notice of it, and not subject to stay. In such a case, the Administrator incorporates the findings and a brief statement of the reasons for it, in the notice of the amendment to be adopted.

(e) A carrier may submit a request to the Administrator to amend its program. The application must be filed with the Administrator at least 30 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Administrator. Within 15 days after receipt of a proposed amendment, the Administrator either approves or denies the request. Within 30 days after receiving from the Administrator a notice of refusal to approve the application for amendment, the applicant may petition the Administrator to reconsider the refusal to amend.

PART 191—WITHHOLDING SECURITY INFORMATION FROM DISCLOSURE UNDER THE AIR TRANSPORTATION SECURITY ACT OF 1974

2. By adding a new paragraph (b)(10) to § 191.3 to read as follows:

§ 191 Records and information withheld.

* * * * *

(b) * * *

(10) The security program of any indirect air carrier and that portion of the security program of the United States Postal Service that relates to security of parcel mail to be transported by air.

(Secs. 313(a), 316, 601, and 1005, of the Federal Aviation Act of 1958 (49 U.S.C. secs. 1354(a), 1357, 1421, and 1485); and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has determined that the expected impact of the regulation is so minimal that it does not require an evaluation.

Issued in Washington, D.C., on December 10, 1979.

Langhorne Bond,
Administrator.

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