

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 11432, Amdt. 121-85]

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

Aviation Security; Certain Air Carriers and Commercial Operators—Security Programs and Other Requirements

The purpose of these amendments to § 121.538 of the Federal Aviation Regulations is to require each of certain air carriers and commercial operators operating large aircraft (other than helicopters) to: (1) Prepare in writing and submit for approval of the Administrator its security program showing the procedures, facilities, or a combination thereof, that it uses or intends to use to support that program; (2) when it receives a bomb or air piracy threat, notify the pilot in command of the aircraft if it is being operated, and conduct a pre-flight security inspection if the aircraft is then on the ground or a post flight security inspection if the aircraft is then in flight; and (3) immediately notify the Administrator upon receipt of information that an act or suspected act of aircraft piracy has been committed. These requirements together with that of Amendment 121-83 issued January 31, 1972 (37 F.R. 2500), requiring the certificate holder to adopt and put into use, within 72 hours after that amendment became effective, a screening system acceptable to the Administrator, to prevent or deter the carriage aboard its aircraft of sabotage devices or weapons in carryon baggage or on or about the persons of passengers, complete the implementation of Notice 71-29.

Interested persons have been afforded an opportunity to participate in the making of these regulations by a notice of proposed rule making (Notice 71-29) issued on September 28, 1971, and published in the FEDERAL REGISTER on September 30, 1971 (36 F.R. 19173). Due consideration has been given to all comments presented in response to that Notice.

Several public comments received in opposition to the Notice concerned the general approach to the problem, or the economic burden in relation to the benefits desired. Some comments request further FAA consultation with certificate holders and airport operators. As to this fact, innumerable FAA and industry consultations, meetings, and reviews of the air piracy problem and possible corrective actions, including a Task Force and training periods for air carrier, airport, and law enforcement personnel, have taken place during the last 10 years. It is considered that further consultations leading to proposed rule making would not serve a useful purpose, and that the need stated in the Notice requires the issuance of this rule at this time.

Some concern was expressed with the use of the term "prevent" (in the phrase "prevent or deter" in the proposal) on the grounds that the term "deter" alone would be more realistic and possible to implement. However, the phrase as proposed appropriately requires prevention when it may reasonably be achieved and deterrence where prevention cannot so be achieved.

Some commentators would drop or limit the proposed provisions concerned with the Administrator's amendment of approved security programs, especially without prior notice in emergencies. However, these provisions are considered necessary for the proper administration of the security regulations. It should be noted that similar provisions exist with respect to operations specifications for air carriers (§ 121.79).

A number of comments were generally favorable to the proposal. With this approval came several suggestions for changes that, after further consideration, have been reflected in whole or in part in the rule now issued, as follows:

(1) The more explicit term "explosive or incendiary" is used instead of the term "sabotage," for the purpose of clarification. Likewise, the phrase "unless handled" is used instead of the phrase "until cleared," with respect to cargo and checked baggage, in order to avoid the implication that the certificate holder has responsibility beyond observing its security procedures in this regard. Also, the phrase "responsible agent or representative" is used instead of the phrase "responsible representative," in connection with baggage check-in, in view of possible contractual relationships entered into by the certificate holder.

(2) In conformity with comment, the rule requires the certificate holder to submit its security program to the Administrator instead of to the Regional Director. This will assure initial uniformity and permit the approval of security programs, as a matter of administrative procedure, to be treated as experience dictates.

(3) It was suggested by comment that when a bomb threat is received the certificate holder should notify the pilot in command of the aircraft involved, in addition to conducting a security inspection. This suggestion has been followed in the final rule, as well as the addition of threat of "air piracy" to this provision.

The notice proposed that the certificate holder must submit its security program to the FAA within 90 days after the effective date of this part. This period (as well as the period for FAA's approval or modification notice) has been reduced to 60 days in the rule as issued. This time reduction is considered necessary, in the interest of safety, in order to have security programs submitted and approved at the earliest possible time.

In view of the increased hijackings including extortion of large sums of money that have occurred recently and since the issuance of Notice 71-29, to the extent that these amendments contain requirements more burdensome than those proposed in Notice 71-29, I find that notice and public procedure thereon are impracticable and contrary to the public interest.

In consideration of the foregoing, § 121.538 of the Federal Aviation Regulations is amended, effective April 6, 1972, to read as follows:

§ 121.538 Aircraft security.

(a) For purposes of this section, "certificate holder" means an air carrier as defined in § 121.1(a) (1) or (2) and a commercial operator engaging in interstate common carriage covered by § 121.7.

(b) Each certificate holder shall, before February 6, 1972, adopt and put into use a screening system, acceptable to the Administrator, that is designed to prevent or deter the carriage aboard its aircraft of any explosive or incendiary device or weapon in carryon baggage or on or about the persons of passengers, except as provided in § 121.585.

(c) Each certificate holder shall prepare in writing and submit for approval by the Administrator its security program including the screening system

prescribed by paragraph (b) of this section, and showing the procedures, facilities, or a combination thereof, that it uses or intends to use to support that program and that are designed to—

(1) Prevent or deter unauthorized access to its aircraft;

(2) Assure that baggage is checked in by a responsible agent or representative of the certificate holder; and

(3) Prevent cargo and checked baggage from being loaded aboard its aircraft unless handled in accordance with the certificate holder's security procedures.

(d) Each certificate holder shall submit its security program to the Administrator. Each certificate holder that is operating before April 5, 1972, shall submit its program no later than June 5, 1972. Each certificate holder that obtains the issue of its certificate under this part after April 5, 1972, shall submit its program at least 60 days before the date of intended operations.

(e) Within 60 days after receipt of the program, the Administrator approves the program or notifies the certificate holder to modify the program to comply with the applicable requirements of this section. The certificate holder may petition the Administrator to reconsider the notice to modify. The petition must be filed with the Administrator within 30 days after the certificate holder receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the Administrator.

(f) Each certificate holder shall maintain at least one complete copy of its approved security program at its principal business office, and shall make it available for inspection upon request of the Administrator.

(g) The Administrator may amend any screening system or any security program

approved under this section upon his own initiative if he determines that safety in air transportation and the public interest require the amendment, or upon application by the certificate holder if the Administrator determines that the same considerations allow the amendment.

(1) In the case of an amendment upon his own initiative, the Administrator notifies the certificate holder, in writing, of the proposed amendment, fixing a reasonable period (but not less than 7 days) within which it may submit written information, views, and arguments on the amendment. After considering all relevant material, the Administrator notifies the certificate holder of any amendment adopted, or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives the notice, unless it petitions the Administrator to reconsider the amendment in which case its effective date is stayed by the Administrator. If the Administrator finds that there is an emergency requiring immediate action with respect to safety in air transportation that makes the procedure in this paragraph impracticable or contrary to the public interest, he may issue an amendment, effective without stay, on the date the certificate holder receives notice of it. In such a case, the Administrator incorporates the findings, and a brief statement of the reasons for it, in the notice of the amended screening system or security program to be adopted.

(2) An applicant must file its application for an amendment of a screening system or security program with the Administrator at least 15 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the Administrator. 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.

(h) Each certificate holder shall at all times maintain and carry out the screening system prescribed by paragraph (b) of this section and the security program approved under paragraph (c) of this section.

(1) When a certificate holder receives a bomb or air piracy threat considered to be against a particular aircraft or flight, the certificate holder shall take the following actions to determine whether any explosive or incendiary devices, or weapons are aboard the aircraft involved:

(1) Conduct a security inspection on the ground before the next flight of the aircraft or, if the aircraft is then in flight, immediately after its next landing.

(2) If the aircraft is being operated on the ground, advise the pilot in command to immediately submit the aircraft for a security inspection.

(3) If the aircraft is in flight, advise the pilot in command to take the emergency action he considers necessary under the circumstances, in accordance with § 121.557 or § 121.559, whichever is applicable.

(j) Upon receipt of information that an act or suspected act of aircraft piracy has been committed, a certificate holder shall immediately notify the Administrator.

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

Issued in Washington, D.C., on February 29, 1972.

J. H. SHAFFER,
Administrator.