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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration.

14 CFR Parts 121 and 129

[Docket No. FAA-2003-15653; Amendment Nos. 121-287 and 129-37]

RIN 2120–AH96

Flightdeck Security on Large Cargo Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments

SUMMARY: This action provides an alternative means of compliance to operators of all-cargo airplanes that are required to have a reinforced security flightdeck door. This rule allows those operators to either install reinforced doors or adopt enhanced security procedures approved by the Transportation Security Administration.

DATES: This rule is effective on August 18, 2003 ~~*[Insert date 30 days after date of publication in the Federal Register]*~~. Comments must be received by September 16, 2003 ~~*[insert date 60 days after date of publication in the Federal Register]*~~.

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ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2003-15653 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, Program Management Branch (AFS-200) Flight Standards Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9579; facsimile (202) 267-5229, e-mail joe.keenan@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicative to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking,

will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA-2003- ." The postcard will be date-stamped by the FAA and mailed to the commenter.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at http://www2.faa.gov/avr/arm/nprm.cfm?nav=nprm or the Federal Register's web page at http://www.gpoaccess.gov/fr/index.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this final rule.

What is the Small Business Regulatory Enforcement Fairness Act?

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at http://www.faa.gov/avr/arm/sbrefa.htm, or by e-mailing us at 9-AWA-SBREFA@faa.gov.

BACKGROUND

What rule changes are you making?

We are issuing a rule that allows an alternative means of compliance with a current FAA regulation. This rule allows operators of large cargo airplanes to either install reinforced flightdeck doors or adopt enhanced security procedures approved by the Transportation Security Administration.

Isn't airplane security the responsibility of an agency other than the FAA?

Yes, the Aviation and Transportation Security Act (ATSA) enacted by Congress on November 19, 2001, transferred airplane security to the Transportation Security Administration (TSA). The safety of the physical airplane structure and the operational rules of airplanes are still the responsibility of the FAA. We work with the TSA when our interests overlap to further our missions of safety and security. We coordinated this rule change closely with the TSA. The TSA has significantly contributed to this rule and supports the rule change.

How many rules are affected by this change?

This change has significant effects on two rules. First, Title 14 Code of Federal Regulations (14 CFR), 121.313(j), which applies to the operation of U.S. transport category all-cargo airplanes, is amended to permit operators to adopt a TSA approved security program in lieu of installing reinforced doors. The second rule, 14 CFR 129.28(c), applies to the operation of transport category all-cargo airplanes by foreign operators within the United States. This amendment permits foreign operators to adopt a TSA approved security program in lieu of installing reinforced doors.

Why were the old rules adopted?

The former rules were adopted in response to the terrorist attacks against the United States on September 11, 2001, and the ATSA enacted by Congress on November 19, 2001. The terrorist acts demonstrated a need to improve design as well as operational and procedural security of the flightdeck.

What are the flightdeck and the flightdeck door?

The flightdeck, or cockpit, is that area where the pilots fly the airplane. The flightdeck door is what separates the pilots from the passengers on passenger airplanes.

On passenger airplanes, there are operating rules that require a door between the flightdeck and the passenger compartment. These rules do not require that cargo airplanes have a flightdeck door. Some cargo airplanes have flightdeck doors and many do not.

Traditionally, the door merely served as a privacy door to assure that the pilots were able to concentrate on flying the airplane. As discussed in the original reinforced door rulemakings, efforts were underway prior to the September 11, 2001, attacks to develop standards for a stronger door. The attacks led to the immediate adoption of those standards and the requirement for installation of stronger doors.

What did the old rules require?

On January 15, 2002, parts 25 and 121 were amended to set new standards for flightdeck doors (Amendments 25-106 and 121-288; 67 FR 2118; Docket No. FAA-2002-11032). Section 25.795 was amended to set standards for reinforcing flightdeck doors. The new standards require them to resist forcible intrusion and ballistic penetration.

Section 121.313(f) was amended to mandate installation of the reinforced doors on certain airplanes not later than April 9, 2003. The affected airplanes included transport category all-cargo airplanes operated under part 121 which had flightdeck doors installed on or after January 15, 2002.

On June 21, 2002, part 129 was amended to apply similar standards to foreign operators operating into the United States (Amendment 129-33; 67 FR 42450; Docket No. FAA-2002-12504). Section 129.28 requires installation of the reinforced door not later than April 9, 2003. The affected airplanes include transport category all-cargo

airplanes operated under part 129 which had flightdeck doors installed on or after June 21, 2002.

On December 23, 2002, the FAA issued amendment No. 129-36 as a result of input received from a public hearing held on July 30, 2002, and comments received as a result of the rulemaking. Amendment 129-36 clarifies the applicability of the part 129 regulation for foreign operators.

In effect, section 355 of the Consolidated Appropriations Resolution, Pub. L. 108-007, postponed the compliance date for this section as to all-cargo aircraft until October 1, 2003. We have changed the cargo portion of the rule to replace the April 9, 2003, compliance date with October 1, 2003, to correspond to the Congressional action.

What has happened since the old rules were adopted?

The old rule was an FAA response to the potential security threat to cargo airplanes. Because of the urgency of the response, there was little time for receiving and evaluating a broad range of inputs on the issues and alternatives. But with time, and with additional input from knowledgeable parties, the FAA has identified several elements that convince us that a change is needed. Over the last year, the FAA has received information from parties through comments responding to several rulemakings, as well as petitions for exemption and a petition for rulemaking.

Public Comments On Prior Reinforced Flightdeck Door Rulemakings

As discussed above, the FAA has had two rulemaking actions that established reinforced door requirements. We received public comments on both rules. The following discussion is limited to those comments related to this specific rule change.

The FAA will respond to the other comments in a separate document that will be published later in the Federal Register.

Part 121. Three pilot groups (Air Line Pilots Association International (ALPA), FedEx Pilots Association, and the Coalition of Airline Pilots Association (CAPA)), a public safety group (Aviation Policy Institute), and one individual suggested expanding the reinforced door requirement to all cargo airplanes. This would require installation of reinforced doors on cargo airplanes that do not already have any door. The principal arguments of those parties were centered on increased flightdeck security. Those commenters expressed concerns about the qualification, screening, and identification of the people authorized to ride on the subject airplanes.

ALPA stated that meetings with safety representatives from many of the cargo airlines revealed it is potentially easier for an intruder to gain access to cargo airplanes because of limited ground security procedures, less secure ramp areas, and less scrutiny of persons carried on board cargo flights. ALPA stated that flight attendant and passenger intervention have been discussed as a strategy to defeat the attempts of an intruder to commandeer a passenger airplane. But cargo operators lack the potential benefit of flight attendant or passenger intervention.

Additionally, three commenters proposed enhancement of flightdeck security beyond that provided by the reinforced doors, suggesting the use of dual doors (FedEx Pilots Association) and reinforcing the bulkheads between the flightdeck and other airplane areas (ALPA and the CAPA).

Three operators and the Cargo Airline Association (CAA) and the Air Transport Association opposed the installation of the reinforced flightdeck doors in airplanes

operated for the carriage of cargo. Those comments included two comments that the application of the reinforced flightdeck doors was impractical for the types of airplanes involved and the installation of doors would compromise emergency egress. They also stated it would be difficult to address issues, such as the rapid decompression, when retrofitting flightdeck doors to airplanes in which no door had been previously installed. Six commenters were opposed to the installation of flightdeck doors on cargo airplanes based upon economic considerations, including cost of the doors, installation costs, and lost revenues while airplanes were out of service for modifications. Further, two commenters indicated that the costs should be borne by the government.

The CAA represents 13 all-cargo operators, including the largest operators. In its comments, the CAA argued that the ATSA did not require that cargo airplanes be equipped with the reinforced flightdeck door. Therefore, the FAA rule was procedurally deficient because there was inadequate justification for adopting the rule without prior public comment. The CAA also argued that the unique nature of cargo operations would allow a screening program to provide the same level of security as a retrofit flightdeck door.

Part 129. Seven of the 32 commenters to Amendment 129-33 addressed all-cargo operations. Except for the following three comments, commenters raised similar issues described in the discussion of part 121 above. One commenter stated that of all the various types of operators serving the U.S., cargo operators, particularly those that operate on a charter basis, pose the least risk of having their aircraft used as weapons by terrorists. The commenter contends that cargo charter operations do not publish a

schedule for services and it would be difficult to know in advance when or where the airplane would be operated.

Another commenter explained that crewmembers leave the flightdeck on a regular basis to visit the galley or lavatory and to perform in-flight duties. There is no flight attendant to ensure the area is clear and secure before a flight crewmember leaves. Also, in the event of an intrusion when a flightcrew member is absent from the flightdeck, a reinforced door will prevent reentry to assist other flightcrew members. This commenter also states that this rule will place it at a competitive disadvantage compared to operators whose fleets are designed and operated with no doors.

At the public meeting, one foreign cargo operator explained that he might not know until 3 hours before a flight which airplane would be used on flights to or from the U.S. The operator believed it would be much more efficient and effective to establish security procedures controlling who has access to the airplanes rather than modifying the doors.

Requests for Exemptions

Since January 30, 2002, 11 cargo operators have filed exemption requests from the reinforced door requirements. Two sought relief from the requirement for internal locking devices on existing doors (Special Federal Aviation Regulation (SFAR) 92), three sought relief from part 121, and six sought relief from part 129. In supporting the need for an exemption, requesters cited economic burden caused by the need to make modifications to their airplanes. In several instances, operators indicated that they have a small fleet of airplanes and engineering and design costs would be borne by them alone. The requesters also identified a safety concern with the requirements to close and lock the

flightdeck doors. The safety concern is the lack of adequate emergency exits available to persons on either side of a locked reinforced door. Also, four operators indicated their security measures for allowing riders on their cargo airplanes are strict and would compensate for not reinforcing the door.

Petition for Rulemaking

Atlas Air submitted a petition for rulemaking that requested the FAA allow cargo carriers to adopt enhanced security plans in lieu of the reinforced flightdeck doors. Most of the issues raised by Atlas were also raised by commenters on the prior reinforced flightdeck rulemakings discussed above. Atlas supported its request with the following points:

- The original rule was premised on the inadequacy of then existing security procedures
- The FAA has since issued detailed procedures for access to cargo airplane flightdecks
- The TSA has since issued additional security requirements that cover certain cargo airplanes
- Reinforced doors are necessary on passenger but superfluous on cargo airplanes
- Cargo operations do not depend on riders
    - The number of persons on cargo airplanes is quite small
    - Pilots of cargo airplanes are more willing to exclude suspicious persons
    - Cargo operators can impose more screening without disrupting schedules
    - Access to cargo airplanes is tightly controlled by practice and regulation
- A reinforced door is less effective on a cargo airplane since a terrorist may have an unfettered opportunity to penetrate it
- Keeping terrorists off cargo airplanes is a better alternative

- Cargo doors are expensive and resources could be better utilized elsewhere
  - Cost of reinforced doors is much higher than the FAA estimates
  - Money is better spent on security procedures keeping terrorists off cargo airplanes
  - Passenger airplanes are a higher priority for reinforced doors than cargo airplanes
- Congress is urging a review of reinforced door requirements for cargo airplanes
  - ATSA mandated reinforced doors on passenger airplanes, not cargo airplanes
  - Two proposed bills before Congress would require reexamination of the issue

Why are the changes better than the old rule?

This rule provides an alternative means of compliance for operators. It allows them to meet the security needs for their particular operation through security procedures rather than doors. This option will be available through the security expertise of the TSA. As the economic analysis later in this rule reflects, many operators have airplanes both with and without flightdeck doors. If they adopt security procedures for the airplanes with the doors, they must apply those same procedures to airplanes without doors. By providing the option, operators can decide where to concentrate their limited economic resources. Also, nothing in this rule prevents operators from using both doors and security procedures if they choose.

What factors influenced the decision to change the rule?

Viability of Enhanced Security Procedures

In acting quickly to establish current standards, the FAA included cargo airplanes with doors in the same security category with passenger carrying airplanes. At the time, security procedures for riders on cargo airplanes had not been enhanced. With a diverse population flying on commercial passenger airplanes, a reinforced door to the flightdeck

is essential. In comparison, cargo operations transport far fewer riders, those riders are authorized by the company, and cargo operators have greater discretion in deciding who rides on the airplane. Security procedures can be adapted to fit the needs of cargo operations making the reinforced door less significant in terms of airplane security.

Safety Issues Unique to Cargo Designs

People behind the locked doors on passenger airplanes have multiple exits from the plane. Cargo riders may not. On several models of cargo airplanes, some exits are blocked by cargo or by airplane modifications. Often, modifications of cargo airplanes result in emergency exits being on the other side of the flightdeck door. As a result, rider safety may be significantly compromised if a locked door blocks access to the exits. Without a better security option, the FAA originally concluded that this safety concern was outweighed by the security concern with highjacking. However, since enhanced security procedures are now a viable option, the safety of occupants in an emergency evacuation takes on a higher priority.

Differences in Locations of Persons on Flightdeck of Cargo and Passenger Airplanes

The number and variety of persons who frequently ride on the flightdeck of cargo airplanes are different from those who ride on passenger airplane flightdecks. Under current screening procedures, persons may have access to the flightdeck on cargo airplanes without having undergone the same level of screening used on passenger airplanes. These persons may be in front of the door or behind it. As one commenter pointed out, locking a reinforced door could result in a "bad" person being in front of the door, while preventing a "good" person seated behind the door from assisting the pilots. This may render reinforced doors less valuable on cargo airplanes.

Need for Tools and Equipment

Cargo operators carry diverse cargo, such as animals and dangerous goods. This requires them to carry persons who need specialized tools and equipment during the flight. This necessary equipment is prohibited on passenger flights. Also, on passenger flights, crewmembers, Federal Air Marshals, and passengers can intervene to inhibit efforts to penetrate the reinforced doors. On cargo operations, the limited number of riders means a terrorist might have time and equipment to defeat the protection offered by the doors.

The Cost of the Doors

The original analysis of reinforced door costs was made before designs had been proposed and approved. The FAA has learned that the door will cost substantially more than originally estimated. Instead of $17,000, nearly all doors will cost at least $50,000, and some as much as $210,000. This cost would be acceptable if it were the only alternative to preventing highjackings. But, with the enhanced security procedures now available, it is incumbent on the FAA to allow operators to select the option that best fits their needs.

What comments do you believe support this rule change?

As discussed above, the petition of Atlas Air contained many suggestions and comments that were common to comments received on the original rules. As should be obvious from the rationale explained in the preceding answer, we found many of their points to be persuasive and thus supportive of this rule change.

What comments do you believe would not support this rule change?

Many comments were received supporting the original rule. In particular, pilots and organizations representing pilots believed that the reinforced door was a valuable step toward assuring the safety of the flightcrew and ultimately the airplanes. These commenters urged additional steps for cargo airplanes, to include expanding the rule to require installation of reinforced doors on all cargo airplanes. This would require installation of reinforced doors on those cargo airplanes that have not had doors. This option will be discussed later.

We expect that these commenters would not favor this rule change and would see it as a lessening of security. We expect to receive comments on this during the comment period. At this point, we are confident that the plans that will be approved by the TSA will be comparable to the security provided by the doors. As discussed above, we believe the change will be better than the reinforced doors in some respects.

Were there comments submitted on the original rules that were not considered in this rule change?

Yes. Some comments dealt with issues other than cargo airplanes. Some comments on cargo airplanes were not relevant to this rule change. We will respond to these comments in a separate document that will be published later in the Federal Register.

What other options were considered?

Maintaining the Status Quo

We considered this option but decided that the status quo was no longer justified. When the rule was originally adopted, there was no alternative that would provide security for the flightdeck. As discussed previously, this is no longer the case and

security procedures can provide a viable security alternative. Operators should have the option of selecting which alternative to use to meet the security goal.

Expanding the Reinforced Door Rule to All Cargo Airplanes

As mentioned previously, this was an option originally supported by pilots and pilot organizations. Whether this is still the case in light of changes since adoption of the original rule will be revealed during the comment period on this rule.

We do not believe that this expansion is either practical or necessary. Many cargo airplanes have no door between the pilot area and aft portions of the flightdeck. On some airplanes, there is existing structure that would readily support a new door. On many other airplanes, however, there is no structure to which a door could be fitted. We have spent over a year administering the current reinforced door rule. We have learned that simply replacing existing doors can be expensive and time-consuming, particularly in design development and approval. Undertaking a retrofit requirement for all cargo airplanes could not be done in the time frame relevant to this rule.

Further, since we have identified security procedures as a valid alternative to a reinforced door in cargo operations, there is currently no justification for the substantial cost involved in retrofit.

As discussed in the next question and answer, responsibility for aviation security and threat assessment resides with the TSA. If the TSA decides that the threat warrants expansion of the reinforced door requirement, the FAA will assist them in developing relevant rules and standards.

Expanding Cargo Security Requirements to All Cargo Operations

The old rule, and this new rule change, cover only those cargo airplanes that had doors. With the transfer of security responsibility, the TSA assumed responsibility for developing and imposing security requirements on all aviation operations. As a result, the FAA no longer has the authority to unilaterally establish security requirements applicable to all cargo operators.

Several operators, including Atlas Air, suggested that expansion of security programs to the entire air cargo industry would be beneficial. The FAA and TSA agree with those comments. The TSA will commence a separate rulemaking on this subject. We hope this expansion will be, in part, a consequence of this rule change. The FAA supports this expansion and will assist the TSA in implementing any changes it deems appropriate.

Eliminating the Ability of Cargo Carriers to Carry Supernumeraries

We considered reducing the ability of cargo operators to carry supernumeraries. Under 14 CFR 121.547 and 121.583, supernumeraries are persons who may be on board but who are not essential to the actual operation of the airplane. Limiting the carriage of supernumeraries would have a crippling effect on many cargo operations. Although not in the passenger carrying business, cargo operators need to carry riders who can handle cargo either during the flight or at remote destinations where trained support is not available. They often carry additional pilots for long flights and mechanics to service the airplane at remote locations. These concerns were identified in the petitions for exemption mentioned earlier. As a result, we conclude this is not a viable option for protecting the flightdeck of cargo airplanes.

Supernumeraries were partially addressed by the original rule changes that accompanied the reinforced door requirements. In the original rules, we modified § 121.547 and added § 129.28(d) to limit the number of persons authorized on the flightdeck and required additional approvals for such access.

Case-by-case Exemptions Allowing Security Programs in Lieu of Reinforced Doors

We considered requiring individual exemption applications from cargo operators instead of a rule change. This has been the process for dealing with problems raised under SFAR 92 with its requirement for internal locking devices on flightdeck doors. This has not been efficient, even for the relatively small number of SFAR exemptions.

We anticipate that most, if not all, cargo operators would file exemption requests should we adopt this option instead of a rule change. Dealing with exemption requests would be inefficient and lead to lengthy delays and uncertainty, even if most petitioners raised the same issues. Our immediate adoption of this rule seeks to avoid uncertainty. Also, just as the operators wish to focus their resources on addressing security, we want to use our resources on matters other than individual exemption requests.

Does this rule establish specific security requirements?

This rule does not require specific security procedures. Rather, a carrier may choose to adopt a security program rather than harden its doors. Security programs may vary from operator to operator because airplanes used, routes and missions flown, and persons carried are not uniform. Instead of establishing specific criteria for a security program, this rule provides flexibility to the operator and the TSA to meet specific needs and threats.

Who will approve new security procedures?

The TSA is the agency with approval authority for security programs and procedures related to alternative compliance with this rule. Operators who have principal security inspectors should work with them in preparing programs and procedures.

Is this an airplane security issue or an economic issue?

Implementation of any security measure carries with it some costs. The subsequent economic analysis discusses the relative costs of installing reinforced doors versus adopting a security program. Adopting the security program option will cost operators less than installing the reinforced doors. If this were not the case, operators would opt for the doors instead of the security program. But this rule is not just about money. As discussed previously, reinforced doors are not as effective a security measure on cargo airplanes as on passenger airplanes. On many cargo designs, reinforced doors raise safety issues that do not exist on passenger airplanes. Although cost is an issue, it is not the deciding factor in adopting this rule. Security is paramount.

Will cargo airplanes be less secure if reinforced doors are not required?

Airplanes would be less secure if the requirement were dropped without any compensating action. The compensating action expected in this rule is development and implementation of alternative security plans to control who enters cargo aircraft. This will compensate for the lack of doors by keeping potential terrorist out of the airplane.

As explained above, this rule does not itself establish the criteria for the new program. That program will come from the TSA.

Most importantly, when a security plan is developed, it can be used by all cargo operators, not just those with doors. The result will be greater security for all cargo operations, not just those with existing doors.

Also as discussed above, we believe that the reinforced doors produce vulnerabilities both from a safety and security standpoint that are not present in passenger carrying operations. Providing an alternative to installing reinforced doors reduces those risks.

What airplanes or operations will be affected by this rule change?

This rule will affect both U.S. and foreign operators. For foreign operators, this rule also clarifies the coverage of the rule.

For U.S. certificated operators, only those operations conducted under part 121, utilizing transport category airplanes, for the sole purpose of the carriage of cargo, will be affected. And those operations are only affected if they had a flightdeck door installed on or after January 15, 2002. Those all-cargo operators electing to achieve compliance through a TSA approved security program must apply the security program to the operator's entire fleet of aircraft, not just those with doors. There will be no change for those cargo operators who elect to install the reinforced flightdeck door.

Foreign operators conducting cargo operations under § 129.1(a) are covered when they are operating airplanes with a payload capacity greater than 7,500 pounds and with a flightdeck door installed on or after June 21, 2002. Those all-cargo operators electing to achieve compliance through a TSA approved security program must apply the security program to the operator's entire fleet of aircraft, not just those with doors. There will be no change for those cargo operators who elect to install the reinforced flightdeck door. In

addition, nothing precludes a foreign all-cargo air carrier from implementing a TSA security program in addition to reinforcing its flightdeck doors.

Why does the rule have a June 21, 2002, threshold date for foreign operators and a January 15, 2002, threshold date for US operators?

Section 129.28(a)(2) establishes a compliance threshold date of June 21, 2002. Section 121.313(j)(2) establishes a compliance threshold date of January 15, 2002. These threshold dates identify the airplanes that must comply with the rule, and maintains the applicability of the requirement even if operators remove the non-reinforced doors after that date. If an airplane had a non-reinforced door in place (installed) on the threshold date, or if one is installed on the airplane after that date, then the rule requires that such a door be replaced with a reinforced door. Without the threshold date, operators could avoid compliance with the rule by removing the non-reinforced doors. The threshold dates correspond with the issue dates of the original rules imposing the reinforced door requirement on operators. The dates differ because the original rules were not issued at the same time.

How will compliance be monitored?

The FAA is working with the TSA to establish procedures to share information and monitor compliance with various aspects of aircraft security. This is a new relationship and details on specific aspects of the cooperative monitoring effort are not currently in place. We expect, however, that the TSA approval of programs under this rule will occur in cooperation with the FAA and the FAA will receive information on approved programs either directly from the TSA or through reporting requirements

placed on operators. A formal process for either of these alternatives will be established to assure compliance by affected operators.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this rule (1) has benefits which justify its costs; (2) is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is "significant" as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will have little effect on international trade; and (5) does not impose an

unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarizes them below.

How many operators and airplanes are affected by the rule?

The FAA determined that 46 U.S. air cargo carriers with 1,132 transport category cargo airplanes operate under part 121. Brokers and leasing companies currently hold 125 turbojet cargo airplanes that could be operated under part 121. Thus, 1,257 cargo airplanes could be affected by this rule. The FAA determined that 540 of these airplanes have a flightdeck door, while 26 air cargo carriers operate at least one airplane with a flightdeck door. Of these 26 air cargo operators, 3 are likely to be large operators (more than 50 airplanes), 9 are likely to be medium sized operators (between 10 and 50 airplanes), and 14 are likely to be small operators (fewer than 10 airplanes).

What are the uncertainties affecting the potential costs of this rule?

The cost of a security program could be significantly reduced if the air cargo carrier does not transport any people other than its own employees. To avoid underestimating the potential total cost, the FAA assumed that every affected air cargo operator will occasionally transport people other than their employees. Further, the TSA has not finalized its requirements. This regulatory evaluation does not assume that the TSA will require the screening of cargo. The next question identifies some assumptions about the content of the potential security program. We have not included the potential costs of screening air cargo itself in the estimated costs of these security programs.

What are the bases for the estimated costs of a security program?

For the purpose of this economic analysis, we have assumed, for cost purposes only, that the following types of costs might be incurred. Actual costs may vary between

programs sought by operators and approved by the TSA. Further, the TSA may choose to require certain components of a security plan that will differ from the assumptions included in the FAA cost analysis. The FAA assumes that air cargo carriers will incur costs from reviewing their employee employment files, performing employee background checks, developing procedures to perform security clearances on non-employee passengers, and applying to the TSA for approval in creating their programs. They will incur similar annual costs in operating the program.

How much will it cost to establish and operate a security program?

The FAA estimates that establishing a security program will cost, on average, about $250,000 for a large air cargo airline, about $75,000 for a medium sized air cargo airline, and about $20,000 for a small air cargo airline. The annual cost to operate a security program will average about $120,000 at a large air cargo airline, about $40,000 at a medium sized air cargo airline, and about $10,000 at a small air cargo airline. Thus, if all of the affected air cargo carriers chose to establish security programs, the total first-year cost will be $1.705 million. However, several air cargo operators have voluntarily developed personnel security programs that include some or most of the activities envisioned by the FAA in its cost estimates. Thus, those air cargo operators have already made many of these expenditures and their estimated costs will be lower than those projected. Nevertheless, in order to ensure that the costs are not underestimated, the FAA assumed that no air cargo operator has such a program. Using an anticipated 5.3 percent growth rate of the air cargo industry, the annual costs of operating security programs for 10 years would be $10.265 million. Thus, it will cost air cargo operators a total of

$12.330 million, which has a present value of $9.217 million using the 7 percent discount rate required by the Office of Management and Budget.

How much will it cost to install reinforced flightdeck security doors?

The FAA calculated that installing reinforced doors on the 540 cargo airplanes would cost air cargo operators $66.5 million in 2003.

Table 1

Average Cost Per Airplane To installation A Reinforced Door By Type Of Airplane

Type Of Airplane	Door Kit Cost	Numbers Of Labor Hours To Install	Total Labor Cost	Number Of Days Out-Of-Service	Lost Net Revenue Per Day	Total Lost Net Revenue	Total Costs To Install
727	$65,000	96	$ 7,680	2	$20,500	$41,000	$113,680
737	$50,000	96	$ 7,680	2	$ 4,500	$ 9,000	$ 66,680
747/100/200/300	$210,000	172	$13,760	4	$24,500	$98,000	$321,760
747/400	$51,500	96	$ 7,680	2	$24,500	$49,000	$112,020
757	$50,000	96	$ 7,680	2	$20,500	$41,000	$ 98,680
767	$50,000	96	$ 7,680	2	$20,500	$41,000	$ 98,680
DC-10	$50,000	96	$ 7,680	2	$24,500	$49,000	$106,680
DC-8	$42,000	72	$ 5,760	2	$20,500	$41,000	$ 88,760
DC-9	$42,000	72	$ 5,760	1.5	$ 4,500	$ 6,750	$ 54,530
MD-10/11	$45,000	96	$ 7,680	2	$24,500	$49,000	$101,680
A-300	$50,000	192	$15,360	4	$20,500	$82,000	$147,360
A-300-600	$50,000	192	$15,360	4	$20,500	$82,000	$147,360
A-310	$50,000	192	$15,360	4	$20,500	$82,000	$147,360

Are there any other costs that would be associated with these reinforced doors?

Reinforced flightdeck security doors have electronic systems that would need to be periodically inspected, maintained, and possibly repaired. It would take 8 additional maintenance labor hours every year for these tasks, and the average annual materials costs are minimal. These increased maintenance costs would total $4.4 million between 2004 and 2013, which has a present value of $3.0 million.

Reinforced flightdeck security doors and associated doorway strengthening materials would add weight to the airplane, which would increase fuel consumption. The FAA estimated that the installed door would add 120 pounds to a large cargo airplane, 90 pounds to a medium sized cargo airplane, and 75 pounds to a small cargo airplane. Each additional pound increases annual fuel consumption by 12.25 gallons for a large cargo airplane, 19.1 gallons for a medium sized cargo airplane, and 5.75 gallons for a small cargo airplane. Using a price of $0.80 per gallon, the annual additional fuel cost would be $700,000 in 2004, increasing to $1.1 million in 2013. These additional fuel costs would total $9.5 million between 2004 and 2013, which has a present value of $ 6.7 million.

What, then, are the total costs of installing these doors?

As shown in Table 2, the total costs of installing reinforced security flightdeck doors would be about $80.450 million, which has a present value of about $76.225 million. Of particular note is that the biggest expenditure of $66.5 million would occur in 2003, the first year.

Table 2

Total And Present Values In 2003 Of Costs To Install Reinforced Security Doors In Cargo Airplanes That Currently Have Flightdeck Doors (In $Mil)

Cost To Retrofit Doors	Increased Maintenance Cost (2004-2013)	Present Value Increased Maintenance	Increased Fuel Costs (2004-2013)	Present Value Increased Fuel Cost	Total Cost	Present Value Total Cost
$66.499	$4.406	$3.007	$9.542	$6.722	$80.447	$76.228

What is the net economic impact of this rule?

If all air cargo operators affected by the final rule chose to develop a TSA-approved security program instead of installing reinforced flightdeck security doors, they

would save about $68.117 million between 2003 and 2013, which has a present value of $67.011 million. More importantly, they would save $64.704 million by April 9, 2003. It should be noted that to the extent that several air cargo operators have voluntarily developed these programs, the cost savings have been underestimated. Further, an individual operator has the option to install the reinforced flightdeck security door if it would be financially advantageous. Thus, the FAA determined that this rule provides substantial cost savings to affected air cargo operators.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a

statement providing the factual basis for this determination, and the reasoning should be clear.

This action provides equal regulatory relief to all air cargo carriers. Therefore, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA assessed the potential effect of this rulemaking and determined that it provides equal regulatory relief to both U.S. (under part 121) and foreign air cargo carriers (under part 129). Therefore, the FAA determined that this rule will have a minimal effect on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

What Other Assessments Has the FAA Conducted?

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 3132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Plain English

Executive Order 12866 (58 FR 51735, October. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this final rule easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the question and answer format helpful in understanding the regulations?

Please send your comments to the address specified in the ADDRESSES section.

What urgency requires immediate adoption of these changes?

Under current rules, operators should have installed reinforced doors by April 9, 2003, or the airplane could not be operated after that date. However, the 2003 Consolidated Appropriations Resolution mentioned previously effectively postponed the compliance date for all-cargo aircraft. Absent additional action by Congress, this legislative provision will expire on September 30, 2003. As a result, effective October 1,

2003, cargo operators will have to have installed doors on the affected aircraft or not operate those aircraft.

We have changed the April 9, 2003, date to October 2003, to correspond with the Congressional action. Time is of the essence to operators. The doors are expensive and there is a significant lead-time required to order and install the doors. Cargo operators need to know immediately that there is an alternative to installation of reinforced doors.

Additionally, operators need time to evaluate the requirements of the TSA security procedures, and determine if they can adopt a new security program before the deadline. Delaying the rule for notice and comment would create uncertainty for operators, and frustrate the purpose of the rule.

Further, the FAA received a large number of public comments on this subject through the other rulemakings discussed in this document. We considered those comments in developing this rule.

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." In the context of the APA, impracticable means that, if notice and comment procedures were followed, they would defeat the purpose of the rule. As explained above, the delay associated with notice and comment would negate the security option as a viable alternative to the reinforced door requirement.

For the reasons discussed previously in this document, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, and contrary to the public interest. This final rule must be adopted promptly to create the certainty and the time needed by cargo operators to meet the airplane security requirements.

Lists of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation

14 CFR Part 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121 and 129 as follows:

PART 121–OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 45101-45105, 46105.

2. Sections 121.313(j)(1) and (2) ~~is~~ are revised to read as follows:

§ 121.313 Miscellaneous equipment.

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(j) * * *

(1) After April 9, 2003, for airplanes required by paragraph (f) of this section to have a door between the passenger and pilot or crew rest compartments,

(i) Each such door must meet the requirements of § 25.795(a)(1) and (2) in effect on January 15, 2002: and

(ii) Each operator must establish methods to enable a flight attendant to enter the pilot compartment in the event that a flightcrew member becomes incapacitated. Any associated signal or confirmation system must be operable by each flightcrew member from that flightcrew member's duty station.

(2) After October 1, 2003, for transport category, all-cargo airplanes that had a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, each such door must meet the requirements of § 25.795(a)(1) and (2) in effect on January 15, 2002; or the operator must implement a security program approved by the Transportation Security Administration (TSA) for the operation of all airplanes in that operator's fleet.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S. REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

3. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C.1372, 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901-44904, 44906, 44912, 46105, Pub.L. 107-71 sec. 104.49 U.S.C.

4. Sections 129.28 (c)(1), (2) and (3) ~~is~~ are amended to read as follows:

jma 7/16/03

§ 129.28 Flightdeck security.

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(c) * * *

(1) Except for a newly manufactured airplane on a non-revenue delivery flight, no foreign air carrier covered by § 129.1(a) may operate:

(i) After April 9, 2003, a passenger carrying transport category airplane within the United States, except on overflights, unless the airplane's flightdeck door installation meets the requirements of paragraphs (c)(2) and (c)(3) of this section or an alternative standard found acceptable to the Administrator.

(ii) After October 1, 2003, a transport category all-cargo airplane that had a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States, except on overflights, unless the airplane's flightdeck door installation meets the requirements of paragraphs (c)(2) and (c)(3) of this section or an alternative standard found acceptable to the Administrator; or the operator must implement a security program approved by the Transportation Security Administration (TSA) for the operation of all airplanes in that operator's fleet.

(2) The door must resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 joules (221.3 foot-pounds) at the critical locations on the door, as well as a 1,113-newton (250 pounds) constant tensile load on the knob or handle, and

(3) The door must resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

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Issued in Washington, DC, on July 11, 2003.

/s/ Marion C. Blakey
Administrator