

**AIRPORTS COUNCIL INTERNATIONAL** DEPARTMENT OF TRANSPORTATION

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DOCKET SECTION

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United States Department of Transportation  
Dockets  
Docket No. FAA-1998-4758 -10  
400 Seventh Street, SW  
Room Plaza 401  
Washington, DC 20590

February 24, 1999

RE: 14 CFR Part 129  
Security Programs of Foreign Air Carriers;  
Proposed Rule Docket No. FAA- 1998-4758

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OFFICE OF THE  
CHIEF COUNSEL  
RULES DOCKET

The Airports Council International (ACI) submits the following comments on Notice of Proposed Rulemaking (NPRM) Docket No. FAA 19984758, Security Programs of Foreign Air Carriers.

**Executive Summary**

The stated purpose of the proposed rule is “to increase the safety and security of passengers aboard foreign air carriers on flights to and from the United States.” The proposed rule will not produce this result. Security measures should be aimed at reducing risks by persons intending to inflict harm and must be based on a threat assessment for each affected airport and airline. They should not be implemented for economic or competitive reasons.

The proposed rule and its underlying legislation raise legitimate questions of extraterritoriality. However, since this is a matter within the competency of States ACI will not address it.

The proposed rule will further reduce or limit capacity at airports which today are constrained.

The economic costs to both airports and airlines will far exceed the estimate made by the FAA. Direct costs to US citizens using foreign carriers as well as those utilizing United States flag carriers will rise. A more detailed analysis of the adverse economic and capacity implications for specific airports is included in the appendix to this submission.

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The proposed rule could be detrimental to existing levels of security. Confusion could arise over which measures should be implemented within the airport since they would not be imposed on flights to destinations outside of the United States.

The proposal will frustrate the efforts by ICAO to establish international security standards through Annex 17. The FAA has frequently recognized the harm accomplished by the fragmentation of global standards.

**ACI** believes these problems can be avoided by using an “equivalency” standard in approving a foreign air carrier security plan. This is well within the discretion allowed FAA by the legislation and follows the common “equivalent level of safety” methodology used in FAA’s other safety certification programs.

# AIRPORTS COUNCIL INTERNATIONAL

United States Department of Transportation  
Dockets  
Docket No. FAA-1 **998-4758**  
400 Seventh Street, SW  
Room Plaza 401  
Washington, DC 20590

**RE:** 14 CFR Part 129  
Security Programs of Foreign Air Carriers;  
Proposed **Rule** Docket No. FAA-1 **998-4758**

February **24, 1999**

Airports Council International World Headquarters  
Jean Fleury, Chairman  
Geneva, Switzerland

**ACI** and its member airports appreciate the opportunity to comment on the Notice of Proposed Rulemaking (**NPRM**) Docket No. FAA 1998-4758.

In the preamble to the rule, FAA states that “the proposed rule is intended to increase the safety and security of passengers aboard foreign air carriers on flights to and **from** the United States.” While this is a worthy goal and one that should be supported by all members of the aviation community, we do not believe that the proposed rule as presented will produce the desired result.

The proposed measures not only have to be looked at with regard to international regulations and principles but also in terms of feasibility, cost, and effectiveness.

## **1. Principles**

While there would appear to be a valid question of extraterritoriality concerning the Hatch Amendment, this issue falls within the competency of States.

It would also have to be looked at very closely to see whether the questions normally asked during profiling are legal in all countries linked to the United States by bilateral agreements. This issue also falls within the competency of States.

**ACI** therefore will confine its comments to the impact of the Amendment on the industry. The forum for States to determine industry-wide baseline requirements has historically

been the International Civil Aviation Organization (ICAO). Member States adopt measures that meet a minimum standard established by ICAO Annex 17 and add further measures to respond to current threat assessments and operational capabilities. As a signatory State to ICAO the United States Government and the FAA in particular has publicly recognized the need to prevent the imposition of “local” requirements on a global industry. To depart from this recognized system of international cooperative agreements is to invite chaos. A broad-brush approach to redefine security measures throughout the world to address individual airline complaints about unfair economic burdens does not in any way improve the aviation security of the United States or the global aviation security system.

We believe that it is unreasonable to require airports and airlines in nations outside of the United States to implement measures identical to those measures deemed appropriate for United States airports and air carriers, when the threats to those facilities and businesses, the process by which passengers and cargo make their way through the airport, the physical conditions, etc., are not identical. If this proposed rule were to become final and binding, it would cause airports and air carriers in other nations to adopt security procedures over and above those already in place, even though they were formulated to address specific assessed threats.

## **2. Feasibility**

Profiling and X-Ray screening prior to check-in require large amounts of space within terminals. Slowing down check-in procedures will put even more pressure on space and it may even prove necessary to provide extra counters. There are a number of terminals which just do not have the potential to provide extra capacity. Any loss of capacity would therefore have to be borne equitably by both American and non-American companies, with consequent detrimental effects on **traffic** flows. Undertaking the building of new terminals in order to meet the need for capacity calls for long-term planning and the extra cost would have to be passed on to the carriers. At certain airports, London, for example, all new construction projects are made subject to a public enquiry, a long drawn-out process with very little certainty as to the outcome.

Appendix 1 lists a considerable number of airports where we come up against this problem.

Furthermore, the proposed rules don't follow connection facilitation principles: connecting passengers with registered luggage won't be able to catch their planes within minimum connecting times.

## **3. cost**

It is our contention that costs will far exceed those estimated by FAA:

### **A. Regarding Direct Costs**

Increase in manpower and purchase of specified equipment are not the only ones: Adapting infrastructure and passenger circuits where feasible will also lead to increased costs. If national laws oblige States or Airports to comply with security requirements, the extra cost has to be shared out between all airlines, American ones included.

At certain airports, where advanced technology equipment is already in operation, the extra cost will be a useless burden.

Cost of the extension of terminals made necessary by the Hatch Amendment or the building of new terminals will also have to be passed on to all carriers as explained above.

B. Regarding Indirect Costs:

The loss of capacity will reduce the number of passengers able to travel, and by the way will have a significant impact on jobs in the United States related to the air **traffic** industry.

Tax benefits generated by airports, presently \$3 1.2 billion USD, will decrease. Appendix 2 indicates a potential economic impact of the proposed regulation higher than \$100 million USD annually creating a “significant regulatory action” at a minimum.

In addition to the impacts outlined above, the potential for governmental entities outside the United States to follow the precedent set by this NPRM is a critical consideration.

#### 4. Effectiveness

Regarding the effectiveness of the proposed measures, there are very real grounds for skepticism.

Baggage reconciliation has proved to be a sound measure for the protection of aircraft in flight. The benefits of profiling and X-Ray inspection are less obvious.

Explosive substances are indeed difficult to detect by standard X-Ray screening. Only the most advanced machines enable operators to identify the composition and density of products inside luggage. Equipment meeting these criteria is already in operation or is in the process of being installed in a certain number of European airports. The cost is very high but the crux of the matter is to determine to what extent terminals could be so equipped with the support of ICAO throughout the world. Certainly, this is the only option for countries where airlines run the highest risk; however, any movement in this direction must be gradual, given the disparity between the advances in technology and the level of technical readiness of lesser-endowed airport authorities.

These additional, and in some cases redundant, measures could actually prove to be detrimental to aviation security. It is difficult, even in the best of times, to require employees to implement measures based on limited knowledge and “faith” in the decisions made by others moreover if taken simply for economic reasons.

## 5. Conclusion

To forestall reciprocal measures aimed not at improved security, but at increased investment by all parties, American airlines included, to the detriment of the international aviation industry, ACI believes that the language **of** the proposed rule should be amended to reflect a more appropriate approach to global aviation security. Therefore, the final rule should allow the Administrator to retain his or her ability to judge each security **plan** on its merits. We recommend the following:

*“(e) Each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have a security program acceptable to the Administrator. A foreign air carrier’s security program requires the foreign air carrier in its operations to **and from airports in the United States to adhere to security measures equivalent to those that the Administrator requires U.S. air carriers serving the same airports to adhere to. A foreign air carrier is not considered to be in violation of this requirement if its security program exceeds the security measures required of U.S. air carriers serving the same airport.**”*

And, lastly, we suggest that security measures should be relative to a threat assessment per given carrier and given country.

Again thank you for the opportunity to express our concerns with the current proposed rule.

Sincerely,



David Z. Plavin  
President  
Airports Council International – North America  
on behalf of the Airports Council International

## **APPENDIX 1: Capacity**

### **London Heathrow**

Terminal 3 would be dramatically overcrowded, placing stress on check-in facilities, agents and passengers and creating the type of atmosphere where considerations of time may decrease the accuracy of procedures. This is not an unfounded concern in the aviation security industry. Agents under pressure from customers may fail to undertake detailed procedures at passenger check-in and screening locations to keep the flow of passengers progressing. Space required for Computer Assisted Passenger Screening would reduce check-in capacity at Terminal 4 by 680,000 passengers per year. **If** explosive detection equipment were added to the concourse area this number would increase accordingly. Aircraft stands would have to be segregated reducing flexibility of assignment and creating a loss of passenger **processing** capacity by 2 to 3 million per year. A loss in available slots would be spread across the facility and across all carriers operating there at a rate of between 9,400 and 15,000 per year.

### **London Gatwick**

The implementation of the proposed measure would reduce passenger capacity by 1 to 1.5 million per year and slots by 7,900 to 11,800 per year at the South Terminal. **Traffic** at the North Terminal will be reduced by 2.6 to 3.1 million passengers per year and between 22,200 and 26,500 slots per year. The capacity loss in the North Terminal being significantly higher than the South Terminal the total loss would have to be spread throughout the airport impacting all carriers operating at Gatwick.

### **Vienna**

It is estimated that 85 connections per week, including United States Code Shares, will be lost due to longer connection times required to comply with elements of the proposed rule.

### **Amsterdam**

Additional costs associated with CAPS and aircraft screening are estimated to be \$15 million USD per year. Terminal modifications required for compliance will cost approximately \$21 million USD.

### **Frankfurt**

Passenger processing **capacity** would be reduced by 1.5 million to 2 million passengers per year and loss of available slots, approximately 10,400, would have to be spread across the facility and all carriers operating to/from Frankfurt. Additional costs are estimated to be DEM 22.3 million per year.

## Zurich

Assuming eight flights per day, an additional 60,000 man hours per year at an annual cost of \$6 million USD will be required to perform the Computer Assisted Passenger Screening requirements of the proposed amendment alone.

## **Paris Orly and Charles de Gaulle**

Paris-Orly handles about 16% of passengers destined for the United States and Charles de Gaulle the remainder. The procedures taken to comply with the Hatch Amendment, as estimated by Aeroports de Paris, would cause a loss of capacity at both airports totaling about 1.4 million passengers per year and a loss of 7,660 slots per year spread among all carriers.

Costs involved in modifying terminals at both airports to permit processing passengers according to Hatch guidelines would exceed \$35 million USD.

## APPENDIX 2: Cost

FAA has indicated in the Regulatory Evaluation Summary of the NPRM that estimates of the cost of compliance were derived by comparing the current general differences between an Air Carrier Standard Security Program (ACSSP) and the Model Security Program (MSP) with an emphasis on manpower and equipment. It is our contention that costs will far exceed those estimated by the FAA, as procedural and equipment changes will require more than just an increase in manpower and the purchase of specified equipment. Impacts on terminal **infrastructure** will have a direct detrimental impact on passenger processing capabilities and a subsequent reduction in flights to and from the United States. The laws of supply and demand show us that a reduction in supply will drive costs, and consequently consumer prices, up. Not only will direct costs to 42.3% of passengers who are American Citizens utilizing foreign flag carriers rise, but costs to United States citizens utilizing United States flag carriers will rise as well.

As indicated above, the subsequent economic impact will be much **furhter** reaching than direct costs of increased equipment and manpower as flights to and from the United States are reduced. United States airports are responsible for nearly \$380 billion USD each year in total economic activity nation-wide. The total economic impact of airports on the labor market in the United States is 5.8 million jobs. This includes 1.6 million jobs directly related to airports and another 4.2 million jobs indirectly created in local communities, translating into earnings of \$155.5 billion USD.

In tax benefits, United States airports generate \$3 1.2 billion USD in local, state, and federal taxes. The United States Immigration and Naturalization Service reports that 121.2 million persons traveled to and from the United States by air in 1997. If passenger **traffic** is reduced due to facility constraints at non-United States facilities, each of these revenue figures will be negatively impacted accordingly. Therefore, the economic impact on the United States economy has the potential to be significantly higher than \$ 100 million USD annually creating a “significant regulatory action” at a minimum.