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[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2001-10738; SFAR 91]

RIN 2120-AH49

Aircraft Security under General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action requires certain aircraft operators to search aircraft and screen passengers, crewmembers, and other persons, and their accessible property prior to departure. This action is being taken to counter possible threats in the wake of the September 11, 2001 terrorist attacks.

DATES: This action is effective [insert date of filing for public inspection at the Office of the Federal Register], and shall remain in effect until further notice. The compliance date for persons conducting operations specified in paragraph 1(a) of SFAR 91 is [insert date 5 calendar days after date of filing for public inspection at the Office of the Federal Register].

FOR FURTHER INFORMATION CONTACT:

Questions on this rulemaking: Lon M. Siro, Aviation Security Specialist,
ACP-100, Office of Civil Aviation Security Policy and Planning, Federal Aviation
Administration, 800 Independence Avenue, SW, Washington, D.C. 20591; telephone
(202) 267-8058.

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Questions on security procedures or waivers : Any FAA Regional Civil Aviation Security Division office. You can find a list of all Regional Civil Aviation Security Division offices and contract information at <http://cas.faa.gov/usa.html>. These offices are identified by the appropriate FAA regional designation followed by "-700."

SUPPLEMENTARY INFORMATION:

Availability of This Action

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

(1) Go to 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 FAA's web page at <http://www.faa.gov/avr/armhome.htm> or the Federal Register's web page at http://www.access.gpo.gov/su_docs/aces/aces140html.

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.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at <http://www.faa.gov/avr/arm/sbrefa.htm> and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

In the wake of the September 11, 2001, terrorist attacks against four U.S. commercial aircraft resulting in the tragic loss of human life at the World Trade Center, the Pentagon, and southwest Pennsylvania, the potential for additional terrorist attacks exists. Those responsible for the attacks are believed to be affiliated with an organization possessing a near-global terrorist network. The leaders of the groups constituting this organization have publicly stated they will attack the United States for incarcerating extremist members and are vehemently opposed to U.S. foreign policy and presence in the Middle East. They retain a capability and willingness to conduct airline bombings, hijackings, and suicide attacks against U.S. targets. These tragedies resulting from the attacks also indicate that the terrorists are willing to use aircraft as weapons to inflict significant damage to persons and property in the United States.

While the FAA has issued emergency security procedures under title 14, Code of Federal Regulations (14 CFR) parts 108 and 129 to counter the threat posed by deadly

and dangerous items brought into an aircraft, these actions do not address the threat to certain operations that are currently not subject to mandated security procedures.

Accordingly, the FAA is requiring operators to implement security procedures: (1) by [insert date 5 calendar days after date of filing for public inspection at the Office of the Federal Register] for all aircraft operations in which passengers, crewmembers, or other persons are enplaned from or deplaned into a sterile area regardless of aircraft weight (except for scheduled passenger operations and public charter passenger operations); and (2) when notified, for all aircraft operations conducted under part 91 in aircraft with a maximum certificated takeoff weight exceeding 12,500 pounds. The requirement to implement security procedures for operations conducted in aircraft with a maximum certificated takeoff weight exceeding 12,500 pounds applies regardless of whether passengers, crewmembers, or other persons are enplaned from, or deplaned into, a sterile area.

Persons conducting operations described in 1(a) of this SFAR must implement security procedures by [insert date 5 calendar days after date of filing for public inspection at the Office of the Federal Register]. These operators use sterile areas that also are used by scheduled passenger and public charter passenger operations subject to security measures under 14 CFR parts 108 and 129. It is critical that stringent security be maintained in sterile areas to ensure the safety of the traveling public, and that uniform security measures be applied to all persons in this area. We note that when an operator affected by this rule enplanes passengers, crewmembers, or other persons from, or deplanes those persons into, an existing sterile area, there are screening checkpoints in place and personnel trained to conduct aircraft searches that may be under the control of

other operators. These resources may be used by an operator affected by this rule. Accordingly, this SFAR permits operators to contract for such services to meet the requirements of this rule. We also note that the requirements of paragraph 1(a) of this SFAR do not apply to aircraft operations conducted in a security identification display area (SIDA) as defined in §107.25.

Further, effective on November 14, 2001, private charter operators enplaning passengers from, and deplaning passengers into, sterile areas will be subject to security requirements set forth in a revision to part 108. See "Aircraft Operator Security: Final Rule" (66 FR 37330; July 17, 2001). This SFAR has the effect of advancing the date on which private charter operators must apply security procedures required under revised part 108 to conduct operations into or out of sterile areas. The FAA intends to provide private charter operators conducting these operations portions of the security program that will apply to them under revised part 108. The FAA will also provide portions of the security program to operators of private or corporate aircraft that enplane persons from, or deplane persons into, sterile areas. Affected operators may obtain those portions of the security program that contain the approved procedures by contacting an office specified in "FOR FURTHER INFORMATION CONTACT."

The security program is sensitive security information under part 191 and those portions provided to private charter operators or other persons to meet the requirements of paragraph 1(a) of this SFAR must be protected from unauthorized disclosure. Sensitive security information in the possession of other than those with a need to know may be detrimental to the safety of the traveling public. Accordingly, paragraph 2(b) of this SFAR provides that the operator must restrict the distribution, disclosure, and

availability of information contained in the security procedures approved to comply with paragraph 1(a) of this SFAR to persons with a need to know as described in part 191.

Paragraph 1(b) of this SFAR establishes a process that can be used by the Administrator to rapidly address various types of threats. Security procedures approved to meet paragraph 1(b) of this SFAR will be tailored to meet various threats and could apply to any or all of the operations subject to the rule. Persons conducting operations described in 1(b) of this SFAR are not required to implement security procedures to meet this rule unless notified by the Administrator. The FAA will notify operators by NOTAM when they must apply these security procedures and will make the procedures available to affected operators. We expect threat conditions may change rapidly, and therefore may require the implementation of different security procedures at certain times or for certain operations. The Administrator will require operators to implement these procedures only when it is determined that threat conditions warrant.

All security procedures used to meet the requirements of this SFAR must be approved by the Administrator. Similar to the procedures specified in paragraph 2(a) of this SFAR, the procedures specified in paragraph 2(b) may require that affected aircraft be searched. They may also require that passengers, crewmembers, and other persons and their accessible property (carry-on items) be screened prior to boarding. Screening may include inspection for explosives, incendiaries, and deadly or dangerous weapons, and other measures verifying the identities of passengers, crewmembers, and other persons.

Paragraph 4 of this SFAR specifies that the FAA may issue a waiver if it finds that the operation can be conducted safely under the terms of the waiver. We note, for

instance, that many of the aircraft operations subject to this SFAR are conducted by corporations that may have strong corporate security practices. The FAA may consider whether these or other practices warrant the grant of a waiver.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective immediately upon date of filing for public inspection at the Office of the Federal Register. This action is necessary to prevent a possible imminent hazard to aircraft and persons and property within the United States.

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 determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. The FAA is not able to assess whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. The FAA recognizes that this rule may impose significant costs on some operators, including delaying their operations until they are able to carry out the security procedures. The current security threat requires, however, that operators take all necessary measures to ensure the safety and security of their operations.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR 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. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995 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 SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

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.

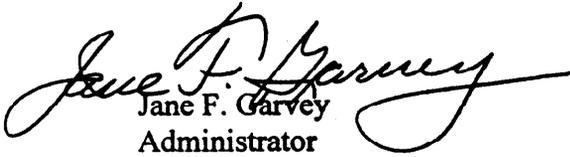
notified by the Administrator. The FAA will notify operators identified in 1(b) of this SFAR by NOTAM when they must implement security procedures.

4. Waivers. The Administrator may permit a person conducting an operation identified in paragraph 1 of this SFAR to deviate from the provisions of this SFAR if the Administrator finds that the operation can be conducted safely under the terms of the waiver.

5. Delegation. The authority of the Administrator under this SFAR is also exercised by the Associate Administrator for Civil Aviation Security and the Deputy Associate Administrator for Civil Aviation Security.

6. Expiration. This Special Federal Aviation Regulation shall remain in effect until further notice.

Issued in Washington, DC on October 1, 2001.


Jane F. Garvey
Administrator

