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DEPT. OF TRANSPORTATION
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February 26, 2002

Re: Docket Number FAA-2001-11032 -19

Dear Sir or Madam:

The Security Requirements Of 14 CFR 121.313(f) Should Be Extended All-Cargo Planes.

In light of the recent amendments to the Aviation and Transportation Security Act (ATSA), recently passed by Congress, and the circumstances under which that legislation was passed, the new rule requiring fortification of flightdeck doors on passenger aircraft should be extended to include all-cargo planes. Although the Administrator is granted wide discretion in determining whether all-cargo aircraft will come under the purvey of such safety rules and although 49 U.S.C.A. §40109(b) allows the Administrator to grant exceptions from the safety regulations of 49 U.S.C.A. §44903, which includes the regulation at issue, the Administrator should not exempt all-cargo air carriers from this rule. Thus, a carrier should be required to equip all-cargo aircraft with a fortified door between the pilot's compartment and the main compartment. Such a requirement is necessary to meet the policy concerns inherent in the regulation of aviation programs and to ensure the safety and security of the aircraft. Furthermore, the benefits of this application of the regulation far outweigh the costs.

The General Policy Considerations Of Aviation Regulation And The Specific Policy Considerations Of Promulgation Of This Rule Require That The Regulation Be Applied To All-Cargo Airplanes

The general policy of aviation regulation provides, among other things, that when carrying out the provisions of Title 49 to regulate aviation, the Secretary of Transportation will consider “assigning and maintaining safety as the highest priority in air commerce.” 49 U.S.C.A. §40101(a)(1). The secretary must “recogniz[e] the clear intent, encouragement, and dedication of Congress to further the highest degree of safety in air transportation and air commerce, and [] maintain the safety vigilance that has evolved in air transportation and air commerce and has come to be expected by the traveling and shipping public.” Id. at (a)(3).

In light of the events of September 11, 2001, the “evolution” of safety vigilance culminated in the passage of the amended ATSA, in which Congress in Section 104(a)(1)(B) orders the Administrator of the FAA to “requir[e] the strengthening of the flight deck door and locks of aircraft [] that are required to have a door between the passenger and pilot compartments under title 14, Code of Federal Regulations.” Although the Administrator retains discretion to decide which aircraft require a flight deck door under 14 CFR, the Administrator also is granted the authority to require flight deck doors in all-cargo planes under Section 104(a)(2) of the amended Act. This section allows the Administrator to “take such other action, including [] flight deck redesign, as may be necessary to ensure the safety and security of the aircraft.”

Clearly, the amended Act displays Congress’ intent to heighten security measures throughout the aviation industry. Just as clearly, the rule of 14 C.F.R. 121.313(f), promulgated by the FAA in response to Section 104(a)(1)(B), requiring fortified flightdeck doors, is intended to avoid the recurrence of an event like that of September 11, 2001. That tragedy demonstrated the potential damage from using an aircraft as a weapon of mass destruction; it also demonstrated the vulnerability of pilot’s compartments to unauthorized access, thus greatly increasing the chances of aircraft being used as a weapon. Since the attacks, although some carriers voluntarily retrofit their fleets with improved flightdeck doors, many carriers still do not provide adequate protections against unauthorized intrusions into the pilot’s compartment.

**Mandated Fortification Of Flight Deck Doors In All-Cargo Planes Is Necessary To Ensure
The Safety And Security Of The Aircraft.**

The primary purpose of Congress' amendments to the ATSA, the authority for the new rule, is to provide for heightened safety in the aviation industry, particularly by ensuring that no other aircraft will be open for use as a weapon. Although the events of September 11, 2001 were made more tragic due to the presence of passengers on the airplanes, the loss of life and property came primarily because of the fuel capacity and size of the airplanes used. Many all-cargo planes fit those same specifications-- in fact, Boeing markets all-cargo planes which are directly related to the models 757 and 767 used on 9/11-- and can, thus, produce similarly tragic results if taken over by force and used offensively.

Moreover, all-cargo planes may be more attractive to persons intending to use an airplane as a weapon. In light of the heightened security measures taken by within the air travel industry and air travelers' heightened awareness of suspicious persons and activity, the potential for success has already been diminished for recurrence of acts similar to those of 9/11. This is evidenced by United flight 93 which, due to interference of passengers on the plane, was diverted from its intended target and caused to crash in Pennsylvania; the seizure of Richard Reid by passengers; and other instances when passengers blocked the flightdeck door or otherwise incapacitated a person on a commuter flight after suspicious activity was perceived. The mere presence of passengers on an airplane is deterrence, in and of itself, from an attempt to overtake a cockpit and use a plane as a weapon. Those planes, like all- cargo planes, that do not have passengers to provide onboard resistance are left vulnerable to unlawful commandeering. As noted in other comments submitted during this rulemaking period, the potential for stowaways in a cargo hold plus the lack of adequate protection of the pilot's compartment could be disastrous. In these circumstances, a fortified flightdeck door serves ass the only deterrent to a person intent on using an airplane as a weapon.

The Benefits of A Broader Application of the Regulation Far Outweigh the Costs

Because Congress explicitly provided for funding the fortification of cockpit doors, the FAA should not allow exemptions for operators of all-cargo planes. Several comments regarding the new rules have sought exemption due to the potential hardships the mandated measures may

have on small businesses. The postulated hardships mostly involve the financial burden inherent in complying with the new rules. As noted in the call for comment at 67 FR 2126, “[t]he degree to which small entities can ‘afford’ the cost of compliance is determined by the availability of financial resources.” The financial burden of compliance should hardly be considered an issue, however, as Congress has explicitly provided for funding to “fortify cockpit doors to deny access from the cabin to the pilots in the cockpit.” 49 USCA §48301(b)(1).

According to the call for comments, the costs associated with refurbishing cockpit doors to part 121 operators, that group that includes all-cargo operators, is \$107.1 - \$ 140.2 million over a period of ten years. This estimate includes the average cost of retrofitting a fortified flightdeck door and the additional fuel costs created by the heavier structure of the plane. Amended Section 48301(b) sets the appropriation for fortifying cockpit doors in fiscal year 2002 at \$500,000,000. Thus, even at its most expensive, compliance with the regulation consumes less than 1/3 of the year’s appropriation, leaving more than 2/3 to finance the other security measures specified for funding. Section 48301 also allows for additional funding in the succeeding three years. Because the provision of fortified doors is a one-time expense, funding in succeeding years can be used entirely for security measures other than cockpit doors. The burden is lessened even more by the ability to retro fit a fortified door overnight, as this practice precludes the need to take aircraft out of service for an extended period of time and allows an air carrier to conduct business as usual.

Regardless of the cost of retrofitting fortified doors, the FAA has noted that the figure is overshadowed by the costs associated with a terror attack involving airplanes used as weapons. An across-the-board rule is essential to ensure a consistently high level of aviation security and prevent the use of aircraft as weapons.

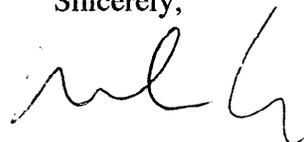
Limits on the application of the regulation

As it can in the context of passenger aircraft, the FAA can probably “tak[e] into consideration such aircraft operating in regions where there is minimal threat to aviation security or national security.” See ATSA §104(c) at 115 Stat. 597, 606. In locations where there is a minimal probability of danger of the use of an aircraft as a weapon, the FAA may adopt looser regulations

regarding fortified cockpit doors. Otherwise, the policy considerations involved in aviation regulation, the deterrent effect, and the overwhelming imbalance of safety benefits over financial burden compels extension of the regulation under 14 CFR 121.313(f) to require fortified flightdeck doors on all-cargo aircraft.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "ML", written in a cursive style.

Michael Leavey

A large, handwritten mark or flourish in black ink, consisting of a single, continuous, sweeping line that curves upwards and then downwards.