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# Part II

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 129**

**Security Programs of Foreign Air Carriers; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 129**

**[Docket No. FAA–1998–4758; Notice No. 98–17]**

**RIN 2120–AG13**

## Security Programs of Foreign Air Carriers

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM); notice of public meeting.

**SUMMARY:** The FAA proposes to amend the existing airplane operator security rules for foreign air carriers and foreign operators of U.S. registered aircraft. The proposed rule would implement provisions of the Antiterrorism and Effective Death Penalty Act of 1996. The proposed rule would condition the Administrator's acceptance of a foreign air carrier's security program on a finding that the security program requires adherence to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to. 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. In addition, the FAA is announcing a public meeting on the NPRM to provide an additional opportunity for the public to comment.

**DATES:** Comments must be submitted on or before March 23, 1999.

A public meeting will be held on February 24, 1999.

**ADDRESSES:** The public meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW, Washington, D.C., in the main auditorium on the 3rd Floor. *Registration:* 8:30 a.m.; *Meeting:* 9:00 a.m.–5:00 p.m.

Comments on this proposed rulemaking should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4758, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays. Written comments to the docket will receive the same consideration as statements made at the public meeting.

Comments that include or reference national security information or sensitive security information should not be submitted to the public docket. These comments should be sent to the following address in a manner consistent with applicable requirements and procedures for safeguarding sensitive security information: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point, Docket No. FAA–1998–4758, 800 Independence Avenue, SW., Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** Moira A. Lozada, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–5961.

Requests to present a statement at the public meeting on the Security Programs of Foreign Air Carriers NPRM and questions regarding the logistics of the meeting should be directed to Elizabeth I. Allen, Federal Aviation Administration, Office of Rulemaking (ARM–105), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–8199; fax (202) 267–5075.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this document may be changed in response to comments received. Comments received on this proposal will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. However, the Assistant Administrator has determined that air carrier security programs required by parts 108 and 129 contain sensitive security information. As such, the availability of information pertaining to airport security programs is governed by 14 CFR Part 191 (Withholding Security Information from Disclosure Under the Air Transportation Security Act of 1974).

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–1998–4758.'' The postcard will be date-stamped and mailed to the commenter.

In order to give the public an additional opportunity to comment on the NPRM, the FAA is planning a public meeting.

Requests from persons who wish to present oral statements at the public meeting on the Security Programs of Foreign Air Carriers NPRM should be received by the FAA no later than February 17, 1999. Such requests should be submitted to Elizabeth I. Allen as listed in the section titled **FOR FURTHER INFORMATION CONTACT.** Requests received after February 17, will be scheduled if time is available during the meeting; however the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

### Public Meeting Procedures

The public meeting will be held on February 24, 1999, at the Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC, in the main auditorium on the 3rd Floor. *Registration:* 8:30 a.m.; *meeting:* 9:00 a.m.–5:00 p.m.

The following procedures are established to facilitate the public meeting on the NPRM.

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be

necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket No. FAA–1998–4758). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the interim final rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the Security Programs of Foreign Air Carriers is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. The FAA may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA.

10. The meeting is designed to solicit public views on the NPRM. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

## Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Government Printing Office's webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, D.C. 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## Background

### *The Current FAA Security Program for Foreign Air Carriers*

The FAA's present Civil Aviation Security Program was initiated in 1973. Part 129 of Title 14 of the Code of Federal Regulations governs the operations of foreign air carriers that hold a permit issued by the Department of Transportation (DOT) under 49 U.S.C. Subtitle VII, section 41301 or that hold another appropriate economic or exemption authority issued by DOT.

The foreign air carrier security regulations were promulgated in 1976 (41 FR 30106; July 22, 1976). In 1989, the FAA issued an amendment to § 129.25(e) (41 FR 11116; March 16, 1989) that requires foreign air carriers flying to or from the U.S. to submit their security programs to the FAA for acceptance by the Administrator. The submitted programs must describe the procedures, facilities, and equipment that foreign air carriers will use to ensure the security of persons and property traveling in air transportation. The rule applies to foreign air carrier operations at U.S. airports and at foreign airports that are a last point of departure before landing in the United States.

For airports that are last points of departure to the United States and for which a government authority on the carrier's behalf performs certain security procedures, the FAA's policies allow the foreign air carrier to refer the FAA to the appropriate foreign government authority that performs those security procedures (54 FR 25551; June 15, 1989).

Currently, 171 foreign air carriers are required to have a security program that is acceptable to the Administrator. The programs contain sensitive security procedures and are not available to the public, in accordance with 14 CFR Part 191 (41 FR 53777; December 9, 1976), which establishes the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974 (Public Law 93–366).

### *Recent Changes To Tighten Security*

The Aviation Security Improvement Act of 1990 (Pub. L. 101–604), enacted on November 16, 1990, after the bombing of Pan Am Flight 103 (December 1988), mandated many changes to air carrier security programs. It was the intent of Congress to ensure that all Americans would be guaranteed adequate protection from terrorist attacks on international flights arriving in or departing from the United States, regardless of the nationality of the air carrier providing the service. The 1990 Act required the FAA to ensure that foreign air carriers operating under security programs provide a similar level of security to that of programs required of U.S. carriers. Accordingly, current § 129.25(e), as amended in 1991 (56 FR 30122; July 1, 1991), requires that a foreign air carrier's security program must provide passengers with a level of protection similar to the level provided by U.S. air carriers serving the same airports.

Since 1990, the meaning of the term ''similar'' has been considered by some to be ambiguous. On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132) (the Antiterrorism Act) was enacted. Subtitle B, section 322 of that Act, amends 49 U.S.C. section 44906, to clarify the ambiguous term by requiring the following:

> The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator shall not approve a security program of a foreign air carrier under section 129.25, or any successor regulation, unless the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires air carriers serving the same airports to adhere to. The foregoing requirement shall not be interpreted to limit the ability of the Administrator to impose additional security measures on a foreign air carrier or an air carrier when the Administrator determines that a specific threat warrants such additional measures. The Administrator shall prescribe regulations to carry out this section.

In accordance with the Antiterrorism Act, Congress intends that the FAA will establish a level of necessary security measures for international flights from each airport that both foreign and U.S. carriers will be required to employ.

Moreover, Congress does not in any way intend the Antiterrorism Act to restrict the ability of the FAA to impose additional measures on any airline at any time that a particular threat warrants additional measures. (Conference Report 104–518, Terrorism Prevention Act, pg. 113–114, Government Printing Office, Washington, D.C., April 1996.)

This notice proposes to amend § 129.25(e) to reflect the recent legislation by stating that a security program of a foreign air carrier is acceptable only if the Administrator finds that the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to.

*Role of the European Civil Aviation Conference*

The European Civil Aviation Conference (ECAC) requested, and was granted, an opportunity to present to the Associate Administrator for Civil Aviation Security its observations on the underlying issues and potential solutions associated with FAA implementation of section 322 of the Antiterrorism Act.

In October 1996, the ECAC expressed disagreement with several underlying issues associated with the proposed revision to part 129. First, according to ECAC, the implementation of the proposed revision to part 129 is the ''unequivocal imposition of extraterritorial legislation.'' Instead of using domestic legislation to adjust implementation of aviation security, the ECAC believes enhanced security cooperation can be best achieved through consultation. The ECAC voiced its concern that the implementation of revisions of part 129 as required by the domestic legislation will lead to divisiveness among countries.

Second, the ECAC believes that amendments to rulemaking and security program requirements associated with part 129 have historically been tied to changes in the nature and scope of the threat posed to the security of the aircraft. This proposal does not appear to be consistent with a threat-based standard, according to the ECAC.

Third, ECAC analysis shows that practical and physical implementation of the security measures associated with the proposed revision to part 129 is ''impossible'' at many European airports. The ECAC estimates that the costs associated with the implementation of the proposed revisions to part 129 at a single airport in the Netherlands would be prohibitive.

Fourth, the ECAC is attempting to implement comprehensive security measures at all airports. In the estimation of the ECAC, the implementation of ''identical measures'' would inhibit such a comprehensive approach by introducing requirements generating distinctive security requirements to a selected portion of air carriers.

Finally, the ECAC expressed concern that the implementation of security measures ''identical'' to those required of U.S. air carriers at last points of departure to the U.S., may have the unintended effect of lowering the current security measures of some foreign air carriers. For example, a non-European air carrier operating an originating flight from a region with political instability or strife would need to implement extraordinary security measures. These security measures reflect the higher associated threat to its aircraft than the threat associated with a U.S. air carrier not originating operations from the same region, but departing the same airport for the United States.

The FAA values the opportunity to have heard the preliminary observations of the ECAC regarding the legislative mandate for ''identical security measures.'' Through such frank discussions, as well as from comments received from this Notice, the FAA anticipates the assistance of the affected parties to implement the Congressional mandate. The concerns of the ECAC are addressed in the following section.

**Discussion of the Proposal in Response to ECAC Concerns**

Questions have been raised about the implementation of this proposed rule. Specifically, certain foreign governments have expressed concern about the FAA seeking security programs from foreign air carriers which would include the procedures at foreign airports where government authorities implement security measures. These governments believe that the more appropriate source of security programs for these operations is the responsible foreign government, not the foreign air carriers.

The proposed rule would be consistent with U.S. international obligations. As the FAA has stated in the past, the applicability of this rule to foreign air carrier operations at foreign airports that are a last point of departure to the United States is necessary for the FAA to assure that foreign air carrier operations into the U.S. territory are secure. This rule is an exercise of authority recognized in the Convention on International Civil Aviation (Chicago Convention) and U.S. air transport agreements and is not intended to undermine the sovereignty of other nations. Under the Chicago Convention and U.S. bilateral air transport agreements, foreign air carriers are required to comply with the laws and regulations governing admission to or departure from the United States and the operation and navigation of those aircraft while within U.S. territory. The provisions of the proposed rule are within the scope of those laws and regulations. Moreover, the implementation of this proposed rule will be done in accordance with these international obligations.

Historically, the aviation community implemented security measures based upon the assumption that the threat to an aircraft was directly related to the specific nationality of the air carrier. The implication of the Act is that the terrorist threat to U.S. interests relates not only to U.S. air carriers but also to air carriers of any nationality engaged in commerce with the United States. Therefore, security measures for U.S. and foreign air carriers operating at last points of departure to the U.S. or from airports in the United States should be identical.

In accordance with the Conference Report on the Act, the FAA intends to identify Annex 17 to the Chicago Convention as the baseline of necessary security measures required of foreign air carrier operations to and from the United States. Currently, the majority of foreign air carrier flights to and from the United States operate under this standard.

Under existing authority, the FAA will review and update the security requirements that need to be levied on U.S. carriers. This will be done on a country-by-country basis, and in some cases an airport-by-airport basis within a country. To implement this proposed rule, the FAA would then impose identical security measures on all foreign carriers flying from those airports as last points of departure to the United States.

The FAA has found that similar levels of protection, for practically all foreign carriers' flights from the United States, and most flights from overseas, have been provided by meeting the standards of Annex 17. However, the FAA's assessments in the past of terrorist threats have indicated the necessity for some foreign flag carriers to implement additional measures to afford a level of protection similar to that of U.S. carriers.

The foreign flag carriers may initiate implementation of the additional measures based on their own national threat assessments, or the foreign air carriers and their respective national authorities may agree to the implementation of additional security measures following consultations with the FAA.

If, however, specific temporary threats affect a particular foreign air carrier or U.S. air carrier, the FAA may require it to implement additional appropriate security measures. In such instances, the FAA intends that any additional security measures will not apply to airlines that are not threatened.

The FAA does not intend to diminish the security measures of any foreign air carrier that may currently exceed the security measures required of U.S. air carriers serving the same airport and the proposed rule language so states.

The FAA will consult the foreign government authority whenever changes to security measures are deemed necessary at a foreign airport.

**Proposed Implementation of the Proposal**

The FAA would initiate implementation of the ''identical measures'' provisions of the Antiterrorism and Effective Death Penalty Act of 1996 by amending § 129.25(e) and by amending the foreign air carriers' security programs. The FAA anticipates publication of the final rule in the **Federal Register** by the end of June 2000. The effective date of the regulation would be at least a month from publication.

The final stage of implementation of a final rule would occur with amendment to the security programs of the regulated foreign air carriers. Toward that end, the FAA anticipates development of specific security amendments in a parallel process to the public rulemaking. The process will be predicated on a revalidation of the currently required security measures for air carriers. The FAA will retain all of the security measures for which there is a continuing security justification. The FAA will evaluate how identical measures may be implemented by foreign air carriers in the most effective manner from a security standpoint. Special attention will be paid to the more complex measures, such as profiling.

The FAA has devoted considerable resources toward developing security standards and regulations as well as the type of equipment that helps to keep international civil aviation secure for not only the citizens of the United States, but for all persons using the international civil aviation system. The FAA believes that it is through such continued international cooperation that all flights can be more secure in an increasingly dangerous world.

**Regulatory Evaluation Summary**

The FAA has determined that this proposed rule is a ''not significant rulemaking action,'' as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this proposed rule.)

Because the Antiterrorism Act prohibits the Administrator from approving any security program of a foreign air carrier ''unless the security program requires the foreign air carrier * * * to adhere to identical security measures'' that apply to U.S. carriers serving the same airports, the FAA has determined that there are not any potentially effective and reasonably feasible alternatives to the proposed regulation that need to be assessed. However, the FAA has drafted the proposed rule to permit flexibility in two respects. It would allow a foreign air carrier to exceed the security measures required of U.S. carriers. The proposal also would permit a foreign air carrier to refer the FAA to appropriate foreign government authorities that perform security functions on the carrier's behalf in lieu of specifying the procedures.

*Cost of Compliance*

The FAA has performed an analysis of the expected costs and benefits of this regulatory proposal. In this analysis, the FAA estimated costs for a 10-year period, from 1998 through 2007. As required by the Office of Management and Budget (OMB), the present value of this stream was calculated using a discount factor of 7 percent. All costs in this analysis are in 1995 dollars.

To calculate the costs, the FAA examined the differences between the Air Carrier Standard Security Program (ACSSP), which sets the security standards and procedures that all certificated U.S. air carriers use, and the Model Security Program (MSP), which sets the security standards and procedures that all certificated part 129 (foreign) air carriers use. These differences were examined at both domestic airports and foreign airports that serve as the last point of departure (LPD) to the U.S. Due to the sensitive nature of these documents, most of these specific differences cannot be discussed in this economic summary or the regulatory analysis (both of which are public documents). The Associate Administrator for Civil Aviation Security (ACS–1) has determined that this information is sensitive to Civil Aviation Security operations; the disclosure or dissemination of this information is prohibited in accordance with 14 CFR Part 191. Sensitive security details related to the cost section of this Regulatory Evaluation are available to regulated foreign air carriers and their national regulatory authorities upon request. A request made by the foreign air carrier should be directed to its Principal Security Inspector (PSI); requests by the appropriate national regulatory authority should be made to the FAA's Civil Aviation Security Liaison Officer (CASLO) for that country.

Total ten year costs sum to $1.19 billion (net present value, $826 million). Given that in 1997, 42.3% of passengers on foreign flag air carriers were U.S. citizens, the impact on the U.S. economy would average $50.7 million a year.[1] Hence, because this proposed rule would not impose costs exceeding $100 million annually on the U.S. economy, this proposed rule is not a ''significant regulatory action'' as defined by Executive Order 12866 (Regulatory Planning and Review).

Because security requirements at each location are subject to change, it is impossible to know, at any given time, which aviation security procedures foreign air carriers are performing and on which flights. Accordingly, all differences were calculated assuming that no foreign air carrier is currently performing any security functions in excess of the minimum required under the MSP. This may lead to an overstatement of costs, as some carriers may already perform some functions not currently required.

The FAA consulted the Official Airline Guide (OAG) to determine the number of scheduled part 129 flights, with more than 60 seats, from U.S. gateway airports and from foreign last point of departure airports where U.S. air carriers also operate. An annual growth rate of 5.2% was applied to these flights over the ten year period of time. The number of passengers affected was calculated by multiplying the average number of passengers per U.S. international flight by the number of international flights. The analysis also assumed an average of 2 checked bags and 2 carry-on bags per international passenger.

[1] This is calculated by multiplying 42.3% times $1.19 billion and dividing by ten.

Foreign air carriers would need additional equipment and personnel for these new requirements. Equipment needs were based, in part, on peak hour requirements at U.S. airports. In the absence of information about wages, employment growth rates, and annual employee turnover rates in each individual country, this analysis used the equivalent rates of U.S. employees; this may overstate costs, assuming that U.S. wages exceed those in most other countries. All hourly wage rates were increased by 26% to account for all fringe benefits. Since additional training would be needed for some of the new proposed requirements, the number of additional classes was calculated assuming 20 people per class. The FAA also assumed, in most cases, an average of one supervisor for every nine employees and that the supervisor salary was, on average, 20 percent higher than the employee salary.

The FAA is requesting information on one of the new measures that could result from the proposal. This measure would limit air carriers to accepting baggage only inside the terminal building for flights to the U.S. from foreign LPD's where U.S. air carriers also operate. Currently, the FAA does not have adequate data on which air carriers would be affected by such a measure and no data on the additional terminal capacity (facilities, labor, etc.) that would be necessary to accommodate the checked baggage that is currently handled outside the airport terminal. Additional information needed also includes the percent of passengers who currently check their baggage outside the terminal building.

The FAA also requests cost information on any other airport or terminal space issues that could result from this proposed rule.

*Analysis of Benefits*

The primary benefit of the proposed rule would be to strengthen air carrier security and the safety of all passengers on foreign air carriers. Aviation security is achieved through an intricate set of interdependent requirements. It would be difficult to separate out any current existing requirement or any proposed change, and identify to what extent any requirement or any change, alone, would have on preventing a criminal or terrorist act in the future.

Since 1987, the FAA has initiated rulemaking and promulgated security-related amendments that have amended parts 107 (airport operator security), 108 (air carrier security), and 129 (foreign air carriers). These amendments have added to the effectiveness of all these parts by addressing certain aspects of the total security system directed at preventing criminal and terrorist activities.

Some benefits can be quantified—prevention of fatalities and injuries and the loss of aircraft and other property. Other benefits, no less important, are probably impossible to quantify. Since the mid-1980's, the major goals of aviation security have been to prevent bombing and sabotage incidents. Preventing an explosive or incendiary device from getting on board an airplane is one of the major lines of defense against an aviation-related criminal or terrorist act. In the ten year period from 1986 through 1995, eleven separate explosions occurred on commercial airlines. These eleven incidents of sabotage (of which nine occurred on foreign airlines) caused a total of 722 fatalities and at least 112 injuries. In addition, in December 1993, a hijacking incident occurred on a U.S.-bound foreign airline.

An example of the type of explosion that aviation security is trying to prevent is the Pan Am 103 tragedy that occurred over Lockerbie, Scotland in 1988. A conservative estimate of the costs associated with this accident is $1.4 billion.

*Comparison of Costs and Benefits*

This proposed rule would cost approximately $1.19 billion (net present value, $826 million) over ten years. This cost needs to be compared to the possible tragedy that could occur if an explosive or incendiary device were to get onto an airplane and cause a catastrophe. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to twelve American airplanes being destroyed by explosive devices in Asia in early 1995.

Congress has mandated that the FAA take action to require security measures identical to those required of U.S. air carriers for all foreign air carrier operations to and from any U.S. airport where U.S. air carriers operate. Congress, which reflects the will of the American public, has determined that this proposed regulation is in the best interest of the nation.

**Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended May 1996, requires regulatory agencies to review rules that may have a ''significant economic impact on a substantial number of small entities.'' The Small Business Administration suggests that ''small'' represent the impacted entities with 1,500 or fewer employees.

The proposed amendments to the regulations would not apply to any small domestic air carriers and, therefore, the FAA has initially determined that they would not have a significant impact on a substantial number of small entities.

**International Trade Impact Statement**

These proposed regulations would make the security requirements between U.S. and foreign air carriers identical. Foreign air carriers would incur costs. However, mandating identical security measures for both foreign and domestic operators would give neither U.S. nor foreign carriers a competitive advantage; both U.S. and foreign carriers would have to follow identical security measures to accomplish passenger and aircraft safety and security.

The international trade implications of this rulemaking are difficult to predict at this time. A number of foreign governments expressed strong opposition to the legislation, on both legal and policy grounds, during and after its passage by the Congress. Officials of the European Civil Aviation Conference (ECAC) have informed the FAA that its members strongly oppose any regulatory action to implement the statute. This rulemaking could be a factor in future bilateral negotiations, but any attempt to quantify possible impacts on U.S. carriers would be premature and speculative.

**Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for

inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental mandates or private sector mandates.

**Federalism Implications**

The rule proposed herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Paperwork Reduction Act**

In this proposed amendment to part 129—Operations: Foreign Air Carriers and Foreign Operators of U.S. Registered Aircraft Engaged In Common Carriage, § 129.25 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of this proposed section to the Office of Management and Budget (OMB) for its review.

The information to be collected is needed to estimate the costs to foreign air carriers with accepted security programs: (1) to check radiation leakage on x-ray equipment used for property security screening at part 107 airports at least annually; (2) to report aircraft piracy as part of the required security program; and (3) to maintain training records for personnel involved in security activities.

It is estimated that this proposal will affect 171 part 129 aircraft operators annually. The estimated annual reporting and recordkeeping burden hours is estimated to be 5,193 hours and is broken down as follows:

(1) Reporting and recordkeeping requirements for foreign air carriers' security programs requiring:

(i) Preparation of new security program documentation—6 hours for each new part 129 air carrier operator; and,

(ii) Necessary security amended program documentation—1.5 hours for each part 129 air carrier operator.

(2) Maintaining copies and availability of the security programs for use by civil aviation security inspectors of the FAA upon request—1 hour for each part 129 air carrier operator.

(3) Reporting and record keeping requirements for the training records for crew members, air carrier security representatives, and individuals performing security-related functions—24 hours for each part 129 air carrier operator. (This includes preparation and record keeping of training records for personnel applying extraordinary security requirements for flights departing from designated overseas locations.)

(4) Record keeping by the air carrier of each x-ray survey conducted for use by FAA officials upon request—.5 hours for each part 129 air carrier operator.

(5) Reporting of acts or suspected acts of aircraft piracy to the FAA. This report is not normally in written form and it is determined to be a request for assistance—.2 hours for each part 129 air carrier operator.

Individuals and organizations may submit comments on the information collection requirements by January 22, 1999, to the address for comments listed in the **ADDRESSES** section of this document. These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the equality, utility, and clarity of the information to be collected can be enhanced; and, how the burden of the collection can be minimized.

**Conclusion**

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

**List of Subjects in 14 CFR Part 129**

Air carriers, Aircraft, Airports, Aviation safety, Weapons.

**The Proposed Amendment**

In consideration of the foregoing the Federal Aviation Administration proposes to amend part 129 of title 14 of the Code of Federal Regulations (14 CFR part 129) as follows:

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

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

**Authority:** 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

2. Section 129.25 is amended by revising the introductory text of paragraph (e) to read as follows:

**§ 129.25 Airplane security.**

* * * * *

(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 is acceptable only if the Administrator finds that the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures 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. The following procedures apply for acceptance of a security program by the Administrator:

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Issued in Washington, D.C., on November 13, 1998.

**Anthony Fainberg,**

*Director, Office of Civil Aviation Security Policy and Planning.*

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