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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA-2005-22449; Amendment No. 121-334]

RIN 2120-A116

Flightdeck Door Monitoring and Crew Discreet Alerting Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends Federal Aviation Administration (FAA) regulations by requiring operators of passenger-carrying transport category airplanes used in domestic, flag, and supplemental operations to have a means for flightcrew to visually monitor the door area outside the flightdeck. This means will allow the flightcrew to identify persons requesting entry into the flightdeck and detect suspicious behavior or potential threats. This final rule also amends FAA regulations to require that, for operations requiring the presence of flight attendants, the flight attendants have a means to discreetly notify the flightcrew of suspicious activity or security breaches in the cabin. This final rule addresses standards adopted by the International Civil Aviation Organization (ICAO) following the September 11, 2001 terrorist attacks.

DATES: Effective October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, Air Transportation Division, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8166, facsimile (202) 267-9579, e-mail: joe.keenan@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- (2) Visiting the FAA's Regulations and Policies web page at http://www.faa.gov/regulations_policies/; or

(3) Accessing the Government Printing Office's web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending 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 rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

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. If you are a small entity and you have a question regarding this document, you may contact the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing:

- Minimum standards required in the interest of safety for the design and performance of aircraft, and;
- Regulations for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

This regulation is within the scope of that authority because it prescribes:

- New standards for the safe operation of transport category airplanes, and;
- Practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security.

Background

Following the terrorists' acts on September 11, 2001, the Office of the

Secretary of Transportation, Congress, and the FAA took several long term actions to prevent hijackings on passenger-carrying airplanes used in air carrier service. As part of those actions, the FAA published the notice of proposed rulemaking (NPRM), "Flightdeck Door Monitoring and Crew Discreet Alerting Systems" (70 FR 55492; September 21, 2005). That NPRM proposed requiring operators of passenger-carrying transport category airplanes used in domestic, flag, and supplemental operations to have a means for flightcrew to visually monitor the door area outside the flightdeck. The NPRM also proposed that, for operations requiring the presence of flight attendants, flight attendants have a means to discreetly notify the flightcrew of suspicious activity or security breaches in the cabin. The proposed changes addressed standards adopted by the International Civil Aviation Organization following the September 11, 2001 terrorist attacks.

Before issuing the NPRM, the FAA participated in the rapid response teams (RRTs) created by the Secretary of Transportation to develop recommendations for improving security within the national aviation system. One team was tasked with developing recommendations to improve security at the nation's airports; the other team was tasked with developing recommendations for aircraft integrity and security, with a specific focus on cockpit access.

Members of the aircraft integrity and security RRT included representatives from American Airlines, the Boeing Company, the Association of Flight Attendants, and the Air Line Pilots Association. Members of the Department of Transportation and the FAA supported the security RRT. In addition to regular team meetings, this RRT met with representatives from the airline operators, pilot and flight attendant associations, and parts manufacturers. The security RRT also received numerous recommendations from the public as the result of an e-mail address on the FAA Web site.

On October 1, 2001, the RRT for aircraft integrity and security presented its final report to the Secretary of Transportation. The report made 17 recommendations. One recommendation recognized the need for reinforced flightdeck doors and severe limitations on flightdeck entry. Anticipating the new severe limitations on flightdeck entry, the RRT made several recommendations for flightdeck access. These included:

- Flight attendants must have a method for immediate notification to

the flightcrew during a suspected threat in the cabin.

- The flightcrew needs the capability to monitor the area outside the flightdeck door.

On November 19, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) (Public Law 107-71). Section 104(b) of the ATSA states that the FAA Administrator may develop and implement methods—

(1) To use video monitors or other devices to alert pilots in the flight deck to activity in the cabin, except that use of such monitors or devices shall be subject to nondisclosure requirements applicable to cockpit video records under [49 U.S.C. § 1114(c)], * * * and

(3) To revise the procedures by which cabin crews of aircraft can notify flight deck crews of security breaches and other emergencies, including providing for the installation of switches or other devices or methods in an aircraft cabin to enable flight crews to discreetly notify the pilots in the case of a security breach occurring in the cabin.

The NPRM responded to the RRT's findings and to the legislation passed by Congress.

Summary of NPRM

The FAA proposed to add the new paragraph (k) to § 121.313. This requirement would apply to all passenger-carrying airplanes that must have a lockable flightdeck door pursuant to 14 CFR 121.313(f). Operators of these airplanes must be able to monitor the area outside the flightdeck door from the flightdeck. This measure would provide the means to allow the flightcrew to identify persons requesting entry and to detect suspicious behavior and potential threats.

The FAA proposed to add the new § 121.582 that would require all passenger-carrying airplanes required to have a lockable flightdeck door to have an approved means by which the cabin crew can discreetly notify the flightcrew in the event of suspicious activity or security breaches in the cabin.

The FAA also proposed to add the new § 121.584. This would prohibit unlocking or opening the flightdeck door unless a person authorized to be on the flightdeck uses an approved audio procedure and an approved visual device to verify that: (1) The area outside the flightdeck door is secure; and (2) if someone outside the flightdeck door is seeking to have the flightdeck door opened, that person is not under duress.

Summary of the Comments

The FAA received 88 comments. Of these comments, 45 stated strong support for the rule; only 5 opposed the

rule. Of the 45 stating strong support for the rule, 6 commenters seemed to support the rule because they thought a video camera was the only means to comply with the requirement to monitor the flightdeck door. They may not have supported the proposal had they realized that video is not the only means to satisfy the requirement. The remaining comments did not directly express support for or opposition to the rule. Many comments included suggested changes, as discussed below.

I. Discussion of the Final Rule

A. Means of Monitoring the Area Outside the Flightdeck

The final rule sets a performance standard whereby air carriers must choose a method of compliance to view the area outside the flightdeck door. The performance standard may be met using a video monitoring device, a peephole or viewport, or other viewing device. The method of compliance must include procedures and training in existing part 121 requirements for unlocking the flightdeck door and operating all of the associated equipment for use in operations.

Several commenters including Boeing, Coalition of Airline Pilots Associations (CAPA), Association of Professional Flight Attendants (APFA), the Regional Airline Association (RAA), the Air Transport Association (ATA), and the Allied Pilots Association (APA) supported the use of current technology and procedures. The APA and CAPA stated that in the few cases when there is a need to open the flightdeck door, established procedures allow safe and secure passage from the flightdeck. Those procedures have stood the test of time and have a credible record of effectiveness. The RAA noted that nearly all their members presently use the peephole/audio method of confirming that the area outside the flightdeck door is secure before opening the door during flight. They saw no additional security benefit to using a video camera system over using their current peephole system to monitor the area outside the flightdeck door. The APFA and Boeing supported a viewing device in the flightdeck door that allows for the door and forward cabin to be monitored.

Several of the commenters thought that the FAA had proposed to require the use of video cameras to monitor the area outside the flight deck door and require wireless devices for discreet communication between cabin crewmembers and flight crewmembers. In particular, the Air Crash Victims Families Group and Families of

September 11 expressed support for a requirement to install video cameras to monitor the area outside of the flight deck door. They also supported requiring wireless devices by the cabin crew to alert the flightdeck crew of a potential problem.

The FAA developed this rule over a period of years following the terrorist attacks of September 11, 2001, taking into consideration recommendations concerning flightdeck security and crew communications. While this action promulgates regulations for added protection of the flightcrew compartment, most part 121 air carriers already have procedures in place that perform this function. This rule allows U. S. air carriers options to meet requirements while remaining flexible in their methods. This flexibility provides an additional level of security to the public because air carriers will use different methods to provide flight deck security and crew communication. Different methods of compliance will make attempts to breach security more difficult because multiple systems will be more difficult to monitor and defeat.

Two commenters, former Congressman Bob Barr and the American Conservative Union, opposed the rule because of safety-related concerns resulting from increased pilot workload to monitor video cameras. The FAA does not believe that monitoring the area outside of the flightdeck door by the flightcrew will distract pilots or add a significant burden if video cameras are used. While air carriers may choose approved video cameras, a FAA-approved procedure-based approach (using procedures and hardware already installed, such as a peephole) is another option. Accordingly, pilots will not have to continuously monitor a video camera, they need only monitor the flightdeck door area when someone seeks access to the flightdeck or when notified by a flight attendant.

Former Congressman Bob Barr and the American Conservative Union also expressed concerns about passenger privacy in the cabin. The FAA is not imposing any requirement to monitor passengers beyond the area outside of the flight deck door. To the extent that a passenger is in the flightdeck door area, the FAA has a security interest in monitoring that passenger's activities.

B. Means of Notifying the Flightcrew

Several commenters, including Capitol Electronics, Inc., expressed concern over the interphone system and its inability to be used discreetly. They stated that the interphone is an obvious piece of equipment, could be compromised, and would be difficult to

use without arousing suspicion. They noted that when passengers or equipment (such as beverage carts) are in the aisles, the crew could find it difficult to reach the interphone quickly. These commenters stressed that a wireless system is the only discreet means for the cabin crew to notify the flightdeck of a problem.

The FAA notes that the interphone system is not intended to be an encrypted or a secure communication means, rather it is a way for all crewmembers to be able to communicate among themselves throughout the passenger cabin and the flightdeck. Nevertheless, if a crewmember uses the existing technology of the interphone system while adhering to the air carrier's communication procedures, discreet communication may be maintained. Conversations between crewmembers on the interphone are generally not broadcast over the aircraft's public address system and the system has the ability for all crewmembers to participate on the call, as company procedures may dictate. The ability of the crewmembers to communicate discreetly in many instances currently exists, primarily by following the operator's procedures.

Some commenters, including the Professional Flight Attendants Association and the Association of Professional Flight Attendants, recommended that flight attendants carry or have in their possession a wireless device to contact the flightdeck. Some suggested the flight attendant carry a wireless device in a pocket or around the neck.

The FAA does not believe requiring flight attendants to carry or have in their possession a wireless device to contact the flight deck is a good idea. A wireless device that is carried on the person (in a pocket or around the neck) may be problematic because an attacker could threaten or assault the flight attendant in order to obtain the wireless device and then use the device fraudulently to gain access to the flightdeck. Additionally, devices carried by an individual are subject to events that may be beyond the control of the air carrier. An entire security system could be compromised if a device in the personal possession of a flight attendant is lost or stolen.

Additionally, the cost to supply a wireless device to each flight attendant could be an unreasonable burden, as there are approximately 130,600 part 121 flight attendants. While the wireless communication device is an option for discreet communication, wireless communication is not the only available

option. This rule is permissive in the sense that an air carrier may elect to use a sophisticated (for example, wireless) communication method, but this rule does not impose a new requirement for such devices.

In the NPRM, the FAA suggested that the evacuation system could be used as a compliant communication method. As noted by the Association of Professional Flight Attendants, not all aircraft have an emergency evacuation system available.

C. Entry to the Flightdeck

This regulation states that no person may unlock or open the flightdeck door unless a person authorized to be on the flightdeck uses an approved audio procedure and an approved visual device to verify that a person seeking entry to the flightdeck is not under duress.¹ The FAA has made a technical correction to § 121.584. We state that the requirements of the entire paragraph (a) must be satisfactorily accomplished before the crew member in charge on the flightdeck will authorize unlocking and opening the door.

Bosch Security Systems, CAPA, and the APA recommended that the FAA require installation of a secondary barrier, in addition to the flightdeck door, on all airplanes that are used in operations affected by this rule. Requiring installation of a secondary barrier would mean reconfiguring each airplane affected. Such an operation would require a major effort that is outside of the scope of this rulemaking and is therefore not adopted.

The International Brotherhood of Teamsters requested the FAA define "the area outside the flightdeck door." Such a definition would vary depending upon the configuration differences among airplanes. There are many areas adjacent to flightdeck doors where an intruder could hide. This fact tends to validate the importance of the audio check from inside the flightdeck with a crewmember in the cabin prior to opening the flightdeck door.

Boeing requested the FAA change the requirement to confirm that a person seeking flightdeck access is not under duress. They noted that "duress" may take the form of both visible and non-visible actions. They further stated that

¹ Use of the word "approved" is a common term used in FAA regulations. Unless otherwise specified, it means approved by the Administrator. The approval for the audio and visual procedures is accomplished by letter from the Principal Operations Inspector for the air carrier. The approval for the viewing device was accomplished by the FAA's Aircraft Certification Office as part of the Supplemental Type Certificate issued for the design changes for the flightcrew compartment door.

there is "no definable or verifiable means of compliance for this as a requirement." Boeing suggests changing the requirement that a crewmember evaluate whether a person is under duress, to simply require identification of a person seeking access to the flightdeck. FAA rules already require any person seeking flightdeck access to be identified before admittance. Section 121.587(b) limits persons on the flightdeck to those eligible under § 121.547. In addition, air carriers already have procedures in place regarding how and when to open a flightdeck door. The concept of determining whether someone is under duress is already applied in current procedures and appears to be readily understood. Air carriers should use the FAA-approved procedures already in place to determine whether someone is under duress. Because duress remains a threat not fully accommodated by the existing requirement that the person seeking access to the flightdeck is authorized to enter, the requirement to check that a person is not under duress remains unchanged.

Boeing also commented on the proposed requirement for both an audio and a visual check before opening the flightdeck door. They stated that most operators have adopted a visual procedure using the door peephole or an installed flightdeck entry visual surveillance system. Boeing made the assumption that use of the cabin interphone system is required to meet the audio procedure requirement. Boeing suggested revising the rule to require "an approved procedure and approved visual device," which does not include a requirement for an audio check. Boeing stated that most major airlines are using a visual procedure/ device, but not an audio procedure. It maintained that a robust visual device and an approved procedure to verify that the area around the flightdeck door is secure will satisfy the intent of the rule. It also claimed that requiring both a visual and an audio procedure could create an undesirable operational impact on the flightdeck. This could occur if the interphone equipment was not easily accessible to the person making a visual check of the door area. It did not state the basis for this observation. The FAA has determined that both a visual and audio check is required to provide an appropriate amount of security prior to opening the flightdeck door. Neither check alone provides adequate security. A video camera system may not provide complete coverage of the area outside of the flightdeck door or confirm that any

lavatory in that area is unoccupied. An audio check with a crewmember in the cabin that has verified that the area is clear is required. Likewise, it would be very difficult to determine if a person seeking access to the flightdeck was under duress without an audio as well as a visual check. An air carrier's procedures for opening the flightdeck door are already required to include both checks. Therefore, the requirement for both an audio and visual check remains unchanged from current practice.

Boeing requested the FAA change the requirement in § 121.584(a)(2) concerning authorization to unlock the flightdeck door from "the crewmember in charge" to "an authorized crewmember." Boeing stated its concern that the phrase "the crewmember in charge" can be interpreted always to require the pilot-in-command (PIC) to authorize unlocking and opening of the flightdeck door. While the FAA agrees with Boeing's interpretation of the proposed requirement, it does not share Boeing's apparent concern. Section 91.3(a) states, "The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft." While the PIC may delegate functions to other crewmembers, the PIC remains responsible for the outcome of those functions. An air carrier's approved procedures are required to address opening of the flightdeck door while flight crewmembers leave or return to the pilot's compartment. While functions, such as unlocking and opening the flightdeck door may be delegated, the responsibility for such action rests with the PIC. Therefore, the requirement for "the crewmember in charge" remains unchanged.

Aircraft Operators should be aware that the Transportation Security Administration (TSA) is reviewing the procedures that are in use for ingress and egress through the flight deck door during flight, and is considering additional procedures that may be necessary to address security concerns. TSA will coordinate with the FAA during the development of any proposed additional requirements.

D. International Standards

As stated in the NPRM, the International Civil Aviation Organization (ICAO) adopted standards on March 15, 2002 that require installing flightdeck doors, locking and unlocking such doors, monitoring the area on the passenger side of the flightdeck door, and discreetly notifying the flightcrew in the event of security breaches in the cabin. The standards are

located in ICAO Annex 6, Part 1, Chapter 13, provision 13.2, which state:

13.2.1 In all aeroplanes which are equipped with a flight crew compartment door, this door shall be capable of being locked, and means shall be provided by which cabin crew can discreetly notify the flight crew in the event of suspicious activity or security breaches in the cabin.

13.2.2 From 1 November 2003, all passenger-carrying aeroplanes of a maximum certificated take-off mass in excess of 45500 kg or with a passenger seating capacity greater than 60 shall be equipped with an approved flight crew compartment door that is designed to resist penetration by small arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized persons. This door shall be capable of being locked and unlocked from either pilot's station.

13.2.3 In all aeroplanes which are equipped with a flight crew compartment door in accordance with 13.2.2:

(a) This door shall be closed and locked from the time all external doors are closed following embarkation until any such door is opened for disembarkation, except when necessary to permit access and egress by authorized persons; and

(b) Means shall be provided for monitoring from either pilot's station the entire door area outside the flight crew compartment to identify persons requesting entry and to detect suspicious behavior or potential threat.

In the NPRM, the FAA identified three areas where the proposed rule did not appear to meet ICAO standards. We stated in the NPRM:

- The proposal in this action will not be implemented before the November 1, 2003 ICAO deadline.

- Any passenger-carrying aeroplanes operated under parts 91, 125, and 135 including international commercial air transport operations with a maximum certificated takeoff mass in excess of 45500 kg or with a seating capacity of greater than 60 (as ICAO requires), are not covered by this proposed rule.

- The proposed rule will permit an alternative means to monitor the area outside the flightdeck door from the flightdeck side of the door, instead of from either pilot station, as ICAO requires.

L-3 Communications and the International Brotherhood of Teamsters state that the rule falls well short of ICAO standards and ATSA requirements because the viewport option and existing interphone systems do not adequately address ICAO requirements. L-3 Communications expresses support for cameras and wireless devices in meeting these requirements.

The International Air Transport Association (IATA) commented that it is concerned that the United States (U.S.) will continue to have differences with

the ICAO standard. IATA is concerned that other national authorities may take a different view on the applicable ICAO standards. They ask that the FAA work with its international partners. Several commenters, including Delta Airlines, the Transport Workers Union of America, the CAPA, the Air Transport Association, and the APA generally agree with the FAA that the new rule meets the intent of ICAO standards addressing flightdeck security. ICAO implementation guidance provides for a procedural-based approach.

Upon further review of the ICAO standards associated guidance and FAA actions, we have determined that only one of three perceived differences remains. First, concerning the ICAO implementation date, the FAA discovered that if an ICAO member country has policies in place before the implementation date for the ICAO standard, the member country is considered to be in compliance with the ICAO standard. The FAA published Notice N8400.51, Procedures for Opening, Closing, and Locking of Flightcrew Compartment Doors before November 1, 2003. This notice addresses air carrier procedures to open the flightdeck door during flight operations and addresses the intent of the ICAO standards for monitoring the area outside the flightdeck door. In accordance with ICAO guidance, the FAA met the intent of the standard before the ICAO implementation date of November 1, 2003.

Second, the FAA has met the intent of the ICAO requirement to monitor from either pilot's station the entire door area outside the flight crew compartment. ICAO guidance permits operators to use different methods to monitor the area outside the flightdeck door. The monitoring does not have to take place from "either pilot's station," as a plain reading of the ICAO standard indicates. According to ICAO, use of a spyhole or peephole would satisfy the requirement to monitor the area outside the flightdeck door. Since this final rule adopts a performance standard that contemplates the type of system that ICAO states is sufficient to meet the ICAO standard, the FAA determines no difference exists.

Finally, the ICAO standard is applicable to passenger-carrying aeroplanes based on weight or seating capacity. The FAA regulations differ from the ICAO standard regarding applicability. As explained in the NPRM, ICAO provisions apply to passenger-carrying aeroplanes of a maximum certificated take-off mass in excess of 45,500 kg or with a passenger seating capacity greater than 60. The

FAA standard applies to all part 121 operations. U.S. aviation regulations governing airplanes operated under parts 91, 125, and 135 may be within the weight and passenger seating capacity required by the ICAO standard; however, airplanes operating under these parts are not specifically required to have a flightdeck door. We therefore find it impractical to impose a viewing requirement on airplanes operating under these parts. We also find it impracticable to impose a communication procedure requirement when there is no way to prevent access to the flightdeck.

We will carefully monitor these types of operations and if it becomes a matter of concern in the future, we will consider adopting the ICAO standard, based on weight, instead of by operating rule. In addition, if an air carrier is subject to the ICAO requirement (or foreign regulations) because of weight or seating capacity but not subject to FAA requirements, the FAA will, upon request, work with any operator to consider any approvals necessary to satisfy requirements by another civil aviation authority that an operator have approved procedures in place. We do not believe there will be any need to provide accommodation for the ICAO requirement on monitoring the area outside the flightdeck because we believe all of the reinforced flightdeck doors are already outfitted with a peephole.

The Association of European Airlines states that any final rule on flightdeck door monitoring and crew discreet alerting should not apply to non-U.S. operators to the United States. This rule does not apply to non-U.S. operators, including those operating under part 129. These operations are covered by adequate regional and international rules and standards.

E. Compliance Dates

In the NPRM, the FAA proposed to give part 121 passenger-carrying operators not already in compliance with the rule, two years to install a monitoring device to meet the proposed performance standard on the existing fleet. We also proposed a 180-day compliance date for the discreet communications procedure.

Several individual commenters, including the Air Transport Association, expressed concerns about compliance dates. These comments all stated that the compliance period was too short. Some expressed concern with the immediate effective date for operations of airplanes that already have a means to monitor the flightdeck door area, required by § 121.584(b). ATA

expressed concern that two years would not be enough time to install a video surveillance system. ATA recommended a five- or six-year interval.

After further review, the FAA has determined that every part 121 passenger-carrying operator should already have a means to monitor the flightdeck door area. The FAA learned from flightdeck door manufacturers that every reinforced flightdeck door that meets the requirements of section 25.795 (required for passenger-carrying operations in part 121) has a peephole that meets the requirements of this rule. As a result of this information, the FAA has determined that there should be no retrofit of airplanes operated by part 121 carriers. Accordingly, the FAA has decided against adopting a two-year compliance period in proposed section 121.584(b). If a part 121 passenger-carrying operator does not have a means to monitor the flightdeck door area, the operator can: (1) Operate without opening the flightdeck door until the airplane is retrofitted; or (2) seek relief by applying to the FAA for exemption from this rule.

As discussed above, we are issuing this final rule with a reduced compliance period. The NPRM proposed to give operators that do not have a means to view the area outside the flightdeck door two years to install such a means. The FAA proposed to require operators that have a means to monitor the area outside the flightdeck door to comply on the effective date of the final rule. After review of the comments to the NPRM and FAA actions regarding reinforced doors, we decided to change the compliance date for all affected parts to 60 days.

First, air carriers conducting passenger-carrying operations under part 121 were required to install a reinforced door by April 9, 2003. The FAA concluded, by review of supplemental type certificates, that no airplanes operating passenger-carrying service under part 121 have a flightdeck door without a means to monitor the area outside the flightdeck door. Second, no commenter specifically stated that they were currently not in compliance with the rule. The only comment relevant to this inquiry was from ATA, which stated that if an operator chose to install video, it would take more than two years to do so.

Similarly, the FAA confirmed that part 121 passenger-carrying operators should already have an approved means in place for a cabin crew to discreetly notify the flightcrew in the event of suspicious activity or security breaches in the cabin. Therefore, the FAA removed the 180-day compliance date

from § 121.582. The compliance period for the entire rule is now 60 days.

The FAA is limiting the compliance period without providing an opportunity for prior public notice and comment as is normally required by the Administrative Procedure Act (APA). See 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). The FAA finds good cause for shortening the compliance period in this final rule because it would be contrary to the public interest not to do so. A two-year compliance period is contrary to the public interest because we determined that every operator already has equipment installed to comply with this rule. The only outstanding compliance concern could be that some operators need to develop and implement procedures to monitor the area outside the flightdeck (for example, by looking through the peephole) before opening the flightdeck door. Therefore, the FAA is allowing a 60-day compliance period, so any operator that must adopt procedures will have time to do so.

F. Miscellaneous Issues

Several commenters, including the CAPA and Air Line Pilots Association International, recommended the FAA include all-cargo operations in this rule. These commenters noted that cargo operations should be as safe and secure as passenger operations. They recommended the FAA require installation of a secure flightdeck door on part 121 cargo airlines.

While all-cargo operators may implement the requirements of this rule, they are not specifically required to do so. All-cargo flights carry only those individuals allowed under 14 CFR 121.583; all individuals carried on cargo flights are screened through TSA approved procedures. The general traveling public is not allowed onboard these flights. ICAO standards in this area reflect this awareness in that they apply only to passenger-carrying operations. In keeping with ICAO standards and security requirements, the FAA developed a performance-based approach for operations conducted under the passenger-carrying requirements of part 121. The FAA and TSA believe that security measures in place to protect the flightdecks of all-cargo operations are adequate for those operations, considering the small number of persons allowed onboard for those flights. Therefore, the FAA does

not apply this rule to all-cargo operations.

Several commenters, including the Air Transport International, L.L.C., expressed concerns about the rule's applicability to part 121 operations. They stated the rule should not apply to Combi-configured aircraft that mainly transport cargo. While these aircraft can transport up to 32 passengers, the commenters believe they have sufficient security measures in place to prevent anyone from gaining access to the flightdeck. The FAA notes that the requirements of this rule apply to passenger-carrying operations conducted under part 121. When operations are conducted that are subject to the passenger-carrying requirements of part 121, including flights carrying passengers and cargo, those operations must also meet the requirements of this rule.

Several commenters, including the Transport Workers Union of America and the Association of Professional Flight Attendants, refer to the "lessons learned" from the Operation Atlas exercise. The FAA was not a participant in this exercise to measure response and recovery efforts. Comments about the Operation Atlas exercise are outside of the scope of this rulemaking activity.

US Airways requested clarification on use of Minimum Equipment Lists (MEL) with regard to the equipment required by this rule. Since this is a rule of general applicability it does not impact an individual operator's MEL. Each individual MEL is developed by the operator and approved by its Principal Operations Inspector. Pertinent MEL relief is provided through the Master Minimum Equipment List (MMEL). Development of the MMEL is beyond the scope of this rule, especially because this rule is a performance standard. Since this rule does not require any new equipment, each air carrier should refer to its already established MEL and question its POI for further information.

II. Regulatory Notices and Analyses

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 requirements for information collection associated with this rule.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandate Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that

each Federal agency shall 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 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

Every reinforced cockpit door has a peephole, which meets the final rule requirement to visually identify anyone attempting to enter the flightdeck. Operators can comply by developing appropriate procedures. Most operators have already developed these procedures and we determined that there will be minimal expense to the operators that still need to develop them to meet the requirement.

Further, the final rule requirement that the crew members be able to alert the flightdeck of any cabin problems can also be met by a variety of measures such as special signals through the interphone system or modifications of existing crew notification devices or procedures. We also determined that there will be minimal expense to the operators to implement these measures.

In the NPRM, we had estimated the costs of operators installing video camera surveillance systems. As the

final rule does not require such a system, the costs for an operator that chooses to install such a system are not a cost of compliance with the final rule. We received several comments on our estimated costs and these can be reviewed in the docket for this rulemaking.

In general, we believe these comments support the estimates in the NPRM after taking into account the experience of the commenters in installing such systems. While Boeing's estimate was significantly higher than ours, its system is far more sophisticated than any video system designed to minimally meet the performance standard. Since all of the costs are associated with a monitoring system that is not required by the rule and is redundant to existing, compliant systems already aboard all affected aircraft, we are not discussing the comments further.

The rule is one of a series of rulemaking actions aimed at preventing or deterring an occurrence similar to the September 11 terrorist attacks. It is designed to ensure that pilots do not open the flightdeck door and admit a potential hijacker because the pilots will be able to recognize who is trying to gain entry. It is also designed to alert the pilots to problems in the cabin through the crew discreet monitoring system and allow them to take the appropriate actions.

This rule responds to the interest of the U.S. Congress as specified in the ATSA and to the ICAO flightdeck surveillance requirement for international travel airplanes with more than 60 seats. We conclude that the benefits of this final rule will exceed the minimal costs.

The FAA has, therefore, determined that this final rule 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.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives 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 this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." 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 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 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.

Due to its minimal costs, the final rule will have a minor effect upon small businesses. We also received no comments from the public on the economic impact of the proposed rule on small entities. We are sensitive to the needs of small businesses and thus have found a minimal cost solution that meets our security needs.

Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in 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 has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and, therefore, no effect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) 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.” The FAA currently

uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million. This final rule does not contain such a mandate.

Executive Order 13132, 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.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR chapter I as follows:

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

■ 1. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 2. Section 121.313 is amended by adding paragraph (k) to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(k) Except for all-cargo operations as defined in § 119.3 of this chapter, for all passenger-carrying airplanes that require a lockable flightdeck door in accordance with paragraph (f) of this section, a means to monitor from the flightdeck side of the door the area outside the flightdeck door to identify persons requesting entry and to detect suspicious behavior and potential threats.

■ 3. Add § 121.582 as follows:

§ 121.582 Means to discreetly notify a flightcrew.

Except for all-cargo operations as defined in § 119.3 of this chapter, after October 15, 2007, for all passenger carrying airplanes that require a lockable flightdeck door in accordance with § 121.313(f), the certificate holder must have an approved means by which the cabin crew can discreetly notify the flightcrew in the event of suspicious activity or security breaches in the cabin.

■ 4. Add § 121.584 as follows:

§ 121.584 Requirement to view the area outside the flightdeck door.

From the time the airplane moves in order to initiate a flight segment through the end of that flight segment, no person may unlock or open the flightdeck door unless:

(a) A person authorized to be on the flightdeck uses an approved audio procedure and an approved visual device to verify that:

- (1) The area outside the flightdeck door is secure, and;
- (2) If someone outside the flightdeck is seeking to have the flightdeck door opened, that person is not under duress, and;

(b) After the requirements of paragraph (a) of this section have been satisfactorily accomplished, the crewmember in charge on the flightdeck authorizes the door to be unlocked and open.

Issued in Washington, DC, on August 6, 2007.

Marion C. Blakey,
Administrator.

[FR Doc. E7-16063 Filed 8-14-07; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 700

Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 600 to 799, revised as of April 1, 2007, in § 700.27, on page 138, paragraph (d) is reinstated to read as follows:

§ 700.27 Use of prohibited cattle materials in cosmetic products.

* * * * *

(d) *Adulteration.* Failure of a manufacturer or processor to operate in compliance with the requirements of paragraph (b) or (c) of this section renders a cosmetic adulterated under section 601(c) of the act.

[FR Doc. 07-55510 Filed 8-14-07; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

22 CFR Part 51

RIN 1400-AC23

[Public Notice: 5894]

Rule Title: Passport Procedures—Amendment to Passport Surcharge

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This rule amends the Department of State’s regulation implementing the requirements of the Passport Services Enhancement Act of 2005, amending the Passport Act of June 4, 1920, to authorize the Secretary of State to establish and collect a surcharge to cover the costs of meeting the increased demand for passports as a

result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). The Passport Services Enhancement Act authorizes the Department of State to assess a surcharge on applicable fees for the filing of each passport application to offset its additional costs. This rule will raise the surcharge based on a current estimate of the increased passport demand due to actions taken to comply with section 7209(b) of IRTPA. The surcharge will continue to be collected from within the passport application fee and will not increase the overall current cost of the passport to the applicant.

DATES: *Effective date:* This interim rule is effective on August 15, 2007.

Comment period: The Department of State will accept written comments from interested persons up to September 14, 2007.

ADDRESSES: Interested parties may submit comments at any time by any of the following methods:

- *E-mail:* PassportRules@state.gov.

You must include the Regulatory Identification Number (RIN) in the subject line of your message.

- *Mail:* (paper, disk, or CD-ROM submissions): An original and three copies of comments should be sent to: Susan Bozinko, Office of Passport Services, Legal Affairs Division, Planning and Advisory Services, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037. 202-663-2427.

- *Fax:* 202-663-2499. You must include the Regulatory Identification Number (RIN) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: For *passport issuance policy:* Susan Bozinko, Division Chief, Office of Passport Services, Legal Affairs Division, 2100 Pennsylvania Ave., NW., 3rd Floor, Washington, DC 20037. (202) 663-2427. E-mail:

PassportRules@state.gov. For *consular fee setting policy:* Tracy Henderson, Director of the Budget, Bureau of Consular Affairs, U.S. Department of State, Suite H1004, 2401 E St., NW., Washington, DC 20520, or by e-mail: fees@state.gov.

SUPPLEMENTARY INFORMATION: The Passport Services Enhancement Act (Pub. L. 109-167, January 10, 2006, 119 Stat. 3578) authorizes the Secretary of State to establish, collect, and retain a surcharge to cover the costs of meeting the increased demand for passports as a result of actions taken to comply with section 7209(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108-458, 8 U.S.C. 1185).

In March 2006, the Department of State had commissioned an independent cost of service survey to examine the resource implications of the increased demand for passports under the Western Hemisphere Travel Initiative (WHTI), the Administration’s proposal to address the requirements of the IRTPA, and to determine the appropriate amount of the surcharge. That survey estimated that uncompensated WHTI-related costs borne by the Department of State would reach \$289 million during the period FY2006–FY2008. It also projected that a six-dollar surcharge retained by the Department of State would enable it to meet the costs of increased passport demand during that period. Accordingly on August 15, 2006, the Department of State published an interim rule providing for a surcharge of \$6 per passport application. However, the demand and costs proved to be greater than originally estimated and thus the Department now projects that uncompensated demands during the period FY2008 to FY 2010 will reach \$944 million. The Department has therefore determined that to meet its increased costs, it will need to retain \$20 per passport application. Pursuant to the authority granted to the Secretary of State under the Passport Services Enhancement Act of 2005, this rule will allow the Department of State to establish, collect, and retain a twenty-dollar surcharge on applicable fees for the filing of each application for a passport, in order to address the resource implications of section 7209(b) of the IRTPA. That surcharge will be embedded in the passport application fee and will be deposited as an offsetting collection to the appropriate Department of State appropriation account. The non-surcharge portion of the passport application fee will be remitted to the general fund of the Treasury. The overall cost of the passport to the public will not increase by virtue of this action.

The Department of State considers the enactment of this rule as a matter of urgency to help provide the funds to meet the demand created by the legislation for universal international traveler nationality and identity documentation. The Department is in the process of increasing its overall production capacity, improving efficiency of production and adjudication processes, as well as enhancing anti-fraud measures. The Department is also currently developing a less expensive card format passport for use at land border crossings.