DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–2002–12504; Amendment No. 129–33]

RIN 2120–AH70

Security Considerations for the Flightdeck on Foreign Operated Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule requires improved flightdeck security and operational and procedures changes to prevent unauthorized access to the flightdeck on passenger-carrying aircraft and some cargo aircraft operated by foreign carriers under the provisions of part 129. It is being adopted to further enhance air carrier security in response to the heightened threat to civil aviation in the United States. This final rule applies the same flightdeck security enhancements to foreign air carriers as apply to U.S. air carriers.

DATES: This final rule is effective June 21, 2002. Comments must be received on or before August 20, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12504 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing comments to this final rule in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: For part 25 issues contact Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149; e-mail: *jeff.gardlin@faa.gov.* For parts 121 and 129 issues contact Thomas Penland, FAA Program Management Branch, AFS–260, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3764, facsimile (202) 267–5229, e-mail: *thomas.pendland@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations of the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, 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 international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the DOT Docket Management System address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this final rule, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2002–12504.'' The postcard will be date stamped and mailed to the commenter.

The FAA will be holding a public meeting during the comment period for this final rule. Details will be announced in the **Federal Register**.

Availability of Rulemaking Documents

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

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm.cfm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number and amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requirements for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBFEFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm.* For more information on SBREFA, e-mail us at 9-AWA-SFREFA@faa.gov.

Background

On September 11, 2001, the United States experienced terrorist attacks when aircraft were commandeered and used as weapons. These actions demonstrated that there is a need to improve the design, operational, and procedural security of the flightdeck. On November 19, 2001, Congress enacted Public Law 107–71, the Aviation and Transportation Security Act (the Act), which specifies that improved flightdeck security must be applied to aircraft operating in air transportation.

Section 104 of the Act directed the FAA to issue a final rule, without seeking public comment prior to adoption, addressing the security requirement for aircraft that are currently required to have flightdeck doors.

In response to section 104(a)(1) of the Act, the FAA issued Amendment 121–288 to 14 CFR Part 121, which requires that certain U.S. air carriers install reinforced flightdeck doors that provide intrusion resistance and ballistic penetration resistance (67 FR 2881, January 15, 2002). Amendment 121–288 applies to transport category airplanes operating in commercial service that are required by § 121.313(f) to have a door installed between the flightdeck and the passenger cabin and to all cargo aircraft that have such a door installed on or after January 15, 2002. The reinforced doors must be installed by April 9, 2003. Additionally, the amendment requires that the operators adopt operational changes restricting access to the flightdeck in flight.

The FAA also issued a series of Special Federal Aviation Regulations (SFAR–92) (66 FR 51546, October 9, 2001; 66 FR 52835, October 17, 2001; 66 FR 58650, November 21, 2001; and 67 FR 12820, March 19, 2002) that first allowed, then required, the installation of internal locking devices on the flightdeck doors. The internal locking devices are intended to provide enhanced flightdeck security pending installation of the reinforced doors required by Amendment 121–288.

As discussed in the preamble to Amendment 121–288, the FAA expected that foreign operators conducting service to and from the United States under part 129 would have flightdeck security measures commensurate with those of U.S. carriers.

Part 129 governs foreign operators who operate either within the United States, or who operate solely outside the United States, but with aircraft registered in the United States. In the case of operations within the United States, part 129 is effectively equivalent to part 121 in terms of the types of operations conducted and the aircraft used. With part 121 flightdeck security improved, the FAA was concerned that part 129 operations would be more attractive targets for terrorist actions if security was not similarly improved. Amendment 121–288 solicited comments on this issue and clearly stated that the FAA intended to have consistent flightdeck door security requirements for parts 121 and 129. The FAA received no comments objecting to the stated intention to adopt consistent standards.

The FAA has discussed in numerous international settings its intent to have consistent flightdeck door security requirements for parts 121 and 129. Below is a listing of international meetings with European and other authorities and industry where this issue was discussed:

October 17, 2001 FAA/Joint Aviation Authorities (JAA) Executive Board Meeting, Rome, Italy

November 28–30, 2001 FAA/JAA Certification Management Team Meeting, Washington, DC

January 8, 2002 Special FAA meeting with regional Asian-Pacific Civil Aviation Authorities and industry, Kuala, Lumpur, Malaysia

January 22, 2002 FAA/European Civil Aviation Conference Security Meeting, Washington, DC

January 23, 2002 Aircraft Certification and Flight Standards directors visit Brussels, Belgium, and meet with La Direction Général de l'Aviation Civile and Luftfahrt-Bundesamt representatives, officials from European Parliament, the European Commission's Director of Aviation Safety, and the International Air Transport Association (IATA)

February 19–20, 2002 International Civil Aviation Organization Aviation Security Ministerial Meeting, Montreal, Canada

March 2002 Latin American Civil Aviation Commission, Asunción, Paraguay

March 5, 2002 FAA/JAA Certification Management Team Meeting, Hoofddorp, Netherlands

March 18–20, 2002 Central America and Panama Directors General Meeting, Mexico City, Mexico

April 3, 2002 FAA/JAA Executive Board Meeting, Washington, DC

April 3, 2002 12th International Air & Space Fair, FIDAE 2002, Santiago, Chile

April 9, 2002 IATA Operations Council Meeting, Brussels, Belgium

April 13–14, 2002 FAA/Asia-Pacific Bilateral Partners Meeting, Tokyo, Japan

May 7, 2002 Transport Canada Civil Aviation Annual Safety Meeting, Niagara on the Lake, Canada

Since the adoption of Amendment 121–288, the International Civil Aviation Organization (ICAO) has moved to adopt standards for flightdeck security similar to those adopted by the FAA. The ICAO is an international body consisting of 187 member countries. The ICAO adopts standards under Amendment 97 to Annex 8 to the Convention on International Civil Aviation (Chicago Convention). The ICAO recently adopted standards relating to the incorporation of security into the design of aircraft. The ICAO flightdeck security standards will require that passenger-carrying aircraft of 60 passengers or more, or with a maximum certificated takeoff weight of 100,000 pounds, be protected from intrusion and ballistic threats.

The FAA wholly supports this change. This requirement, however, is not mandatory until November 2003, 7 months after the FAA's requirements must be met. It does not apply to cargo aircraft, as does Amendment 121–288. In addition, there is an ICAO requirement for the installation of flightdeck door internal locking devices by November 28, 2002. Absent additional action by the FAA, foreign operators can operate to and from the U.S. without any mandatory flightdeck door security measures in the interim.

The foreign operations subject to this rule use the same aircraft and conduct the same types of operations as U.S. operators. They use many of the same airports into and out of the U.S. They also present targets for a repeat of the September 11, 2001 terrorist attacks.

Under SFAR 92, U.S. operators already have installed internal locking devices to deter entry to the flightdeck. Not all foreign operators have. After April 2003, U.S. operators will have reinforced flightdeck doors. Foreign operators may not.

The FAA finds that it is unacceptable to create two levels of flightdeck protection for the same operations to and from U.S. airports. It would be irresponsible to expose passengers, and those on the ground, to greater risks based solely upon the country of registration of the aircraft. In this case security considerations clearly demand that this rule be issued as a necessary complement to Amendment 121–288 and SFAR 92. And to meet this goal of corresponding protection, it is essential that the standards be imposed at the same time. If the requirements do not have a synchronized compliance time, the security risk will be shifted to the unprotected aircraft. Unsynchronized implementation of the security measures should not create a more attractive target for terrorists.

Because of the need to synchronize the effective dates, this rule must be adopted immediately. The time required for public notice and comment would make compliance by the required date impossible, and the resulting lack of synchronization would increase vulnerability to terrorist attack. Therefore, the FAA finds that it is necessary to adopt a new rule for part 129 operators, without prior notice and

public comment, to prevent an unacceptable disparity in flight deck security between domestic and foreign operators in the United States. In accordance with § 553(b)(3)(B) of the Administrative Procedures Act, the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Authority To Amend Part 129

Under the Chicago Convention, signatory states agree that the country of registry regulates the airworthiness of aircraft. The Convention also provides, however, that the state whose airspace is being entered may require that its operational rules be followed. This case presents security issues, which have always been considered operational. The FAA has in the past required foreign air carriers to implement additional security measures for operations to and from the U.S. The FAA has determined that safe operation in the U.S. and on overflights demands a minimum level of flightdeck security, in the same way as does collision avoidance equipment, or basic radio systems. Collision avoidance equipment and radio systems are operational requirements. Because flightdeck security is an operational issue, the U.S. and the FAA have authority to regulate it irrespective of the country of registry.

Compliance with these requirements may, in fact, result in modifications to aircraft that affect airworthiness. The issue in this rulemaking, however, is not the airworthiness of the aircraft, but the ability to operate the aircraft safely in the face of evident threats to security. The ICAO itself has reinforced this position by adopting the requirements for intrusion resistant flightdeck doors into its requirements. Although the ICAO compliance dates differ from those adopted here, the intent is the same.

Discussion of the Final Rule

This amendment requires changes to aircraft operated by foreign operators in accordance with part 129, similar to changes made on aircraft operated under part 121. The requirements consist of enhancements to protect against forcible intrusion by persons, ballistic penetration of the flightdeck, and access to the flightdeck while the aircraft is operated. As discussed, the intent of these requirements is to provide a consistent level of flightdeck security among those aircraft that operate in parts 121 and 129. Accordingly, the presence of a flightdeck door is essential, as is currently mandated in § 121.313. For the purposes of this requirement, the FAA has assumed that all affected aircraft are already equipped with flightdeck doors. To ensure a consistent level of flightdeck security, however, § 129.28(a) mandates that there be a flightdeck door on passenger carrying operations. This requirement is intended to prevent the removal of flightdeck doors, and is not expected to result in installation of flightdeck doors where none existed. In the unlikely event that an operator is compelled to install a flightdeck door as a result of this requirement, the FAA will address such instances on a case by case basis.

Internal Flight Deck Door Locking Devices

The SFAR 92 series rules initially permitted, and subsequently required, quick installation of simple enhancements to the flightdeck door for improved security. Section 129.28(a) adopts a requirement for a similar improvement in flightdeck security. This requirement is consistent with SFAR 92 and requires that internal locking devices be installed within 60 days of the effective date of this amendment.

As noted in the preamble to SFAR 92, modifications required by this provision have the potential to compromise other airworthiness standards. As a result, § 129.28(b) of this rule provides relief from the otherwise applicable provisions of § 129.13. Because the FAA does not directly regulate airworthiness of foreign registered aircraft, however, modifications to install the internal locking devices may also require relief from the country of registry. Based on correspondence with other airworthiness authorities, the FAA has concluded that most are prepared to grant this relief, and this amendment should not create a conflict with the standards of the local authority. In the event that a country is not willing to grant such relief, the FAA will work to reach a mutually acceptable solution.

Reinforced Flight Deck Doors

This amendment adopts increased long-term standards for flightdeck intrusion resistance in keeping with standards adopted for part 121 operators in Amendment 121–288. This amendment also provides for compliance with an alternative standard, acceptable to the Administrator, in the event that the country of registry adopts a different intrusion resistance standard. Operators wishing to comply with this amendment using an alternative standard should submit their proposal to the Manager, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055–4056.

As also discussed in Amendment 121–288, § 129.28(c) requires design precautions to be taken to minimize the penetration of shrapnel from a fragmentation device and small arms projectiles (i.e., ballistics) which might be fired through the flightdeck doors from occupied compartments. These requirements have been adopted by ICAO and will be effective November 2003. The standards are key elements to protect the flightdeck from intrusion because any compromise in the integrity of the flightdeck door from a ballistic threat could enable an intruder to gain access to the flightdeck.

The flightdeck door is already subject to several requirements that affect its structural integrity. These include protection during decompression where the door may incorporate venting features to prevent a large pressure differential; egress considerations to permit the flightcrew to enter the cabin in the event the door becomes jammed during an accident; and the capacity to allow rescue personnel to enter the flightdeck in the event the flightcrew are unable to egress on their own. The door may also be integral in meeting ventilation requirements. After reviewing several design proposals, the FAA has determined that all the requirements can be accommodated by proper design of the door installation. As a result, aircraft meeting the requirements of this rule should continue to meet all the requirements necessary to maintain a valid certificate of airworthiness from the country of registry.

The rule requires installation of doors meeting this standard by April 9, 2003. The FAA evaluated several factors in establishing this compliance time. The most important is synchronization of the compliance date with the requirements of Amendment 121–288. The FAA considers this synchronization to be essential. This is an aggressive schedule; given the events of September 11, 2001, however, the issue demands aggressive action. Also, the prior imposition of the door design standard on part 121 operators means that manufacturers have made substantial progress in developing reinforced doors to meet the standard. These new doors can be installed on part 129 as well as part 121 aircraft.

Flightdeck Access Provisions

A new § 129.28(d) is adopted to require procedures to restrict access to

the flightdeck, except as authorized in that section. This action is consistent with the requirements of Amendment 121–288 and adopts many of the same provisions, but provides additional flexibility with respect to the allowances made by the airworthiness authority of the country of registry.

Finally, the FAA is amending § 129.11(a) by adding a new paragraph (5). This paragraph requires that the operator identify those aircraft that are subject to these requirements in the operator's operations specification. This requirement is necessary to identify the specific aircraft that will be operated within the United States and on overflights, because part 129 operators typically have some aircraft in their fleets that do not operate within the United States.

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.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The need for improved flightdeck security is an operational and security issue and is demonstrably necessary to provide safe operation within the United States. Even though this amendment may result in modifications to aircraft, the basis of the rule is to provide for safe operation and is appropriately an operational requirement of part 129.

Regulatory Evaluation Summary

Regulatory Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Act Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis for U.S. standards. Fourth, the Unfunded Mandates Act of 1995 requires agencies to prepare a written assessment of the costs and benefits, and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local, or tribal governments, or on the private sector, likely to result in a total expenditure of $100 million or more (adjusted for inflation) in any one year.

In conducting these analyses, the FAA determined that this rule has benefits that justify the costs; will not have a significant impact on a substantial number of small entities; has no effect on trade-sensitive activity; and does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

Benefits and Costs

This rule is part of a series of FAA rules to improve aviation safety and security, as directed by the Aviation and Transportation Security Act. This rule establishes the requirements for flightdeck door enhancements on aircraft operated to and from the U.S. by foreign operators. Accordingly, the benefits of this rule are to ensure the safety and security of the flying public. Because this rule is one of several being promulgated to avoid a reoccurrence of an event like that of September 11, 2001, the benefits will be shared by the entire set of rules designed to prevent such a recurrence.

The September 11, 2001, attacks demonstrated that foreign terrorists may choose civil aviation as a tool as well as a target. They have demonstrated their ability to circumvent security practices and gain possession of improvised weapons in flight. Flightdeck doors provide a last line of defense and can either prevent entry or delay entry while other intervention occurs.

The most recent compelling evidence of the benefit provided by fortifying flightdeck doors was seen on February 7, 2002, when a man on a United Airlines flight from Miami to Buenos Aires was able to insert his torso through the lower blowout panel of the flightdeck door. The door had been retrofitted with a steel bar and was locked, preventing the man from completely entering the flightdeck, and enabling the flightcrew to subdue the intruder before another disaster occurred.

As was witnessed on September 11, 2001, terrorist acts can result in the complete destruction of an aircraft with the loss of all on board, with the collateral damage far exceeding that to the aircraft and passengers. The losses from the September 11 terrorist attack are estimated to be several billions of dollars, and the costs of another incident could possibly be even higher due to the economic impact of passengers choosing not to fly and thereby losing the benefits of air transportation.

The FAA is not able to accurately estimate the actual net social cost and the corollary benefit gained by preventing future aviation-related terrorist acts. The insurance industry's cancellation of war risk coverage for aircraft indicates both the difficulty of estimating the benefits of preventing future incidents, and the broad impact of those terrorist acts. There is, however, ample basis for judging the likelihood of attaining benefits by averting future attacks to justify this rule.

The rule applies to aircraft belonging to foreign carriers, engaged in air transportation serving the U.S. As discussed previously, any of these aircraft operated by foreign carriers could provide a likely target for terrorists interested in their massive destructive power. The FAA estimates that 4,689 aircraft are operated by air carriers certificated under part 129, and could be potentially affected by this rule. Not all of these aircraft, however, will be utilized for operations to the U.S.

A review of the air carriers' fleets and the Official Airline Guide allowed the FAA to significantly reduce the number of aircraft potentially affected by this rule. The selection process eliminated those aircraft that, although in a foreign carrier's fleet, could not be feasibly utilized for service to the U.S. An example would include turboprops, regional jets, and some smaller narrowbody aircraft based in Europe and Asia. With the remaining aircraft, the FAA recognizes that some carriers have dedicated aircraft to fly to the U.S., but conservatively estimated that any aircraft in the carrier's fleet could be put in service on a route to the U.S., and will therefore need to be retrofitted. An example is the large contingent of Boeing 747s in Japan Airlines' and British Airways' fleets. Although only a portion of those aircraft might be dedicated to U.S. routes, the FAA assumes that they will all be retrofitted. The aforementioned analysis resulted in an estimate of 1,921 aircraft that will be affected by this rule. This figure does not include aircraft in charter service.

For this analysis, the FAA assumed that the estimated costs of future compliant flightdeck doors will be approximately $17,000, installed. The

flightdeck door applications to meet the new standards have not yet been approved; therefore, the FAA used an upper bound cost of what the agency believes is a door that meets the intent of the rule.

Not knowing exactly how many aircraft have doors that are already compliant with the rule, the FAA proceeded with the assumption that all 1,921 aircraft will be required to be retrofitted with new doors, at a base case cost of approximately $17,000 each. This will result in a base case cost of $32.7 million. Because no foreign repair stations have applied for door certification, it is possible that several foreign carriers will opt to have their doors installed by the aircraft's original equipment manufacturer. This will mean an increased cost to about $27,500 per door for narrowbody aircraft, and $39,900 for widebody aircraft. Based on the affected fleet, the average cost per door will be just under $36,000, plus installation. These figures, released by Boeing and partner C&D Interiors, are consistent with a door that far exceeds the intent of the rule, but it is still likely to be the choice of carriers due to convenience. The upper bound cost to foreign air carriers to purchase and install the compliant door could, therefore, be as high as $72.0 million.

Many flightdeck door manufacturers claimed that their version of a secure flightdeck door could be installed by airline technicians overnight, or during an extended overnight. Some claim that their kit can be installed in four hours or less. The plan is for the manufacturers' mechanics to train the airlines' technicians, supervise the first several installations, and then allow the airlines to complete the installations on their own. Based on this information, the FAA believes that there will be no need to take aircraft out of service for any significant amount of time.

Commercial air carrier operators will, however, incur costs attributable to the increased fuel consumption resulting from heavier doors. The industry estimates that a typical door currently weighs approximately 25 pounds, and that a new compliant door will weigh approximately 75 pounds. The weight increase of approximately 50 pounds will translate into increased fuel consumption for aircraft affected by the rule. The increase in fuel consumption was calculated based on the projected aircraft utilization of 8.6 block hours per day and rate of fuel burn increase. At a current cost of $0.62 per gallon, and forecasted price based on the FAA Aerospace Forecast, the additional weight is expected to impose an additional cost to foreign air carriers of $11.2 million ($8.3 million, discounted) over the next decade.

When all costs are accounted for, the total cost of this rule over the next decade is expected to be $43.8 million ($40.9 million discounted). Using an average cost of $36,000 per door, instead of the base case cost of $17,000, the total cost of this rule would increase to $83.1 million ($80.2 million discounted).

This rule will ensure that any attempts to enter through the flightdeck door of foreign operated aircraft flying to the U.S. will be very difficult. The new standards will deter terrorists from attempting to take over the flightdeck. If an attempt is made, implementation of the standards will significantly delay efforts to gain entry, thus allowing additional security efforts to be implemented. In addition to meeting a requirement of the Aviation and Transportation Security Act, the potential benefits of this rule greatly exceed the costs. Accordingly, the FAA believes that the rule is cost-beneficial and is necessary to ensure the level of aviation security expected by the American public, and passengers flying to/from the U.S. on foreign carriers.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

If an agency determines, however, that a proposed or final 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. This rule will not have a significant impact on a substantial number of small entities, therefore a full Regulatory Flexibility Analysis is not necessary. The rule affects only foreign air carriers, not U.S. businesses.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, 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.

A single level of safety among aircraft, regardless of registry, is paramount to the protection of the American public, as well as for the passengers on-board the aircraft. In January 2002, the FAA adopted a rule requiring, by April 2003, the hardening of cockpit doors on all U.S. aircraft in scheduled commercial service requiring a door between the passenger and crew compartments and transport category cargo aircraft with flightdeck doors. U.S. carriers have not been the first to fortify flightdeck doors. In fact, recognizing the terrorist threat, El Al Israel Airlines' aircraft have had secure cockpits for many years, and so have several other aircraft in various fleets around the world.

To promote uniformity in the security of aircraft, in March 2002, ICAO established a universally acceptable international standard, requiring that all of the world's airlines meet the standard by November 2003. Some carriers, such as British Airways and All Nippon Airways, voluntarily opted to strengthen their flightdeck doors soon after September 11. Despite the fact that some aircraft are already compliant, the 7-month gap between the FAA regulation and ICAO mandate, and the lack of an ICAO cargo aircraft requirement, could pose a threat to the American public and the passengers of those carriers who are not voluntarily protecting their flightdecks.

The FAA therefore feels that extending the same requirements imposed on U.S. carriers to foreign carriers serving U.S. airports is warranted. The fortification will be required by ICAO just several months later, and is likely to be required by insurance companies extending war risk insurance.

The FAA has assessed the potential effect of this rule and has determined that the objective of this rule is the safety and security of the United States; the rule is therefore not considered an

unnecessary obstacle to international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), 2 U.S.C. 1531–1571, 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.

This rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Good Cause for Immediate Adoption

As discussed previously, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, and contrary to the public interest. The rule requires implementation of security requirements related to protection of the flightdeck. It provides means to protect the flightdeck from small arms fire or fragmentation devices, as well as means to protect against intrusion by unauthorized persons. Providing one standard for U.S. operators while allowing a lower standard for foreign operators only invites a shift of terrorist focus. It is essential that the rules impose the same standards at the same time. The only way to make this requirement effective concurrently with the previously adopted requirement for U.S. operators is to immediately adopt this requirement.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect 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, we determined that this rule would not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration (FAA) amends part 129 of Title 14 Code of Federal Regulations, 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 is revised to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 sec. 104.

2. Section 129.11 is amended by adding a new paragraph (a)(5) to read as follows:

§ 129.11 Operations specifications.

(a) * * *

(5) Registration and markings of each aircraft that meets equipment requirements of § 129.28(a).

3. In § 129.13, paragraph (a) is revised to read as follows:

§ 129.13 Airworthiness and registration certificates.

(a) Except as provided in § 129.28(b) of this part, no foreign air carrier may operate any aircraft within the United States unless that aircraft carries current registration and airworthiness certificates issued or validated by the country of registry and displays the nationality and registration markings of that country.

* * * * *

4. Part 129 is amended by adding a new § 129.28 to read as follows:

§ 129.28 Flightdeck security.

(a) After August 20, 2002, no foreign air carrier covered by § 129.1(a), may operate:

(1) A passenger carrying transport category aircraft within the United States or on overflights unless the aircraft is equipped with a door between the passenger and pilot compartment that incorporates features to restrict the unwanted entry of persons into the flightdeck that are operable from the flightdeck only; or

(2) A transport category all-cargo airplane, within the United States or on overflights, that has a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, unless the door incorporates features to restrict the unwanted entry of persons into the flightdeck that are operable from the flightdeck only.

(b) To the extent necessary to meet the requirements of paragraph (a) of this section, the requirements of § 129.13(a) to maintain airworthiness certification are waived until April 9, 2003. After that date, the requirements of § 129.13(a) apply in full.

(c) After April 9, 2003, no foreign air carrier covered by § 129.1(a) may operate a passenger carrying transport category airplane, or a transport category all-cargo airplane that has a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States or on overflights unless the aircraft's flightdeck door installation meets the requirements of paragraphs (c)(1) and (2) of this section or an alternative standard found acceptable to the Administrator.

(1) Resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 joules (221.3 foot-pounds) at the critical locations on the door, as well as a 1,113-newton (250 pounds) constant tensile load on the knob or handle, and

(2) Resist penetration by small arms fire and fragmentation devices to a level equivalent to level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

(d) After August 20, 2002, no foreign air carrier covered by § 129.1 may operate a passenger carrying transport category airplane, or a transport category all-cargo airplane that has a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States or on overflights unless the carrier has procedures in place that are acceptable to the civil aviation authority responsible for oversight of the part 129 operator to prevent access to the flightdeck except as authorized as follows:

(1) No person other than a person who is assigned to perform duty on the flight

deck may have a key to the flight deck door that will provide access to the flightdeck.

(2) Except when it is necessary to permit access and egress by persons authorized in accordance with paragraph (d)(3) of this section, a pilot in command of an aircraft that has a lockable flight deck door in accordance with § 129.28(a) and that is carrying passengers shall ensure that the door separating the flight crew compartment from the passenger compartment is closed and locked at all times when the aircraft is being operated.

(3) No person may admit any person to the flight deck of an aircraft unless the person being admitted is—

(i) A crewmember,

(ii) An inspector of the civil aviation authority responsible for oversight of the part 129 operator, or

(iii) Any other person authorized by the civil aviation authority responsible for oversight of the part 129 operator.

Issued in Washington, DC, on June 14, 2002.

Jane F. Garvey,

Administrator.

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