

*See correction*

## Title 14—Aeronautics and Space

### CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 15855; Amdt. Nos. 1-25; 107-2; 121-121] *Part 191*

#### AIRCRAFT SECURITY

##### Release of Information

• **Purpose.** The purpose of this amendment to Part 1 and the Addition of new Part 191 of the Federal Aviation Regulations is to implement section 316(d)(2) of Federal Aviation Act of 1958, which was added by the Air Transportation Security Act of 1974. The purpose of the amendments to Parts 107 and 121 of the Federal Aviation Regulations is to make editorial changes to conform those parts to the change in Part 1. •

Interested persons have been afforded an opportunity to participate in the making of these regulations by a notice of proposed rulemaking (Notice 76-14) issued on June 18, 1976, and published in the FEDERAL REGISTER on June 28, 1976 (41 FR 26579). Due consideration has been given to all comments presented in response to that notice.

A total of five comments were received in response to the notice. Two of the comments supported the proposals without qualification. While two other comments were in general agreement with the proposals, one requested certain assurances and the other recommended certain changes. The remaining comment opposed the proposals.

One commentator requested assurances that the prohibition on the release of information would not be imposed when there is a direct or indirect effect on the airport operator's security requirements or awareness. The FAA recognizes that from time to time certain information may be of value to an individual airport operator in implementing security programs, and while the FAA cannot give assurances in the form requested by the commentator, the FAA can state that it will disclose information consistent with the requirements of the Act and the regulations in Part 191.

One commentator urged that the proposals be broadened to apply to the security programs which were voluntarily adopted by business aviation enterprises not involved in common carriage. However, the applicability of the proposed new Part 191 is established by section 316(d) of the Federal Aviation Act of 1958, which applies only to common carriage operations.

The one commentator which submitted negative comments directed its comments to two main points, i.e., the listing of records in § 191.3(b), and the absence of a regulatory provision for release of "nonconfidential information which is reasonably segregable from confidential information." With respect to the listing of records, the commentator was concerned that the listing would lead to rigid application of a nondisclosure policy regarding the types of records listed in § 191.3(b). The FAA believes that the commentator has misunderstood

the regulations which were proposed. The listing of records does not mean that disclosure would be prohibited without the finding required under § 191.5 by the Director, Civil Aviation Security Service or his designee. The FAA believes that it is clear from the regulation as a whole that no blanket prohibition on disclosure is intended and that each request will be considered individually.

The commentator's second point concerned the absence of what the commentator described as a regulatory provision for "release of nonconfidential information which is reasonably segregable from confidential information." As a preliminary observation, it should be noted the records and information which can be withheld are those meeting the criteria set forth in § 191.5 irrespective of whether or not they are confidential. While the Freedom of Information Act provides in part, that "any reasonable segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection," there is no similar requirement in the amendments to the Federal Aviation Act effected by the Air Transportation Security Act of 1974. In response to the comment the FAA points out that section 316(d)(2) of the Federal Aviation Act states that the Administrator has power to prescribe regulations under section 316(d)(2) "Notwithstanding section 552 of title 5, United States Code, relating to freedom of information \* \* \*." However, to the extent that the commentator's suggestion advocates that there should be disclosure of information within a record if it is determined that the information can be disclosed, the FAA agrees with the commentator. Consequently, a § 191.7 is added to provide for disclosure of information in a record if the Director, Civil Aviation Security Service or his designee determines it can be disclosed under § 191.5 even though it is determined that the record also contains other information the disclosure of which is prohibited. Since § 191.7 is relaxatory it is included with these amendments.

As stated in Notice 76-14, a new definition of "intrastate air transportation" would be added to § 1.1 of the Federal Aviation Regulations. The addition of this definition is not intended to limit the applicability of § 121.7 of the Federal Aviation Regulations. Consequently, the title of § 121.7 is revised by these amendments to delete the word "intrastate." In addition, since §§ 107.1(a), 107.5(a)(1) and (2), 107.5(b), and 121.538(a) contain references to "intrastate common carriage covered by § 121.7", conforming editorial changes are made to delete the word "intrastate" wherever it appears in those sections.

Since the amendments to Parts 107 and 121 of the Federal Aviation Regulations are editorial and impose no additional burden on any person, I find that notice and public procedure thereon are unnecessary and that good cause exists for making them effective in less than 30 days.

Since the adoption of the amendment to § 1.1 and of new Part 191 is necessary to implement section 316(d)(2) of the Federal Aviation Act of 1958, which was added by the Air Transportation Security Act of 1974, and there is an urgent need to make them effective at the earliest possible date, I find that good cause exists for making them effective in less than 30 days.

(Secs. 313(a), 316(d)(2), 601, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1357(d)(2), 1421); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, Parts 1, 107, and 121 of the Federal Aviation Regulations and Chapter I, Subchapter K of Title 14 of the Code of Federal Regulations are amended, effective December 9, 1976, as follows:

#### PART 1—DEFINITIONS AND ABBREVIATIONS

1. By adding a new definition to § 1.1 between the definition of "Interstate air transportation" and the definition "Kite" to read as follows:

##### § 1.1 General definitions.

"Intrastate air transportation" means the carriage of persons or property as a common carrier for compensation or hire, by turbojet-powered aircraft capable of carrying thirty or more persons, wholly within the same State of the United States.

#### PART 107—AIRPORT SECURITY

##### PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

##### §§ 107.1 and 107.5 [Amended]

2. By amending §§ 107.1(a), 107.5(a)(1) and (2), 107.5(b), and 121.538(a) to delete the word "intrastate" where it appears in those sections.

3. By revising the title of § 121.7 to read as follows:

##### § 121.7 Common carriage by commercial operator.

##### PART 191—WITHHOLDING SECURITY INFORMATION FROM DISCLOSURE UNDER THE AIR TRANSPORTATION SECURITY ACT OF 1974

4. By adding a new Part 191 to Subchapter K to read as follows:

- Sec.  
191.1 Applicability.  
191.3 Records and information withheld.  
191.5 When disclosure of information is prohibited.  
191.7 Records containing both available and unavailable information.

AUTHORITY: Secs. 313(a), 316(d)(2), 601, Federal Aviation Act of 1958, (49 U.S.C. 1354(a), 1357(d)(2), 1421); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

(As published in the Federal Register [41 F.R. 53776] on December 9, 1976)

ACS

**§ 191.1 Applicability.**

(a) This part implements section 316 (d) (2) of the Federal Aviation Act of 1958 (49 U.S.C. 1357(d) (2)) and governs the release of any record, and any information contained therein, in the possession of the FAA which has been obtained or developed in the conduct of research and development activities to develop, modify, test, and evaluate systems, procedures, facilities, and devices to protect persons and property aboard aircraft in air transportation or intrastate air transportation against acts of criminal violence and aircraft piracy.

(b) For the purposes of this part, "record" includes any writing, drawing, map, recording, tape, film, photograph, or other documentary material by which information is preserved.

**§ 191.3 Records and information withheld.**

(a) Notwithstanding 5 U.S.C. 552, the records described in § 191.1(a) are not made available for public inspection or copying nor is any information contained in those records released to the public when disclosure thereof is prohibited by the Director, FAA Civil Aviation Security Service or his designee.

(b) Records subject to paragraph (a) of this section include, but are not limited to, those containing information which pertains to:

- (1) Any hijacker profile.
- (2) Any profile used in baggage screening.
- (3) The security program of any airport.
- (4) The security program of any air carrier.
- (5) Any device for the detection of any explosive or incendiary device or weapon.
- (6) Any device for protection against, or detection of, cargo theft.
- (7) Any contingency security plan.
- (8) Any security communications equipment and procedures.
- (9) Any threat of sabotage, terrorism or air piracy.

**§ 191.5 When disclosure of information is prohibited.**

The Director, FAA Civil Aviation Security Service or his designee prohibits disclosure of a record and information contained therein under § 191.3 if in his opinion it would:

- (a) Constitute an unwarranted invasion of personal privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(b) Reveal trade secrets or privileged or confidential commercial or financial information obtained from any person; or

(c) Be detrimental to the safety of persons traveling in air transportation or intrastate air transportation.

**§ 191.7 Records containing both available information.**

If a record contains information that the Director, Civil Aviation Security Service or his designee determines cannot be disclosed under this part, but also contains information that can be disclosed, the latter information will be provided for public inspection and copying.

NOTE.—The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C. on November 29, 1976.

**J. W. COCHRAN,**  
*Acting Administrator.*

December 20, 1976

[Docket No. 15855; Amdt. Nos. 1-25; 107-2;  
121-131] *Part 191*

**AIRCRAFT SECURITY**

**Release of Information**

*Correction*

In FR Doc. 36128, appearing on page 53776, in the issue of Thursday, December 9, 1976, on page 53777, in § 191.7, the heading should read: "Records containing both available and unavailable information."