

Barriers to Entry: FAA Proposes to Require Flight Deck Physical Secondary Barriers on New Aircraft

The Federal Aviation Administration (FAA) has issued a Notice of Proposed Rulemaking (NPRM) to require that certain passenger aircraft be outfitted with “installed physical secondary barrier[s]” or “IPSBs” to further protect the flight deck from unauthorized intrusion.

Following the 9/11 attacks, U.S. airlines implemented enhanced measures to prevent unauthorized flight deck access, which included the installation of reinforced flight deck doors. However, such doors must occasionally be opened in flight to provide for lavatory breaks and meal service. The NPRM is designed to further impede unauthorized access during the rare moments when the door must be opened in flight.

The NPRM – issued pursuant to a Congressional mandate, though nearly three years overdue – applies only to passenger-carrying operations under 14 CFR Part 121 (i.e., U.S. airlines). The FAA invites comment on several proposals airlines should pay close attention to, given the potential for unanticipated costs and added operational complexity.

Requirements

The FAA’s NPRM is composed of two elements.

1. First, the FAA proposes to require that U.S. airlines conducting passenger operations using transport category airplanes under 14 CFR Part 121 equip certain new aircraft with IPSBs. The FAA does not specify a particular IPSB that must be used; instead, it invites comment on proposed physical standards and capabilities of acceptable IPSBs, which would be incorporated into FAA aircraft airworthiness standards. Such capabilities include intrusion resistance, proposed load requirements, and visibility requirements, among others.
2. Second, the FAA recognizes that merely requiring airlines to “install an IPSB would not necessarily ensure that the IPSB is deployed.” Therefore, the FAA also proposes to require that airlines incorporate the use of the IPSB into their existing FAA-approved flightdeck door opening procedures already required under Part 121.

Timeline

Recognizing that it takes time to incorporate new aircraft airworthiness standards, the FAA proposes a two-year compliance timeline following the effective date of the final rule. After this time, any transport category aircraft manufactured and used in passenger-carrying operations under Part 121 would be required to be equipped with an FAA-compliant IPSB. Importantly, the proposed rule does not require retrofitting of existing aircraft.

Foreign Air Carriers

Of note, the FAA’s proposed rule does not apply to foreign air carriers operating under 14 CFR Part 129. The FAA’s justification for this difference in treatment is that “the portion of the total fleet made up by airplanes that are both newly manufactured, and subject to part 129, is very small, so the difference in risk between the domestic fleet and the international fleet would not be significant under this proposal.” Additionally, unlike the requirement to reinforce flight deck doors following 9/11, “neither ICAO nor other countries are imposing an IPSB requirement.” Accordingly, an FAA requirement would be “unharmonized” with international standards. However, the FAA reserves the right to “reconsider its current position” regarding applicability to foreign carriers “should the fleet change or an IPSB requirement become[s] an international standard.”

Short Flights



Rachel Welford

Member

rwelford@cozen.com
Phone: (202) 912-4825
Fax: (202) 304-1451



Michael Deutsch

Associate

mdeutsch@cozen.com
Phone: (202) 280-6499
Fax: (202) 861-1905

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The FAA proposes to apply the IPSB requirement to aircraft used for short-duration flights – even though it is more likely that the flight deck door may not need to be opened – on the basis that it is difficult to identify an airplane design parameter (such as passenger capacity or airplane gross weight) that correlates with short flights. Further, the FAA states that “the range of all the airplane models that would be affected ... exceeds the maximum flight length at which opening the flight deck door is unlikely.” However, the FAA invites comment on whether it should limit the applicability of the IPSB requirement to certain flights based on an airplane’s size, range, or duration of flight.

Observations

While there is widespread agreement regarding the importance of securing the flight deck, airlines and aircraft manufacturers would be well advised to carefully review the contours of FAA’s proposal with the following issues in mind as they consider commenting on the FAA’s NPRM:

- Airlines should evaluate the impact of the NPRM on operational, security, and flight training needs and determine whether changes to the NPRM could mitigate any unintended impacts. For example, because the rule does not contain a retrofit requirement, some flight crews at an airline will fly the same type of aircraft where only some aircraft are equipped with IPSBs, and thus the flight deck door opening procedures could vary flight-to-flight. Airlines may wish to consider whether to request that FAA allow for ample time to train crews on FAA-approved procedures relating to IPSB usage.
- Airlines and aircraft manufacturers should assess the physical IPSB requirements and standards proposed by the FAA to determine whether they are problematic and whether certain revisions could enhance the passenger experience and avoid substantially interfering with existing flight attendant/pilot processes.
- Foreign airlines should consider whether to proactively comment on the NPRM given that the FAA may “reconsider its current position” on applicability to such carriers in the event of “fleet change.” As noted above, the NPRM does not apply the IPSB requirement to foreign air carriers because FAA believes the “difference in risk between the domestic fleet and the international fleet would not be significant under” the proposal (it is unclear at what point the risk would become “significant”).
- Airlines should consider whether aircraft used for shorter stage lengths should be exempted from the rule, particularly since flight deck doors typically remain closed on such flights, potentially resulting in a different risk calculus. This analysis may include discussion with airline Corporate Security colleagues, given that the airline industry (and the Transportation Security Administration) have for years touted and adopted an information- and intelligence-driven, “risk-based” approach to aviation security.

Comments are due no later than September 30, 2022.
