UNITED STATES OF AMERICA
FEDERAL AVIATION AGENCY
WASHINGTON, D.C.

Civil Air Regulations Amendment 40-31
Effective: November 21, 1961
Issued: October 17, 1961

[Reg. Docket No. 839; Amdt. 40-31]

## PART 40—SCHEDULED INTERSTATE AIR CARRIER CERTIFICATION AND OPERATION RULES

### Boarding of Air Carrier Aircraft by Persons Appearing Intoxicated

A notice of proposed rule making was published in the FEDERAL REGISTER August 10, 1961 (26 F.R. 7223) and circulated to the industry as Draft Release 61-16 dated August 4, 1961, which proposed to amend Parts 40, 41, and 42 of the Civil Air Regulations to (1) place on the air carrier the responsibility of not permitting any person to board its aircraft if such person appears to be intoxicated, and (2) require that the air carrier notify the Administrator of incidents involving violations of this section, or any disturbance caused by intoxicated persons while boarding or aboard its aircraft.

Many comments were received from interested parties and consideration has been given to all relevant matter presented. Generally speaking, the comments were unanimously in favor of lengthening the proposed 24-hour reporting period contained in paragraph (d). Other comments favored limiting the reporting of violations of paragraph (a) to only those incidents in which the passenger refuses to comply with its provisions. A few comments suggested that the proposed amendments were altogether unnecessary.

In proposing these amendments, the Agency considered several recent incidents where intoxicated persons were permitted to board air carrier aircraft and, due to their condition, subsequently created disturbances, and even threatened to do bodily harm to crew members and other persons aboard the aircraft. The drinking regulations adopted in March 1960, effectively control the consumption and serving of alcoholic beverages to persons aboard air carrier aircraft, but do not provide for situations such as are considered here.

Section 43.45 of the Civil Air Regulations currently provides that a pilot shall not permit any person to be carried in the aircraft who is obviously under the influence of intoxicating liquor. This provision has also served its purpose well. However, when applied to air carrier operations, this regulation has not been entirely effective to prevent incidents such as those which recently have taken place. Placing the responsibility on the pilot is not satisfactory in the case of air carrier operations since, under most conditions, the pilot is not present to observe the appearance and conduct of passengers as they board the aircraft, but is engaged elsewhere in essential duties regarding the flight.

The primary responsibility for preventing intoxicated persons from boarding air carrier aircraft must be placed on those who have an adequate opportunity to prevent the occurrence. The air carrier has both ground personnel and cabin attendants who are in a position to detect those persons who appear to be intoxicated and to refuse such persons permission to board the aircraft. The proposed amendments to Parts 40, 41, and 42 of the Civil Air Regulations place on the carrier the responsibility of not permitting any person to board its aircraft if such person appears to be intoxicated. Some air carriers have developed their own procedures and instructions to appropriate personnel in recognition of a responsibility in this area. This regulation underlines that responsibility and requires all carriers to take steps more appropriate to existing conditions. In particular it will prevent exclusive reliance on the pilot as the carrier's sole agent for this purpose. Section 43.45 is not being amended because it is always the responsibility of the pilot in command to refuse permission for the carriage of any person who is under the influence of intoxicating liquor regardless of the action taken by other airline employees if presence of such person is known to him.

Comments received in regard to the 24-hour reporting period point out that due to crew rotations, weekends and periods when the air carriers' general offices are closed, coupled with the minimum time required to process these reports, such a short period would place a serious burden on the carriers. After consideration of these circumstances, it has been decided to lengthen the reporting period to 5 days. It is felt that this allows sufficient period in which to gather the information and make the necessary report.

In response to comments other changes have been made in paragraph (d). One comment received from an air carrier points out that the rule as proposed requires the making of a report even where a passenger who was unaware of the restriction imposed by paragraph (a) complies with it upon request. It has been determined that whatever advantages might be derived by requiring such reports would be outweighed by the embarrassment and possible adverse publicity to the carrier and passenger concerned. Consequently, the paragraph has been revised to require that only those violations of paragraph (a) which persist after the passenger has been informed of its provision must be reported. Also, the phrase "under the influence of alcoholic beverage" has been changed to "appears to be intoxicated". The purpose of this change is to bring the language in paragraph (d) into conformity with that presently found in paragraphs (b) and (c).

In addition to the changes made in response to comments, the Agency has made another change in paragraph (d). The proposed rule required a report of disturbances while boarding an air carrier aircraft. Upon further consideration there does not appear any necessity for requiring a report under these circumstances. If the person is not permitted to board the aircraft there has been no safety threat involved and no necessity for a report of the incident to the Federal Government.

In consideration of the foregoing, Part 40 of the Civil Air Regulations (14 CFR Part 40) is hereby amended by adding new paragraphs (c) and (d) to § 40.371 to read as follows:

§ 40.371 Drinking and serving of alcoholic beverages.

* * * * *

(c) No air carrier shall permit any person to board an air carrier aircraft if such person appears to be intoxicated.

(d) An air carrier shall report to the Administrator within 5 days any incident in which a person aboard its aircraft refuses to comply with paragraph (a) of this section, or any disturbance caused by a person who appears to be intoxicated while aboard its aircraft.

This amendment shall become effective on November 21, 1961.

(Secs. 313(a), 601, 72 Stat. 752, 775, 49 U.S.C. 1354(a), 1421)

Issued in Washington, D.C., on October 17, 1961.

N. E. HALABY,
*Administrator.*

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