

VOLUME 14 COMPLIANCE AND ENFORCEMENT**CHAPTER 3 SPECIAL CONSIDERATIONS****Section 10 Compliance with In-Flight Smoking Regulations**

14-3-10-1 GENERAL. Principal operations inspectors (POI) will ensure that U.S. and foreign air carriers to which they are assigned are aware of the public laws and the Title 14 of the Code of Federal Regulations (14 CFR) part banning smoking, and that their U.S. air carriers have taken appropriate actions to include procedures in their manuals and training curriculums for instructing all crewmembers regarding these requirements. The Federal Aviation Administration (FAA) position regarding enforcement of the smoking prohibitions contained in 14 CFR part 121, § 121.317, part 129, § 129.29, and part 135, § 135.127 is to treat a reported deviation as the FAA would any other safety rule, while at the same time exercising good judgment in determining the appropriate actions to be taken. The actions to be taken will differ according to the type of passenger noncompliance. Passenger noncompliance can be through ignorance of the rule, or unthinking reaction to the urge to smoke, or it can be willful noncompliance. For example, if a passenger lights a cigarette as a reflex action and, when told that smoking is not allowed, puts it out and does not light another one, no further action is necessary. On the other hand, if a passenger lights a cigarette and will not extinguish it when asked to do so, further action is necessary.

A. Guidance. POIs should ensure that operators have procedures in place for instructing crewmembers concerning the following:

1) Procedures for Handling of Passengers in Noncompliance with Smoking Prohibitions. Operators should instruct flight attendants (F/A) on the following:

- How to use nonthreatening methods to approach passengers who are not complying with the smoking rule;
- How to avoid actions that could result in abusive passenger behavior; and
- How to avoid the involvement of other passengers to help obtain compliance from the smoker, as this could cause passengers to interact in a negative way with each other.

2) Procedures for Handling of Noncompliant Passengers Who Refuse to Identify Themselves. POIs should ensure that their operators have procedures to notify the flightcrew if a passenger is suspected of smoking in the lavatory, tampering with the lavatory smoke detector, or if a passenger refuses to extinguish a cigarette. The procedures should provide for identification (preferably one with a picture). The procedures should also address instances of a passenger refusing to provide any identification. Crewmembers should obtain as much information as possible regarding that passenger, such as a physical description, seat number, boarding location, and names and addresses of any traveling companions. Operators must obtain the names and addresses of other passengers who are seated in the vicinity of the smoker, as these passengers may have to be contacted as witnesses later. Then the pilot in command (PIC) should notify the operator that there is a noncompliant passenger on board who refuses to identify himself or herself, and request that the operator have Law Enforcement Officers (LEO)

meet the flight at the gate. The LEOs should be informed by the operator's personnel that they believe that a person may have violated a Federal law and 14 CFR. Regardless of the actions the LEOs may take, it is important that the FAA be given enough information (evidence), including the proper identification of the alleged offender, to initiate an Enforcement Investigative Report (EIR). If the LEOs obtain the identity of the smoker or person who tampers with a lavatory smoke detector, this information should be provided to the F/A in charge of the cabin, the PIC, or the station manager, as applicable. This person will then be responsible for ensuring that the information regarding the smoker's identification is included with the operator's report to the FAA describing the incident.

3) Procedures for Handling of Physically Abusive, Noncompliant Passengers.

Carriers should have procedures to address the following situations: if a passenger becomes physically abusive either toward another passenger or crewmember; if a passenger has to be physically restrained; or if a flightcrew member must leave the flight deck to help restore order in the cabin; then the appropriate information should be obtained and the PIC should notify the operator and have the operator request that the appropriate LEO meet the flight at the gate.

4) Reporting Noncompliance. All cases of noncompliance with the smoking regulations should be reported in a timely manner by the operator to the FAA in accordance with the procedures contained in the operator's manual (as required by §§ 121.133 and 135.21, as applicable). The exception to this is the case where the person smoking immediately extinguishes the cigarette when asked to do so. The PIC and/or the F/A in charge of the cabin should fill out a report which, if feasible, both of them should sign. This report should be sent to the operator's personnel designated in the operator's and crewmembers' manuals. Some operators have indicated that they will develop a form that will list the information that should be given and include the address to which the form should be mailed. POIs should encourage operators to adopt this procedure. The report should include the following:

- The name and address of the smoker (if this information has been obtained);
- A physical description of the smoker;
- The seat number in which the smoker was seated;
- The location of the smoker's boarding and destination;
- Names, addresses, and phone numbers of witnesses;
- Names, addresses, and domiciles of the other crewmembers;
- A statement and confirmation of whether or not the passenger briefing required by § 121.571(a)(1)(i) was given, and whether or not the smoker was on board the aircraft when the briefing was given;
- A statement and confirmation of whether or not the "no smoking" signs were illuminated or "no smoking" placards were posted;
- A brief, objective, narrative of the incident;
- The airline, flight number, and date; and
- Police report number if police were summoned.

B. Summary. POIs should inform their operators of the following types of recommended practices for crewmembers handling smoker noncompliance with smoking prohibitions on nonsmoking flights:

1) Incidents That Require No Additional Action. No additional action is required if a person lights a cigarette or other smoking material and, when advised that this is against the law and 14 CFR, immediately extinguishes it and does not light another cigarette.

2) Incidents That Require Obtaining Information. Crewmembers should be instructed to obtain the report information (see subparagraph 14-3-10-1A4)) when one of the following situations occurs:

- A smoker refuses to immediately extinguish smoking materials;
- A smoker or lavatory smoke detector tamperer becomes abusive;
- The crew has evidence that a person has smoked in the lavatory; and
- The crew has evidence that a person has tampered with the lavatory smoke detector.

3) Incidents That May Require Involvement of LEOs. Crewmembers should request that police meet the flight at the gate when the flight arrives and obtain information when the following occurs:

- A smoker refuses to produce identification;
- A person who is suspected of tampering with a lavatory smoke detector refuses to produce identification;
- A person suspected of smoking in a lavatory refuses to produce identification; and
- A smoker or lavatory smoke detector tamperer becomes abusive toward crewmembers or other passengers.

C. Procedures. Air carriers and passengers must comply with the regulations discussed in this paragraph, as well as with all other appropriate FAA safety regulations. With respect to passenger noncompliance with smoking prohibitions, the following information regarding enforcement action should be noted.

1) Interference with a Crewmember. Passenger noncompliance with FAA safety regulations may result in interference with a crewmember, which is a violation of 14 CFR part 91, § 91.11, §§ 121.580, and 135.120, and may also be a criminal violation under Title 49 of the United States Code (49 U.S.C.) § 46504. Operators should have procedures in their manuals to ensure that crewmembers know what actions to take if a passenger interferes with a crewmember and/or does not comply with the smoking regulations. If the passenger interferes with a crewmember, the operator should involve local LEOs. If passenger noncompliance does not result in crewmember interference, but the operator files a complaint with the FAA, the operator must provide enough information (evidence) to the FAA so an investigation can be initiated.

2) Providing Evidence. Operators or other complainants must provide ample evidence, and FAA inspectors must ensure that ample evidence exists, to make the following determinations: whether a violation of 14 CFR has occurred; whether there is enough information to locate the passenger (his or her name and address); and whether statements from

crewmembers and company officials will be required to corroborate the complaint. If an operator cannot provide the foregoing information, then no further action should be taken.

3) Complaints. Complaints from other passengers should also contain enough information (including that previously described) so that it can be used to initiate an investigation.

4) Circumstantial Evidence. Recently, some concerns have been expressed about enforcement actions being taken against passengers for noncompliance with the smoking regulations when the information provided by the operator and/or crewmember contains evidence that is only circumstantial in nature. Circumstantial evidence (as opposed to direct evidence) is indirect evidence. For example, if a crewmember does not observe a passenger smoking in a lavatory, but does observe that passenger leaving a lavatory with a package of cigarettes in his/her possession, does smell cigarette smoke while the person is in the lavatory or immediately after the person leaves the lavatory, and also observes ashes in the lavatory (although the crewmember may not have directly observed the passenger smoking in the lavatory), there is enough indirect (circumstantial) evidence to prove that the passenger was smoking. One legal encyclopedia (The Guide to American Law, published by West Publishing Company) describes circumstantial evidence as the following:

- Information and testimony presented by a party in a civil or criminal action that permit the making of deductions that indirectly establish the existence or nonexistence of the fact or event that the party seeks to prove; and
- A party or witness who provides circumstantial evidence does not have actual personal knowledge of, and did not directly observe, the fact in issue, but because of the facts he or she knows or observed, he or she and any other reasonable person can logically deduce the existence of fact or event.

NOTE: The current edition of FAA Order 2150.3, FAA Compliance and Enforcement Program, does not, at the present time, explicitly discuss the use of circumstantial evidence in enforcement actions. The FAA headquarters (HQ) legal staff, however, has advised that circumstantial evidence may be used in many instances, including enforcement actions involving noncompliance with the smoking regulations, if an operator, crewmember, or passenger provides the information to the FAA.

14-3-10-3 through 14-3-10-17 RESERVED.