



**INTERNATIONAL CIVIL AVIATION ORGANIZATION**

*A United Nations Specialized Agency*

# **ICAO Regional FAL Workshop Mexico City, Mexico 14-17 May 2013**

**INADMISSIBLE PERSONS/DEPORTEES**

15 May 2013

# INADMISSIBLE PERSONS/DEPORTEES: OVERVIEW



1. BACKGROUND
2. CHAPTER 5: INTRODUCTION
3. INADMISSIBLE PERSONS
4. DEPORTEES
5. GUIDANCE MATERIAL

# 1. BACKGROUND



## 1<sup>ST</sup> Edition (1949)

**“Recommendation” 3.17:** “. . .public authorities . . . responsible for the custody and care of passengers and crew who are in possession of all necessary papers, until they are finally admitted or refused admission and transferred back to the custody of the operator for transport away from the territory of the State.”

**Standard 3.18:** “Upon refusal of admission and transfer back of any person, the operator shall be responsible for promptly returning him to the point where he commenced the use of the operator’s aircraft.”

# 1. BACKGROUND

1. Late 1970s/early 1980s: increase in illegal migration by air
2. FAL/10 (1988), FAL/11 (1995): new SARPs
3. FALP/1 (1997): additional SARPs
4. FALP/4 (2002): drafting group set up
5. 2003: drafting group – WP for FAL/12
6. FAL/12 (2004): Ch. 3 amended, new Ch. 5
7. FALP/7 (2012): additional SARPs

# INADMISSIBLE PERSONS/DEPORTEES: OVERVIEW



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## 2. CH. 5: INTRODUCTION

- 4 Sections
- 32 SARPs: 29 **Standards**; 3 RPs (existing)
  - 3 Standards: aircraft operators
- **Section A: General**
- **Section D: Procurement of a Replacement TD**



## 2. CH. 5: INTRODUCTION

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### A. General

5.1 C.S. shall cooperate to promptly resolve differences in implementing provisions

5.2 C.S. shall facilitate the transit of persons

5.3 Preservation of dignity of persons

## 2. CH. 5: INTRODUCTION



### D. Procurement of a Replacement TD

5.25: Assistance to be provided in obtaining replacement travel document

5.26: Requested State to respond within 30 days: issue TD or prove person not national

5.27: Signature not to be required to issue TD

5.28: Issuance of emergency TD

5.29: Refusal to issue TD or otherwise hinder return prohibited

# 2. CH. 5: INTRODUCTION



INADMISSIBLE PERSON	DEPORTEE
<p>“A person who is or will be <u>refused admission</u> to a State by its authorities.”</p>	<p>“A person who had <u>legally been admitted</u> to a State by its authorities or who had <u>entered</u> a State <u>illegally</u>, and who at some later time is <u>formally ordered</u> by the competent authorities <u>to leave</u> that State.”</p>

## CHARACTERISTICS

1. Improperly documented (e.g. expired pp)	1. Person who seeks entry & is admitted
2. Fraudulently documented (e.g. false pp)	2. Person who enters illegally
3. Undocumented (arrive at border without travel documents)	3. Person who enters legally, but later found to have entered illegally
4. Other admission refusals (beyond control of aircraft operator) (e.g. lack of funds)	4. Formally ordered to leave

**Once person admitted, airline’s responsibility for custody & care ends [3.45]. Thereafter, all obligations, responsibilities & costs for removal that of State; aircraft operator merely provides transportation.**

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# 3. INADMISSIBLE PERSONS



1. Relevant definitions
2. Notification of inadmissibility
3. Consultation on removal
4. Provision of documents
5. Flight security; Costs of custody & care
6. Physical removal of inadmissible person
7. Miscellaneous provisions

# 3. INADMISSIBLE PERSONS

## 1. Relevant Definitions

***Admission.*** The permission granted to a person to enter a State by the public authorities of that State **in accordance with its national laws**. [→ 1949 “finally” admitted]

***Commencement of journey.*** The point at which the person began his journey, without taking into account any airport at which he stopped in direct transit, either on a through-flight or a connecting flight, if he did not leave the direct transit area of the airport in question. [→ 1949 “commenced the use of the operator’s aircraft”]

# 3. INADMISSIBLE PERSONS

## 1. Relevant Definitions

***Improperly documented person.*** A person who travels, or attempts to travel: (a) with an expired travel document or an invalid visa; (b) with a counterfeit, forged or altered travel document or visa; (c) with someone else's travel document or visa; (d) without a travel document; or (e) without a visa, if required. [▶ 5.9.1]

***Travel document.*** A passport or other official document of identity issued by a State or organization, which may be used by the rightful holder for international travel.

# 3. INADMISSIBLE PERSONS

## 1. Relevant Definitions

(proposed: FALP/7, Oct. 2012)

***Escort.*** An escort is an individual, authorized by a Contracting State or an aircraft operator to accompany inadmissible persons or deportees being removed from that Contracting State.

***Imposter.*** A person who impersonates the rightful holder of a genuine travel document.

# 3. INADMISSIBLE PERSONS

- Airline: Responsible from Aircraft → Border Control Desk [3.43]
- Authorities: Expeditiously accept persons for examination as to their admissibility into the State [3.42]
- Authorities: Responsible for persons after “acceptance for examination” until: a) admitted; or b) **found inadmissible** ▶ 5.3
- The responsibility of an aircraft operator . . . shall terminate from the moment such persons have been admitted [3.45]

**2. Notification of inadmissibility [3.44 ↔ 5.3]:** State to notify airline [paper/electronically] when a person is found inadmissible.

# 3. INADMISSIBLE PERSONS



## 3. Consultation on [time-frame] for removal: [RP5.4 → FALP/7 Standard!]

→ allow operator sufficient time to remove via own services or make other arrangements

## 4. Provision of documents

→ Removal order (definition; 5.5 → FALP/7)

→ Covering letters (5.6 & 5.7 ↔ 5.13: Acceptance by States)

– App. 9-1: Attesting document relating to lost or destroyed travel document

– App. 9-2: Letter relating to fraudulent, etc. TD or genuine TD presented by imposter

# 3. INADMISSIBLE PERSONS



## 5. Flight security; Costs of custody & care until removed

- 5.8 → Advance warning to airline: precautions for security
- 5.9 → Airline to bear costs of an improperly document person
- 5.9.1 → State to bear costs of all other categories of inad. Persons  
(document problems beyond airline's expertise;  
reasons other than **improper documents**)
  
- 5.10 → Recovery of transportation costs by airline

# 3. INADMISSIBLE PERSONS



1. Relevant definitions
2. Notification of inadmissibility
3. Consultation on removal
4. Provision of documents
5. Flight security; Costs of custody & care
6. Physical removal of inadmissible person
7. Miscellaneous provisions

# 3. INADMISSIBLE PERSONS



## 6. Physical removal of inadmissible person

- 5.11 The aircraft operator shall remove the inadmissible person to:

- a) the point where he **commenced his journey**; or

- b) to **any place where he is admissible** [citizen or resident]

- 5.12 A Contracting State shall accept for examination a person removed from a State where he was found inadmissible, if this person **commenced his journey** from its territory. A Contracting State shall not return such a person to the country where he was earlier found inadmissible.

- 5.12 Obligation to accept letter issued under 5.6 or 5.7

# 3. INADMISSIBLE PERSONS



## 7. Miscellaneous provisions

- 5.14: No fines if airline has taken adequate precautions to ensure compliance with documentary requirements
- RP 5.15: Cooperation (e.g. MOU): reduction of fines & penalties
- 5.16: States not to prevent departure of aircraft pending admissibility of arriving passengers

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# 4. DEPORTEES



## Relevant Definitions

***Deportation order.*** A written order, issued by the competent authorities of a State and served upon a deportee, directing him to leave that State.

***Deportee.*** A person who had legally been admitted to a State by its authorities or who had entered a State illegally, and who at some later time is formally ordered by the competent authorities to leave that State.

# 4. DEPORTEES



## Relevant Definitions

***Risk assessment.*** An assessment by a deporting State of a deportee's suitability for escorted or unescorted removal via commercial air services. The assessment should take into account all pertinent factors, including medical, mental and physical fitness for carriage on a commercial flight, willingness or unwillingness to travel, behavioural patterns and any history of violence.

▶ **Important from AVSEC point-of-view**

## 4. DEPORTEES

- 5.17 Obligation to serve deportation order & name destination
- 5.18 Removing State: all obligations, responsibilities, costs
  - Legal status of deportee ↔ inadmissible person
- **FALP/7**: 24-hour point of contact to be established
  
- 5.19 Obligation to provide advance information to airline
  - Copy of deportation order, risk assessment, escorts
- **FALP/7**: Airline/pilot-in-command: option to refuse to transport deportee on a specific flight: safety & security of flight
- **FALP/7**: State to consider airline's policy: number of deportees that may be transported on a given flight

## 4. DEPORTEES

- 5.20 Use of direct, non-stop flights
- 5.21 State to provide to airline all TDs required by transit, destination State
- 5.22 Obligation of State to admit a national who has been deported from another State
- 5.23 Special consideration to residents deported
- 5.24 Escorts: to remain with deportee until final destination unless otherwise agreed with airline

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# 5. GUIDANCE MATERIAL



1. Doc 9957: FAL Manual

2. IATA/CAWG:

→ Guidelines for the Removal of Deportees

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