

Purpose

This white paper is designed to provide members of the National Air Transportation Association's (NATA) Airline Service Council (ASC) a detailed review of the Interim Final Rule (IFR), Air Cargo Screening published in the *Federal Register* on September 16, 2009. The Transportation Security Administration (TSA) will accept public comments on this IFR until its effective date, November 16, 2009. Additionally, NATA hopes this white paper will encourage ASC members to discuss and provide NATA staff with specific points to be included in the association's comments to the TSA on this rule.



Background

Beginning in 2002 and until now, the TSA has utilized a multilayered, risk-based system for securing cargo transported on passenger aircraft. Air carriers have been required to comply with the provisions in their security program for screening and inspecting cargo carried on passenger aircraft. Indirect air carriers (IAC) have been required to screen a certain percentage of cargo prior to tendering the cargo for shipment to air carriers. The TSA has required 100% screening on all cargo deemed an “elevated risk.” Currently, most screening is performed by air carriers at the airport.

This IFR is a response to the requirement in the Implementing Recommendations of the 9/11 Commission Act (9/11 Act) for:

Not later than three years after the date of enactment of the [9/11 Act]), the Secretary of Homeland Security shall establish a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier in air transportation on intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo.

Additionally, the 9/11 Act provides that the system used to screen cargo on passenger aircraft must provide a level of security “commensurate with the level of security for the screening of passenger checked baggage” and directs that:

- 50% of such cargo must be screened by February 3, 2009
- 100% of such cargo must be screened by August 3, 2010

Summary of the IFR



This IFR will create the Certified Cargo Screening Program (CCSP), which will allow entities upstream in the cargo transportation process to perform TSA-approved screening and tender the cargo to the air carrier utilizing a secure chain of custody. These upstream facilities performing screening will be known as Certified Cargo Screening Facilities (CCSF). Air carriers receiving cargo that has been screened by a CCSF and tendered using a secure chain of custody will consider that cargo fully screened. Under the CCSP CCSF will be required to:

- Implement the certified cargo screening standard security program that the TSA develops and any amendments to it;
- Appoint security coordinators at the corporate and facility levels and alternates to be available 24 hours per day, 7 days per week;
- Ensure that the following individuals successfully undergo a TSA-conducted security threat assessment (STA):
 - Each employee and authorized representative who screens cargo or has unescorted access to screened cargo, and
 - each security coordinator and alternate, senior manager of the facility, and other individual who implements the cargo screening program;
- Adhere to strict physical and access control measures for the storage, handling, and screening of cargo;
- Screen cargo using TSA-approved methods;
- Implement chain of custody requirements, including the use of tamper-evident technology, which must begin when the cargo is screened and remain intact until the cargo is tendered to the aircraft operator for transport on a passenger aircraft; and
- Apply for recertification, including a new examination by a TSA-approved validator, every 36 months

Entities such as shippers, manufacturers, warehousing entities, distributors, third-party logistics companies, and IACs that are located in the U.S. may apply to the TSA to become CCSFs. In addition, aircraft operators that screen cargo off-airport must also become CCSFs. Entities wishing to become CCSFs must submit a single-facility application to the TSA and also provide a TSA-approved validator's evaluation of the applicant's security measures.

This IFR establishes a process for firms to become TSA-approved validators if they:

- Hold and carry out a TSA-approved security program;
- Establish security coordinators to be the primary points of contact for security of the facility; and
- Ensure that individuals conducting assessments have professional qualifications, receive training, do not have conflicts of interest with facilities to be assessed, and conduct assessments impartially.

This rule also requires that validators, their supervisors and validation firm's security coordinators must undergo a TSA STA. Individuals performing validation assessments must:

- Be a citizen or national of the United States or be a lawful permanent resident alien;
- Hold a certification or accreditation from a TSA-recognized organization qualified to certify or accredit a validator;
- Have at least five years of experience in inspection or validating compliance with certain government and industry organizations;
- Have sufficient knowledge of certain regulations, policies, and security programs and be able to determine compliance;
- Have sufficient knowledge of the CCSP; and
- Conduct no more than two assessments of a facility seeking approval, unless the TSA authorizes otherwise.

Section By Section Analysis



Part 1515 – Appeal and Waiver Procedures for Security Threat Assessments for Individuals

This rule amends 1515.1 to include applicants engaged in air cargo operations who work for certified cargo screening facilities or validation firms who have applied for an STA and wish to appeal and Initial Determination of Threat Assessment. The appeal procedures include administrative appeals, requests for waivers, and review of certain cases by an administrative law judge.

Part 1520 – Protection of Sensitive Security Information (SSI)

This rule will classify the security programs of CCSFs, IACs and Validation Firms as SSI. Additionally, personnel from the aforementioned entities will now be classified as 'covered persons' and subject to the requirements of 49 CFR 1520 relating to SSI.

Part 1522 – TSA-Approved Validation Firms and Validators

"The provisions of part 1522 establish a system in which TSA approves validation firms; these firms are responsible for hiring individuals, called validators, who must have specific qualifications. These Validators are responsible for conducting the assessments of the facility seeking certification or recertification as a CCSF operating under part 1549. The CCSF applicants (whether they are individual companies or IACs) will pay the validation firm for the validation assessment, TSA will not charge or establish a fee for that purpose. Firms that seek to perform the functions of validation firms for purposes

of the CCSP must apply to TSA for approval and, once approved, must perform the functions in accordance with TSA's requirements. The criteria for approval and the performance requirements are set forth in part 1522. Part 1522 also addresses the qualifications and responsibilities of individual validators, who, on behalf of a validation firm, actually perform the assessments of persons, operations, or facilities regulated under this chapter.”¹

Part 1540 – Civil Aviation Security: General Rules

This section further amends the rules to allow for STA for affected air carrier, CCSF, IAC and validation firm employees.

Part 1544 – Aircraft Operator Security: Air Carriers and Commercial Operators / Part 1546 – Foreign Air Carrier Security

“Part 1544 and part 1546 apply to a variety of operators, including different sizes of passenger aircraft and all-cargo aircraft, by U.S. operators and foreign air carriers, respectively. This rule does not apply to all such operators. The requirement to comply with the enhanced cargo screening requirements in the 9/11 Act and this rule apply only to U.S. aircraft operators under § 1544.101(a) and to foreign air carriers under §§ 1546.101(a) and (b). See 49 CFR 1544.205(g) and 1546.205(g). The operators that must comply are air carriers or commercial operators under FAA rule 14 CFR part 119 (which are U.S. operators), and foreign air carriers, in scheduled or public charter passenger operations with an aircraft having a passenger seating configuration of 61 or more seats, or that will provide deplaned passengers access to a sterile area of an airport or will enplane passengers from a sterile area. This rule does not apply to general aviation operators.”²

The changes to this Part establish the rules by which air carriers must operate in regards to shipping cargo on passenger aircraft and include the following:

- Cargo may be accepted (provided it has been screened) from a shipper, aircraft operator, foreign air carrier, IAC or CCSF.
- The following entities may conduct cargo screening
 - The aircraft operator on an airport
 - On-airport screening area must be a SIDA
 - Another aircraft operator or foreign aircraft operator under the Aircraft Operator Standard Security Program or Foreign Air Carrier Model Security Program
 - CCSF
- Any aircraft operator that screens cargo off airport must be certified as a CCSF
- If an aircraft operator accepts cargo from a CCSF, the operator must verify that there has been no break in the chain of custody between the time the cargo was screened and when it is tendered to the operator
 - If there has been a break in the chain of custody, the operator must re-screen the cargo prior to transporting it on a passenger aircraft.

¹ Federal Register/ Vol. 74, No. 178/ Wednesday, September 16, 2009/ Page 47677

² Federal Register/ Vol. 74, No. 178/ Wednesday, September 16, 2009/ Page 47684

- The following individuals must undergo an STA
 - Anyone authorized by the operator to have unescorted access to cargo and having knowledge that said cargo will be shipped on passenger aircraft.
 - Anyone having unescorted access to cargo that has been screened
 - Anyone who performs functions such as dispatch or security of cargo
 - Cargo screeners or supervisors

Part 1549 – Certified Cargo Screening Program

“This new part applies to each facility that applies for TSA certification as a CCSF or operates as a CCSF. The regulatory text does not limit who may apply to be certified as a CCSF. Examples of facilities that may apply include: Manufacturers; third party logistics companies; IACs; warehouses, distribution centers and other entities, if they own a facility that directly tenders cargo to an IAC, an aircraft operator, foreign air carrier, or another CCSF for transport on a passenger aircraft. For example, a manufacturer could physically inspect the box prior to closing it and initiating chain of custody, then tender the cargo to a third-party logistics company who is a CCSF, who then tenders it to the aircraft operator for transport on a passenger aircraft. If the CCSF could transfer the cargo to a non-regulated entity, it would be difficult to ensure that the chain of custody measures remained intact when the non-regulated entity tendered the cargo to the aircraft operator. Certifications will apply to a single facility, not to a single company owning several locations where screening would occur, because security measures and the level of security will vary from one facility to another. TSA must evaluate and make a determination on the security measures of the specific facility applying for certification.”³

Section 1549.101 Acceptance, screening and transfer of Cargo

This section sets forth the specific rules a CCSF must follow when screening cargo.

- CCSFs must use the facilities, equipment and procedures described in its security program to prevent any unauthorized explosives, incendiaries or other destructive substances from being transported in cargo on an aircraft
- Cargo must be screened for explosives, incendiaries or other destructive substances before being tendered to another CCSF, IAC or air carrier
- If a shipper refuses to allow screening of cargo, the CCSF must refuse to offer the cargo to another CCSF, IAC or air carrier
- Screened cargo must be protected from unauthorized access by a secure chain of custody from the time it is screened until it is tendered to another CCSF, IAC or air carrier

³ Federal Register/ Vol. 74, No. 178/ Wednesday, September 16, 2009/ Page 47686

Status of the Rule

This rule has been issued as an IFR and will become effective on November 16, 2009. The TSA will accept comments on the rule until November 16, 2009.

Closing

This IFR has been promulgated to meet the 9/11 Act statutory requirement that 100% of cargo transported on passenger aircraft be screened by August 3, 2010. With that statutory requirement in mind, NATA asks for comment from members of the Airline Service Council on specific areas where this rule could be improved to allow for:

- Less financial burden in implementation
- Greater efficiency in cargo shipment
- Reduction in administrative burden
- Increased security

To allow for sufficient time to prepare comments, NATA asks to receive comments from its members concerning this IFR by November 6, 2009.

