

November 12, 2009

Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE.  
West Building Ground Floor, Room W12-140  
Washington, DC 20590-0001

**RE: Docket No. TSA-2009-0018, Air Cargo Screening – Interim Final Rule**

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before the Congress, federal agencies and state governments. NATA's over 2,000 member companies own, operate and service aircraft and provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

In addition, NATA formed the Airline Services Council (ASC) in 2002 to further the interests of companies providing services to scheduled air carriers as their primary business. NATA's ASC currently comprises 23 domestic and international firms, with a workforce of over 90,000 individuals, which provide aircraft fueling, baggage service, catering, terminal services, cargo services, aircraft handling, de-icing, maintenance, security services, and aircraft cleaning to scheduled air carriers.

The NATA and ASC appreciate the opportunity to provide comment on the creation of the Certified Cargo Screening Program by the Air Cargo Screening Interim Final Rule (IFR).

**Background**

The Transportation Security Administration (TSA) issued the IFR to meet the requirements of section 1602 of the Implementing the Recommendations of the 9/11 Commission Act of 2007. The act requires that by February 3, 2009, at least 50% of cargo carried on commercial passenger aircraft must be screened and by August 3, 2010, 100% of cargo carried on commercial passenger aircraft must be screened. One of the major obstacles in meeting those goals is that air carriers do not have the facilities or space to screen all cargo effectively at the airport prior to loading on aircraft. This IFR will create the Certified Cargo Screening Program (CCSP) that will allow entities upstream in the cargo packaging and transportation process to perform TSA-approved screening and tender the cargo to the air carrier

utilizing a secure chain of custody. Air carriers receiving cargo that has been screened by a Certified Cargo Screening Facility (CCSF) and tendered using a secure chain of custody will consider that cargo fully screened. Entities such as shippers, manufacturers, warehousing entities, distributors, third-party logistics companies, and Indirect Air Carriers (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.

## **Comments**

The NATA and ASC are overall pleased with the introduction of the CCSP. This program should allow for the meeting of the goals set forth in the Implementing the Recommendations of the 9/11 Commission Act without undue disruption of cargo transportation in the United States. However, NATA believes the following issues with the IFR must be addressed.

### **Third Party Validation**

This IFR requires entities desiring to become a CCSF to contract, for a fee, with a third-party validation firm to perform an audit of the facilities' compliance with the CCSP requirements. The results of this validation audit must be submitted to the TSA with the facilities application for CCSF status. Existing CCSFs will be required to have compliance audits performed by third-party validators every 36 months.

NATA is unsure as to why the TSA has chosen to insert an additional layer of oversight between the agency and CCSFs. As proposed, the TSA's role in certification of new CCSFs will be reduced to reviewing compliance reports produced by validators, performing security threat assessments (STAs) and other "paperwork" formalities. In terms of ongoing compliance, the preamble to the rule states that "TSA will inspect the CCSF for compliance" every 36 months. NATA is again unsure as to why the TSA would then also require CCSF's to undergo a third-party validation audit every 36 months.

NATA believes that the third-party validator concept, as expressed in the IFR, is an inappropriate delegation of the governmental function of oversight. Placing a "for profit" oversight layer between the agency and the CCSFs can serve no purpose other than to shift oversight costs to the regulated parties. In the case of ongoing compliance, the third-party validation audit is redundant, as the TSA has stated it will be performing on-site inspections for all CCSFs at least every 36 months. NATA believes this cost shifting would provide little benefit to the agency when the cost of administering the validator program is taken into account.

Rather than using agency resources to create, implement and administer a program that shifts oversight to an unneeded third-party, "for profit" validation program, NATA believes the TSA should retain oversight and enforcement for the CCSP.

## **Security Threat Assessments**

The IFR requires that certain personnel employed by CCSFs undergo STAs. Currently, many of the individuals who will need to undergo STAs for the CCSP have already received TSA STAs as part of the application process for airport identification media. Requiring those individuals who have undergone STAs as part of airport identification process will create an increased cost and administrative burden on both the TSA and the CSSF without providing any increase in security. NATA recommends that the TSA modify the rule to allow the STAs conducted as part of the TSA-required airport identification issuance process to be acceptable for use in employment at a CCSF.

## **Off-Airport Air Carrier Screening Facilities**

The IFR states, in § 1544.205(g)(3), that:

*“If an aircraft operator or foreign air carrier screens cargo off an airport, it must do so as a certified cargo screening facility in accordance with part 1549.”*

NATA has received word from its membership that the TSA may be allowing exemptions to the above mentioned rule. NATA assumes that the rule was included in the IFR to address differences in security requirements for Air Carriers and CCSFs. If differences do exist, allowing exemptions from § 1544.205(g)(3) would be wholly inappropriate. Additionally, since the successful implementation of the CCSP is dependent on firms voluntarily becoming CCSFs the TSA must maximize the business case for CCSFs. Therefore, the TSA must consider, even if no differences in security requirements exist, whether providing air carriers exemptions to § 1544.205(g)(3) would place non air carrier firms at an economic disadvantage when operating as CCSFs. NATA is not suggesting that air carriers be required to bear more cost or face stricter security requirements, only that the playing field be level.

If the TSA determines that there is no difference in security requirements between existing air carrier rules and CSSP requirements and that there is no economic benefit favoring air carriers over non-air carriers, this rule should be removed. Regardless of what the TSA determines in respect to those conditions, exemptions to § 1544.205(g)(3) serve no security benefit and may actually harm the implementation of the CCSP and, therefore, should not be granted.

## Conclusion

The National Air Transportation Association supports the Transportation Security Administration's work in meeting the goals and requirements of the Implementing the Recommendations of the 9/11 Commission Act of 2007. The Certified Cargo Screening Program, as proposed by the Air Cargo Screening Interim Final Rule is a large step in allowing for the screening of cargo at the most efficient step in the cargo packaging and handling process. The comments provided above are offered in the spirit of cooperation and in the interest of successfully implementing the CCSP.

Sincerely,

Michael France  
Manager, Regulatory Affairs  
National Air Transportation Association

