

TSA REQUIRES SECURITY PROGRAMS FOR SELECT ON-DEMAND AIR CHARTER OPERATORS; SMALL AIR CARRIERS

March 13, 2002

What's at Issue

On February 22, 2002, the Transportation Security Administration (TSA) published regulation imposing security requirements on commercial operators of aircraft weighing 12,500 pounds or more. This includes Part 135 on-demand air charter businesses providing cargo or passenger service.

Why It's Important

The rule will require a security program, known as the "Twelve-Five Program," for specified operators. Key elements of the program include criminal background checks for flightcrews, emergency planning and employee security training.

Major Provisions

The Twelve-Five Program is found in the TSA's new Part 1544 regulations. Part 1544 (49 CFR 1544) was formerly Federal Aviation Administration (FAA) regulation Part 108, but was transferred to the TSA regulatory framework earlier this year.

Who Is Covered?

All operators, including on-demand air taxis, holding a certificate issued by the FAA under Part 119 and who operate at least one aircraft weighing 12,500 pounds or more maximum certificated takeoff weight (MTOW) are covered by the new Twelve-Five Program regulation. It is important to note that while many FAA regulations apply rules to aircraft weighing *more than* 12,500 pounds MTOW, this rule *includes* aircraft weighing 12,500 pounds MTOW.

What Are The Deadlines?

The rule was published as an Interim Final Rule and requires compliance by June 24, 2002. However, the effective date for complying with the rule's background check requirements is December 6, 2002. NATA is working with the TSA to ensure that the timeline published by the agency is sufficient for operators to achieve compliance.

When Do Twelve-Five Program Requirements Apply?

The rule states that the program requirements apply for "each operation" that meets qualifying criteria, including the carriage of "passengers or cargo." NATA has asked the TSA to clarify that program requirements do not apply to Part 135 aircraft positioning flights or to Part 91 'deadhead' or management flights.

MORE...

(Major Provisions Continued)

In the case of a mixed operation, the TSA has informally indicated that the security requirements will only apply to the operation of aircraft weighing 12,500 pounds or more and their flightcrews. The term “mixed operation” is being used by NATA to describe those operators with at least one aircraft weighing 12,500 pounds or more and at least one aircraft weighing less than 12,500 pounds. NATA has requested that the TSA formalize this position.

How Do I Develop, Gain Approval and Implement This Program?

TSA officials have explained to NATA that they are developing and will release to affected businesses a sample program for operators to customize for their use. NATA has asked to be involved in developing the sample program to the extent permitted by law. NATA also has reminded the TSA that, with a pending June deadline for implementation of these programs, there is little time for the agency to delay in following through with its responsibility to assist carriers with compliance.

What Specific New Requirements Are Imposed?

- **Designated Security Personnel:** Each operator must designate an Aircraft Operator Security Coordinator (AOSC) to serve as the TSA point of contact at the business. The pilot in command of each covered flight is designated as the In-flight Security Coordinator (ISC). The rule also calls for Ground Security Coordinators (GSC) to carry out security duties at each airport served by the operator. Because of the obvious problems this would present for an on-demand operation where thousands of airports worldwide are served on an irregular basis, NATA has requested that the TSA authorize the pilot in command to also serve as the GSC. The TSA has informally indicated that it is not their intention to imply that an operator employ a GSC at every airport that may potentially be served.
- **Law Enforcement Support:** Operators covered by the Twelve-Five Program will not need to provide law enforcement personnel at non-Part 1542 (formerly Part 107) airports. At Part 1542 airports, the airport operator is responsible for providing law enforcement. NATA has alerted the TSA that most Part 135 operations at Part 1542 airports occur outside the secured airline terminal area and has asked the TSA to define how this new rule could impact airport operations at these airports.
- **Firearms Carriage:** The firearms rules applicable to Twelve-Five Programs deal only with the carriage of law enforcement personnel. NATA has reminded the TSA that Section 135.119 allows the operator to permit passengers and crew to carry firearms. NATA supports this option for certificate holders and has requested that the TSA clarify that these new rules in no way conflict with Section 135.119.
- **Federal Air Marshall (FAM):** The TSA requires that any Twelve-Five Program operator carry a FAM if requested to do so. While NATA supports the efforts of the FAMs, the TSA has been asked to elaborate under what circumstances a FAM would seek a seat on a chartered flight as their presence would undoubtedly be detected by the passengers.
- **Employee Training:** Employees are required to receive training on the operators’ security program, including any employee responsibilities. NATA has asked the TSA to provide more details on the content, format and length of this training.
- **Criminal History Records Checks (CHRCs):** A CHRC is now required for all flightcrew (new and currently employed) members covered by any security program, including Twelve-Five Programs. The TSA has stated that only those flightcrews qualified to operate and serve on aircraft weighing 12,500 pounds or more are subject to the CHRC mandate. NATA has asked the TSA to clarify whether or not the operator may begin indoctrination training for flightcrews while the CHRC is in progress. NATA is also working with the TSA to provide this service to the industry in an efficient and economical manner. Operators are not prohibited from recouping the cost of the CHRC under this rule.

(Major Provisions Continued)

- **Flight Deck Doors:** The rules require that operators must restrict access to the flight deck of each aircraft “that has a door.” NATA has asked the TSA to clarify its meaning of “has a door” as it is quite possible for an aircraft that was originally manufactured with a door to have had that door legally removed. Also, NATA requested clarification as to what specific measures the TSA would expect to restrict access in door-equipped aircraft and what, if any, measures are expected on aircraft without doors.
- **Contingency Plans:** As part of the Twelve-Five Program, each operator must develop contingency plans to respond to security threats. These plans must be updated annually.
- **Threat Response:** The TSA specifies that the operator, upon receipt of a specific and credible threat, conduct an immediate inspection of aircraft and ground facilities. Also, the rule as written requires “immediate notification” of the pilot. NATA has explained that many operators covered by the Twelve-Five Program do not have, nor are they required to have, in-flight communications capabilities with the flightcrew. NATA has suggested that this requirement only apply if such communications equipment is installed and operable.
- **Sensitive Security Information Obligations:** Importantly, dissemination of security program details and TSA issued Security Directives can occur only on a need-to-know basis. Inappropriate release of security information is punishable by heavy fines and/or imprisonment.

NATA Position

All affected operators should immediately review the TSA regulation and provide TSA with formal feedback during the comment period. NATA has communicated to the TSA the industry’s strong desire to acknowledge and mitigate any threat to the security of our operations. The Association has also raised its concerns with the application of certain Twelve-Five Program rules to the many small businesses impacted by this requirement and offered to provide any assistance the agency requires in helping operators comply with this rule. Furthermore, NATA will, if appropriate, request a delay in the application of any regulation presenting a unique problem for the industry until an acceptable means of achieving the required level of security is identified.

Status

The Twelve-Five Rule will be discussed at the upcoming NATA Convention in Indianapolis, Indiana, on Thursday, March 28, at 10:15 a.m. during a general session on regulatory compliance. Knowledgeable TSA staff have accepted NATA’s invitation to be present to learn more about any implementation and compliance concerns the industry may have. This session will also include new changes to existing drug-testing and pilot record-keeping rules. Other sessions during the three-day Convention will include discussions of the Twelve-Five Rule, also, plus other issues of concern to Part 135 on-demand air taxi operators. Additionally, Convention registration is available on-line at NATA’s Web site, www.nata-online.org or by calling 800-808-6282. On-site registration, including one-day passes, will be available in the Indiana Convention Center.

The TSA Twelve-Five Program rule is available for download from NATA’s Web site, www.nata-online.org, in the ‘Reports and Statements’ section. The direct link to this file is:

http://www.nata-online.org/2GovWatch/Pdf/tsa_twelve_five_rule.pdf

Comments on the rule must be submitted to the TSA on or before April 23, 2002.

Staff Contact: Jacqueline Rosser
Manager, Flight Operations
jrosser@nata-online.org