[4910-62]
DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 107, 108, 109, 121, 129, 135, 139, and 191

Transportation Security Administration

49 CFR Parts 1500, 1510, 1520, 1540, 1542, 1544, 1546, 1548, 1550

[Docket No. TSA-2002- ; Amendment Nos. 91- ; 107- ;108- ; 109- ; 121- 129- ; 135- ;1500- ; 1510- ; 1520- ; 1540- ; 1542- ; 1544- ; 1546- ; 1548- ; 1550-]

RIN 2110-AA03

Civil Aviation Security Rules

AGENCY: Federal Aviation Administration (FAA) and Transportation Security Administration (TSA), DOT.

ACTION: Final rule.

SUMMARY: This rulemaking transfers the FAA's rules governing civil aviation security to TSA. This rulemaking also amends those rules to enhance security as required by recent legislation. This rulemaking also requires additional qualifications, training, and testing of individuals who screen persons and property that are carried in passenger aircraft. It is intended to improve the quality of screening conducted by aircraft operators and foreign air carriers. This rule is being adopted to improve the qualifications of individuals performing screening, and thereby to improve the level of security in air transportation. This will help ensure a smooth transition of aviation security from the FAA to TSA, and will avoid disruptions in air transportation due to any shortage of qualified screeners.

DATES: This rule is effective February 17, 2002. The incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of February 17, 2002. Submit comments by [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may obtain a copy of this final rule from the DOT public docket through the Internet at http://dms.dot.gov/, docket number TSA-2002- . If you do not have access to the Internet, you may obtain a copy of the working draft by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify Docket Number TSA-2002- and request a copy of the final rule entitled "Civil Aviation Security Rules."

You may also review the public docket in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Department of Transportation.

FOR FURTHER INFORMATION CONTACT: Scott Cummings, telephone 202-267-3413. For Part 1542 – Brian Reed; for Part 1544 - Lon M. Siro; for Part 1546 - Nouri Larbi; for Part 1548 - John F. DelCampo; Transportation Security Administration, Department of Transportation, Washington, DC 20591; telephone 202-267-3413.

SUPPLEMENTARY INFORMATION

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however, provides that to the maximum extent possible,

operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA or TSA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

TSA and the FAA will consider all comments received on or before the closing date for comments. Late-filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

See "ADDRESSES" above for information on how to submit comments.

Abbreviations and Terms Used In This Document

ASIA 2000-- Airport Security Improvement Act of 2000

ATSA-- Aviation and Transportation Security Act

Computer Assisted Passenger Prescreening System (CAPPS)

GED-- General Equivalency Diploma

Screening company NPRM - Notice of Proposed Rulemaking, Certification of Screening Companies, 65 FR 560 (January 5, 2000).

SIDA-- Security identification display areas

SSI—Sensitive security information

TIP—Threat image projection

TSA—Transportation Security Administration

Background

Regulatory and Legislative Context

The current aviation security rules are in title 14 of the Code of Federal Regulations. Part 107 governs airport operators that serve certain passenger operations of air carriers and commercial operators. Part 108 is for certain aircraft operators that hold U.S. air carrier or commercial operator certificates. Part 109 prescribes rules for indirect air carriers such as freight forwarders. Several sections in part 129 govern certain foreign air carriers that operate to, from, and within the United States. Aircraft operators and foreign air carriers are responsible for screening passengers and property that are carried on their aircraft. Part 191 covers the protection of sensitive security information. In addition, Special Federal Aviation Regulation 91 (SFAR 91) covers certain other aircraft operators. These rules were issued by the Administrator of the Federal Aviation Administration.

On January 5, 2000, the FAA published a Notice of Proposed Rulemaking (NPRM) that proposed to require FAA-certification for all companies that provide screening under 14 CFR parts 108, 109, and 129. See 65 FR 560. The screening company NPRM proposed such additional measures as improved training, FAA tests, and monitoring of the tests by aircraft operators. Further, the Airport Security Improvement Act of 2000 (ASIA 2000), Public Law 106-528, provided in part that training for screeners must include at least 40 hours of classroom instruction, with certain exceptions.

The final rule on certification of screening companies was approved for publication shortly before the terrorist attacks of September 11, 2001, occurred.

September 11 Terrorist Attacks, and the Continuing Threat to Aviation Security

The September 11, 2001, terrorist attacks involving four U.S. commercial aircraft that resulted in the tragic loss of human life at the World Trade Center, the Pentagon, and southwest Pennsylvania, demonstrate the need for increased air transportation security measures. The Al-Qaeda organization, which was responsible for the attacks, possesses a near global network. The leaders of the groups constituting this organization have publicly stated that they will attack the United States, its institutions, and its individual citizens. They retain a capability and willingness to conduct airline bombings, hijackings, and suicide attacks against U.S. targets: the December 22, 2001, attempted bombing of a U.S. carrier on a flight from Paris illustrates the continuing danger. Finally, it should be underscored that, although other potential threats to U.S. civil aviation may be overshadowed at present, they are no less important. For example, the uncertain course of the Middle East peace process, negative reactions to the U.S.-led military campaign in Afghanistan, and Iraqi opportunism in response to continued United Nations sanctions are among the developments that could give rise to attacks by groups or individuals not linked to the September 11 atrocities.

Aviation and Transportation Security Act

The September 11, 2001, attacks led Congress to enact the Aviation and Transportation Security Act (ATSA), Public Law 107-71, November 19, 2001. ATSA provides additional qualifications for screeners, including U.S. citizenship and increased training and testing of screeners.

Under ATSA, by November 19, 2002, the responsibility for inspecting persons and property carried by aircraft operators and foreign air carriers will be transferred to the Under Secretary of Transportation for Security, who heads a new agency created by that statute, the Transportation Security Administration (TSA).

ATSA requires TSA to make a number of improvements to aviation security. The improvements include that by November 19, 2002, screening of individuals and property in the United States be conducted by TSA employees and companies under contract with TSA. ATSA requires enhanced qualifications and training of individuals who perform screening functions. It requires that Federal law enforcement officers be present at screening locations.

Screening by TSA will make the certification of screening companies unnecessary. However, the screening company NPRM proposed enhanced screener qualifications and training, and enhanced aircraft operator and foreign air carrier oversight that remain relevant. First, until these duties are transferred, it is important to ensure that aircraft operators and foreign air carriers improve the qualifications, training, and testing of screeners in order to improve aviation security. Second, aircraft operators will continue to conduct some screening at foreign locations, which must be done in accordance with enhanced standards.

Current Rulemaking

This rulemaking serves several purposes. It transfers to TSA rules the current FAA rules governing civil aviation security. Further, it includes certain improved standards, most notably for screener qualifications and training.

This rule does not include all of the improvements in security required under ATSA, but is an important step towards full compliance with that Act. It is intended to respond to the ATSA mandate for increased screener qualifications, by ensuring that aircraft operators and foreign air carriers improve the qualifications, training, and testing for newly hired screeners. It also makes related changes, in part as proposed in the screening company NPRM, and as required in ASIA 2000.

Beginning February 17, 2002, TSA will be assuming responsibility for screening that is currently the responsibility of aircraft operators. TSA will require the screening companies to comply with essentially the same enhanced screener qualifications and training that is applied to the aircraft operators and foreign air carriers in this rule. Until TSA takes over responsibility for all these screening duties, it is important that the aircraft operators improve the training and qualifications of screeners.

Most of the new screener qualification requirements come directly from ATSA. We intend by this action to make an immediate improvement in screening in response to the ongoing threat of terrorism to aviation security. At the same time we recognize the importance of an orderly transition as TSA assumes responsibility for contracting with screening companies, hiring screeners, and conducting screening. An inefficient transition would adversely affect security and would be costly and disruptive to the industry. As TSA begins to hire screeners, it will use a hiring process to select the most qualified personnel among all applicants. However, by acting now to ensure that hired screeners newly hired by aircraft operators and foreign air carriers meet many of the increased standards, a substantial number of better trained and qualified workers will be available by the time the ATSA requirements come into full effect. The standards

imposed in this rule are thus an interim step, but we anticipate that many of the people hired during the transition period will also have the necessary ability and training for future positions with TSA. These persons may subsequently be hired for those positions, although this is not assured.

This rulemaking does not address some measures required in ATSA to enhance screening, such as additional background checks for individuals with access to secured areas of airports. Those measures are under development now.

We emphasize that we are applying the new screener standards at this time only to employees hired as of February 17, 2002. Those individuals now performing screening functions on behalf of aircraft operators or foreign air carriers who may not be able to meet the requirements of ATSA once it comes into full effect may remain in their positions during the transition. In addition, those employees who are not currently eligible under ATSA may be able to take action during the transition period to improve their qualifications for future positions performing screening functions under TSA. For example, some people now performing screening functions may be eligible for U.S. citizenship, but have not yet taken the steps necessary to become U. S. citizens.

Overview of This Rulemaking

This rulemaking transfers the aviation security rules to title 49 of the Code of Federal Regulations. The Under Secretary of Transportation for Security is issuing these new rules.

The rules are largely unchanged from the FAA security rules, other than to change references from FAA to TSA. This rulemaking also incorporates some enhanced

screener qualifications and training standards mandated by ATSA. These changes are discussed in this document in connection with the part of the rule affected.

These rules do not include all of the new security measures required in ATSA. In the future, TSA will adopt additional measures to improve controls to the access to secured areas of airports, additional checks of the backgrounds of individuals who have access to secured areas, and other measures required in ATSA.

14 CFR—FAA Regulations

Because security functions are transferring to TSA, many of the FAA rules are no longer needed. This rulemaking removes these parts.

Further, several references in the operations rules for air carriers and commercial operators are changed. Sections 121.538 and 135.125 are revised to require operators to comply with TSA security rules instead of FAA security rules. Similarly, where this rulemaking removes security requirements in part 129, it adds a requirement that foreign air carriers comply with TSA security rules, the same as that for part 121.

49 CFR—TSA Regulations

This rulemaking establishes the basic organization for TSA rules. The rules will appear in title 49, Code of Federal Regulations, Chapter XII, which includes parts 1500 through 1699. Subchapter A will contain administrative and procedural rules. Subchapter B will contain rules that apply to many modes of transportation. Subchapter C will contain rules for civil aviation security.

Outline of TSA Regulations

Chapter XII - Transportation Security Administration, Department of Transportation

Subchapter A - Administrative and Procedural Rules

Part 1500 - Applicability, Terms and Abbreviations, and Rules of Construction

Part 1510 - Passenger Civil Aviation Security Service Fees

Subchapter B - Security Rules for All Modes of Transportation

Part 1520 - Protection of Sensitive Security Information

Subchapter C - Civil Aviation Security

Part 1540 - Civil Aviation Security

Part 1542 - Airport Security

Part 1544 - Aircraft Operator Security: Air Carriers and Commercial Operators

Part 1546 - Foreign Air Carrier Security

Part 1548 - Indirect Air Carrier Security

Part 1550 - Aircraft Operator Security Under General Operating and Flight Rules

49 CFR Part 1500 – Applicability, Terms and Abbreviations

New part 1500 provides the applicability, and some terms and abbreviations, that apply to all TSA regulations. The definitions of "person" and "United States" are based on those in 49 U.S.C. 40102.

49 CFR Part 1520 - Protection of Sensitive Security Information

New Part 1520 provides the rules for protecting sensitive security information. It is largely the same as 14 CFR part 191.

In general, Federal law and policy calls for release of information to the public, and TSA and DOT comply with these laws and policies. However, when release of

information may compromise the safety or security of the traveling public, TSA and DOT protect that information from disclosure. Information that could help someone determine how to defeat security systems is protected from public disclosure under part 1520. In § 1520.7, TSA has designated this information as SSI. SSI includes information about security programs, vulnerability assessments, technical specifications of certain screening equipment and objects used to test screening equipment, and other information. Under § 1520.3, TSA does not disclose such information. Under § 1520.5, aircraft operators, foreign air carriers, and others are required to protect SSI from disclosure. They may disclose SSI only to those with a need to know. For instance, aircraft operator and foreign air carrier security programs are protected from public disclosure under § 1520.7(a).

Section 1520.1 includes the applicability and definitions. Section 1520.1 (c) provides that the authority of the Under Secretary under this part may be further delegated.

Section 101(e) of ATSA amended 49 U.S.C. 40119(b) by making it applicable to information obtained or developed in carrying out security in all modes of transportation. Although the Under Secretary is given overall responsibility for carrying out section 40119(b), the heads of the operating administrations in the Department of Transportation have day-to-day responsibility for matters in their own modes of transportation. Hence, it is most efficient for these other administrations to exercise authority to protect SSI in their modes. Accordingly, § 1520(d) provides that the Under Secretary's authority under this part is also exercised, in consultation with the Under Secretary, by the Commandant of the United States Coast Guard, as to matters affecting and information held by the

Coast Guard, and the Administrator of each DOT administration, as to matters affecting and information held by that administration, and any other individual formally designated to act in their capacity. The Under Secretary will be responsible for determining what information is SSI (see § 1520.7) and what persons are required to protect it under this part (see § 1520.5).

Section 1520.3 covers records and information withheld by the Transportation Security Administration. Section 1520.3(b)(3) is changed to reflect the change ATSA made to section 40119. TSA may protect information the release of which that would be detrimental to the safety of persons in transportation, not just air transportation.

Section 1520.5 covers records and information protected by others. Paragraph (a) identifies what persons are responsible for protecting SSI. For the most part, they are the same persons covered in current § 191.5. However, § 1520.5(a)(8) covers each person for which a vulnerability assessment has been authorized, approved, or funded by DOT, irrespective of mode of transportation. These assessments may identify ways in which the port or other facility could be vulnerable to attack, and may suggest corrective action. If this information were to fall into the wrong hands it could be used to attack the transportation system. Accordingly, the persons receiving these vulnerability assessments now are responsible under this rule to protect them from unauthorized disclosure. The vulnerability assessments themselves are added to the list of information that is determined to be SSI in § 1520.7(r).

In the course of applying for and qualifying for an air carrier certificate or operating certificate under 14 CFR part 119, an applicant that will be subject to part 1544 receives a copy of the standard security program. To ensure that applicants for

certificates are required to protect SSI, we are adding § 1520.5(e). Paragraph (e) provides that references in part 1520 to an aircraft operator, airport operator, indirect air carrier, or foreign air carrier, include applicants. Thus, an applicant must restrict disclosure of the security program information that it receives. The same is true of an applicant for any other security program, such as a foreign air carrier security program.

When an individual receives SSI during training for a position with an airport operator, aircraft operator, indirect air carrier, or foreign air carrier, he or she is subject to part 1520. Section 1520.5 (f) clarifies that he or she may not disclose this information.

Section 1520.7 describes SSI. Section 1520.7 defines what information and records are SSI and therefore are subject to the protections in §§ 1520.3 and 1520.5.

Section 191.7(a) covers any approved or standard security program for an airport operator, aircraft operator, foreign air carrier, or indirect air carrier. However, the agency has recently adopted other security programs, including those covering screening to be conducted by TSA, and those covering certain general aviation operations. Accordingly, § 1520.7(a) covers any approved, accepted, or standard security program under the rules listed in § 1520.5(a) (1) through (6).

Section 1520.7(m) provides that the locations at which particular screening methods or equipment are used, and the carriers that are authorized to use those methods and equipment, are SSI. This information is SSI only if TSA has determined that, as to those particular screening methods or equipment, the criteria of 49 U.S.C. 40119 are met. In some cases, the exact screening methods used at different locations are not publicly released, particularly methods used for checked baggage and cargo. This may occur, for instance, when new technology is deployed. It may take time to deploy it widely, and we

may determine that there is a significant security benefit to not letting any unauthorized person know where it may be used. This could affect a person's perception as to whether the introduction of a threat item was more likely to be detected, and might lead a person to attempt to target a location that the person assumes is less secure.

New paragraph (n) is added to cover the screener tests that screeners must complete under this rulemaking. These tests contain information that is in the security programs and must be protected in the same way.

New paragraph (o) protects the scores of screener tests administered under the rules listed in § 1520.5(a) (1) through (6). These scores could be used to determine which screening locations have screeners with better or worse scores, which might be viewed as a means to defeat the screening system. Therefore, while the scores will be used by TSA to identify weaknesses, they may not be disclosed.

New paragraph (p) covers performance data from screening systems, and from testing of screening systems. This includes information from threat image projection systems (TIP) and from other tests and data collections. The performance data is protected to prevent unauthorized persons from attempting to determine which screening locations or companies may be less successful at detecting weapons, explosives, and incendiaries. Performance data might also be used to determine which threat items are more difficult to detect.

Paragraph (q) covers threat images and descriptions of threat images for threat image projection systems. The threat images and descriptions would inform unauthorized persons as to what threat items screeners have been exposed to. This information might be used in attempting to defeat screening and must be protected.

As noted above, paragraph (r) covers information in a vulnerability assessment that has been authorized, approved, or funded by DOT, irrespective of mode of transportation. Note that as TSA continues to consider the security needs of all the modes of transportation in the current environment, we expect to identify other information that must be protected under this part in order to support transportation security. We may issue a notice of proposed rulemaking in the future to propose further changes. In that event, we may respond in that notice of proposed rulemaking to any comments to this final rule regarding this part.

The following distribution table is provided to illustrate how the current regulations relate to the newly added regulations.

Distribution Table

Current section **14 CFR part 191**	**New section** **49 CFR part 1520**
191.1	1520.1
191.3	1520.3
191.5	1520.5
191.7	1520.7

49 CFR Part 1540—Civil Aviation Security: General Rules

New Part 1540 provides rules that cover all segments of civil aviation security. It also includes rules that govern individuals and other persons. Most of the rules in Part 1540 are transferred from 14 CFR Parts 107, 108, and 129.

Delegations

Section 1540.3 contains delegations of authority. The law vests the authority of TSA in the Under Secretary of Transportation for Security. See 49 U.S.C. 114. Where the Civil Aviation Security rules in subchapter C name the Under Secretary as exercising authority over a function, the Under Secretary or the Deputy Under Secretary exercise the

authority. Any individual formally designated to act as the Under Secretary or the Deputy Under Secretary may also exercise the authority.

For the most part these rules simply refer to TSA as exercising authority. Where rules in this subchapter name TSA as exercising authority over a function, in addition to the Under Secretary, a designated official within TSA exercises the authority.

Terms Used in This Subchapter

Section 1540.5 contains definitions and descriptions for many of the terms used in this subchapter. Most terms are from FAA regulations, including 14 CFR parts 1, 107, and 108. Some are definitions in the statute governing TSA, 49 U.S.C. 40102. Others are discussed below.

"Aircraft operator" is used in part 108 to identify the air carriers and commercial operators that are subject to part 108. When this term was adopted the agency did not impose security regulations on aircraft operators other than air carriers or commercial operators. Recently, however, it has become necessary to require security measures for other aircraft operators, as discussed below under part 1550.

The term "aircraft operator" in § 1540.5 means a person who uses, causes to be used, or authorizes to be used an aircraft, with or without the right of legal control (as owner, lessee, or otherwise), (1) for the purpose of air navigation including the piloting of aircraft, or (2) on any part of the surface of an airport. This definition is based on the definition of "operate aircraft" in 49 U.S.C. 40102(32) and "operate" in 14 CFR part 1. The definition also states that in specific parts or sections, "aircraft operator" is used to refer to specific types of aircraft operators. For instance, new part 1544 uses "aircraft operator" to refer to those air carriers and commercial operators subject to that part.

"Indirect air carrier" is defined as any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of a passenger air carrier. This does not include the United States Postal Service (USPS) or its representative while acting on the behalf of the USPS. This definition is in the aircraft operator standard security program and in the indirect air carrier standard security program.

"Person" is defined to include various entities and government authorities, as well as individuals, as it is in 49 U.S.C. 40102 and 14 CFR part 1.

"Screening function" is defined as the inspection of individuals and property for explosives, incendiaries, and weapons.

"Screening location" means each site at which individuals or property are inspected for the presence of any explosive, incendiary, or weapon. The checkpoint where passengers and their property are inspected with metal detectors, X-ray machines, and other methods is a screening location. So are the locations in the baggage make-up areas where checked baggage is inspected with an explosive detection system, and those locations where cargo is inspected.

There are some other wording changes in these rules worthy of note. FAA security rules often refer to "deadly or dangerous weapons." However, all weapons are potentially deadly or dangerous, so the excess words were removed and these TSA rules refer simply to "weapons."

FAA rules often refer to "security systems, measures, or procedures" or other listing. However, the term "measures" encompasses all these terms. These TSA rules,

therefore, often refer simply to "security measures," which may include any systems, procedures, equipment, and other measures that accomplish the security goal.

Subpart B – Responsibilities of Passengers and Other Individuals and Persons

This subpart contains rules that apply to many persons, including airport operators, airport tenants, aircraft operators, foreign air carriers, and indirect air carriers, as well as employees of such entities, passengers, individuals at airports, and other individuals. This subpart includes rules that apply to all entities governed by subchapter C, and includes most of the security rules that apply to individuals rather than entities.

Section 1540.103 transfers the falsification rules that were in 14 CFR §§ 107.9 and 108.7. The section applies to the whole subchapter. Criminal statutes, such as 18 U.S.C. 1001, prohibit intentional falsification and fraud. This section provides a civil remedy for similar conduct. See Amendment Nos. 107-9 and 108-4, Falsification of Security Records (61 FR 64242, Dec. 3, 1996) in which these rules were first adopted.

Section 1540.105 transfers §§ 107.11 and 108.9, regarding the security responsibilities of employees and other persons.

Section 1540.107 transfers § 108.201(c), which requires individuals who enter a sterile area to submit to screening. Transferring the section to part 1540 makes more clear that the rule applies to individuals entering a sterile area where screening is conducted by TSA, an aircraft operator, or a foreign air carrier.

Section 1540.109 is a new requirement prohibiting any person from interfering with, assaulting, threatening, or intimidating screening personnel in the performance of their screening duties. This section was proposed in the January 2000 screening company NPRM and received no negative comments. The rule prohibits interference that might

distract or inhibit a screener from effectively performing his or her duties. This rule is necessary to emphasize the importance to safety and security of protecting screeners from undue distractions or attempts to intimidate. Previous instances of such distractions have included verbal abuse of screeners by passengers and certain air carrier employees.

A screener encountering such a situation must turn away from his or her normal duties to deal with the disruptive individual, which may affect the screening of other individuals. The disruptive individual may be attempting to discourage the screener from being as thorough as required. The screener may also need to summon a checkpoint screening supervisor and law enforcement officer, taking them away from other duties. Checkpoint disruptions potentially can be dangerous in these situations. This rule supports screeners' efforts to be thorough and helps prevent individuals from unduly interfering with the screening process. This rule is similar to 14 CFR 91.11, which prohibits interference with crewmembers aboard aircraft, and which also is essential to passenger safety and security.

This rule does not prevent good-faith questions from individuals seeking to understand the screening of their persons or their property. But abusive, distracting behavior, and attempts to prevent screeners from performing required screening, are subject to civil penalties under this rule.

This section applies to individuals interfering with screeners under subchapter C. Thus, if an individual interferes with a screener employed by a foreign air carrier, the individual violates § 1540.109.

This section applies to persons, not just individuals. Thus, a company or other entity could be found in violation of this section.

Note that if an individual is interfering with screening in violation of this rule, that individual potentially is also in violation of State or local laws, such as those relating to disturbing the peace. This rule does not preempt such State and local laws. Law enforcement personnel at the scene will determine whether to take action under State or local laws. TSA will also determine whether TSA civil penalty action is warranted for violation of § 1540.109.

Title 49, United States Code, 46503, was added in ATSA to provide a criminal penalty for interfering with security personnel. Section 1540.109 permits TSA to seek a civil penalty for actions that may not warrant criminal prosecution under section 46503 but do warrant legal enforcement action.

Section 1540.101 regarding the carriage of weapons, explosives, and incendiaries by individuals, is transferred from §§ 108.201(e) and (f), 108.203(e), and 129.27(a) and (b).

Section 1540.113 requires that each individual who holds an airman certificate, medical certificate, authorization, or license issued by the FAA must present it for inspection upon a request from TSA. As the need to ensure aviation security increases, it becomes important for TSA to be able to identify individuals who have access to aircraft, such as pilots and mechanics. This rule makes clear that TSA can require an airman to show his or her FAA certificate when requested. This rule is especially important for use with general aviation airmen who are not employed by air carriers, because they do not have identification media issued by air carriers or aircraft operators under parts 1542 or 1544. For instance, TSA may need to make such a request in connection with §§ 1550.5

or 1550.7 security procedures. This section is similar to a number of sections in the FAA regulations, such as 14 CFR 61.3(l), 65.51(b), 65.89, and 65.105.

49 CFR Part 1542—Airport Security

New part 1542 provides the rules for airport operators. It is largely the same as 14 CFR part 107 (66 FR 37274, July 17, 2001) and § 107.209, Criminal history records checks, as amended (66 FR 63474, December 6, 2001). Some of the sections from part 107 were moved to part 1540 rather than part 1542 and are discussed in that portion of this document.

Law Enforcement Support

This part continues to state that the airport operator must provide law enforcement personnel to support its security program and to support each system for screening persons and accessible property required under parts 1544 or 1546. This screening includes the inspection of individuals and property, as well as other security measures such as those that take place at the ticket counter, such as Computer Assisted Passenger Prescreening System (CAPPS). TSA will be assuming responsibility for law enforcement presence for the inspection of individuals and property as necessary. When TSA assumes this duty at the airport, the airport will no longer need to perform this function on a routine basis. However, the airport operator will continue to provide a law enforcement presence and capability that is adequate to ensure the safety of passengers in accordance with 49 U.S.C. 44903(c), including covering screening before TSA law enforcement assumes this duty. Airport law enforcement will also be expected to back up TSA law enforcement officers at screening locations should the need arise. TSA will

work closely with law enforcement agencies at each airport to ensure that all agencies cooperate in providing for the safe and secure operation of the airport.

The recordkeeping requirements are changed to reflect TSA's participation in law enforcement support of airport security. Section 1542.221(b) requires that certain data be maintained, except as authorized by TSA. This includes data regarding weapons detected during passenger screening and information on arrests. To the extent that TSA is performing these functions or gathering this data, the airport operator will not have to.

Criminal History Records Checks (CHRC)

The current rule provides that the airport operator may exempt from the requirement to undergo a CHRC individuals in four categories. See § 107.209(m)(1) through (4). Section 138 of ATSA, however, provides in part that a CHRC "shall not be required under this subsection for an individual who is exempted under section 107.31(m)(1) or (2)…." Section 107.31 was renumbered § 107.209. See 66 FR 37274, July 17, 2001.

Accordingly, in § 1542.209(m), what formerly was (m)(1) and (2) are renumbered to be paragraph (m)(1)(i) and (ii), and are revised to state that the airport operator must authorize the subject individuals to have unescorted access authority. These individuals include an employee of the Federal, state, or local government (including a law enforcement officer) who, as a condition of employment, has been subjected to an employment investigation that includes a criminal records check; and a crewmember of a foreign air carrier covered by an alternate security arrangement in the foreign air carrier's approved security program.

The other exemptions, formerly in (m)(3) and (4), are clarified. The

airport operator may exempt certain individuals who have been continuously employed by another airport operator, airport user, or aircraft operator. In response to questions we have received, this section now states that the exemption does apply to contract employees of these entities, not only direct employees.

The following distribution table is provided to illustrate how the current regulations relate to the newly added regulations.

Distribution Table

Current section **14 CFR part 107**	**New section** **49 CFR part 1542/1540**
107.1	1542.1
107.3	1540.5
107.5	1542.3
107.7	1542.5
107.9 and 108.7	1540.103
107.11 and 108.9	1540.105
Subpart B (§§ 107.101-107.113)	Subpart B (§§ 1542.101-1542.113)
Subpart C (§§ 107.201-107.221)	Subpart C (§§ 1542.201-1542.221)
Subpart D (§§ 107.301-107.307)	Subpart D (§§ 1542.301-1542.307)

49 CFR Part 1544—Aircraft Operator Security

New part 1544 provides the rules for aircraft operators. It is largely the same as 14 CFR part 108 (66 FR 37330, July 17, 2001) and § 108.229, Criminal history records checks, as amended (66 FR 63474, December 6, 2001). Some of the sections from part 108 were moved to part 1500 and are discussed in that portion of this document. The other significant changes are discussed below.

Screening

Although TSA is taking over responsibility for most inspections of individuals and property in the United States, aircraft operators will continue to do some inspections, such as at foreign airports where the host government does not screen. Accordingly, this

rule continues to include measures for aircraft operators to carry out when they inspect individuals or property for weapons, explosives, and incendiaries.

Section 1544.201(a) continues the requirement that the aircraft operator use the measures in its security program to prevent or deter the carriage of any explosive, incendiary, or weapon on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area. There are a number of measures used to carry out this requirement, including use of the CAPPS, inspecting the individual and their accessible property, and other measures. Aircraft operators are also required to ensure that passengers and their accessible property are inspected for weapons, explosives, and incendiaries. The means of accomplishing these inspections are described in § 1544.207, discussed below.

Note that § 1544.201(e) continues the requirement that the aircraft operator not permit persons to have unauthorized explosives, incendiaries, or weapons when on board an aircraft. Although TSA will conduct most inspections, if the aircraft operator becomes aware that a person has an unauthorized weapon, the aircraft operator must not permit that weapon on board.

Sections 1544.203 and 1544.205 continue the requirements that each aircraft operator must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized explosive or incendiary onboard aircraft in checked baggage and cargo. Section 1544.203(c) requires screening of all checked baggage, in compliance with section 110 of ATSA.

Section 1544.207 addresses the inspection of individuals, accessible property, checked baggage, and cargo. At locations within the United States at which TSA

conducts such inspections, the aircraft operator's responsibility will be to ensure that passengers and property are inspected by TSA. The aircraft operator must follow procedures used at that airport to do so. For instance, the aircraft operator may not allow passengers to bypass inspection by bringing them to an aircraft from the ramp side, unless special arrangements are made to inspect the passengers.

Section 1544.207(c) provides that at locations where TSA or the host government is not conducting the inspections, the aircraft operator will continue to be responsible for conducting the inspections. For instance, at most foreign airports aircraft operators are responsible for inspecting checked baggage. At such locations the aircraft operators must conduct the inspections in accordance with this part and their security program.

Section 1544.207(d) provides that at locations outside the United States at which the foreign government conducts inspections, the aircraft operator must ensure that the individuals and property have been inspected by the foreign government. The host government may inspect using government employees or using contractors hired by the government. In either case the aircraft operator must follow the procedures at that airport to ensure that the inspections are conducted before boarding the passengers and property.

Criminal History Records Checks (CHRC)

Section 1544.229 covers fingerprint-based criminal history records checks (CHRCs). This section requires all individuals who have unescorted access to the SIDA, and all individuals with authority to perform screening functions for passengers and accessible property, to undergo a CHRC. See 66 FR 63474 (December 6, 2001).

This section currently only covers screening functions for passengers and accessible property because, until ATSA, the statute providing authority for these checks

only covered such functions. Further, it appears that almost all individuals who screen checked baggage and cargo are covered under the current rule, because they also screen passengers and accessible property, or because they have unescorted access to the SIDA where they handle checked baggage and cargo.

ATSA amended the statute as to CHRCs so that it also covers screening of checked baggage and cargo. See ATSA sections 110 and 49 U.S.C. 44901(a) and 44936. In addition, ATSA emphases the need to enhance security for checked baggage and cargo, and to expand the use of background checks. See ATSA section 110 and 136. TSA has determined, therefore, that we must ensure that all screeners of checked baggage and cargo have undergone a CHRC. This rule applies to new screeners as of February 17, 2002, and allows the aircraft operators until December 6, 2002, to conduct the CHRCs on current screeners. This is essentially the same as the December 2001 amendment to this section.

Further, this section requires that individuals who accept checked baggage for transport on behalf of the aircraft operator must undergo a CHRC. This includes ticket agents, sky caps, individuals at remote check-in sites at hotels, and others. Most such individuals currently have unescorted access to the SIDA and therefore are subject to the current rule. There are some, however, that are not currently subject to § 1544.229.

Individuals who accept checked baggage exercise important security functions, which may include such functions as identifying those items that require extra security, and guarding the baggage from tampering. It is important that such individuals can be relied on. Accordingly, this rule ensures that all such individuals will undergo a CHRC.

Note that this section does not cover individuals who accept cargo for transport (except for those who also screen cargo). Many such individual have unescorted access to the SIDA and therefore are subject to the rule. As to the others, TSA is now closely examining the cargo industry and determining what additional security measures may be advisable. We will provide for additional security measures in the future.

Paragraph (g) covers determining the arrest status of an individual when the CHRC results show an arrest for a disqualifying criminal offence but do not show the disposition of that offense. This paragraph states that the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before the individual may serve in the covered position. This has been interpreted by some people to mean that there must be a disposition in order for the individual to serve. This was not intended. For instance, if the court is holding the case in abeyance, and there is no conviction or finding of not guilty by reason of insanity, the individual is not disqualified. This section is amended to better explain this meaning. Note that if the individual is later convicted he or she must report the conviction under paragraph (l). The same change is made to § 1542.209(g) for airport operators.

The requirements for screener qualifications and testing are now in subpart E, discussed below.

Screener Qualifications

Subpart E contains the qualifications and training standards for screeners. Current screeners will continue under the current standard (14 CFR 108.213 in the current rule, 49 CFR 1544.403 in this new rule) until November 19, 2002, when all screeners must meet the new standards. TSA is developing new training that it will provide to aircraft

operators and foreign air carriers, and will order them to begin using on a specified date. The new standards will apply to those who first serve as screeners on and after that date.

Sections 1544.405 through 1544.411 cover the new screeners, who first serve as screeners on and after February 17, 2002. Most of the new standards come from ATSA. These provisions are essentially the same as those that TSA will use for screeners that it hires as employees to screen in the majority of airports. This rule will ensure that all screeners meet the same enhanced standards required under ATSA.

Section 1544.405, regarding the qualifications of screening personnel, incorporates the basic qualifications for screeners now in § 108.213, and additions from ATSA. Screeners must be U. S. citizens and have a high school diploma or a General Equivalency Diploma (GED). As authorized by ATSA, TSA may determine that the individual's education and experience are sufficient instead of the high school diploma or GED. Screeners must also have a satisfactory or better score on a screener selection test provided by TSA.

Section 1544.405 also sets out that those seeking to be screeners must have the fundamental physical and mental aptitude necessary to perform the job. These include the statutory requirements for adequate color perception, motor skills and related physical abilities in accordance with their assignment, and the ability to read, write, and speak in English.

Section 1544.407 covers the training, testing, and knowledge of individuals who perform screening functions. For those locations where the hiring and training of screeners remain an aircraft operator responsibility, the aircraft operator or foreign air carrier will be responsible to meet specific training and testing standards. Except as part

of on-the-job training, no one may perform screening functions without having completed the required initial, recurrent, and specialized training, and no aircraft operator may use screeners who are not properly trained.

More specifically, for screeners who first serve on or after February 17, 2002, this section provides that training must be conducted using training programs that have been made available by TSA. Current standards allow for as little as 12 hours of classroom instruction; as required by statute, newly hired trainees must complete 40 hours of classroom training. The required training program will be made available through the aircraft operator's or foreign air carrier's Principal Security Inspector. The material in the training program will take 40 hours to cover adequately.

Following classroom instruction, but before moving on to the on-the-job portion of the training, a trainee must pass the screener readiness test. On-the-job training must be for at least 60 hours, in accordance with ATSA. Although a trainee will be performing screening functions during on-the-job training, he or she must be closely supervised. Further testing is required after completion of on-the-job training before the screener is allowed to make independent judgments as a screener.

Under § 1544.407(g), aircraft operators are prohibited from allowing trainees to have access to sensitive security information (SSI) until the criminal history records check (required by § 1544.229) is successfully completed. As discussed in the changes to part 1520, certain information related to civil aviation security must be protected from unauthorized disclosure because it could be used to attempt to defeat the security system if it falls into the wrong hands.

Before allowing an individual to screen passengers and property that will be carried in the cabin of an aircraft, the aircraft operator must conduct a criminal history records check and verify that the individual does not have a disqualifying criminal offense. These requirements are set out at § 1544.229. Under this rule, that check must be completed before giving SSI to a trainee. Criminal history records checks are also required for individuals with unescorted access to security identification display areas (SIDA). They are conducted by either the airport operator or aircraft operator. See 49 U.S.C. 44936 and § 1544.229. See also Criminal History Records Checks, 66 FR 63474, Dec. 6, 2001.

Section 1544.409 covers the integrity of screener tests. Paragraph (a) makes it a violation to cheat or facilitate cheating on any screener test, such as by unauthorized copying, or giving or receiving improper assistance on the test. This section was proposed in the screening company NPRM and no commenters objected. This section emphasizes that cheating is not permitted on any training test administered to or taken by screening personnel, to include test monitors, screeners, screeners in charge, and checkpoint security supervisors. These requirements are similar to the testing regulations for pilots in 14 CFR 61.37.

Certain of the requirements apply "except as authorized," to provide for the possibility that in the future, TSA would authorize such conduct as the use of certain outside materials. For instance, in pilot exams, the applicants may bring flight computers to perform required calculations.

In addition, § 1544.409(b) governs administering and monitoring screener readiness tests. Whenever a screener readiness test is to be performed, the aircraft

operator must notify the agency. If a government official is not available at the time the test is being conducted, the test must be administered and monitored by a direct employee of the aircraft operator. Screening companies will not be permitted to monitor their own screener readiness tests. The monitor must not be a screener or supervisor, but must understand the nature of the test and be able to detect cheating. This does not require knowledge of the subject matter in which the screener is tested. For instance, the monitor must know what, if any, outside materials the screener is allowed to use and be able to observe whether the screener is using unauthorized materials. The monitor will be expected to call up the test on the computer for the trainee, to submit the computerized test for grading, and to make a record of the grade, such as by printing out the result.

We recognize that at some airports the aircraft operator may not have an employee who can perform this task. The rule provides that TSA may authorize an aircraft operator or foreign air carrier to use as a test monitor a person who is neither a direct employee nor a government employee. This ensures independence on the part of the person who is monitoring the test. For instance, an aircraft operator or foreign air carrier may have difficulty at small airports at which it has few flights. Such airports often have a pilot school or fixed base operator at which an FAA-designated examiner administers and monitors written pilot tests. Designated examiners are very familiar with monitoring tests to prevent cheating. An aircraft operator or foreign air carrier could consider arranging for the designated examiner to monitor the screener training tests.

If multiple aircraft operators or foreign air carriers contract with one screening company, TSA will authorize one of them to monitor the screener tests, or the responsibility may be rotated among them.

We are not requiring that the on-the-job training tests be monitored because of the logistical difficulties involved with screeners completing their 60 hours of on-the-job training at varied times.

Section 1544.411 covers the continuing qualifications for screening personnel. ATSA states that a screener must be fit for duty on a daily basis, unimpaired by illegal drugs, sleep deprivation, medication, or alcohol. Paragraph (a) of this section includes these requirements, but also makes it clear that they are intended as examples of potential causes of impairment rather than an exclusive list. We believe that fitness for duty is an absolute requirement for proper execution of a screener's responsibilities, and on-duty impairment is unacceptable, irrespective of the cause.

Under § 1544.411(b), aircraft operators are prohibited from allowing screeners who have not completed training, including on-the-job training, to exercise independent judgment about permitting individuals or property to pass into the sterile area of an airport or aboard an aircraft.

Under paragraph (c), whenever a screener fails a TSA operational test, he or she must undergo remedial training before being permitted to resume screening duties.

An annual proficiency review is required in paragraph (d). To ensure that a screener's skills are maintained over time, the aircraft operator's Ground Security Coordinator must conduct an annual evaluation of each person performing screening functions. This is the same requirement as set forth in § 108.213(d). This proficiency review must satisfactorily demonstrate that the screener continues to meet all qualification requirements, has performed satisfactorily, and demonstrates the current

knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

Signs for X-ray Systems

The current rules require aircraft operators to post signs if they use X-ray technology, including explosive detection systems. See §§ 108.209(e) and 108.211(b). The signs alert people that items are inspected by X-rays and warn them to remove X-ray, scientific, and high-speed film from their accessible property and checked baggage.

This rule includes these sign requirements when the aircraft operator conducts screening using X-ray technology. If TSA is screening accessible property, however, the aircraft operator is not responsible for the signs. TSA will control the screening checkpoint and will post all necessary signs. This rule requires aircraft operators to post signs where checked baggage is accepted if either TSA or the aircraft operator screens checked baggage using X-ray technology. See §§ 1544.209(e) and 1544.211(b). The aircraft operators continue to have control over locations where checked baggage is accepted and must post the signs to provide necessary information to the passengers. These signs are already posted in most places where they are needed. The aircraft operators will simply need to keep them posted.

The following distribution table is provided to illustrate how the current regulations relate to the newly added regulations.

Distribution Table

Current section **14 CFR part 108**	**New section** **49 CFR part 1544/1540**
108.1	1544.1
108.3	1540.5
108.5	1544.3
108.7 and 107.9	1540.103
108.9 and 107.11	1540.105

Subpart B (§§ 108.101-108.105)	Subpart B (§§ 1544.101-1544.105)
108.201(c)	1540.107
108.201(e) and (f)	1540.101
108.203 (e)	1540.101
108.205	1544.205
108.207	1544.209
108.209	1544.211
108.211	1544.213
108.213	1544.403
Subpart C (§§ 108.215-108.235)	Subpart C (§§ 1544.215-1544.235)
Subpart D (§§ 108.301-108.305)	Subpart D (§§ 1544.301-1544.305)

49 CFR Part 1546—Foreign Air Carrier Security

New part 1546 provides the rules for foreign air carriers that operate within the United States. It largely contains the same requirements as the security sections in 14 CFR part 129, including §§ 129.25, 129.26, 129.27, and 129.31. However, it has been reorganized for ease of use, and certain requirements are updated, such as the procedure for adopting and amending a security program. Further, several additional measures are amended or added, including signs for X-ray machines in § 1546.209, and screener qualifications and training in subpart E is added, reading essentially the same and for the same reasons as in part 1544.

Section 1546.209 (current § 129.26) covers the use of X-ray systems. The industry standard for X-ray systems is updated for foreign air carriers in § 1546.209(g), consistent with the requirement for aircraft operators in § 1544.209(g). The ASTM standard has been amended to provide an updated operational test procedure. Foreign air carriers currently are carrying out this procedure. This rule incorporates the new ASTM standard.

The following chart cross-references applicable sections of the regulations for foreign air carrier security that were moved from 14 CFR to 49 CFR:

Distribution Table

Current section/part 14 CFR part 129	New section/part 49 CFR part 1546/1540/1510
129.25(a)	1510.3
129.25(b)	1546.101
129.25(b)(1)	1546.101(a)
129.25(b)(2)	1546.101(b)
129.25(b)(3)	1546.101(c)
129.25(b)(4)	1546.101(d)
129.25(c)	1546.103(b)
129.25(d)	1546.103(c)
129.25(e)	1546.103(a)(1)
129.25(e)(1)	1546.103(a)(2)
129.25(e)	1546.105
129.25(f)	1546.301
129.25(g)	1546.201(c)
129.25(h)	1546.209(a)
129.25(i)	1546.209(b)
129.25(j)	1546.201(a), (b)
129.26	1546.207
129.27(a)	1546.201(d) and 1540.101
129.27(b)	1546.203(c) and 1540.101
129.31	1546.103(d)

49 CFR Part 1548—Indirect Air Carrier Security

New part 1548 provides the rules for indirect air carriers. It is largely the same as 14 CFR part 109. However, it has been reorganized for readability and to update certain requirements, such as the procedure for adopting and amending a security program.

In the screening company NPRM the FAA proposed to add a section on the FAA's inspection authority. No comments were received. Section 1548.3 contains TSA's inspection authority for indirect air carriers, which is the same as for aircraft operators under part 1544 and others under this subchapter.

Section 1548.5 and 1548.7 contain the requirements for security programs. These sections were proposed (in slightly different formats) in the January 2000 screening company NPRM and received no negative comments. Section 1548.5, Adoption and

implementation, redesignates current § 109.3 as § 1548.5 and reorganizes it to be similar to § 1544.103. Section 1548.5 is largely the same as current § 109.3. New paragraph 1548.5(d)(2) makes clear that the security program at each office where cargo is accepted may be an electronic version.

Section 1548.7 restates and clarifies § 109.5 and makes it consistent with § 1544.105.

The following distribution table is provided to illustrate how the current regulations relate to the newly added regulations.

Distribution Table

Current section **14 CFR part 109**	**New section** **49 CFR part 1548**
109.1	1548.1
109.3	1548.5
109.5	1548.7

49 CFR Part 1550—Aircraft Security Under General Operating and Flight Rules

This part includes security requirements for aircraft operations other than those governed by other parts in this subchapter. It covers air carrier operations that are not covered by part 1544, such as corporate and private aircraft, and other operations. Part 1550 now provides the rules for aircraft operators covered under SFAR 91 (66 FR 50531, Oct. 4, 2001). It contains the same requirements as those in the SFAR, but is reorganized.

In addition, § 1550.3 describes TSA's inspection authority for aircraft operators under this part. It is largely the same as for aircraft operators under part 1544 and others under this subchapter, except that it does not include references to access to the SIDA, because they are not relevant in this part.

Section 1550.5 is essentially the same as SFAR 91 paragraph 1(a).

Section 1550.7 is essentially the same as SFAR 91 paragraph 1(b), except that the size of aircraft covered is expanded. SFAR 91 covers aircraft with a maximum certificated takeoff weight of more than 12,500 pounds. However, in ATSA Congress has provided that the agency must require increased security for aircraft of 12,500 pounds or more. See ATSA sections 113 and 132(a). Accordingly, § 1550.7 provides that TSA may require additional measures for operators of aircraft 12,500 pounds or more maximum certificated takeoff weight when TSA determines that a threat exists.

The following distribution table is provided to illustrate how the current regulations relate to the newly added regulations.

Distribution Table

Current section **SFAR No. 91 in 14 CFR part 91**	**New section** **49 CFR part 1550**
1(a)	1550.5
1(b)	1550.7
2	§§ 1550.5 and 1550.7
3	§§ 1550.5 and 1550.7
4	§§ 1550.5 and 1550.7
5	1550.1

Good Cause for Immediate Adoption

This action mostly is an administrative action moving rules from one title to another in the Code of Federal Regulations. In addition, ATSA imposes a statutory mandate for TSA to improve screener qualifications and training, checked baggage security, and cargo security. This action is necessary to prevent a possible imminent hazard to aircraft and persons and property within the United States. Because the circumstances described herein warrant immediate action, the Under Secretary finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the

public interest. We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do without incurring expense or delay. We may further amend this rule in light of the comments we receive.

Paperwork Reduction Act

This final rule contains information collection requirements that were previously approved for parts 107 (2120-0075, 2120-0554, 2120-0628), 108 (2120-0098, 2120-0554, 2120-0577, 2120-0628, 2120-0642), 109 (2120-0505), and 129 (2120-0638), in accordance with the Paperwork Reduction Act (44 U.S.C. Section 3507(d)). TSA is submitting to the Office of Management and Budget a supplemental justification requesting that these approvals be transferred from the FAA to TSA.

Economic Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980. When no notice of proposed rulemaking has first been published, the Regulatory Flexibility Act does not apply. TSA recognizes that this rule may impose significant costs on aircraft operators and foreign air carriers. An assessment will be conducted in the future. In any event, the current

security threat requires that operators take necessary measures to ensure the safety and security of their operations. This rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 13132, Federalism

The TSA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA and TSA have assessed the potential effect of this final rule and have determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of

the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Therefore, the FAA and TSA have not prepared a statement under the Act.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in "For Further

Information Contact" for information. You can get further information regarding SBREFA on the Small Business Administration's web page at http://www.sba.gov/advo/laws/law_lib.html.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Ethiopia, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements, Yugoslavia.

14 CFR Part 107

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 108

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 109

Air carriers, Aircraft, Freight forwarders, Security measures.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Security measures.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing, Reporting and recordkeeping requirements.

14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 191

Air transportation, Security measures.

49 CFR Part 1500

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1510

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1520

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1542

Air carriers, Aircraft, Aviation safety, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, Foreign air carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1550

Aircraft, Security measures.

Federal Aviation Administration

14 CFR Chapter I

Authority and Issuance

For the reasons stated in the preamble and under the authority of 49 U.S.C. 40102, the Federal Aviation Administration amends 14 CFR chapter I as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

Special Federal Aviation Regulation No. 91 – [Removed]

2. Remove SFAR No. 91 from 14 CFR part 91.

PART 107—[REMOVED]

3. Remove 14 CFR part 107.

PART 108—[REMOVED]

4. Remove 14 CFR part 108.

PART 109—[REMOVED]

5. Remove 14 CFR part 109.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

6. Revise the authority citation for part 121 to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 46105.

7. Revise § 121.538 to read as follows:

§ 121.538 Aircraft security.

Certificate holders conducting operations under this part must comply with the applicable security requirements in 49 CFR chapter XII.

PART 129 – OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

8. Revise the authority citation for part 129 to read as follows:

Authority: 49 U.S.C. 106(g), 40104-40105, 40113, 40119, 41706, 44701-44702, 44712, 44716-44717, 44722.

9. Revise § 129.25 to read as follows:

§ 129.25 Airplane security.

Foreign air carriers conducting operations under this part must comply with the applicable security requirements in 49 CFR chapter XII.

§§ 129.26, 129.27, and 129.31 [Removed]

10. Remove §§ 129.26, 129.27, and 129.31.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

11. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44101, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

12. Revise § 135.125 to read as follows:

§ 135.125 Aircraft security.

Certificate holders conducting operators conducting operations under this part must comply with the applicable security requirements in 49 CFR chapter XII.

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

13. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106 (g), 40113, 44701-44706, 44709, 44719.

14. Section 139.325(h) is revised to read as follows:

§ 139.325 Airport emergency plan.

* * * * *

(h) Each airport subject to 49 CFR part 1542, Airport Security, shall ensure that instructions for response to paragraphs (b)(2) and (b)(6) of this section in the airport emergency plan are consistent with its approved security program.

* * * * *

PART 191—[REMOVED]

15. Remove 14 CFR part 191.

Issued in Washington, DC on

Jane F. Garvey,

Administrator.

Transportation Security Administration

49 CFR Chapter XII

For the reasons stated in the preamble, the Transportation Security Administration amends 49 CFR Chapter XII as follows:

1. Add new subchapter A and part 1500 to Chapter XII to read as follows:

SUBCHAPTER A - ADMINISTRATIVE AND PROCEDURAL RULES

PART 1500—APPLICABILITY, TERMS, AND ABBREVIATIONS

Sec.

1500.1 Applicability.

1500.3 Terms and abbreviations used in this chapter.

1500.5 Rules of construction.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105.

§ 1500.1 Applicability.

This chapter, this subchapter, and this part apply to all matters regulated by the Transportation Security Administration.

§ 1500.3 Terms and abbreviations used in this chapter.

As used in this chapter:

Person means an individual, corporation, company, association, firm, partnership, society, joint-stock company, or governmental authority. It includes a trustee, receiver, assignee, successor, or similar representative of any of them.

Transportation Security Regulations (TSR) means the regulations issued by the Transportation Security Administration, in title 49 of the Code of Federal Regulations, chapter XII, which includes parts 1500 through 1699.

TSA means the Transportation Security Administration.

Under Secretary means the Under Secretary of Transportation for Security.

United States, in a geographical sense, means the States of the United States, the District of Columbia, and territories and possessions of the United States, including the territorial sea and the overlying airspace.

§ 1500.5 Rules of construction.

(a) In this chapter, unless the context requires otherwise:

(1) Words importing the singular include the plural.

(2) Words importing the plural include the singular.

(3) Words importing the masculine gender include the feminine.

(b) In this chapter, the word:

(1) "Must" is used in an imperative sense;

(2) "May" is used in a permissive sense to state authority or permission to do the act prescribed, and the words "no person may * * *" or "a person may not * * *" mean that no person is required, authorized, or permitted to do the act prescribed; and

(3) "Includes" means "includes but is not limited to".

2. Existing part 1510 is transferred to subchapter A.

3. Add new subchapter B and part 1520 to Chapter XII.

SUBCHAPTER B - SECURITY RULES FOR ALL MODES OF TRANSPORTATION

PART 1520--PROTECTION OF SENSITIVE SECURITY INFORMATION

Sec.

1520.1 Applicability and definitions.

1520.3 Records and information withheld by the Department of Transportation.

1520.5 Records and information protected by others.

1520.7 Sensitive security information.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105.

§ 1520.1 Applicability and definitions.

(a) This part governs the release, by the Transportation Security Administration and by other persons, of records and information that has been obtained or developed during security activities or research and development activities.

(b) For purposes of this part:

Record includes any writing, drawing, map, tape, film, photograph, or other means by which information is preserved, irrespective of format.

Vulnerability assessment means any examination of a transportation system, vehicle, or facility to determine its vulnerability to unlawful interference.

(c) The authority of the Under Secretary under this part may be further delegated within TSA.

(d) The Under Secretary's authority under this part to withhold or to disclose sensitive security information is also exercised, in consultation with the Under Secretary, by the Commandant of the United States Coast Guard, as to matters affecting and information held by the Coast Guard, and the Administrator of each DOT administration, as to matters affecting and information held by that administration, and any individual formally designated to act in their capacity.

§ 1520.3 Records and information withheld by the Department of Transportation.

(a) Except as provided in paragraphs (c) and (d) of this section, and notwithstanding the Freedom of Information Act (5 U.S.C. 552) or other laws, the records and information described in § 1520.7 and 1520.3(b) are not available for public inspection or copying, nor is information contained in those records released to the public.

(b) Section 1520.7 describes the information that TSA prohibits from disclosure. The Under Secretary prohibits disclosure of information developed in the conduct of security or research and development activities under 49 U.S.C. 40119 if, in the opinion of the Under Secretary, the disclosure of such information would:

(1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(2) Reveal trade secrets or privileged or confidential information obtained from any person; or

(3) Be detrimental to the safety of persons traveling in transportation.

(c) If a record contains information that the Under Secretary determines cannot be disclosed under this part, but also contains information that can be disclosed, the latter

information, on proper Freedom of Information Act request, will be provided for public inspection and copying. However, if it is impractical to redact the requested information from the document, the entire document will be withheld from public disclosure.

(d) After initiation of legal enforcement action, if the alleged violator or designated representative so requests, the Chief Counsel, or designee, may provide copies of portions of the enforcement investigative report (EIR), including sensitive security information. This information may be released only to the alleged violator or designated representative for the sole purpose of providing the information necessary to prepare a response to the allegations contained in the legal enforcement action document. Such information is not released under the Freedom of Information Act. Whenever such documents are provided to an alleged violator or designated representative, the Chief Counsel or designee advises the alleged violator or designed representative that--

(1) The documents are provided for the sole purpose of providing the information necessary to respond to the allegations contained in the legal enforcement action document; and

(2) Sensitive security information contained in the documents provided must be maintained in a confidential manner to prevent compromising civil aviation security, as provided in § 1520.5.

§ 1520.5 Records and information protected by others.

(a) Duty to protect information. The following persons must restrict disclosure of and access to sensitive security information described in § 1520.7 (a) through (g), (j), (k), and (m) through (r), and, as applicable, § 1520.7 (l) to persons with a need to know and

must refer requests by other persons for such information to TSA or the applicable DOT administration:

(1) Each person employed by, contracted to, or acting for a person listed in this paragraph (a).

(2) Each airport operator under part 1542 of this chapter.

(3) Each aircraft operator under part 1544 of this chapter.

(4) Each foreign air carrier under part 1546 of this chapter.

(5) Each indirect air carrier under part 1548 of this chapter.

(6) Each aircraft operator under § 1550.5 of this chapter.

(7) Each person receiving information under § 1520.3 (d).

(8) Each person for which a vulnerability assessment has been authorized, approved, or funded by DOT, irrespective of the mode of transportation.

(b) Need to know. For some specific sensitive security information, the Under Secretary may make a finding that only specific persons or classes of persons have a need to know. Otherwise, a person has a need to know sensitive security information in each of the following circumstances:

(1) When the person needs the information to carry out DOT-approved, accepted, or directed security duties.

(2) When the person is in training to carry out DOT-approved, accepted, or directed security duties.

(3) When the information is necessary for the person to supervise or otherwise manage the individuals carrying to carry out DOT-approved, accepted, or directed security duties.

(4) When the person needs the information to advise the persons listed in paragraph (a) of this section regarding any DOT security-related requirements.

(5) When the person needs the information to represent the persons listed in paragraph (a) of this section in connection with any judicial or administrative proceeding regarding those requirements.

(c) When sensitive security information is released to unauthorized persons, any person listed in paragraph (a) of this section or individual with knowledge of the release, must inform DOT.

(d) Violation of this section is grounds for a civil penalty and other enforcement or corrective action by DOT.

(e) Applicants. Wherever this part refers to an aircraft operator, airport operator, foreign air carrier, or indirect air carrier, those terms also include applicants for such authority.

(f) Trainees. An individual who is in training for a position is considered to be employed by, contracted to, or acting for persons listed in paragraph (a) of this section, regardless of whether that individual is currently receiving a wage or salary or otherwise is being paid.

§ 1520.7 Sensitive security information.

Except as otherwise provided in writing by the Under Secretary as necessary in the interest of safety of persons in transportation, the following information and records containing such information constitute sensitive security information:

(a) Any approved, accepted, or standard security program under the rules listed in § 1520.5(a)(1) through (6), and any security program that relates to United States mail to

be transported by air (including that of the United States Postal Service and of the Department of Defense); and any comments, instructions, or implementing guidance pertaining thereto.

(b) Security Directives and Information Circulars under § 1542.303 or § 1544.305 of this chapter, and any comments, instructions, or implementing guidance pertaining thereto.

(c) Any selection criteria used in any security screening process, including for persons, baggage, or cargo under the rules listed in § 1520.5(a)(1) through (6).

(d) Any security contingency plan or information and any comments, instructions, or implementing guidance pertaining thereto under the rules listed in § 1520.5(a)(1) through (6).

(e) Technical specifications of any device used for the detection of any deadly or dangerous weapon, explosive, incendiary, or destructive substance under the rules listed in § 1520.5(a)(1) through (6).

(f) A description of, or technical specifications of, objects used to test screening equipment and equipment parameters under the rules listed in § 1520.5(a)(1) through (6).

(g) Technical specifications of any security communications equipment and procedures under the rules listed in § 1520.5(a)(1) through (6).

(h) As to release of information by TSA: Any information that TSA has determined may reveal a systemic vulnerability of the aviation system, or a vulnerability of aviation facilities, to attack. This includes, but is not limited to, details of inspections, investigations, and alleged violations and findings of violations of 14 CFR parts 107, 108, or 109, and 14 CFR 129.25, 129.26, or 129.27; or parts 1540, 1542, 1544, 1546, 1548, or

§ 1550.5 of this chapter, and any information that could lead the disclosure of such details, as follows:

(1) As to events that occurred less than 12 months before the date of the release of the information, the following are not released: the name of an airport where a violation occurred, the regional identifier in the case number, a description of the violation, the regulation allegedly violated, and the identity of the aircraft operator in connection with specific locations or specific security procedures. TSA may release summaries of an aircraft operator's total security violations in a specified time range without identifying specific violations. Summaries may include total enforcement actions, total proposed civil penalty amounts, total assessed civil penalty amounts, number of cases opened, number of cases referred to TSA or FAA counsel for legal enforcement action, and number of cases closed.

(2) As to events that occurred 12 months or more before the date of the release of information, the specific gate or other location on an airport where an event occurred is not released.

(3) The identity of TSA or FAA special agent who conducted the investigation or inspection.

(4) Security information or data developed during TSA or FAA evaluations of the aircraft operators and airports and the implementation of the security programs, including aircraft operator and airport inspections and screening point tests or methods for evaluating such tests under the rules listed in § 1520.5(a)(1) through (6).

(i) As to release of information by TSA: Information concerning threats against transportation.

(j) Specific details of aviation security measures whether applied directly by the TSA or entities subject to the rules listed in § 1520.5(a)(1) through (6). This includes, but is not limited to, information concerning specific numbers of Federal Air Marshals, deployments or missions, and the methods involved in such operations.

(k) Any other information, the disclosure of which TSA has prohibited under the criteria of 49 U.S.C. 40119.

(l) Any draft, proposed, or recommended change to the information and records identified in this section.

(m) The locations at which particular screening methods or equipment are used under the rules listed in § 1520.5(a)(1) through (6) if TSA determines that the information meets the criteria of 49 U.S.C. 40119.

(n) Any screener test used under the rules listed in § 1520.5(a)(1) through (6).

(o) Scores of tests administered under the rules listed in § 1520.5(a)(1) through (6).

(p) Performance data from screening systems, and from testing of screening systems under the rules listed in § 1520.5(a)(1) through (6).

(q) Threat images and descriptions of threat images for threat image projection systems under the rules listed in § 1520.5(a)(1) through (6).

(r) Information in a vulnerability assessment that has been authorized, approved, or funded by DOT, irrespective of mode of transportation.

4. Add new subchapter C and part 1540 to Chapter XII.

SUBCHAPTER C – CIVIL AVIATION SECURITY

PART 1540 – CIVIL AVIATION SECURITY: GENERAL RULES

Subpart A - General

Sec.

1540.1 Applicability of this subchapter and this part.

1540.3 Delegation of authority.

1540.5 Terms used in this subchapter.

Subpart B – Responsibilities of Passengers and Other Individuals and Persons

1540.101 Applicability of this subpart.

1540.103 Fraud and intentional falsification of records.

1540.105 Security responsibilities of employees and other persons.

1540.107 Submission to screening and inspection.

1540.109 Prohibition against interference with screening personnel.

1540.111 Carriage of weapons, explosives, and incendiaries by individuals.

1540.113 Inspection of airman certificate.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105.

Subpart A – General

§ 1540.1 Applicability of this subchapter and this part.

This subchapter and this part apply to persons engaged in aviation-related activities.

§ 1540.3 Delegation of authority.

(a) Where the Under Secretary is named in this subchapter as exercising authority over a function, the authority is exercised by the Under Secretary or the Deputy Under Secretary, or any individual formally designated to act as the Under Secretary or the Deputy Under Secretary.

(b) Where TSA or the designated official is named in this subchapter as exercising authority over a function, the authority is exercised by the official designated by the Under Secretary to perform that function

§ 1540.5 Terms used in this subchapter.

In addition to the terms in part 1500 of this chapter, the following terms are used in this subchapter:

Air operations area (AOA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes aircraft movement areas, aircraft parking areas, loading ramps, and safety areas, for use by aircraft regulated under 14 CFR part 108 or § 129.25, and any adjacent areas (such as general aviation areas) that are not separated by adequate security systems, measures, or procedures. This area does not include the secured area.

Aircraft operator means a person who uses, causes to be used, or authorizes to be used an aircraft, with or without the right of legal control (as owner, lessee, or otherwise), (1) for the purpose of air navigation including the piloting of aircraft, or (2) on any part of the surface of an airport. In specific parts or sections of this subchapter, "aircraft operator" is used to refer to specific types of operators as described in those parts or sections.

Airport operator means a person that operates an airport serving a aircraft operator or a foreign air carrier required to have a security program under part 1544 or 1546 of this chapter.

Airport security program means a security program approved by TSA under § 1542.101 of this chapter.

Airport tenant means any person, other than an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter, that has an agreement with the airport operator to conduct business on airport property.

Airport tenant security program means the agreement between the airport operator and an airport tenant that specifies the measures by which the tenant will perform security functions, and approved by TSA, under § 1542.113 of this chapter.

Approved, unless used with reference to another person, means approved by TSA.

Cargo means property tendered for air transportation accounted for on an air waybill. All accompanied commercial courier consignments, whether or not accounted for on an air waybill, are also classified as cargo. Aircraft operator security programs further define the term "cargo."

Checked baggage means property tendered by or on behalf of a passenger and accepted by an aircraft operator for transport, which is inaccessible to passengers during flight. Accompanied commercial courier consignments are not classified as checked baggage.

Escort means to accompany or monitor the activities of an individual who does not have unescorted access authority into or within a secured area or SIDA.

Exclusive area means any portion of a secured area, AOA, or SIDA, including individual access points, for which an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter has assumed responsibility under § 1542.111 of this chapter.

Exclusive area agreement means an agreement between the airport operator and an aircraft operator or a foreign air carrier that has a security program under parts 1544 or 1546 of this chapter that permits such an aircraft operator or foreign air carrier to assume responsibility for specified security measures in accordance with § 1542.111 of this chapter.

FAA means the Federal Aviation Administration.

Indirect air carrier means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of a passenger air carrier. This does not include the United States Postal Service (USPS) or its representative while acting on the behalf of the USPS.

Loaded firearm means a firearm that has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm.

Passenger seating configuration means the total maximum number of seats for which the aircraft is type certificated that can be made available for passenger use aboard a flight, regardless of the number of seats actually installed, and includes that seat in certain aircraft that may be used by a representative of the FAA to conduct flight checks but is available for revenue purposes on other occasions.

Private charter means any aircraft operator flight--

(1) For which the charterer engages the total passenger capacity of the aircraft for the carriage of passengers; the passengers are invited by the charterer; the cost of the flight is borne entirely by the charterer and not directly or indirectly by any individual passenger; and the flight is not advertised to the public, in any way, to solicit passengers.

(2) For which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement conducted under contract with the Government of the United States or the government of a foreign country.

Public charter means any charter flight that is not a private charter.

Scheduled passenger operation means an air transportation operation (a flight) from identified air terminals at a set time, which is held out to the public and announced by timetable or schedule, published in a newspaper, magazine, or other advertising medium.

Screening function means the inspection of individuals and property for weapons, explosives, and incendiaries.

Screening location means each site at which individuals or property are inspected for the presence of weapons, explosives, or incendiaries.

Secured area means a portion of an airport, specified in the airport security program, in which certain security measures specified in part 1542 of this chapter are carried out. This area is where aircraft operators and foreign air carriers that have a security program under part 1544 or 1546 of this chapter enplane and deplane passengers and sort and load baggage and any adjacent areas that are not separated by adequate security measures.

Security Identification Display Area (SIDA) means a portion of an airport, specified in the airport security program, in which security measures specified in this part are carried out. This area includes the secured area and may include other areas of the airport.

Sterile area means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, or by an aircraft operator under part 1544 of this chapter or a foreign air carrier under part 1546 of this chapter, through the screening of persons and property.

Unescorted access authority means the authority granted by an airport operator, an aircraft operator, foreign air carrier, or airport tenant under part 1542, 1544, or 1546 of this chapter, to individuals to gain entry to, and be present without an escort in, secured areas and SIDA's of airports.

Subpart B - Responsibilities of Passengers and Other Individuals and Persons

§ 1540.101 Applicability of this subpart.

This subpart applies to individuals and other persons.

§ 1540.103 Fraud and intentional falsification of records.

No person may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application for any security program, access medium, or identification medium, or any amendment thereto, under this subchapter.

(b) Any fraudulent or intentionally false entry in any record or report that is kept, made, or used to show compliance with this subchapter, or exercise any privileges under this subchapter.

(c) Any reproduction or alteration, for fraudulent purpose, of any report, record, security program, access medium, or identification medium issued under this subchapter.

§ 1540.105 Security responsibilities of employees and other persons.

(a) No person may:

(1) Tamper or interfere with, compromise, modify, attempt to circumvent, or cause a person to tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented under this subchapter.

(2) Enter, or be present within, a secured area, AOA, SIDA or sterile area without complying with the systems, measures, or procedures being applied to control access to, or presence or movement in, such areas.

(3) Use, allow to be used, or cause to be used, any airport-issued or airport-approved access medium or identification medium that authorizes the access, presence, or movement of persons or vehicles in secured areas, AOA's, or SIDA's in any other manner than that for which it was issued by the appropriate authority under this subchapter.

(b) The provisions of paragraph (a) of this section do not apply to conducting inspections or tests to determine compliance with this part or 49 U.S.C. Subtitle VII authorized by:

(1) TSA, or

(2) The airport operator, aircraft operator, or foreign air carrier, when acting in accordance with the procedures described in a security program approved by TSA.

§ 1540.107 Submission to screening and inspection.

No individual may enter a sterile area without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area under this subchapter.

§ 1540.109 Prohibition against interference with screening personnel.

No person may interfere with, assault, threaten, or intimidate screening personnel in the performance of their screening duties under this subchapter.

§ 1540.111 Carriage of weapons, explosives, and incendiaries by individuals.

(a) On an individual's person or accessible property - prohibitions. Except as provided in paragraph (b) of this section, an individual may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property —

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area;

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter.

(b) On an individual's person or accessible property - permitted carriage of a weapon. Paragraph (a) of this section does not apply as to carriage of firearms and other weapons if the individual is one of the following:

(1) Law enforcement personnel required to carry a firearm or other weapons while in the performance of law enforcement duty at the airport.

(2) An individual authorized to carry a weapon in accordance with §§ 1544.219, 1544.221, 1544.223, or 1546.211 of this chapter.

(3) An individual authorized to carry a weapon in a sterile area under a security program.

(c) In checked baggage. A passenger may not transport or offer for transport in checked baggage:

(1) Any loaded firearm(s).

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing, before checking the baggage, that the passenger has a firearm in his or her bag and that it is unloaded;

(ii) The firearm is unloaded;

(iii) The firearm is carried in a hard-sided container; and

(iv) The container in which it is carried is locked, and only the passenger retains the key or combination.

(3) Any unauthorized explosive or incendiary.

(d) Ammunition. This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

§ 1540.113 Inspection of airman certificate.

Each individual who holds an airman certificate, medical certificate, authorization, or license issued by the FAA must present it for inspection upon a request from TSA.

5. Add new part 1542 to Chapter XII, Subchapter C.

PART 1542—AIRPORT SECURITY

Subpart A--General

Sec.

1542.1 Applicability of this part.

1542.3 Airport security coordinator.

1542.5 Inspection authority.

Subpart B--Airport Security Program

1542.101 General requirements.

1542.103 Content.

1542.105 Approval and amendments.

1542.103 Changed conditions affecting security.

1542.109 Alternate means of compliance.

1542.111 Exclusive area agreements.

1542.113 Airport tenant security programs.

Subpart C--Operations

1542.201 Security of the secured area.

1542.203 Security of the air operations area (AOA).

1542.205 Security of the security identification display area (SIDA).

1542.207 Access control systems.

1542.209 Fingerprint-based criminal history records checks (CHRC).

1542.211 Identification systems.

1542.213 Training.

1542.215 Law enforcement support.

1542.217 Law enforcement personnel.

1542.219 Supplementing law enforcement personnel.

1542.221 Records of law enforcement response.

Subpart D--Contingency Measures

1542.301 Contingency plan.

1542.303 Security Directives and Information Circulars.

1542.305 Public advisories.

1542.307 Incident management.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44905, 44907, 44913-44914, 44916-44917, 44935-44936, 44942, 46105.

Subpart A - General

§ 1542.1 Applicability of this part.

This part describes aviation security rules governing:

(a) The operation of airports regularly serving aircraft operations required to be under a security program under part 1544 of this chapter, as described in this part.

(b) The operation of airport regularly serving foreign air carrier operations required to be under a security program under part 1546 of this chapter, as described in this part.

(c) Each airport operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by the Designated official for Civil Aviation Security.

§ 1542.3 Airport security coordinator.

(a) Each airport operator must designate one or more Airport Security Coordinator(s) (ASC) in its security program.

(b) The airport operator must ensure that one or more ASCs:

(1) Serve as the airport operator's primary and immediate contact for security-related activities and communications with TSA. Any individual designated as an ASC may perform other duties in addition to those described in this paragraph (b).

(2) Is available to TSA on a 24-hour basis.

(3) Review with sufficient frequency all security-related functions to ensure that all are effective and in compliance with this part, its security program, and applicable Security Directives.

(4) Immediately initiate corrective action for any instance of non-compliance with this part, its security program, and applicable Security Directives.

(5) Review and control the results of employment history, verification, and criminal history records checks required under § 1542.209.

(6) Serve as the contact to receive notification from individuals applying for unescorted access of their intent to seek correction of their criminal history record with the FBI.

(c) After July 17, 2003, no airport operator may use, nor may it designate any person as, an ASC unless that individual has completed subject matter training, as specified in its security program, to prepare the individual to assume the duties of the position. The airport operator must maintain ASC training documentation until at least 180 days after the withdrawal of a individual's designation as an ASC.

(d) An individual's satisfactory completion of initial ASC training required under paragraph (c) of this section satisfies that requirement for all future ASC designations for that individual, except for site specific information, unless there has been a two or more year break in service as an active and designated ASC.

§ 1542.5 Inspection authority.

(a) Each airport operator must allow TSA, at any time or place, to make any inspections or tests**,** including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This subchapter and any security program under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each airport operator must provide evidence of compliance with this part and its airport security program, including copies of records.

(c) TSA may enter and be present within secured areas, AOA's, and SIDA's without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) At the request of TSA and upon the completion of SIDA training as required in a security program, each airport operator promptly must issue to TSA personnel access and identification media to provide TSA personnel with unescorted access to, and movement within, secured areas, AOA's, and SIDA's.

Subpart B--Airport Security Program

§ 1542.101 General requirements.

(a) No person may operate an airport subject to this part unless it adopts and carries out a security program that--

(1) Provides for the safety and security of persons and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence, aircraft piracy, and the introduction of an unauthorized weapon, explosive, or incendiary onto an aircraft;

(2) Is in writing and is signed by the airport operator;

(3) Includes the applicable items listed in § 1542.103;

(4) Includes an index organized in the same subject area sequence as § 1542.103; and

(5) Has been approved by TSA.

(b) The airport operator must maintain one current and complete copy of its security program and provide a copy to TSA upon request.

(c) Each airport operator must--

(1) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know; and

(2) Refer all requests for SSI by other persons to TSA.

§ 1542.103 Content.

(a) Complete program. Except as otherwise approved by TSA, each airport operator regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(a)(1) or § 1546.101(a) of this chapter, must include in its security program the following:

(1) The name, means of contact, duties, and training requirements of the ASC required under § 1542.3.

(2) [Reserved]

(3) A description of the secured areas, including--

(i) A description and map detailing boundaries and pertinent features;

(ii) Each activity or entity on, or adjacent to, a secured area that affects security;

(iii) Measures used to perform the access control functions required under § 1542.201(b)(1);

(iv) Procedures to control movement within the secured area, including identification media required under §1542.201(b)(3); and

(v) A description of the notification signs required under § 1542.201(b)(6).

(4) A description of the AOA, including--

(i) A description and map detailing boundaries, and pertinent features;

(ii) Each activity or entity on, or adjacent to, an AOA that affects security;

(iii) Measures used to perform the access control functions required under § 1542.203(b)(1);

(iv) Measures to control movement within the AOA, including identification media as appropriate; and

(v) A description of the notification signs required under § 1542.203(b)(4).

(5) A description of the SIDA's, including--

(i) A description and map detailing boundaries and pertinent features; and

(ii) Each activity or entity on, or adjacent to, a SIDA.

(6) A description of the sterile areas, including--

(i) A diagram with dimensions detailing boundaries and pertinent features;

(ii) Access controls to be used when the passenger-screening checkpoint is non-operational and the entity responsible for that access control; and

(iii) Measures used to control access as specified in § 1542.207.

(7) Procedures used to comply with § 1542.209 regarding fingerprint-based criminal history records checks.

(8) A description of the personnel identification systems as described in § 1542.211.

(9) Escort procedures in accordance with § 1542.211(e).

(10) Challenge procedures in accordance with § 1542.211(d).

(11) Training programs required under §§ 1542.213 and 1542.217(c)(2), if applicable.

(12) A description of law enforcement support used to comply with § 1542.215(a).

(13) A system for maintaining the records described in §1542.221.

(14) The procedures and a description of facilities and equipment used to support TSA inspection of individuals and property, and aircraft operator or foreign air carrier screening functions of part 1544 and 1546 of this chapter.

(15) A contingency plan required under § 1542.301.

(16) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(17) Procedures for posting of public advisories as specified in §1542.305.

(18) Incident management procedures used to comply with § 1542.307.

(19) Alternate security procedures, if any, that the airport operator intends to use in the event of natural disasters, and other emergency or unusual conditions.

(20) Each exclusive area agreement as specified in § 1542.111.

(21) Each airport tenant security program as specified in § 1542.113.

(b) Supporting program. Except as otherwise approved by TSA, each airport regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(a)(2) or (f), or § 1546.101(b) or (c) of this chapter, must include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC, as required under § 1542.3.

(2) A description of the law enforcement support used to comply with § 1542.215(a).

(3) Training program for law enforcement personnel required under § 1542.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 1542.221.

(5) The contingency plan required under § 1542.301.

(6) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(7) Procedures for public advisories as specified in § 1542.305.

(8) Incident management procedures used to comply with § 1542.307.

(c) Partial program. Except as otherwise approved by TSA, each airport regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(b) or § 1546.101(d) of this chapter, must include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the ASC as required under § 1542.3.

(2) A description of the law enforcement support used to comply with § 1542.215(b).

(3) Training program for law enforcement personnel required under § 1542.217(c)(2), if applicable.

(4) A system for maintaining the records described in § 1542.221.

(5) Procedures for the distribution, storage, and disposal of security programs, Security Directives, Information Circulars, implementing instructions, and, as appropriate, classified information.

(6) Procedures for public advisories as specified in § 1542.305.

(7) Incident management procedures used to comply with § 1542.307.

(d) Use of appendices. The airport operator may comply with paragraphs (a), (b), and (c) of this section by including in its security program, as an appendix, any document that contains the information required by paragraphs (a), (b), and (c) of this section. The appendix must be referenced in the corresponding section(s) of the security program.

§ 1542.105 Approval and amendments.

(a) Initial approval of security program. Unless otherwise authorized by the designated official, each airport operator required to have a security program under this part must submit its initial proposed security program to the designated official for approval at least 90 days before the date any aircraft operator or foreign air carrier required to have a security program under part 1544 or part 1546 of this chapter is expected to begin operations. Such requests will be processed as follows:

(1) The designated official, within 30 days after receiving the proposed security program, will either approve the program or give the airport operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The airport operator may either submit a modified security program to the designated official for approval, or petition the Under Secretary to reconsider the notice

to modify within 30 days of receiving a notice to modify. A petition for reconsideration must be filed with the designated official.

(3) The designated official, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) Amendment requested by an airport operator. Except as provided in § 1542.103(c), an airport operator may submit a request to the designated official to amend its security program, as follows:

(1) The request for an amendment must be filed with the designated official at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to a security program may be approved if the designated official determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the airport operator may petition the Under Secretary to reconsider the denial.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition within 30 days of receipt, together with any pertinent information, to the Under Secretary for reconsideration. The Under

Secretary disposes of the petition within 30 days of receipt by either directing the designated official to approve the amendment or affirming the denial.

(c) Amendment by TSA. If safety and the public interest require an amendment, the designated official may amend a security program as follows:

(1) The designated official sends to the airport operator a notice, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the airport operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the airport operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the airport operator receives the notice of amendment, unless the airport operator petitions the Under Secretary to reconsider no later than 15 days before the effective date of the amendment. The airport operator must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice, or transmits the petition, together with any pertinent information to the Under Secretary for reconsideration. The Under Secretary disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the amendment, or by affirming the amendment.

(d) Emergency Amendments. Notwithstanding paragraph (c) of this section, if the designated official finds that there is an emergency requiring immediate action with respect to safety and security in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the designated official may issue

an amendment, effective without stay on the date the airport operator receives the notice of it. In such a case, the designated official must incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The airport operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

§ 1542.107 Changed conditions affecting security.

(a) After approval of the security program, each airport operator must notify TSA when changes have occurred to the--

(1) Measures, training, area descriptions, or staffing, described in the security program;

(2) Operations of an aircraft operator or foreign air carrier that would require modifications to the security program as required under § 1542.103; or

(3) Layout or physical structure of any area under the control of the airport operator, airport tenant, aircraft operator, or foreign air carrier used to support the screening process, access, presence, or movement control functions required under part 1542, 1544, or 1546 of this chapter.

(b) Each airport operator must notify TSA no more than 6 hours after the discovery of any changed condition described in paragraph (a) of this section, or within the time specified in its security program, of the discovery of any changed condition described in paragraph (a) of this section. The airport operator must inform TSA of each interim measure being taken to maintain adequate security until an appropriate amendment to the security program is approved. Each interim measure must be acceptable to TSA.

(c) For changed conditions expected to be less than 60 days duration, each airport operator must forward the information required in paragraph (b) of this section in writing to TSA within 72 hours of the original notification of the change condition(s). TSA will notify the airport operator of the disposition of the notification in writing. If approved by TSA, this written notification becomes a part of the airport security program for the duration of the changed condition(s).

(d) For changed conditions expected to be 60 days or more duration, each airport operator must forward the information required in paragraph (b) of this section in the form of a proposed amendment to the airport operator's security program, as required under § 1542.105. The request for an amendment must be made within 30 days of the discovery of the changed condition(s). TSA will respond to the request in accordance with § 1542.105.

§ 1542.109 Alternate means of compliance.

If in TSA's judgment, the overall safety and security of the airport, and aircraft operator or foreign air carrier operations are not diminished, TSA may approve a security program that provides for the use of alternate measures. Such a program may be considered only for an operator of an airport at which service by aircraft operators or foreign air carriers under part 1544 or 1546 of this chapter is determined by TSA to be seasonal or infrequent.

§ 1542.111 Exclusive area agreements.

(a) TSA may approve an amendment to an airport security program under which an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter assumes responsibility for specified security measures for all or

portions of the secured area, AOA, or SIDA, including access points, as provided in § 1542.201, § 1542.203, or § 1542.205. The assumption of responsibility must be exclusive to one aircraft operator or foreign air carrier, and shared responsibility among aircraft operators or foreign air carriers is not permitted for an exclusive area.

(b) An exclusive area agreement must be in writing, signed by the airport operator and aircraft operator or foreign air carrier, and maintained in the airport security program. This agreement must contain the following:

(1) A description, a map, and, where appropriate, a diagram of the boundaries and pertinent features of each area, including individual access points, over which the aircraft operator or foreign air carrier will exercise exclusive security responsibility.

(2) A description of the measures used by the aircraft operator or foreign air carrier to comply with § 1542.201, § 1542.203, or § 1542.205, as appropriate.

(3) Procedures by which the aircraft operator or foreign air carrier will immediately notify the airport operator and provide for alternative security measures when there are changed conditions as described in § 1542.103(a).

(c) Any exclusive area agreements in effect on November 14, 2001, must meet the requirements of this section and § 1544.227 no later than November 14, 2002.

§ 1542.113 Airport tenant security programs.

(a) TSA may approve an airport tenant security program as follows:

(1) The tenant must assume responsibility for specified security measures of the secured area, AOA, or SIDA as provided in §§ 1542.201, 1542.203, and 1542.205.

(2) The tenant may not assume responsibility for law enforcement support under § 1542.215.

(3) The tenant must assume the responsibility within the tenant's leased areas or areas designated for the tenant's exclusive use. A tenant may not assume responsibility under a tenant security program for the airport passenger terminal.

(4) Responsibility must be exclusive to one tenant, and shared responsibility among tenants is not permitted.

(5) TSA must find that the tenant is able and willing to carry out the airport tenant security program.

(b) An airport tenant security program must be in writing, signed by the airport operator and the airport tenant, and maintained in the airport security program. The airport tenant security program must include the following:

(1) A description and a map of the boundaries and pertinent features of each area over which the airport tenant will exercise security responsibilities.

(2) A description of the measures the airport tenant has assumed.

(3) Measures by which the airport operator will monitor and audit the tenant's compliance with the security program.

(4) Monetary and other penalties to which the tenant may be subject if it fails to carry out the airport tenant security program.

(5) Circumstances under which the airport operator will terminate the airport tenant security program for cause.

(6) A provision acknowledging that the tenant is subject to inspection by TSA in accordance with § 1542.5.

(7) A provision acknowledging that individuals who carry out the tenant security program are contracted to or acting for the airport operator and are required to protect

sensitive information in accordance with part 1520 of this chapter, and may be subject to civil penalties for failing to protect sensitive security information.

(8) Procedures by which the tenant will immediately notify the airport operator of and provide for alternative security measures for changed conditions as described in §1542.103(a).

(c) If TSA has approved an airport tenant security program, the airport operator may not be found to be in violation of a requirement of this part in any case in which the airport operator demonstrates that:

(1) The tenant or an employee, permittee, or invitee of the tenant, is responsible for such violation; and

(2) The airport operator has complied with all measures in its security program to ensure the tenant has complied with the airport tenant security program.

(d) TSA may amend or terminate an airport tenant security program in accordance with § 1542.105.

Subpart C—Operations

§ 1542.201 Security of the secured area.

(a) Each airport operator required to have a security program under § 1542.103(a) must establish at least one secured area.

(b) Each airport operator required to establish a secured area must prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into and within the secured area by doing the following:

(1) Establish and carry out measures for controlling entry to secured areas of the airport in accordance with § 1542.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the secured area by an individual whose access is not authorized in accordance with its security program.

(3) Establish and carry out a personnel identification system described under § 1542.211.

(4) Subject each individual to employment history verification as described in § 1542.209 before authorizing unescorted access to a secured area.

(5) Train each individual before granting unescorted access to the secured area, as required in § 1542.213(b).

(6) Post signs at secured area access points and on the perimeter that provide warning of the prohibition against unauthorized entry. Signs must be posted by each airport operator in accordance with its security program not later than November 14, 2003.

§ 1542.203 Security of the air operations area (AOA).

(a) Each airport operator required to have a security program under § 1542.103(a) must establish an AOA, unless the entire area is designated as a secured area.

(b) Each airport operator required to establish an AOA must prevent and detect the unauthorized entry, presence, and movement of individuals and ground vehicles into or within the AOA by doing the following:

(1) Establish and carry out measures for controlling entry to the AOA of the airport in accordance with § 1542.207.

(2) Provide for detection of, and response to, each unauthorized presence or movement in, or attempted entry to, the AOA by an individual whose access is not authorized in accordance with its security program.

(3) Provide security information as described in § 1542.213(c) to each individual with unescorted access to the AOA.

(4) Post signs on AOA access points and perimeters that provide warning of the prohibition against unauthorized entry to the AOA. Signs must be posted by each airport operator in accordance with its security program not later than November 14, 2003.

(5) If approved by TSA, the airport operator may designate all or portions of its AOA as a SIDA, or may use another personnel identification system, as part of its means of meeting the requirements of this section. If it uses another personnel identification system, the media must be clearly distinguishable from those used in the secured area and SIDA.

§ 1542.205 Security of the security identification display area (SIDA).

(a) Each airport operator required to have a security program under § 1542.103(a) must establish at least one SIDA. Each secured area must be a SIDA. Other areas of the airport may be SIDA's.

(b) Each airport operator required to establish a SIDA must establish and carry out measures to prevent the unauthorized presence and movement of individuals in the SIDA and must do the following:

(1) Establish and carry out a personnel identification system described under § 1542.211.

(2) Subject each individual to employment history verification as described in § 1542.209 before authorizing unescorted access to a SIDA.

(3) Train each individual before granting unescorted access to the SIDA, as required in § 1542.213(b).

§ 1542.207 Access control systems.

(a) Secured area. Except as provided in paragraph (b) of this section, the measures for controlling entry to the secured area required under § 1542.201(b)(1) must--

(1) Ensure that only those individuals authorized to have unescorted access to the secured area are able to gain entry;

(2) Ensure that an individual is immediately denied entry to a secured area when that person's access authority for that area is withdrawn; and

(3) Provide a means to differentiate between individuals authorized to have access to an entire secured area and individuals authorized access to only a particular portion of a secured area.

(b) Alternative systems. TSA may approve an amendment to a security program that provides alternative measures that provide an overall level of security equal to that which would be provided by the measures described in paragraph (a) of this section.

(c) Air operations area. The measures for controlling entry to the AOA required under § 1542.203(b)(1) must incorporate accountability procedures to maintain their integrity.

(d) Secondary access media. An airport operator may issue a second access medium to an individual who has unescorted access to secured areas or the AOA, but is

temporarily not in possession of the original access medium, if the airport operator follows measures and procedures in the security program that--

(1) Verifies the authorization of the individual to have unescorted access to secured areas or AOAs;

(2) Restricts the time period of entry with the second access medium;

(3) Retrieves the second access medium when expired;

(4) Deactivates or invalidates the original access medium until the individual returns the second access medium; and

(5) Provides that any second access media that is also used as identification media meet the criteria of § 1542.211(b).

§ 1542.209 Fingerprint-based criminal history records checks (CHRC).

(a) Scope. The following persons are within the scope of this section--

(1) Each airport operator and airport user.

(2) Each individual currently having unescorted access to a SIDA, and each individual with authority to authorize others to have unescorted access to a SIDA (referred to as unescorted access authority).

(3) Each individual seeking unescorted access authority.

(4) Each airport user and aircraft operator making a certification to an airport operator pursuant to paragraph (n) of this section, or 14 CFR 108.31(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001). An airport user, for the purposes of this section only, is any person other than an aircraft operator subject to §1544.229 of this chapter making a certification under this section.

(b) Individuals seeking unescorted access authority. Except as provided in paragraph (m) of this section, each airport operator must ensure that no individual is granted unescorted access authority unless the individual has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section.

(c) Individuals who have not had a CHRC. (1) Except as provided in paragraph (m) of this section, each airport operator must ensure that after December 6, 2002, no individual retains unescorted access authority, unless the airport operator has obtained and submitted a fingerprint under this part.

(2) When a CHRC discloses a disqualifying criminal offense for which the conviction or finding of not guilty by reason of insanity was on or after December 6, 1991, the airport operator must immediately suspend that individual's authority.

(d) Disqualifying criminal offenses. An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty of by reason of insanity, of any of the disqualifying crimes listed in this paragraph (d) in any jurisdiction during the 10 years before the date of the individual's application for unescorted access authority, or while the individual has unescorted access authority. The disqualifying criminal offenses are as follows--

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving--

(i) Willful destruction of property;

(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph (d).

(e) Fingerprint application and processing. (1) At the time of fingerprinting, the airport operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 49 CFR 1542.209 (l) impose a continuing obligation to disclose to the airport operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has unescorted access authority. After February 17, 2002, the airport operator may use statements that have already been printed referring to 14 CFR 107.209 until stocks of such statements are used up.

(iv) A statement reading, "The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)"

(v) A line for the printed name of the individual.

(vi) A line for the individual's signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The airport operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The airport operator must advise the individual that:

(i) A copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) The ASC is the individual's point of contact if he or she has questions about the results of the CHRC.

(5) The airport operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation of the airport operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by TSA for that purpose.

(7) The fingerprint submission must be forwarded to TSA in the manner specified by TSA.

(f) Fingerprinting fees. Airport operators must pay for all fingerprints in a form and manner approved by TSA. The payment must be made at the designated rate (available from the local TSA security office) for each set of fingerprints submitted. Information about payment options is available though the designated TSA headquarters point of contact. Individual personal checks are not acceptable.

(g) Determination of arrest status. (1) When a CHRC on an individual seeking unescorted access authority discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the airport operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting that authority. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(2) When a CHRC on an individual with unescorted access authority discloses an arrest for any disqualifying criminal offense without indicating a disposition, the airport operator must suspend the individual's unescorted access authority not later than 45 days after obtaining the CHRC unless the airport operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(3) The airport operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, unescorted access authority, and who are not covered by a certification from an aircraft operator under paragraph (n) of this section. The airport operator may not make determinations for individuals described in § 1544.229 of this chapter.

(h) Correction of FBI records and notification of disqualification. (1) Before making a final decision to deny unescorted access authority to an individual described in paragraph (b) of this section, the airport operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(2) The airport operator must notify an individual that a final decision has been made to grant or deny unescorted access authority.

(3) Immediately following the suspension of unescorted access authority of an individual, the airport operator must advise him or her that the FBI criminal record

discloses information that disqualifies him or her from retaining unescorted access authority and provide the individual with a copy of the FBI record if he or she requests it.

(i) Corrective action by the individual. The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions--

(1) For an individual seeking unescorted access authority on or after December 6, 2001, the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to granting unescorted access authority.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the airport operator may make a final determination to deny unescorted access authority.

(2) For an individual with unescorted access authority before December 6, 2001, the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the airport operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The airport operator must obtain a copy, or accept a copy from the individual, of the revised FBI record, or a certified true copy of

the information from the appropriate court, prior to reinstating unescorted access authority.

(j) Limits on dissemination of results. Criminal record information provided by the FBI may be used only to carry out this section and § 1544.229 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of other airport operators who are determining whether to grant unescorted access to the individual under this part.

(3) Aircraft operators who are determining whether to grant unescorted access to the individual or authorize the individual to perform screening functions under part 1544 of this chapter.

(4) Others designated by TSA.

(k) Recordkeeping. The airport operator must maintain the following information:

(1) Investigations conducted before December 6, 2001. The airport operator must maintain and control the access or employment history investigation files, including the criminal history records results portion, or the appropriate certifications, for investigations conducted before December 6, 2001.

(2) Fingerprint application process on or after December 6, 2001. Except when the airport operator has received a certification under paragraph (n) of this section, the airport operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct airport operator employees

may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) Certification on or after December 6, 2001. The airport operator must maintain the certifications provided under paragraph (n) of this section.

(4) Protection of records--all investigations. The records required by this section must be maintained in a manner that is acceptable to TSA and in a manner that protects the confidentiality of the individual.

(5) Duration—all investigations. The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's unescorted access authority. When files are no longer maintained, the criminal record must be destroyed.

(l) Continuing responsibilities. (1) Each individual with unescorted access authority on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the airport operator and surrender the SIDA access medium to the issuer.

(2) Each individual with unescorted access authority who has a disqualifying criminal offense must report the offense to the airport operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the airport operator or the airport user indicating that an individual with unescorted access authority has a disqualifying criminal offense, the airport operator must determine the status of the conviction. If a

disqualifying offense is confirmed the airport operator must immediately revoke any unescorted access authority.

(m) Exceptions. Notwithstanding the requirements of this section, an airport operator must authorize the following individuals to have unescorted access authority:

(1) An employee of the Federal, state, or local government (including a law enforcement officer) who, as a condition of employment, has been subjected to an employment investigation that includes a criminal records check.

(2) Notwithstanding the requirements of this section, an airport operator may authorize the following individuals to have unescorted access authority:

(i) An individual who has been continuously employed in a position requiring unescorted access authority by another airport operator, airport user, or aircraft operator, or contractor to such an entity, provided the grant for his or her unescorted access authority was based upon a fingerprint-based CHRC through TSA or FAA.

(ii) An individual who has been continuously employed by an aircraft operator or aircraft operator contractor, in a position with authority to perform screening functions, provided the grant for his or her authority to perform screening functions was based upon a fingerprint-based CHRC through TSA or FAA.

(n) Certifications by aircraft operators. An airport operator is in compliance with its obligation under paragraph (b) or (c) of this section when the airport operator accepts, for each individual seeking unescorted access authority, certification from an aircraft operator subject to part 1544 of this chapter indicating it has complied with § 1544.229 of this chapter for the aircraft operator's employees and contractors seeking unescorted

access authority. If the airport operator accepts a certification from the aircraft operator, the airport operator may not require the aircraft operator to provide a copy of the CHRC.

(o) Airport operator responsibility. The airport operator must--

(1) Designate the ASC, in the security program, or a direct employee if the ASC is not a direct employee, to be responsible for maintaining, controlling, and destroying the criminal record files when their maintenance is no longer required by paragraph (k) of this section.

(2) Designate the ASC, in the security program, to serve as the contact to receive notification from individuals applying for unescorted access authority of their intent to seek correction of their FBI criminal record.

(3) Audit the employment history investigations performed by the airport operator in accordance with this section and 14 CFR 107.31 in effect prior to November 14, 2001 (see 14 CFR parts 60 through 139 revised as of January 1, 2001), and those investigations conducted by the airport users who provided certification to the airport operator. The audit program must be set forth in the airport security program.

(p) Airport user responsibility. (1) The airport user must report to the airport operator information, as it becomes available, that indicates an individual with unescorted access authority may have a disqualifying criminal offense.

(2) The airport user must maintain and control, in compliance with paragraph (k) of this section, the employment history investigation files for investigations conducted before December 6, 2001, unless the airport operator decides to maintain and control the employment history investigation file.

(3) The airport user must provide the airport operator with either the name or title of the individual acting as custodian of the files described in this paragraph (p), the address of the location where the files are maintained, and the phone number of that location. The airport user must provide the airport operator and TSA with access to these files.

§ 1542.211 Identification systems.

(a) Personnel identification system. The personnel identification system under §§ 1542.201(b)(3) and 1542.205(b)(1) must include the following:

(1) Personnel identification media that--

(i) Convey a full-face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media and media of persons who no longer have unescorted access authority.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year or sooner, as necessary, to ensure the integrity and accountability of all identification media.

(v) As specified in the security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or otherwise unaccounted for, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time, except for personnel who are employed with more than one company and require additional identification media to carry out employment duties. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost, stolen, or destroyed.

(b) Temporary identification media. Each airport operator may issue personnel identification media in accordance with its security program to persons whose duties are expected to be temporary. The temporary identification media system must include procedures and methods to--

(1) Retrieve temporary identification media;

(2) Authorize the use of a temporary media for a limited time only;

(3) Ensure that temporary media are distinct from other identification media and clearly display an expiration date; and

(4) Ensure that any identification media also being used as an access media meet the criteria of § 1542.207(d).

(c) Airport-approved identification media. TSA may approve an amendment to the airport security program that provides for the use of identification media meeting the

criteria of this section that are issued by entities other than the airport operator, as described in the security program.

(d) Challenge program. Each airport operator must establish and carry out a challenge program that requires each individual who has authorized unescorted access to secured areas and SIDA's to ascertain the authority of any individual who is not displaying an identification medium authorizing the individual to be present in the area. The challenge program must include procedures to challenge individuals not displaying airport approved identification media. The procedure must--

(1) Apply uniformly in secured areas, SIDAs, and exclusive areas;

(2) Describe how to challenge an individual directly or report any individual not visibly displaying an authorized identification medium, including procedures to notify the appropriate authority; and

(3) Describe support of challenge procedures, including law enforcement and any other responses to reports of individuals not displaying authorized identification media.

(e) Escorting. Each airport operator must establish and implement procedures for escorting individuals who do not have unescorted access authority to a secured area or SIDA that--

(1) Ensure that only individuals with unescorted access authority are permitted to escort;

(2) Ensure that the escorted individuals are continuously accompanied or monitored while within the secured area or SIDA in a manner sufficient to identify whether the escorted individual is engaged in activities other than those for which

escorted access was granted, and to take action in accordance with the airport security program;

(3) Identify what action is to be taken by the escort, or other authorized individual, should individuals under escort engage in activities other than those for which access was granted;

(4) Prescribe law enforcement support for escort procedures; and

(5) Ensure that individuals escorted into a sterile area without being screened under § 1544.201 of this chapter remain under escort until they exit the sterile area, or submit to screening pursuant to § 1544.201 or § 1546.201 of this chapter.

(f) Effective date. The identification systems described in this section must be implemented by each airport operator not later than November 14, 2003.

§ **1542.213 Training.**

(a) Each airport operator must ensure that individuals performing security-related functions for the airport operator are briefed on the provisions of this part, Security Directives, and Information Circulars, and the security program, to the extent that such individuals need to know in order to perform their duties.

(b) An airport operator may not authorize any individual unescorted access to the secured area or SIDA, except as provided in § 1542.5, unless that individual has successfully completed training in accordance with TSA-approved curriculum specified in the security program. This curriculum must detail the methods of instruction, provide attendees with an opportunity to ask questions, and include at least the following topics--

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media;

(3) Escort and challenge procedures and the law enforcement support for these procedures;

(4) Security responsibilities as specified in § 1540.105;

(5) Restrictions on divulging sensitive security information as described in part 1520 of this chapter; and

(6) Any other topics specified in the security program.

(c) An airport operator may not authorize any individual unescorted access to the AOA, except as provided in § 1542.5, unless that individual has been provided information in accordance with the security program, including--

(1) The unescorted access authority of the individual to enter and be present in various areas of the airport;

(2) Control, use, and display of airport-approved access and identification media, if appropriate;

(3) Escort and challenge procedures and the law enforcement support for these procedures, where applicable;

(4) Security responsibilities as specified in § 1540.105; and

(5) Restrictions on divulging sensitive security information as described in part 191 of this chapter; and

(6) Any other topics specified in the security program.

(d) Each airport operator must maintain a record of all training and information given to each individual under paragraphs (b) and (c) of this section for 180 days after the termination of that person's unescorted access authority.

(e) As to persons with unescorted access to the SIDA on November 14, 2001, training on responsibility under § 1540.105 can be provided by making relevant security information available.

(f) Training described in paragraph (c) of this section must be implemented by each airport operator not later than November 14, 2002.

§ 1542.215 Law enforcement support.

(a) In accordance with § 1542.217, each airport operator required to have a security program under § 1542.103(a) or (b) must provide:

(1) Law enforcement personnel in the number and manner adequate to support its security program.

(2) Uniformed law enforcement personnel in the number and manner adequate to support each system for screening persons and accessible property required under part 1544 or 1546 of this chapter, except to the extent that TSA provides Federal law enforcement support for the system.

(b) Each airport required to have a security program under § 1542.103(c) must ensure that:

(1) Law enforcement personnel are available and committed to respond to an incident in support of a civil aviation security program when requested by an aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter.

(2) The procedures by which to request law enforcement support are provided to each aircraft operator or foreign air carrier that has a security program under part 1544 or 1546 of this chapter.

§ 1542.217 Law enforcement personnel.

(a) Each airport operator must ensure that law enforcement personnel used to meet the requirements of § 1542.215, meet the following qualifications while on duty at the airport--

(1) Have arrest authority described in paragraph (b) of this section;

(2) Are identifiable by appropriate indicia of authority;

(3) Are armed with a firearm and authorized to use it; and

(4) Have completed a training program that meets the requirements of paragraphs (c) and (d) of this section.

(b) Each airport operator must ensure that each individual used to meet the requirements of § 1542.215 have the authority to arrest, with or without a warrant, while on duty at the airport for the following violations of the criminal laws of the State and local jurisdictions in which the airport is located--

(1) A crime committed in the presence of the individual; and

(2) A felony, when the individual has reason to believe that the suspect has committed it.

(c) The training program required by paragraph (a)(4) of this section must--

(1) Meet the training standard for law enforcement officers prescribed by either the State or local jurisdiction in which the airport is located for law enforcement officers performing comparable functions.

(2) Specify and require training standards for private law enforcement personnel acceptable to TSA, if the State and local jurisdictions in which the airport is located do

not prescribe training standards for private law enforcement personnel that meets the standards in paragraph (a) of this section.

(3) Include training in--

(i) The use of firearms;

(ii) The courteous and efficient treatment of persons subject to inspection, detention, search, arrest, and other aviation security activities;

(iii) The responsibilities of law enforcement personnel under the security program; and

(iv) Any other subject TSA determines is necessary.

(d) Each airport operator must document the training program required by paragraph (a)(4) of this section and maintain documentation of training at a location specified in the security program until 180 days after the departure or removal of each person providing law enforcement support at the airport.

§ 1542.219 Supplementing law enforcement personnel.

(a) When TSA decides, after being notified by an airport operator as prescribed in this section, that not enough qualified State, local, and private law enforcement personnel are available to carry out the requirements of § 1542.215, TSA may authorize the airport operator to use, on a reimbursable basis, personnel employed by TSA, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality to supplement State, local, and private law enforcement personnel.

(b) Each request for the use of Federal personnel must be submitted to TSA and include the following information:

(1) The number of passengers enplaned at the airport during the preceding calendar year and the current calendar year as of the date of the request.

(2) The anticipated risk of criminal violence, sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(3) A copy of that portion of the security program which describes the law enforcement support necessary to comply with § 1542.215.

(4) The availability of law enforcement personnel who meet the requirements of § 1542.217, including a description of the airport operator's efforts to obtain law enforcement support from State, local, and private agencies and the responses of those agencies.

(5) The airport operator's estimate of the number of Federal personnel needed to supplement available law enforcement personnel and the period of time for which they are needed.

(6) A statement acknowledging responsibility for providing reimbursement for the cost of providing Federal personnel.

(7) Any other information TSA considers necessary.

(c) In response to a request submitted in accordance with this section, TSA may authorize, on a reimbursable basis, the use of personnel employed by a Federal agency, with the consent of the head of that agency.

§ 1542.221 Records of law enforcement response.

(a) Each airport operator must ensure that--

(1) A record is made of each law enforcement action taken in furtherance of this part; and

(2) The record is maintained for a minimum of 180 days.

(b) Data developed in response to paragraph (a) of this section must include at least the following, except as authorized by TSA:

(1) The number and type of weapons, explosives, or incendiaries discovered during any passenger-screening process, and the method of detection of each.

(2) The number of acts and attempted acts of aircraft piracy.

(3) The number of bomb threats received, real and simulated bombs found, and actual detonations on the airport.

(4) The number of arrests, including--

(i) Name, address, and the immediate disposition of each individual arrested;

(ii) Type of weapon, explosive, or incendiary confiscated, as appropriate; and

(iii) Identification of the aircraft operators or foreign air carriers on which the individual arrested was, or was scheduled to be, a passenger or which screened that individual, as appropriate.

Subpart D--Contingency Measures

§ 1542.301 Contingency plan.

(a) Each airport operator required to have a security program under § 1542.103(a) and (b) must adopt a contingency plan and must:

(1) Implement its contingency plan when directed by TSA.

(2) Conduct reviews and exercises of its contingency plan as specified in the security program with all persons having responsibilities under the plan.

(3) Ensure that all parties involved know their responsibilities and that all information contained in the plan is current.

(b) TSA may approve alternative implementation measures, reviews, and exercises to the contingency plan which will provide an overall level of security equal to the contingency plan under paragraph (a) of this section.

§ 1542.303 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify airport operators of security concerns. When TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(b) Each airport operator must comply with each Security Directive issued to the airport operator within the time prescribed in the Security Directive.

(c) Each airport operator that receives a Security Directive must--

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to TSA.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the airport operator is unable to implement the measures in the Security Directive, the airport operator must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval. The airport operator must submit the proposed alternative measures within the time prescribed in the

Security Directive. The airport operator must implement any alternative measures approved by TSA.

(e) Each airport operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to TSA. TSA may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each airport operator that receives a Security Directive or an Information Circular and each person who receives information from a Security Directive or an Information Circular must:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those who have an operational need to know without the prior written consent of TSA.

§ 1542.305 Public advisories.

When advised by TSA, each airport operator must prominently display and maintain in public areas information concerning foreign airports that, in the judgment of the Secretary of Transportation, do not maintain and administer effective security measures. This information must be posted in the manner specified in the security program and for such a period of time determined by the Secretary of Transportation.

§ 1542.307 Incident management.

(a) Each airport operator must establish procedures to evaluate bomb threats, threats of sabotage, aircraft piracy, and other unlawful interference to civil aviation operations.

(b) Immediately upon direct or referred receipt of a threat of any of the incidents described in paragraph (a) of this section, each airport operator must--

(1) Evaluate the threat in accordance with its security program;

(2) Initiate appropriate action as specified in the Airport Emergency Plan under 14 CFR 139.325; and

(3) Immediately notify TSA of acts, or suspected acts, of unlawful interference to civil aviation operations, including specific bomb threats to aircraft and airport facilities.

(c) Airport operators required to have a security program under § 1542.103(c) but not subject to 14 CFR part 139, must develop emergency response procedures to incidents of threats identified in paragraph (a) of this section.

(d) To ensure that all parties know their responsibilities and that all procedures are current, at least once every 12 calendar months each airport operator must review the procedures required in paragraphs (a) and (b) of this section with all persons having responsibilities for such procedures.

6. Add new part 1544 to Chapter XII, Subchapter C.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

Subpart A—General

Sec.

1544.1 Applicability of this part.

1544.3 TSA inspection authority.

Subpart B—Security Program

1544.101 Adoption and implementation.

1544.103 Form, content, and availability.

1544.105 Approval and amendments.

Subpart C—Operations

1544.201 Acceptance and screening of individuals and accessible property.

1544.203 Acceptance and screening of checked baggage.

1544.205 Acceptance and screening of cargo.

1544.207 Screening of individuals and property.

1544.209 Use of metal detection devices.

1544.211 Use of X-ray systems.

1544.213 Use of explosives detection systems.

1544.215 Security coordinators.

1544.217 Law enforcement personnel.

1544.219 Carriage of accessible weapons.

1544.221 Carriage of prisoners under the control of armed law enforcement officers.

1544.223 Transportation of Federal Air Marshals.

1544.225 Security of aircraft and facilities.

1544.227 Exclusive area agreement.

1544.229 Fingerprint-based criminal history records checks (CHRC): Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions.

1544.231 Airport-approved and exclusive area personnel identification systems.

1544.233 Security coordinators and crewmembers, training.

1544.235 Training and knowledge for individuals with security-related duties.

Subpart D—Threat and Threat Response

1544.301 Contingency plan.

1544.303 Bomb or air piracy threats.

1544.305 Security Directives and Information Circulars.

Subpart E—Screener Qualifications When the Aircraft Operator Performs Screening

1544.401 Applicability of this subpart.

1544.403 Current screeners.

1544.405 New screeners: Qualifications of screening personnel.

1544.407 New screeners: Training, testing, and knowledge of individuals who perform screening functions.

1544.409 New screeners: Integrity of screener tests.

1544.411 New screeners: Continuing qualifications for screening personnel.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44905, 44907, 44913-44914, 44916-44918, 44932, 44935-44936, 44942, 46105.

Subpart A—General

§ 1544.1 Applicability of this part.

(a) This part prescribes aviation security rules governing the following:

(1) The operations of aircraft operators holding operating certificates under 14 CFR part 119 for scheduled passenger operations, public charter passenger operations, private charter passenger operations, and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

(2) Each law enforcement officer flying armed aboard an aircraft operated by an aircraft operator described in paragraph (a)(1) of this section.

(3) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular issued by TSA.

(b) As used in this part, "aircraft operator" means an aircraft operator subject to this part as described in § 1544.101.

§ 1544.3 TSA inspection authority.

(a) Each aircraft operator must allow TSA, at any time or place, to make any inspections or tests**,** including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This subchapter and any security program under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each aircraft operator must provide evidence of compliance with this part and its security program, including copies of records.

(c) TSA may enter and be present within secured areas, AOA's, and SIDA's without access media or identification media issued or approved by an airport operator or aircraft operator, in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) At the request of TSA and the completion of SIDA training as required in a security program, each aircraft operator must promptly issue to TSA personnel access and identification media to provide TSA personnel with unescorted access to, and movement within, areas controlled by the aircraft operator under an exclusive area agreement.

Subpart B—Security Program

§ 1544.101 Adoption and implementation.

(a) Full program. Each aircraft operator must carry out subparts C, D, and E of this part and must adopt and carry out a security program that meets the requirements of § 1544.103 for each of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of 61 or more seats.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of 60 or fewer seats when passengers are enplaned from or deplaned into a sterile area.

(b) Partial program—adoption. Each aircraft operator must carry out the requirements specified in paragraph (c) of this section for each of the following operations:

(1) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of 31 or more but 60 or fewer seats that does not enplane from or deplane into a sterile area.

(2) A scheduled passenger or public charter passenger operation with an aircraft having a passenger-seating configuration of 60 or fewer seats engaged in operations to, from, or outside the United States that does not enplane from or deplane into a sterile area.

(c) Partial program—content. For operations described in paragraph (b) of this section, the aircraft operator must carry out the following, and must adopt and carry out a security program that meets the applicable requirements of § 1544.103(c):

(1) The requirements of §§ 1544.215, 1544.217, 1544.219, 1544.235, 1544.301, 1544.303, and 1544.305.

(2) Such other provisions of subparts C, D, and E of this part as TSA has approved upon request.

(3) The remaining requirements of subparts C, D, and E of this part when TSA notifies the aircraft operator in writing that a security threat exists concerning that operation.

(d) [Reserved]

(e) [Reserved]

(f) Private charter program. Each aircraft operator must carry out §§ 1544.201, 1544.207, 1544.209, 1544.211, 1544.213, 1544.215, 1544.217, 1544.219, 1544.229, 1544.233, 1544.235, 1544.303, and 1544.305, and subpart E of this part and must adopt and carry out a security program that meets the applicable requirements of § 1544.103 for

each private charter operation in which passengers are enplaned from or deplaned into a sterile area.

(g) Limited program. TSA may approve a security program after receiving a request by an aircraft operator, holding a certificate under 14 CFR part 119 other than one identified in paragraph (a), (b), or (c) of this section. The aircraft operator must—

(1) Carry out selected provisions of subparts C, D, and E of this part,

(2) Carry out § 1544.305, as specified in its security program, and

(3) Adopt and carry out a security program that meets the applicable requirements of § 1544.103(c).

§ 1544.103 Form, content, and availability.

(a) General requirements. Each security program must:

(1) Provide for the safety of persons and property traveling on flights provided by the aircraft operator against acts of criminal violence and air piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft.

(2) Be in writing and signed by the aircraft operator or any person delegated authority in this matter.

(3) Be approved by TSA.

(b) Availability. Each aircraft operator having a security program must:

(1) Maintain an original copy of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each airport served. An electronic version of the program is adequate.

(3) Make a copy of the security program available for inspection upon request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in the security program to persons with a need-to-know as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

(c) Content. The security program must include, as specified for that aircraft operator in § 1544.101, the following:

(1) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.201 regarding the acceptance and screening of individuals and their accessible property.

(2) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.203 regarding the acceptance and screening of checked baggage.

(3) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.205 regarding the acceptance and screening of cargo.

(4) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.207 regarding the screening of individuals and property.

(5) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.209 regarding the use of metal detection devices.

(6) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.211 regarding the use of x-ray systems.

(7) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.213 regarding the use of explosives detection systems.

(8) The procedures used to comply with the requirements of § 1544.215 regarding the responsibilities of security coordinators. The names of the Aircraft Operator Security Coordinator (AOSC) and any alternate, and the means for contacting the AOSC(s) on a 24-hour basis, as provided in § 1544.215.

(9) The procedures used to comply with the requirements of § 1544.217 regarding the requirements for law enforcement personnel.

(10) The procedures used to comply with the requirements of § 1544.219 regarding carriage of accessible weapons.

(11) The procedures used to comply with the requirements of § 1544.221 regarding carriage of prisoners under the control of armed law enforcement officers.

(12) The procedures used to comply with the requirements of § 1544.223 regarding transportation of Federal Air Marshals.

(13) The procedures and description of the facilities and equipment used to perform the aircraft and facilities control function specified in § 1544.225.

(14) The specific locations where the air carrier has entered into an exclusive area agreement under § 1544.227.

(15) The procedures used to comply with the applicable requirements of § 1544.229 regarding fingerprint-based criminal history record checks.

(16) The procedures used to comply with the requirements of § 1544.231 regarding personnel identification systems.

(17) The procedures and syllabi used to accomplish the training required under § 1544.233.

(18) The procedures and syllabi used to accomplish the training required under § 1544.235.

(19) An aviation security contingency plan as specified under § 1544.301.

(20) The procedures used to comply with the requirements of § 1544.303 regarding bomb and air piracy threats.

§ 1544.105 Approval and amendments.

(a) Initial approval of security program. Unless otherwise authorized by TSA, each aircraft operator required to have a security program under this part must submit its proposed security program to the designated official for approval at least 90 days before the intended date of passenger operations. The proposed security program must meet the requirements applicable to its operation as described in § 1544.101. Such requests will be processed as follows:

(1) The designated official, within 30 days after receiving the proposed aircraft operator security program, will either approve the program or give the aircraft operator written notice to modify the program to comply with the applicable requirements of this part.

(2) The aircraft operator may either submit a modified security program to the designated official for approval, or petition the Under Secretary to reconsider the notice

to modify within 30 days of receiving a notice to modify. A petition for reconsideration must be filed with the designated official.

(3) The designated official, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) Amendment requested by an aircraft operator. An aircraft operator may submit a request to TSA to amend its security program as follows:

(1) The request for an amendment must be filed with the designated official at least 45 days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to an aircraft operator security program may be approved if the designated official determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 30 days after receiving a denial, the aircraft operator may petition the Under Secretary to reconsider the denial. A petition for reconsideration must be filed with the designated official.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of

the petition within 30 days of receipt by either directing the designated official to approve the amendment, or affirming the denial.

(6) Any aircraft operator may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

(c) Amendment by TSA. If safety and the public interest require an amendment, TSA may amend a security program as follows:

(1) The designated official notifies the aircraft operator, in writing, of the proposed amendment, fixing a period of not less than 30 days within which the aircraft operator may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the aircraft operator of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 days after the aircraft operator receives the notice of amendment, unless the aircraft operator petitions the Under Secretary to reconsider no later than 15 days before the effective date of the amendment. The aircraft operator must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of the petition within 30 days of receipt by either directing the designated official to withdraw or amend the amendment, or by affirming the amendment.

(d) Emergency amendments. If the designated official finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air

commerce that makes procedures in this section contrary to the public interest, the designated official may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the aircraft operator receives notice of it. In such a case, the designated official will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The aircraft operator may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the emergency amendment.

Subpart C—Operations

§ 1544.201 Acceptance and screening of individuals and accessible property.

(a) Preventing or deterring the carriage of any explosive, incendiary, or deadly or dangerous weapon. Each aircraft operator must use the measures in its security program to prevent or deter the carriage of any weapon, explosive, or incendiary on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) Screening of individuals and accessible property. Except as provided in its security program, each aircraft operator must ensure that each individual entering a sterile area at each preboard screening checkpoint for which it is responsible, and all accessible property under that individual's control, are inspected for weapons, explosives, and incendiaries as provided in § 1544.207.

(c) Refusal to transport. Each aircraft operator must deny entry into a sterile area and must refuse to transport—

(1) Any individual who does not consent to a search or inspection of his or her person in accordance with the system prescribed in this part; and

(2) Any property of any individual or other person who does not consent to a search or inspection of that property in accordance with the system prescribed by this part.

(d) Prohibitions on carrying a weapon, explosive, or incendiary. Except as provided in §§ 1544.219, 1544.221, and 1544.223, no aircraft operator may permit any individual to have a weapon, explosive, or incendiary, on or about the individual's person or accessible property when onboard an aircraft.

(e) Staffing. Each aircraft operator must staff its security screening checkpoints with supervisory and non-supervisory personnel in accordance with the standards specified in its security program.

§ 1544.203 Acceptance and screening of checked baggage.

(a) Preventing or deterring the carriage of any explosive or incendiary. Each aircraft operator must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized explosive or incendiary onboard aircraft in checked baggage.

(b) Acceptance. Each aircraft operator must ensure that checked baggage carried in the aircraft is received by its authorized aircraft operator representative.

(c) Screening of checked baggage. Except as provided in its security program, each aircraft operator must ensure that all checked baggage is inspected for explosives and incendiaries before loading it on its aircraft, in accordance with § 1544.207.

(d) Control. Each aircraft operator must use the procedures in its security program to control checked baggage that it accepts for transport on an aircraft, in a manner that:

(1) Prevents the unauthorized carriage of any explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(e) Refusal to transport. Each aircraft operator must refuse to transport any individual's checked baggage or property if the individual does not consent to a search or inspection of that checked baggage or property in accordance with the system prescribed by this part.

(f) Firearms in checked baggage. No aircraft operator may knowingly permit any person to transport in checked baggage:

(1) Any loaded firearm(s).

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing before checking the baggage that any firearm carried in the baggage is unloaded;

(ii) The firearm is carried in a hard-sided container;

(iii) The container in which it is carried is locked, and only the individual checking the baggage retains the key or combination; and

(iv) The checked baggage containing the firearm is carried in an area that is inaccessible to passengers, and is not carried in the flightcrew compartment,.

(3) Any unauthorized explosive or incendiary.

(g) Ammunition. This section does not prohibit the carriage of ammunition in checked baggage or in the same container as a firearm. Title 49 CFR part 175 provides additional requirements governing carriage of ammunition on aircraft.

§ 1544.205 Acceptance and screening of cargo.

(a) General requirements. Each aircraft operator must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries in cargo onboard a passenger aircraft.

(b) Screening of cargo baggage. Each aircraft operator must ensure that, as required in its security program, cargo is inspected for explosives and incendiaries before loading it on its aircraft in accordance with § 1544.207.

(c) Control. Each aircraft operator must use the procedures in its security program to control cargo that it accepts for transport on an aircraft in a manner that:

(1) Prevents the carriage of any unauthorized explosive or incendiary aboard the aircraft.

(2) Prevents access by persons other than an aircraft operator employee or its agent.

(d) Refusal to transport. Each aircraft operator must refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with the system prescribed by this part.

§ 1544.207 Screening of individuals and property.

(a) Applicability of this section. This section applies to the inspection of individuals, accessible property, checked baggage, and cargo as required under this part.

(b) Locations within the United States at which TSA conducts screening. Each aircraft operator must ensure that the individuals or property have been inspected by TSA before boarding or loading on its aircraft. This paragraph applies when TSA is conducting screening using TSA employees or when using companies under contract with TSA.

(c) Aircraft operator conducting screening. Each aircraft operator must use the measures in its security program and in subpart E of this part to inspect the individual or property. This paragraph does not apply at locations identified in paragraphs (b) and (d) of this section.

(d) Locations outside the United States at which the foreign government conducts screening. Each aircraft operator must ensure that all individuals and property have been inspected by the foreign government. This paragraph applies when the host government is conducting screening using government employees or when using companies under contract with the government.

§ 1544.209 Use of metal detection devices.

(a) No aircraft operator may use a metal detection device within the United States or under the aircraft operator's operational control outside the United States to inspect persons, unless specifically authorized under a security program under this part. No aircraft operator may use such a device contrary to its security program.

(b) Metal detection devices must meet the calibration standards established by TSA.

§ 1544.211 Use of X-ray systems.

(a) TSA authorization required. No aircraft operator may use any X-ray system within the United States or under the aircraft operator's operational control outside the United States to inspect accessible property or checked baggage, unless specifically authorized under its security program. No aircraft operator may use such a system in a manner contrary to its security program. TSA authorizes aircraft operators to use X-ray systems for inspecting accessible property or checked baggage under a security program if the aircraft operator shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of weapons, explosives, and incendiaries; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792-88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

(b) Annual radiation survey. No aircraft operator may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted that shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) Radiation survey after installation or moving. No aircraft operator may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the

system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the aircraft operator shows that it can be moved without altering its performance.

(d) Defect notice or modification order. No aircraft operator may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless the FDA has advised TSA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) Signs and inspection of photographic equipment and film. (1) At locations at which an aircraft operator uses an X-ray system to inspect accessible property the aircraft operator must ensure that a sign is posted in a conspicuous place at the screening checkpoint. At locations outside the United States at which a foreign government uses an X-ray system to inspect accessible property the aircraft operator must ensure that a sign is posted in a conspicuous place at the screening checkpoint.

(2) At locations at which an aircraft operator or TSA uses an X-ray system to inspect checked baggage the aircraft operator must ensure that a sign is posted in a conspicuous place where the aircraft operator accepts checked baggage.

(3) The signs required under this paragraph (e) must notify individuals that such items are being inspected by an X-ray and advise them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign must also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one

milliroentgen during the inspection, the sign must advise individuals to remove film of all kinds from their articles before inspection.

(4) If requested by individuals, their photographic equipment and film packages must be inspected without exposure to an X-ray system.

(f) Radiation survey verification after installation or moving. Each aircraft operator must maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and must make it available for inspection upon request by TSA at each of the following locations—

(1) The aircraft operator's principal business office; and

(2) The place where the X-ray system is in operation.

(g) Incorporation by reference. The American Society for Testing and Materials (ASTM) Standard F792-88 (Reapproved 1993), "Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," is approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and l CFR part 51. ASTM Standard F792-88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at http://dms.dot.gov/search (under docket number FAA-2001-8725). Copies of the standard may be examined also at the Office of the Federal Register, 800 North Capitol St., NW, Suite 700, Washington, DC. In addition, ASTM Standard F792-88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

(h) Each aircraft operator must comply with the X-ray operator duty time limitations specified in its security program.

§ 1544.213 Use of explosives detection systems.

(a) Use of explosive detection equipment. If TSA so requires by an amendment to an aircraft operator's security program, each aircraft operator required to conduct screening under a security program must use an explosives detection system approved by TSA to screen checked baggage on international flights.

(b) Signs and inspection of photographic equipment and film. (1) At locations at which an aircraft operator or TSA uses an explosives detection system that uses X-ray technology to inspect checked baggage the aircraft operator must ensure that a sign is posted in a conspicuous place where the aircraft operator accepts checked baggage. The sign must notify individuals that such items are being inspected by an explosives detection system and advise them to remove all X-ray, scientific, and high-speed film from checked baggage before inspection. This sign must also advise individuals that they may request that an inspection be made of their photographic equipment and film packages without exposure to an explosives detection system.

(2) If the explosives detection system exposes any checked baggage to more than one milliroentgen during the inspection the aircraft operator must post a sign which advises individuals to remove film of all kinds from their articles before inspection. If requested by individuals, their photographic equipment and film packages must be inspected without exposure to an explosives detection system.

§ 1544.215 Security coordinators.

(a) Aircraft Operator Security Coordinator. Each aircraft operator must designate and use an Aircraft Operator Security Coordinator (AOSC). The AOSC and any alternates must be appointed at the corporate level and must serve as the aircraft operator's primary contact for security-related activities and communications with TSA, as set forth in the security program. Either the AOSC, or an alternate AOSC, must be available on a 24-hour basis.

(b) Ground Security Coordinator. Each aircraft operator must designate and use a Ground Security Coordinator for each domestic and international flight departure to carry out the Ground Security Coordinator duties specified in the aircraft operator's security program. The Ground Security Coordinator at each airport must conduct the following daily:

(1) A review of all security-related functions for which the aircraft operator is responsible, for effectiveness and compliance with this part, the aircraft operator's security program, and applicable Security Directives.

(2) Immediate initiation of corrective action for each instance of noncompliance with this part, the aircraft operator's security program, and applicable Security Directives. At foreign airports where such security measures are provided by an agency or contractor of a host government, the aircraft operator must notify TSA for assistance in resolving noncompliance issues.

(c) In-flight Security Coordinator. Each aircraft operator must designate and use the pilot in command as the In-flight Security Coordinator for each domestic and international flight to perform duties specified in the aircraft operator's security program.

§ 1544.217 Law enforcement personnel.

(a) The following applies to operations at airports within the United States that are not required to hold a security program under part 1542 of this chapter.

(1) For operations described in § 1544.101(a) each aircraft operator must provide for law enforcement personnel meeting the qualifications and standards specified in §§ 1542.215 and 1542.217 of this chapter.

(2) For operations described in § 1544.101(b) or (c) each aircraft operator must—

(i) Arrange for law enforcement personnel meeting the qualifications and standards specified in § 1542.217 of this chapter to be available to respond to an incident; and

(ii) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

(b) The following applies to operations at airports required to hold security programs under part 1542 of this chapter. For operations described in § 1544.101(c), each aircraft operator must—

(1) Arrange with TSA and the airport operator, as appropriate, for law enforcement personnel meeting the qualifications and standards specified in § 1542.217 of this chapter to be available to respond to incidents, and

(2) Provide its employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance at that airport.

§ 1544.219 Carriage of accessible weapons.

(a) Flights for which screening is conducted. The provisions of § 1544.201(d), with respect to accessible weapons, do not apply to a law enforcement officer (LEO) aboard a flight for which screening is required if the requirements of this section are met.

Paragraph (a) of this section does not apply to a Federal Air Marshal on duty status under § 1544.223.

(1) Unless otherwise authorized by TSA, the armed LEO must meet the following requirements:

(i) Be a Federal law enforcement officer or a full-time municipal, county, or state law enforcement officer who is a direct employee of a government agency.

(ii) Be sworn and commissioned to enforce criminal statutes or immigration statutes.

(iii) Be authorized by the employing agency to have the weapon in connection with assigned duties.

(iv) Has completed the training program "Law Enforcement Officers Flying Armed."

(2) In addition to the requirements of paragraph (a)(1) of this section, the armed LEO must have a need to have the weapon accessible from the time he or she would otherwise check the weapon until the time it would be claimed after deplaning. The need to have the weapon accessible must be determined by the employing agency, department, or service and be based on one of the following:

(i) The provision of protective duty, for instance, assigned to a principal or advance team, or on travel required to be prepared to engage in a protective function.

(ii) The conduct of a hazardous surveillance operation.

(iii) On official travel required to report to another location, armed and prepared for duty.

(iv) Employed as a Federal LEO, whether or not on official travel, and armed in accordance with an agency-wide policy governing that type of travel established by the employing agency by directive or policy statement.

(v) Control of a prisoner, in accordance with § 1544.221, or an armed LEO on a round trip ticket returning from escorting, or traveling to pick up, a prisoner.

(vi) TSA Federal Air Marshal on duty status.

(3) The armed LEO must comply with the following notification requirements:

(i) All armed LEOs must notify the aircraft operator of the flight(s) on which he or she needs to have the weapon accessible at least 1 hour, or in an emergency as soon as practicable, before departure.

(ii) Identify himself or herself to the aircraft operator by presenting credentials that include a clear full-face picture, the signature of the armed LEO, and the signature of the authorizing official of the agency, service, or department or the official seal of the agency, service, or department. A badge, shield, or similar device may not be used, or accepted, as the sole means of identification.

(iii) If the armed LEO is a State, county, or municipal law enforcement officer, he or she must present an original letter of authority, signed by an authorizing official from his or her employing agency, service or department, confirming the need to travel armed and detailing the itinerary of the travel while armed.

(iv) If the armed LEO is an escort for a foreign official then this paragraph (a)(3) may be satisfied by a State Department notification.

(4) The aircraft operator must do the following:

(i) Obtain information or documentation required in paragraphs (a)(3)(ii), (iii), and (iv) of this section.

(ii) Advise the armed LEO, before boarding, of the aircraft operator's procedures for carrying out this section.

(iii) Have the LEO confirm he/she has completed the training program "Law Enforcement Officers Flying Armed" as required by TSA, unless otherwise authorized by TSA.

(iv) Ensure that the identity of the armed LEO is known to the appropriate personnel who are responsible for security during the boarding of the aircraft.

(v) Notify the pilot in command and other appropriate crewmembers, of the location of each armed LEO aboard the aircraft. Notify any other armed LEO of the location of each armed LEO, including FAM's. Under circumstances described in the security program, the aircraft operator must not close the doors until the notification is complete.

(vi) Ensure that the information required in paragraphs (a)(3)(i) and (ii) of this section is furnished to the flight crew of each additional connecting flight by the Ground Security Coordinator or other designated agent at each location.

(b) Flights for which screening is not conducted. The provisions of § 1544.201(d), with respect to accessible weapons, do not apply to a LEO aboard a flight for which screening is not required if the requirements of paragraphs (a)(1), (3), and (4) of this section are met.

(c) Alcohol. (1) No aircraft operator may serve any alcoholic beverage to an armed LEO.

(2) No armed LEO may:

(i) Consume any alcoholic beverage while aboard an aircraft operated by an aircraft operator.

(ii) Board an aircraft armed if they have consumed an alcoholic beverage within the previous 8 hours.

(d) Location of weapon. (1) Any individual traveling aboard an aircraft while armed must at all times keep their weapon:

(i) Concealed and out of view, either on their person or in immediate reach, if the armed LEO is not in uniform.

(ii) On their person, if the armed LEO is in uniform.

(2) No individual may place a weapon in an overhead storage bin.

§ 1544.221 Carriage of prisoners under the control of armed law enforcement officers.

(a) This section applies as follows:

(1) This section applies to the transport of prisoners under the escort of an armed law enforcement officer.

(2) This section does not apply to the carriage of passengers under voluntary protective escort.

(3) This section does not apply to the escort of non-violent detainees of the Immigration and Naturalization Service. This section does not apply to individuals who may be traveling with a prisoner and armed escort, such as the family of a deportee who is under armed escort.

(b) For the purpose of this section:

(1) “High risk prisoner” means a prisoner who is an exceptional escape risk, as determined by the law enforcement agency, and charged with, or convicted of, a violent crime.

(2) “Low risk prisoner” means any prisoner who has not been designated as “high risk.”

(c) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless, in addition to the requirements in § 1544.219, the following requirements are met:

(1) The agency responsible for control of the prisoner has determined whether the prisoner is considered a high risk or a low risk.

(2) Unless otherwise authorized by TSA, no more than one high risk prisoner may be carried on the aircraft.

(d) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft for which screening is required unless the following staffing requirements are met:

(1) A minimum of one armed law enforcement officer must control a low risk prisoner on a flight that is scheduled for 4 hours or less. One armed law enforcement officer may control no more than two low risk prisoners.

(2) A minimum of two armed law enforcement officers must control a low risk prisoner on a flight that is scheduled for more than 4 hours. Two armed law enforcement officers may control no more than two low risk prisoners.

(3) For high-risk prisoners:

(i) For one high-risk prisoner on a flight: A minimum of two armed law enforcement officers must control a high risk prisoner. No other prisoners may be under the control of those two armed law enforcement officers.

(ii) If TSA has authorized more than one high-risk prisoner to be on the flight under paragraph (c)(2) of this section, a minimum of one armed law enforcement officer for each prisoner and one additional armed law enforcement officer must control the prisoners. No other prisoners may be under the control of those armed law enforcement officers.

(e) An armed law enforcement officer who is escorting a prisoner –

(1) Must notify the aircraft operator at least 24 hours before the scheduled departure, or, if that is not possible as far in advance as possible of the following –

(i) The identity of the prisoner to be carried and the flight on which it is proposed to carry the prisoner; and

(ii) Whether or not the prisoner is considered to be a high risk or a low risk.

(2) Must arrive at the check-in counter at least 1 hour before to the scheduled departure.

(3) Must assure the aircraft operator, before departure, that each prisoner under the control of the officer(s) has been searched and does not have on or about his or her person or property anything that can be used as a weapon.

(4) Must be seated between the prisoner and any aisle.

(5) Must accompany the prisoner at all times, and keep the prisoner under control while aboard the aircraft.

(f) No aircraft operator may carry a prisoner in the custody of an armed law enforcement officer aboard an aircraft unless the following are met:

(1) When practicable, the prisoner must be boarded before any other boarding passengers and deplaned after all other deplaning passengers.

(2) The prisoner must be seated in a seat that is neither located in any passenger lounge area nor located next to or directly across from any exit and, when practicable, the aircraft operator should seat the prisoner in the rearmost seat of the passenger cabin.

(g) Each armed law enforcement officer escorting a prisoner and each aircraft operator must ensure that the prisoner is restrained from full use of his or her hands by an appropriate device that provides for minimum movement of the prisoner's hands, and must ensure that leg irons are not used.

(h) No aircraft operator may provide a prisoner under the control of a law enforcement officer –

(1) With food or beverage or metal eating utensils unless authorized to do so by the armed law enforcement officer.

(2) With any alcoholic beverage.

§ 1544.223 Transportation of Federal Air Marshals.

(a) A Federal Air Marshal on duty status may have a weapon accessible while aboard an aircraft for which screening is required.

(b) Each aircraft operator must carry Federal Air Marshals, in the number and manner specified by TSA, on each scheduled passenger operation, and public charter passenger operation designated by TSA.

(c) Each Federal Air Marshal must be carried on a first priority basis and without charge while on duty, including positioning and repositioning flights. When a Federal Air Marshal is assigned to a scheduled flight that is canceled for any reason, the aircraft operator must carry that Federal Air Marshal without charge on another flight as designated by TSA.

(d) Each aircraft operator must assign the specific seat requested by a Federal Air Marshal who is on duty status. If another LEO is assigned to that seat or requests that seat, the aircraft operator must inform the Federal Air Marshal. The Federal Air Marshal will coordinate seat assignments with the other LEO.

(e) The Federal Air Marshal identifies himself or herself to the aircraft operator by presenting credentials that include a clear, full-face picture, the signature of the Federal Air Marshal, and the signature of the FAA Administrator. A badge, shield, or similar device may not be used or accepted as the sole means of identification.

(f) The requirements of § 1544.219(a) do not apply for a Federal Air Marshal on duty status.

(g) Each aircraft operator must restrict any information concerning the presence, seating, names, and purpose of Federal Air Marshals at any station or on any flight to those persons with an operational need to know.

(h) Law enforcement officers authorized to carry a weapon during a flight will be contacted directly by a Federal Air Marshal who is on that same flight.

§ 1544.225 Security of aircraft and facilities.

Each aircraft operator must use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation:

(a) Prevent unauthorized access to areas controlled by the aircraft operator under an exclusive area agreement in accordance with § 1542.111 of this chapter.

(b) Prevent unauthorized access to each aircraft.

(c) Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program.

§ 1544.227 Exclusive area agreement.

(a) An aircraft operator that has entered into an exclusive area agreement with an airport operator, under § 1542.111 of this chapter must carry out that exclusive area agreement.

(b) The aircraft operator must list in its security program the locations at which it has entered into exclusive area agreements with an airport operator.

(c) The aircraft operator must provide the exclusive area agreement to TSA upon request.

(d) Any exclusive area agreements in effect on November 14, 2001, must meet the requirements of this section and § 1542.111 of this chapter no later than November 14, 2002.

§ 1544.229 Fingerprint-based criminal history records checks (CHRC): Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions.

(a) Scope. The following individuals are within the scope of this section. Unescorted access authority, authority to perform screening functions, and authority to perform checked baggage or cargo functions, are collectively referred to as "covered functions."

(1) New unescorted access authority or authority to perform screening functions. (i) Each employee or contract employee covered under a certification made to an airport operator on or after December 6, 2001, pursuant to 14 CFR 107.209(n) in effect prior to (see 14 CFR Parts 60 to 139 revised as of January 1, 2002) or § 1542.209(n) of this chapter.

(ii) Each individual issued on or after December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 1542.205 of this chapter (referred to as "unescorted access authority").

(iii) Each individual, on or after December 6, 2001, granted authority to perform the following screening functions at locations within the United States (referred to as "authority to perform screening functions")--

(A) Screening passengers or property that will be carried in a cabin of an aircraft of an aircraft operator required to screen passengers under this part.

(B) Serving as an immediate supervisor (checkpoint security supervisor (CSS)), and the next supervisory level (shift or site supervisor), to those individuals described in paragraph (a)(1)(iii)(A) of this section.

(2) Current unescorted access authority or authority to perform screening functions. (i) Each employee or contract employee covered under a certification made to

an airport operator pursuant to 14 CFR 107.31(n) in effect prior to November 14, 2001 (see 14 CFR Parts 60 to 139 revised as of January 1, 2001), or pursuant to 14 CFR 107.209(n) in effect prior to December 6, 2001 (see 14 CFR Parts 60 to 139 revised as of January 1, 2001).

(ii) Each individual who holds on December 6, 2001, an aircraft operator identification media that one or more airports accepts as airport-approved media for unescorted access authority within a security identification display area (SIDA), as described in § 1542.205 of this chapter.

(iii) Each individual who is performing on December 6, 2001, a screening function identified in paragraph (a)(1)(iii) of this section.

(3) New authority to perform checked baggage or cargo functions. Each individual who, on and after February 17, 2002, is granted the authority to perform the following checked baggage and cargo functions (referred to as "authority to perform checked baggage or cargo functions"), except for individuals described in paragraph (a)(1) of this section:

(i) Screening of checked baggage or cargo of an aircraft operator required to screen passengers under this part, or serving as an immediate supervisor of such an individual.

(ii) Accepting checked baggage for transport on behalf of an aircraft operator required to screen passengers under this part.

(4) Current authority to perform checked baggage or cargo functions. Each individual who holds on February 17, 2002, authority to perform checked baggage or cargo functions, except for individuals described in paragraph (a)(1) or (2) of this section.

(b) Individuals seeking unescorted access authority, authority to perform screening functions, or authority to perform checked baggage or cargo functions. Each aircraft operator must ensure that each individual identified in paragraph (a)(1) or (3) of this section has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in paragraph (d) of this section, before—

(1) Making a certification to an airport operator regarding that individual;

(2) Issuing an aircraft operator identification medium to that individual;

(3) Authorizing that individual to perform screening functions; or

(4) Authorizing that individual to perform checked baggage or cargo functions.

(c) Individuals who have not had a CHRC. (1) Deadline for conducting a CHRC. Each aircraft operator must ensure that, on and after December 6, 2002:

(i) No individual retains unescorted access authority, whether obtained as a result of a certification to an airport operator under 14 CFR 107.31(n) in effect prior to November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), or under 14 CFR 107.209(n) in effect prior to December 6, 2001 (see 14 CFR Parts 60 to 139 revised as of January 1, 2001), or obtained as a result of the issuance of an aircraft operator's identification media, unless the individual has been subject to a fingerprint-based CHRC for unescorted access authority under this part.

(ii) No individual continues to have authority to perform screening functions described in paragraph (a)(1)(iii) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(iii) No individual continues to have authority to perform checked baggage or cargo functions described in paragraph (a)(3) of this section, unless the individual has been subject to a fingerprint-based CHRC under this part.

(2) Lookback for individuals with unescorted access authority or authority to perform screening functions. When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after December 6, 1991, the aircraft operator must immediately suspend that individual's unescorted access authority or authority to perform screening functions.

(3) Lookback for individuals with authority to perform checked baggage or cargo functions. When a CHRC discloses a disqualifying criminal offense for which the conviction or finding was on or after February 17, 1992, the aircraft operator must immediately suspend that individual's authority to perform checked baggage or cargo functions.

(d) Disqualifying criminal offenses. An individual has a disqualifying criminal offense if the individual has been convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in this paragraph in any jurisdiction during the 10 years before the date of the individual's application for authority to perform covered functions, or while the individual has authority to perform covered functions. The disqualifying criminal offenses are as follows:

(1) Forgery of certificates, false marking of aircraft, and other aircraft registration violation; 49 U.S.C. 46306.

(2) Interference with air navigation; 49 U.S.C. 46308.

(3) Improper transportation of a hazardous material; 49 U.S.C. 46312.

(4) Aircraft piracy; 49 U.S.C. 46502.

(5) Interference with flight crew members or flight attendants; 49 U.S.C. 46504.

(6) Commission of certain crimes aboard aircraft in flight; 49 U.S.C. 46506.

(7) Carrying a weapon or explosive aboard aircraft; 49 U.S.C. 46505.

(8) Conveying false information and threats; 49 U.S.C. 46507.

(9) Aircraft piracy outside the special aircraft jurisdiction of the United States; 49 U.S.C. 46502(b).

(10) Lighting violations involving transporting controlled substances; 49 U.S.C. 46315.

(11) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements; 49 U.S.C. 46314.

(12) Destruction of an aircraft or aircraft facility; 18 U.S.C. 32.

(13) Murder.

(14) Assault with intent to murder.

(15) Espionage.

(16) Sedition.

(17) Kidnapping or hostage taking.

(18) Treason.

(19) Rape or aggravated sexual abuse.

(20) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.

(21) Extortion.

(22) Armed or felony unarmed robbery.

(23) Distribution of, or intent to distribute, a controlled substance.

(24) Felony arson.

(25) Felony involving a threat.

(26) Felony involving—

(i) Willful destruction of property;

(ii) Importation or manufacture of a controlled substance;

(iii) Burglary;

(iv) Theft;

(v) Dishonesty, fraud, or misrepresentation;

(vi) Possession or distribution of stolen property;

(vii) Aggravated assault;

(viii) Bribery; or

(ix) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year.

(27) Violence at international airports; 18 U.S.C. 37.

(28) Conspiracy or attempt to commit any of the criminal acts listed in this paragraph (d).

(e) Fingerprint application and processing. (1) At the time of fingerprinting, the aircraft operator must provide the individual to be fingerprinted a fingerprint application that includes only the following—

(i) The disqualifying criminal offenses described in paragraph (d) of this section.

(ii) A statement that the individual signing the application does not have a disqualifying criminal offense.

(iii) A statement informing the individual that Federal regulations under 49 CFR 1544.229 impose a continuing obligation to disclose to the aircraft operator within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she has authority to perform a covered function.

(iv) A statement reading, "The information I have provided on this application is true, complete, and correct to the best of my knowledge and belief and is provided in good faith. I understand that a knowing and willful false statement on this application can be punished by fine or imprisonment or both. (See section 1001 of Title 18 United States Code.)"

(v) A line for the printed name of the individual.

(vi) A line for the individual's signature and date of signature.

(2) Each individual must complete and sign the application prior to submitting his or her fingerprints.

(3) The aircraft operator must verify the identity of the individual through two forms of identification prior to fingerprinting, and ensure that the printed name on the fingerprint application is legible. At least one of the two forms of identification must have been issued by a government authority, and at least one must include a photo.

(4) The aircraft operator must:

(i) Advise the individual that a copy of the criminal record received from the FBI will be provided to the individual, if requested by the individual in writing; and

(ii) Identify a point of contact if the individual has questions about the results of the CHRC.

(5) The aircraft operator must collect, control, and process one set of legible and classifiable fingerprints under direct observation by the aircraft operator or a law enforcement officer.

(6) Fingerprints may be obtained and processed electronically, or recorded on fingerprint cards approved by the FBI and distributed by TSA for that purpose.

(7) The fingerprint submission must be forwarded to TSA in the manner specified by TSA.

(f) Fingerprinting fees. Aircraft operators must pay for all fingerprints in a form and manner approved by TSA. The payment must be made at the designated rate (available from the local TSA security office) for each set of fingerprints submitted. Information about payment options is available though the designated TSA headquarters point of contact. Individual personal checks are not acceptable.

(g) Determination of arrest status. (1) When a CHRC on an individual described in paragraph (a)(1) or (3) of this section discloses an arrest for any disqualifying criminal offense listed in paragraph (d) of this section without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before granting authority to perform a covered function. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(2) When a CHRC on an individual described in paragraph (a)(2) or (4) of this section discloses an arrest for any disqualifying criminal offense without indicating a disposition, the aircraft operator must suspend the individual's authority to perform a

covered function not later than 45 days after obtaining the CHRC unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in paragraph (d) of this section, the individual is not disqualified under this section.

(3) The aircraft operator may only make the determinations required in paragraphs (g)(1) and (g)(2) of this section for individuals for whom it is issuing, or has issued, authority to perform a covered function; and individuals who are covered by a certification from an aircraft operator under § 1542.209(n) of this chapter. The aircraft operator may not make determinations for individuals described in § 1542.209(a) of this chapter.

(h) Correction of FBI records and notification of disqualification. (1) Before making a final decision to deny authority to an individual described in paragraph (a)(1) or (3) of this section, the aircraft operator must advise him or her that the FBI criminal record discloses information that would disqualify him or her from receiving or retaining authority to perform a covered function and provide the individual with a copy of the FBI record if he or she requests it.

(2) The aircraft operator must notify an individual that a final decision has been made to grant or deny authority to perform a covered function.

(3) Immediately following the suspension of authority to perform a covered function, the aircraft operator must advise the individual that the FBI criminal record discloses information that disqualifies him or her from retaining his or her authority, and provide the individual with a copy of the FBI record if he or she requests it.

(i) Corrective action by the individual. The individual may contact the local jurisdiction responsible for the information and the FBI to complete or correct the information contained in his or her record, subject to the following conditions—

(1) For an individual seeking unescorted access authority or authority to perform screening functions on or after December 6, 2001; or an individual seeking authority to perform checked baggage or cargo functions on or after February 17, 2002; the following applies:

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record or a certified true copy of the information from the appropriate court, prior to authority to perform a covered function.

(ii) If no notification, as described in paragraph (h)(1) of this section, is received within 30 days, the aircraft operator may make a final determination to deny authority to perform a covered function.

(2) For an individual with unescorted access authority or authority to perform screening functions before December 6, 2001; or an individual with authority to perform checked baggage or cargo functions before February 17, 2002; the following applies: Within 30 days after being advised of suspension because the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from

the individual, of the revised FBI record, or a certified true copy of the information from the appropriate court, prior to reinstating authority to perform a covered function.

(j) Limits on dissemination of results. Criminal record information provided by the FBI may be used only to carry out this section and § 1542.209 of this chapter. No person may disseminate the results of a CHRC to anyone other than:

(1) The individual to whom the record pertains, or that individual's authorized representative.

(2) Officials of airport operators who are determining whether to grant unescorted access to the individual under part 1542 of this chapter when the determination is not based on the aircraft operator's certification under § 1542.209(n) of this chapter.

(3) Other aircraft operators who are determining whether to grant authority to perform a covered function under this part.

(4) Others designated by TSA.

(k) Recordkeeping. The aircraft operator must maintain the following information.

(1) Investigation conducted before December 6, 2001. The aircraft operator must maintain and control the access or employment history investigation files, including the criminal history records results portion, for investigations conducted before December 6, 2001.

(2) Fingerprint application process on or after December 6, 2001. The aircraft operator must physically maintain, control, and, as appropriate, destroy the fingerprint

application and the criminal record. Only direct aircraft operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(3) Protection of records—all investigations. The records required by this section must be maintained in a manner that is acceptable to TSA and in a manner that protects the confidentiality of the individual.

(4) Duration—all investigations. The records identified in this section with regard to an individual must be maintained until 180 days after the termination of the individual's authority to perform a covered function. When files are no longer maintained, the criminal record must be destroyed.

(l) Continuing responsibilities. (1) Each individual with unescorted access authority or the authority to perform screening functions on December 6, 2001, who had a disqualifying criminal offense in paragraph (d) of this section on or after December 6, 1991, must, by January 7, 2002, report the conviction to the aircraft operator and surrender the SIDA access medium to the issuer and cease performing screening functions, as applicable.

(2) Each individual with authority to perform a covered function who has a disqualifying criminal offense must report the offense to the aircraft operator and surrender the SIDA access medium to the issuer within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(3) If information becomes available to the aircraft operator indicating that an individual with authority to perform a covered function has a possible conviction for any disqualifying criminal offense in paragraph (d) of this section, the aircraft operator must determine the status of the conviction. If a disqualifying criminal offense is confirmed

the aircraft operator must immediately revoke any authority to perform a covered function.

(4) Each individual with authority to perform checked baggage or cargo functions on February 17, 2002, who had a disqualifying criminal offense in paragraph (d) of this section on or after February 17, 1992, must, by [insert date 30 days after publication in the Federal Register], report the conviction to the aircraft operator and cease performing check baggage or cargo functions.

(m) Aircraft operator responsibility. The aircraft operator must—

(1) Designate an individual(s) to be responsible for maintaining and controlling the employment history investigations for those whom the aircraft operator has made a certification to an airport operator under § 107.209(n) of this chapter as it existed before November 14, 2001 (see 14 CFR parts 60 to 139 revised as of January 1, 2001), and for those whom the aircraft operator has issued identification media that are airport-accepted. The aircraft operator must designate a direct employee to maintain, control, and, as appropriate, destroy criminal records.

(2) Designate an individual(s) to maintain the employment history investigations of individuals with authority to perform screening functions whose files must be maintained at the location or station where the screener is performing his or her duties.

(3) Designate an individual(s) at appropriate locations to serve as the contact to receive notification from individuals seeking authority to perform covered functions of their intent to seek correction of their FBI criminal record.

(4) Audit the employment history investigations performed in accordance with this section and 14 CFR 108.33 in effect prior to November 14, 2001 (see 14 CFR Parts

60 to 139 revised as of January 1, 2001). The aircraft operator must set forth the audit procedures in its security program.

§ 1544.231 Airport-approved and exclusive area personnel identification systems.

(a) Each aircraft operator must establish and carry out a personnel identification system for identification media that are airport-approved, or identification media that are issued for use in an exclusive area. The system must include the following**:**

(1) Personnel identification media that—

(i) Convey a full face image, full name, employer, and identification number of the individual to whom the identification medium is issued;

(ii) Indicate clearly the scope of the individual's access and movement privileges;

(iii) Indicate clearly an expiration date; and

(iv) Are of sufficient size and appearance as to be readily observable for challenge purposes.

(2) Procedures to ensure that each individual in the secured area or SIDA continuously displays the identification medium issued to that individual on the outermost garment above waist level, or is under escort.

(3) Procedures to ensure accountability through the following:

(i) Retrieving expired identification media.

(ii) Reporting lost or stolen identification media.

(iii) Securing unissued identification media stock and supplies.

(iv) Auditing the system at a minimum of once a year, or sooner, as necessary to ensure the integrity and accountability of all identification media.

(v) As specified in the aircraft operator security program, revalidate the identification system or reissue identification media if a portion of all issued, unexpired identification media are lost, stolen, or unretrieved, including identification media that are combined with access media.

(vi) Ensure that only one identification medium is issued to an individual at a time. A replacement identification medium may only be issued if an individual declares in writing that the medium has been lost or stolen.

(b) The aircraft operator may request approval of a temporary identification media system that meets the standards in § 1542.211(b) of this chapter, or may arrange with the airport to use temporary airport identification media in accordance with that section.

(c) Each aircraft operator must submit a plan to carry out this section to TSA no later than May 13, 2002. Each aircraft operator must fully implement its plan no later than November 14, 2003.

1544.233 Security coordinators and crewmembers, training.

(a) No aircraft operator may use any individual as a Ground Security Coordinator unless, within the preceding 12-calendar months, that individual has satisfactorily completed the security training as specified in the aircraft operator's security program.

(b) No aircraft operator may use any individual as an in-flight security coordinator or crewmember on any domestic or international flight unless, within the preceding 12-calendar months or within the time period specified in an Advanced Qualifications Program approved under SFAR 58 in 14 CFR 121, that individual has

satisfactorily completed the security training required by 14 CFR 121.417(b)(3)(v) or 135.331(b)(3)(v), and as specified in the aircraft operator's security program.

(c) With respect to training conducted under this section, whenever an individual completes recurrent training within one calendar month earlier, or one calendar month after the date it was required, that individual is considered to have completed the training in the calendar month in which it was required.

§ 1544.235 Training and knowledge for individuals with security-related duties.

(a) No aircraft operator may use any direct or contractor employee to perform any security-related duties to meet the requirements of its security program unless that individual has received training as specified in its security program including their individual responsibilities in § 1540.105 of this chapter.

(b) Each aircraft operator must ensure that individuals performing security-related duties for the aircraft operator have knowledge of the provisions of this part, applicable Security Directives and Information Circulars, the approved airport security program applicable to their location, and the aircraft operator's security program to the extent that such individuals need to know in order to perform their duties.

Subpart D—Threat and Threat Response

§ 1544.301 Contingency plan.

Each aircraft operator must adopt a contingency plan and must:

(a) Implement its contingency plan when directed by TSA.

(b) Ensure that all information contained in the plan is updated annually and that appropriate persons are notified of any changes.

(c) Participate in an airport operator-sponsored exercise of the airport contingency plan or its equivalent, as provided in its security program.

§ 1544.303 Bomb or air piracy threats.

(a) Flight: Notification. Upon receipt of a specific and credible threat to the security of a flight, the aircraft operator must—

(1) Immediately notify the ground and in-flight security coordinators of the threat, any evaluation thereof, and any measures to be applied; and

(2) Ensure that the in-flight security coordinator notifies all crewmembers of the threat, any evaluation thereof, and any measures to be applied; and

(3) Immediately notify the appropriate airport operator.

(b) Flight: Inspection. Upon receipt of a specific and credible threat to the security of a flight, each aircraft operator must attempt to determine whether or not any explosive or incendiary is present by doing the following:

(1) Conduct a security inspection on the ground before the next flight or, if the aircraft is in flight, immediately after its next landing.

(2) If the aircraft is on the ground, immediately deplane all passengers and submit that aircraft to a security search.

(3) If the aircraft is in flight, immediately advise the pilot in command of all pertinent information available so that necessary emergency action can be taken.

(c) Ground facility. Upon receipt of a specific and credible threat to a specific ground facility at the airport, the aircraft operator must:

(1) Immediately notify the appropriate airport operator.

(2) Inform all other aircraft operators and foreign

air carriers at the threatened facility.

(3) Conduct a security inspection.

(d) Notification. Upon receipt of any bomb threat against the security of a flight or facility, or upon receiving information that an act or suspected act of air piracy has been committed, the aircraft operator also must notify TSA. If the aircraft is in airspace under other than U.S. jurisdiction, the aircraft operator must also notify the appropriate authorities of the State in whose territory the aircraft is located and, if the aircraft is in flight, the appropriate authorities of the State in whose territory the aircraft is to land. Notification of the appropriate air traffic controlling authority is sufficient action to meet this requirement.

§ 1544.305 Security Directives and Information Circulars.

(a) TSA may issue an Information Circular to notify aircraft operators of security concerns. When TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(b) Each aircraft operator required to have an approved aircraft operator security program must comply with each Security Directive issued to the aircraft operator by TSA, within the time prescribed in the Security Directive for compliance.

(c) Each aircraft operator that receives a Security Directive must-

(1) Within the time prescribed in the Security Directive, verbally acknowledge receipt of the Security Directive to TSA.

(2) Within the time prescribed in the Security Directive, specify the method by which the measures in the Security Directive have been implemented (or will be implemented, if the Security Directive is not yet effective).

(d) In the event that the aircraft operator is unable to implement the measures in the Security Directive**,** the aircraft operator must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval. The aircraft operator must submit the proposed alternative measures within the time prescribed in the Security Directive. The aircraft operator must implement any alternative measures approved by TSA.

(e) Each aircraft operator that receives a Security Directive may comment on the Security Directive by submitting data, views, or arguments in writing to TSA. TSA may amend the Security Directive based on comments received. Submission of a comment does not delay the effective date of the Security Directive.

(f) Each aircraft operator that receives a Security Directive or Information Circular and each person who receives information from a Security Directive or Information Circular must:

(1) Restrict the availability of the Security Directive or Information Circular, and information contained in either document, to those persons with an operational need-to-know.

(2) Refuse to release the Security Directive or Information Circular, and information contained in either document, to persons other than those with an operational need-to-know without the prior written consent of TSA.

Subpart E—Screener Qualifications When the Aircraft Operator Performs Screening

§ 1544.401 Applicability of this subpart.

(a) Aircraft operator screening. This subpart applies when the aircraft operator is conducting inspections as provided in § 1544.207(c).

(b) Current screeners. As used in this subpart, "current screener" means each individual who first performed screening functions before the date the aircraft operator must begin use of the new screener training program provided by TSA. Until November 19, 2002, each current screener must comply with § 1544.403. Until November 19, 2002, each aircraft operator must apply § 1544.403 for each current screener. On and after November 19, 2002, each such current screener must comply with §§ 1544.405 through 1544.411, and each aircraft operator must comply with §§ 1544.405 through 1544.411 for such individuals.

(c) New screeners. As used in this subpart, "new screener" means each individual who first performs screening functions on and after the date the aircraft operator must begin use of the new screener training program provided by TSA. Each aircraft operator must apply §§ 1544.405 through 1544.411 for individuals who first perform screening functions for new screeners.

§ 1544.403 Current screeners.

This section applies to current screeners. This section is no longer effective on and after November 19, 2002.

(a) No aircraft operator may use any person to perform any screening function, unless that person has:

(1) A high school diploma, a General Equivalency Diploma, or a combination of education and experience that the aircraft operator has determined to have equipped the person to perform the duties of the position.

(2) Basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(i) Screeners operating X-ray equipment must be able to distinguish on the X-ray monitor the appropriate imaging standard specified in the aircraft operator's security program. Wherever the X-ray system displays colors, the operator must be able to perceive each color;

(ii) Screeners operating any screening equipment must be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies;

(iii) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment;

(iv) Screeners performing physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, and other objects subject to security processing; and

(v) Screeners who perform pat-downs or hand-held metal detector searches of persons must have sufficient dexterity and capability to thoroughly conduct those procedures over a person's entire body.

(3) The ability to read, speak, and write English well enough to—

(i) Carry out written and oral instructions regarding the proper performance of screening duties;

(ii) Read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) Provide direction to and understand and answer questions from English-speaking persons undergoing screening; and

(iv) Write incident reports and statements and log entries into security records in the English language.

(4) Satisfactorily completed all initial, recurrent, and appropriate specialized training required by the aircraft operator's security program, except as provided in paragraph (b) of this section.

(b) The aircraft operator may use a person who has not completed the training required by paragraph (a)(4) of this section during the on-the-job portion of training to perform security functions provided that the person:

(1) Is closely supervised, and

(2) Does not make independent judgments as to whether persons or property may enter a sterile area or aircraft without further inspection.

(c) No aircraft operator must use a person to perform a screening function after that person has failed an operational test related to that function until that person has successfully completed the remedial training specified in the aircraft operator's security program.

(d) Each aircraft operator must ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each individual assigned screening duties and may continue that individual's employment in a screening capacity only upon the determination by the Ground Security Coordinator that the individual:

(1) Has not suffered a significant diminution of any physical ability required to perform a screening function since the last evaluation of those abilities;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in its security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(e) Paragraphs (a) through (d) of this section do not apply to those screening functions conducted outside the United States over which the aircraft operator does not have operational control. In the event the aircraft operator is unable to implement paragraphs (a) through (d) of this section for screening functions outside the United States, the aircraft operator must notify TSA of those aircraft operator stations so affected.

(f) At locations outside the United States where the aircraft operator has operational control over a screening function, the aircraft operator may use screeners who do not meet the requirements of paragraph (a)(3) of this section, provided that at least one representative of the aircraft operator who has the ability to functionally read and speak English is present while the aircraft operator's passengers are undergoing security screening.

§ 1544.405 New screeners: Qualifications of screening personnel.

(a) No individual subject to this subpart may perform a screening function unless that individual has the qualifications described in §§ 1544.405 through 1544.411. No aircraft operator may use such an individual to perform a screening function unless that person complies with the requirements of §§ 1544.405 through 1544.411.

(b) A screener must have a satisfactory or better score on a screener selection test administered by TSA.

(c) A screener must be a citizen of the United States.

(d) A screener must have a high school diploma, a General Equivalency Diploma, or a combination of education and experience that the TSA has determined to be sufficient for the individual to perform the duties of the position.

(e) A screener must have basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(1) Screeners operating screening equipment must be able to distinguish on the screening equipment monitor the appropriate imaging standard specified in the aircraft operator's security program.

(2) Screeners operating any screening equipment must be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(3) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment at an active screening location.

(4) Screeners who perform physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, cargo, and other objects subject to screening.

(5) Screeners who perform pat-downs or hand-held metal detector searches of individuals must have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(f) A screener must have the ability to read, speak, and write English well enough to—

(1) Carry out written and oral instructions regarding the proper performance of screening duties;

(2) Read English language identification media, credentials, airline tickets, documents, air waybills, invoices, and labels on items normally encountered in the screening process;

(3) Provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(4) Write incident reports and statements and log entries into security records in the English language.

(g) At locations outside the United States where the aircraft operator has operational control over a screening function, the aircraft operator may use screeners who do not meet the requirements of paragraph (f) of this section, provided that at least one representative of the aircraft operator who has the ability to functionally read and speak English is present while the aircraft operator's passengers are undergoing security screening. At such locations the aircraft operator may use screeners who are not United States citizens.

§ 1544.407 New screeners: Training, testing, and knowledge of individuals who perform screening functions.

(a) Training required. Before performing screening functions, an individual must have completed initial, recurrent, and appropriate specialized training as specified in this section and the aircraft operator's security program. No aircraft operator may use any

screener, screener in charge, or checkpoint security supervisor unless that individual has satisfactorily completed the required training. This paragraph does not prohibit the performance of screening functions during on-the-job training as provided in §1544.409 (b).

(b) Use of training programs. Training for screeners must be conducted under programs provided by TSA. Training programs for screeners-in-charge and checkpoint security supervisors must be conducted in accordance with the aircraft operator's security program.

(c) Classroom instruction. Each screener must complete at least 40 hours of classroom instruction or successfully complete a program that TSA determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction.

(d) Screener readiness test. Before beginning on-the-job training, a screener trainee must pass the screener readiness test prescribed by TSA.

(e) On-the-job training and testing. Each screener must complete at least 60 hours of on-the-job training and must pass an on-the-job training test prescribed by TSA. No aircraft operator may permit a screener trainee to exercise independent judgment as a screener, until the individual passes an on-the-job training test prescribed by TSA.

(f) Knowledge requirements. Each aircraft operator must ensure that individuals performing as screeners, screeners-in-charge, and checkpoint security supervisors for the aircraft operator have knowledge of the provisions of this part, the aircraft operator's security program, and applicable Security Directives and Information Circulars to the extent necessary to perform their duties.

(g) Disclosure of sensitive security information during training. The aircraft operator may not permit a trainee to have access to sensitive security information during screener training unless a criminal history records check has successfully been completed for that individual in accordance with § 1544.229, and the individual has no disqualifying criminal offense.

§ 1544.409 New screeners: Integrity of screener tests.

(a) Cheating or other unauthorized conduct. (1) Except as authorized by the TSA, no person may--

(i) Copy or intentionally remove a test under this part;

(ii) Give to another or receive from another any part or copy of that test;

(iii) Give help on that test to or receive help on that test from any person during the period that the test is being given; or

(iv) Use any material or aid during the period that the test is being given.

(2) No person may take any part of that test on behalf of another person.

(3) No person may cause, assist, or participate intentionally in any act prohibited by this paragraph (a).

(b) Administering and monitoring screener tests. (1) Each aircraft operator must notify TSA of the time and location at which it will administer each screener readiness test required under § 1544.405(d).

(2) Either TSA or the aircraft operator must administer and monitor the screener readiness test. Where more than one aircraft operator or foreign air carrier uses a screening location, TSA may authorize an employee of one or more of the aircraft

operators or foreign air carriers to monitor the test for a trainee who will screen at that location.

(3) If TSA or a representative of TSA is not available to administer and monitor a screener readiness test, the aircraft operator must provide a direct employee to administer and monitor the screener readiness test.

(4) An aircraft operator employee who administers and monitors a screener readiness test must not be an instructor, screener, screener-in-charge, checkpoint security supervisor, or other screening supervisor. The employee must be familiar with the procedures for administering and monitoring the test and must be capable of observing whether the trainee or others are engaging in cheating or other unauthorized conduct.

§ 1544.411 New screeners: Continuing qualifications for screening personnel.

(a) Impairment. No individual may perform a screening function if he or she shows evidence of impairment, such as impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(b) Training not complete. An individual who has not completed the training required by § 1544.405 may be deployed during the on-the-job portion of training to perform security functions provided that the individual--

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(c) Failure of operational test. No aircraft operator may use an individual to perform a screening function after that individual has failed an operational test related to

that function, until that individual has successfully completed the remedial training specified in the aircraft operator's security program.

(d) Annual proficiency review. Each individual assigned screening duties shall receive an annual evaluation. The aircraft operator must ensure that a Ground Security Coordinator conducts and documents an annual evaluation of each individual who performs screening functions. An individual who performs screening functions may not continue to perform such functions unless the evaluation demonstrates that the individual—

(1) Continues to meet all qualifications and standards required to perform a screening function;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in the aircraft operator's security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

7. Add new part 1546 to Chapter XII, subchapter C.

PART 1546 - FOREIGN AIR CARRIER SECURITY

Subpart A—General

Sec.

1546.1 Applicability of this part.

1546.3 TSA inspection authority.

Subpart B—Security Program

1546.101 Adoption and implementation.

1546.103 Form, content, and availability of security program.

1546.105 Acceptance of and amendments to the security program.

Subpart C--Operations

1546.201 Acceptance and screening of individuals and accessible property.

1546.203 Acceptance and screening of checked baggage.

1546.205 Acceptance and screening of cargo.

1546.207 Screening of individuals and property.

1546.209 Use of X-ray systems.

1546.211 Law enforcement personnel.

Subpart D—Threat and Threat Response

1546.301 Bomb or air piracy threats.

Subpart E—Screener Qualifications When the Foreign Air Carrier Conducts Screening

1546.401 Applicability of this subpart.

1546.403 Current screeners.

1546.405 New screeners: Qualifications of screening personnel.

1546.407 New screeners: Training, testing, and knowledge of individuals who perform screening functions.

1546.409 New screeners: Integrity of screener tests.

1546.411 New screeners: Continuing qualifications for screening personnel.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44905-44907, 44914, 44916-44917, 44935-44936, 44942, 46105.

Subpart A—General

§ 1546.1 Applicability of this part.

This part prescribes aviation security rules governing the following:

(a) The operation within the United States of each foreign air carrier holding a permit issued by the Department of Transportation under 49 U.S.C. 41302 or other appropriate authority issued by the Civil Aeronautics Board or the Department of Transportation.

(b) Each law enforcement officer flying armed aboard an aircraft operated by a foreign air carrier described in paragraph (a) of this section.

§ 1546.3 TSA inspection authority.

(a) Each foreign air carrier must allow TSA, at any time or place, to make any inspections or tests**,** including copying records, to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or other airport tenants with—

(1) This subchapter and any security program under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each foreign air carrier must provide evidence of compliance with this subchapter and its security program, including copies of records.

Subpart B—Security Program

§ 1546.101 Adoption and implementation.

Each foreign air carrier landing or taking off in the United States must adopt

and carry out a security program, for each scheduled and public charter passenger operation, that meets the requirements of--

(a) Section 1546.103(b) for each operation with an airplane having a passenger seating configuration of 61 or more seats;

(b) Section 1546.103(b) for each operation that will provide deplaned passengers access to a sterile area, or enplane passengers from a sterile area, when that access is not controlled by an aircraft operator using a security program under part 1544 of this chapter or a foreign air carrier using a security program under this part;

(c) Section 1546.103(b) for each operation with an airplane having a passenger seating configuration of 31 or more seats but 60 or fewer seats for which TSA has notified the foreign air carrier in writing that a threat exists; and

(d) Section 1546.103(c) for each operation with an airplane having a passenger seating configuration of 31 or more seats but 60 or fewer seats, when TSA has not notified the foreign air carrier in writing that a threat exists with respect to that operation.

§ 1546.103 Form, content, and availability of security program.

(a) General requirements. The security program must be:

(1) Acceptable to TSA. A foreign air carrier's security program is acceptable only if TSA finds that the security program provides passengers a level of protection similar to the level of protection provided by U.S. air carriers serving the same airports. Foreign air carriers must employ procedures equivalent to those required of U.S. air carriers serving the same airport if TSA determines that such procedures are necessary to provide passengers a similar level of protection.

(2) In English unless TSA requests that the program be submitted in the

official language of the foreign air carrier's country.

(b) Content of security program. Each security program required by § 1546.101(a), (b), or (c) must be designed to--

(1) Prevent or deter the carriage aboard airplanes of any unauthorized explosive, incendiary, or weapon on or about each individual's person or accessible property, except as provided in § 1546.201(d), through screening by weapon-detecting procedures or facilities;

(2) Prohibit unauthorized access to airplanes;

(3) Ensure that checked baggage is accepted by a responsible agent of the foreign air carrier; and

(4) Prevent cargo and checked baggage from being loaded aboard its airplanes unless handled in accordance with the foreign air carrier's security procedures.

(c) Law enforcement support. Each security program required by § 1546.101(d) must include the procedures used to comply with the applicable requirements of § 1546.209 regarding law enforcement officers.

(d) Availability. Each foreign air carrier required to adopt and use a security program under this part must -

(1) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 1520 of this chapter, to persons with a need to know; and

(2) Refer requests for sensitive security information by other persons to TSA.

§ 1546.105 Acceptance of and amendments to the security program.

(a) Initial acceptance of security program. Unless otherwise authorized by TSA, each foreign air carrier required to have a security program by this part must submit

its proposed program to TSA at least 90 days before the intended date of passenger operations. TSA will notify the foreign air carrier of the security program's acceptability, or the need to modify the proposed security program for it to be acceptable under this part, within 30 days after receiving the proposed security program. The foreign air carrier may petition TSA to reconsider the notice to modify the security program within 30 days after receiving a notice to modify.

(b) Amendment requested by a foreign air carrier. A foreign air carrier may submit a request to TSA to amend its accepted security program as follows:

(1) The proposed amendment must be filed with the designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to a foreign air carrier security program may be approved if the designated official determines that safety and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) Within 45 calendar days after receiving a denial, the foreign air carrier may petition the Under Secretary to reconsider the denial. A petition for reconsideration must be filed with the designated official.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of

the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment, or affirming the denial.

(6) Any foreign air carrier may submit a group proposal for an amendment that is on behalf of it and other aircraft operators that co-sign the proposal.

(c) Amendment by TSA. If the safety and the public interest require an amendment, the designated official may amend an accepted security program as follows:

(1) The designated official notifies the foreign air carrier, in writing, of the proposed amendment, fixing a period of not less than 45 calendar days within which the foreign air carrier may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the foreign air carrier of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 calendar days after the foreign air carrier receives the notice of amendment, unless the foreign air carrier petitions the Under Secretary to reconsider no later than 15 calendar days before the effective date of the amendment. The foreign air carrier must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of the petition within 30 calendar days of receipt by either directing the designated official to withdraw or amend the amendment, or by affirming the amendment.

(d) Emergency amendments. If the designated official finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the designated official may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date the foreign air carrier receives notice of it. In such a case, the designated official will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The foreign air carrier may file a petition for reconsideration under paragraph (c) of this section; however, this does not stay the effectiveness of the emergency amendment.

Subpart C--Operations

§ 1546.201 Acceptance and screening of individuals and accessible property.

(a) Preventing or deterring the carriage of any explosive, incendiary, or weapon. Unless otherwise authorized by TSA, each foreign air carrier must use the measures in its security program to prevent or deter the carriage of any explosive, incendiary, or weapon on or about each individual's person or accessible property before boarding an aircraft or entering a sterile area.

(b) Screening of individuals and accessible property. Except as provided in its security program, each foreign air carrier must ensure that each individual entering a sterile area at each preboard screening checkpoint for which it is responsible, and all accessible property under that individual's control, are inspected for weapons, explosives, and incendiaries as provided in § 1546.207.

(c) Refusal to transport. Each foreign air carrier conducting an operation for

which a security program is required by § 1546.101(a), (b), or (c) must refuse to transport--

(1) Any individual who does not consent to a search or inspection of his or her person in accordance with the system prescribed in this part; and

(2) Any property of any individual or other person who does not consent to a search or inspection of that property in accordance with the system prescribed by this part.

(d) Explosive, incendiary, weapon: Prohibitions and exceptions. No individual may, while on board an aircraft being operated by a foreign air carrier in the United States, carry on or about his person a deadly or dangerous weapon, either concealed or unconcealed. This paragraph (d) does not apply to--

(1) Officials or employees of the state of registry of the aircraft who are authorized by that state to carry arms; and

(2) Crewmembers and other individuals authorized by the foreign air carrier to carry arms.

§ 1546.203 Acceptance and screening of checked baggage.

(a) Preventing or deterring the carriage of any explosive or incendiary. Each foreign air carrier must use the procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized explosive or incendiary onboard aircraft in checked baggage.

(b) Refusal to transport. Each foreign air carrier must refuse to transport any individual's checked baggage or property if the individual does not consent to a search or

inspection of that checked baggage or property in accordance with the system prescribed by this part.

(c) Firearms in checked baggage. No foreign air carrier may knowingly permit any person to transport, nor may any person transport, while aboard an aircraft being operated in the United States by that carrier, in checked baggage, a firearm, unless:

(1) The person has notified the foreign air carrier before checking the baggage that the firearm is in the baggage; and

(2) The baggage is carried in an area inaccessible to passengers.

§ 1546.205 Acceptance and screening of cargo.

(a) General requirements. Each foreign air carrier must use the procedures, facilities and equipment described in its security program to prevent or deter the carriage of unauthorized explosives or incendiaries in cargo onboard a passenger aircraft.

(b) Refusal to transport. Each foreign air carrier must refuse to transport any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with the system prescribed by this part.

§ 1546.207 Screening of individuals and property.

(a) Applicability of this section. This section applies to the inspection of individuals, accessible property, checked baggage, and cargo as required under this part.

(b) Locations within the United States at which TSA conducts screening. As required in its security program, each foreign air carrier must ensure that all individuals or property have been inspected by TSA before boarding or loading on its aircraft. This paragraph applies when TSA is conducting screening using TSA employees or when using companies under contract with TSA.

(c) Foreign air carrier conducting screening. Each foreign air carrier must use the measures in its security program to inspect the individual or property. This paragraph does not apply at locations identified in paragraphs (b) of this section.

§ 1546.209 Use of X-ray systems.

(a) TSA authorization required. No foreign air carrier may use any X-ray system within the United States to screen accessible property or checked baggage, unless specifically authorized under its security program. No foreign air carrier may use such a system in a manner contrary to its security program. TSA authorizes foreign air carriers to use X-ray systems for inspecting accessible property or checked baggage under a security program if the foreign air carrier shows that—

(1) The system meets the standards for cabinet X-ray systems primarily for the inspection of baggage issued by the Food and Drug Administration (FDA) and published in 21 CFR 1020.40;

(2) A program for initial and recurrent training of operators of the system is established, which includes training in radiation safety, the efficient use of X-ray systems, and the identification of weapons, explosives, and incendiaries; and

(3) The system meets the imaging requirements set forth in its security program using the step wedge specified in American Society for Testing Materials (ASTM) Standard F792-88 (Reapproved 1993). This standard is incorporated by reference in paragraph (g) of this section.

(b) Annual radiation survey. No foreign air carrier may use any X-ray system unless, within the preceding 12 calendar months, a radiation survey is conducted that shows that the system meets the applicable performance standards in 21 CFR 1020.40.

(c) Radiation survey after installation or moving. No foreign air carrier may use any X-ray system after the system has been installed at a screening point or after the system has been moved unless a radiation survey is conducted which shows that the system meets the applicable performance standards in 21 CFR 1020.40. A radiation survey is not required for an X-ray system that is designed and constructed as a mobile unit and the foreign air carrier shows that it can be moved without altering its performance.

(d) Defect notice or modification order. No foreign air carrier may use any X-ray system that is not in full compliance with any defect notice or modification order issued for that system by the FDA, unless the FDA has advised TSA that the defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person.

(e) Signs and inspection of photographic equipment and film. (1) At locations at which a foreign air carrier uses an X-ray system to inspect accessible property the foreign air carrier must ensure that a sign is posted in a conspicuous place at the screening checkpoint.

(2) At locations at which a foreign air carrier or TSA uses an X-ray system to inspect checked baggage the foreign air carrier must ensure that a sign is posted in a conspicuous place where the foreign air carrier accepts checked baggage.

(3) The signs required under this paragraph must notify individuals that such items are being inspected by an X-ray and advise them to remove all X-ray, scientific, and high-speed film from accessible property and checked baggage before inspection. This sign must also advise individuals that they may request that an inspection be made

of their photographic equipment and film packages without exposure to an X-ray system. If the X-ray system exposes any accessible property or checked baggage to more than one milliroentgen during the inspection, the sign must advise individuals to remove film of all kinds from their articles before inspection.

(4) If requested by individuals, their photographic equipment and film packages must be inspected without exposure to an X-ray system.

(f) Radiation survey verification after installation or moving. Each foreign air carrier must maintain at least one copy of the results of the most recent radiation survey conducted under paragraph (b) or (c) of this section and must make it available for inspection upon request by TSA at each of the following locations—

(1) The foreign air carrier's principal business office; and

(2) The place where the X-ray system is in operation.

(g) Incorporation by reference. The American Society for Testing and Materials (ASTM) Standard F792-88 (Reapproved 1993), "Standard Practice for Design and Use of Ionizing Radiation Equipment for the Detection of Items Prohibited in Controlled Access Areas," is approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and l CFR part 51. ASTM Standard F792-88 may be examined at the Department of Transportation (DOT) Docket, 400 Seventh Street SW, Room Plaza 401, Washington, DC 20590, or on DOT's Docket Management System (DMS) web page at http://dms.dot.gov/search (under docket number FAA-2001-8725). Copies of the standard may be examined also at the Office of the Federal Register, 800 North Capitol St., NW, Suite 700, Washington, DC. In addition, ASTM Standard F792-

88 (Reapproved 1993) may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

(h) Each foreign air carrier must comply with the X-ray operator duty time limitations specified in its security program.

§ 1546.211 Law enforcement personnel.

(a) At airports within the United States not governed by part 1542 of this chapter, each foreign air carrier engaging in public charter passenger operations must--

(1) When using a screening system required by § 1546.101(a), (b), or (c), provide for law enforcement officers meeting the qualifications and standards, and in the number and manner, specified in part 1542; and

(2) When using an airplane having a passenger seating configuration of 31 or more but 60 or fewer seats for which a screening system is not required by § 1546.101(a), (b), or (c), arrange for law enforcement officers meeting the qualifications and standards specified in part 1542 of this chapter to be available to respond to an incident and provide to appropriate employees, including crewmembers, current information with respect to procedures for obtaining law enforcement assistance at that airport.

(b) At airports governed by part 1542 of this chapter, each foreign air carrier engaging in scheduled passenger operations or public charter passenger operations when using an airplane with a passenger seating configuration of 31 or more and 60 or fewer seats under § 1546.101(c), must arrange for law enforcement personnel meeting the qualifications and standards specified in part 1542 of this chapter to be available to respond to an incident and provide to appropriate employees, including crewmembers, current information with respect to procedures for obtaining law enforcement assistance

at that airport.

Subpart D—Threat and Threat Response

§ 1546.301 Bomb or air piracy threats.

No foreign air carrier may land or take off an airplane in the United States, in passenger operations, after receiving a bomb or air piracy threat against that airplane, unless the following actions are taken:

(a) If the airplane is on the ground when a bomb threat is received and the next scheduled flight of the threatened airplane is to or from a place in the United States, the foreign air carrier ensures that the pilot in command is advised to submit the airplane immediately for a security inspection and an inspection of the airplane is conducted before the next flight.

(b) If the airplane is in flight to a place in the United States when a bomb threat is received, the foreign air carrier ensures that the pilot in command is advised immediately to take the emergency action necessary under the circumstances and a security inspection of the airplane is conducted immediately after the next landing.

(c) If information is received of a bomb or air piracy threat against an airplane engaged in an operation specified in paragraph (a) or (b) of this section, the foreign air carrier ensures that notification of the threat is given to the appropriate authorities of the State in whose territory the airplane is located or, if in flight, the appropriate authorities of the State in whose territory the airplane is to land.

Subpart E—Screener Qualifications When the Foreign Air Carrier Conducts Screening

§ 1546.401 Applicability of this subpart.

(a) Foreign air carrier screening. This subpart applies when the foreign air carrier is conducting inspections as provided in § 1546.207(c).

(b) Current screeners. As used in this subpart, "current screener" means each individual who first performed screening functions before the date the foreign air carrier must begin use of the new screener training program provided by TSA. Until November 19, 2002, each current screener must comply with § 1546.403. Until November 19, 2002, each foreign air carrier must apply § 1546.403 for each current screener. On and after November 19, 2002, each current screener must comply with §§ 1546.405 through 1546.411, and each foreign air carrier must comply with §§ 1546.405 through 1546.411 for such individuals.

(c) New screeners. As used in this subpart, "new screener" means each individual who first performs screening functions on and after TSA orders the foreign air carrier to begin use of the new screener training program provided by TSA. Each foreign air carrier must apply §§ 1546.405 through 1546.411 for new screeners.

§ 1546.403 Current screeners.

The foreign air carrier must ensure that each current screener it uses to perform screening functions meet the qualifications and training standards set forth in its security program. This section is no longer effective on and after November 19, 2002.

§ 1546.405 New screeners: Qualifications of screening personnel.

(a) No individual subject to this subpart may perform a screening function unless that individual has the qualifications described in §§ 1546.405 through 1546.411. No foreign air carrier may use such an individual to perform a screening function unless that person complies with the requirements of §§ 1546.405 through 1546.411.

(b) A screener must have a satisfactory or better score on a screener selection test administered by TSA.

(c) A screener must be a citizen of the United States.

(d) A screener must have a high school diploma, a General Equivalency Diploma, or a combination of education and experience that TSA has determined to be sufficient for the individual to perform the duties of the position.

(e) A screener must have basic aptitudes and physical abilities including color perception, visual and aural acuity, physical coordination, and motor skills to the following standards:

(1) Screeners operating screening equipment must be able to distinguish on the screening equipment monitor the appropriate imaging standard specified in the foreign air carrier's security program.

(2) Screeners operating any screening equipment must be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(3) Screeners must be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment at an active screening location.

(4) Screeners who perform physical searches or other related operations must be able to efficiently and thoroughly manipulate and handle such baggage, containers, cargo, and other objects subject to screening.

(5) Screeners who perform pat-downs or hand-held metal detector searches of individuals must have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(f) A screener must have the ability to read, speak, and write English well enough to—

(1) Carry out written and oral instructions regarding the proper performance of screening duties;

(2) Read English language identification media, credentials, airline tickets, documents, air waybills, invoices, and labels on items normally encountered in the screening process;

(3) Provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(4) Write incident reports and statements and log entries into security records in the English language.

(g) At locations outside the United States that are the last point of departure to the United States, and where the foreign air carrier has operational control over a screening function, the foreign air carrier may use screeners who do not meet the requirements of paragraph (f) of this section. At such locations the foreign air carrier may use screeners who are not United States citizens.

§ 1546.407 New screeners: Training, testing, and knowledge of individuals who perform screening functions.

(a) Training required. Before performing screening functions, an individual must have completed initial, recurrent, and appropriate specialized training as specified in this section and the foreign air carrier's security program. No foreign air carrier may use any screener, screener in charge, or checkpoint security supervisor unless that individual has satisfactorily completed the required training. This paragraph does not prohibit the

performance of screening functions during on-the-job training as provided in §1544.409(b).

(b) Use of training programs. Training for screeners must be conducted under programs provided by TSA. Training programs for screeners-in-charge and checkpoint security supervisors must be conducted in accordance with the foreign air carrier's security program.

(c) Classroom instruction. Each screener must complete at least 40 hours of classroom instruction or successfully complete a program that TSA determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction.

(d) Screener readiness test. Before beginning on-the-job training, a screener trainee must pass the screener readiness test prescribed by TSA.

(e) On-the-job training and testing. Each screener must complete at least 60 hours of on-the-job training and must pass an on-the-job training test prescribed by TSA. No foreign air carrier may permit a screener trainee to exercise independent judgment as a screener, until the individual passes an on-the-job training test prescribed by TSA.

(f) Knowledge requirements. Each foreign air carrier must ensure that individuals performing as screeners, screeners-in-charge, and checkpoint security supervisors for the foreign air carrier have knowledge of the provisions of this part, the foreign air carrier's security program, and applicable emergency amendments to the foreign air carrier's security program to the extent necessary to perform their duties.

§ 1546.409 New screeners: Integrity of screener tests.

(a) Cheating or other unauthorized conduct. (1) Except as authorized by TSA, no person may--

(i) Copy or intentionally remove a test under this part;

(ii) Give to another or receive from another any part or copy of that test;

(iii) Give help on that test to or receive help on that test from any person during the period that the test is being given; or

(iv) Use any material or aid during the period that the test is being given.

(2) No person may take any part of that test on behalf of another person.

(3) No person may cause, assist, or participate intentionally in any act prohibited by this paragraph (a).

(b) Administering and monitoring screener tests. (1) Each foreign air carrier must notify TSA of the time and location at which it will administer each screener readiness test required under §1544.405 (d).

(2) Either TSA or the foreign air carrier must administer and monitor the screener readiness test. Where more than one foreign air carrier or foreign air carrier uses a screening location, TSA may authorize an employee of one or more of the foreign air carriers or foreign air carriers to monitor the test for a trainee who will screen at that location.

(3) If TSA or a representative of TSA is not available to administer and monitor a screener readiness test, the foreign air carrier must provide a direct employee to administer and monitor the screener readiness test.

(4) An foreign air carrier employee who administers and monitors a screener readiness test must not be an instructor, screener, screener-in-charge, checkpoint security

supervisor, or other screening supervisor. The employee must be familiar with the procedures for administering and monitoring the test and must be capable of observing whether the trainee or others are engaging in cheating or other unauthorized conduct.

§ 1546.411 New screeners: Continuing qualifications for screening personnel.

(a) Impairment. No individual may perform a screening function if he or she shows evidence of impairment, such as impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(b) Training not complete. An individual who has not completed the training required by § 1546.405 may be deployed during the on-the-job portion of training to perform security functions provided that the individual--

(1) Is closely supervised; and

(2) Does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(c) Failure of operational test. No foreign air carrier may use an individual to perform a screening function after that individual has failed an operational test related to that function, until that individual has successfully completed the remedial training specified in the foreign air carrier's security program.

(d) Annual proficiency review. Each individual assigned screening duties shall receive an annual evaluation. The foreign air carrier must conduct and document an annual evaluation of each individual who performs screening functions. An individual who performs screening functions may not continue to perform such functions unless the evaluation demonstrates that the individual—

(1) Continues to meet all qualifications and standards required to perform a screening function;

(2) Has a satisfactory record of performance and attention to duty based on the standards and requirements in the foreign air carrier's security program; and

(3) Demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

8. Add new part 1548 to Chapter XII, subchapter C.

PART 1548—INDIRECT AIR CARRIER SECURITY

Sec.

1548.1 Applicability of this part.

1548.3 TSA inspection authority.

1548.5 Adoption and implementation of the security program.

1548.7 Approval and amendments of the security program.

1548.9 Acceptance of cargo.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44905, 44913-44914, 44916-44917, 44932, 44935-44936, 46105.

§ 1548.1 Applicability of this part.

This part prescribes aviation security rules governing each indirect air carrier engaged indirectly in the air transportation of property on passenger aircraft.

§ 1548.3 TSA inspection authority.

(a) Each indirect air carrier must allow TSA, at any time or place, to make any inspections or tests, including copying records**,** to determine compliance of an airport operator, aircraft operator, foreign air carrier, indirect air carrier, or airport tenant with—

(1) This subchapter, and any security program approved under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each indirect air carrier must provide evidence of compliance with this subchapter and its indirect air carrier security program, including copies of records.

§ 1548.5 Adoption and implementation of the security program.

(a) Security program required. Each indirect air carrier must adopt and carry out a security program that meets the requirements of this section.

(b) General requirements. The security program must:

(1) Provide for the safety of persons and property traveling in air transportation against acts of criminal violence and air piracy and the introduction of any unauthorized explosive or incendiary into cargo aboard a passenger aircraft.

(2) Be in writing and signed by the indirect air carrier.

(3) Be approved by TSA.

(c) Content. Each security program under this part must --

(1) Be designed to prevent or deter the unauthorized introduction of any explosive or incendiary device into any package cargo intended for carriage by air;

(2) Include the procedures and description of the facilities and equipment used to comply with the requirements of §1548.9 regarding the acceptance of cargo.

(d) Availability. Each indirect air carrier having a security program must:

(1) Maintain an original of the security program at its corporate office.

(2) Have accessible a complete copy, or the pertinent portions of its security program, or appropriate implementing instructions, at each office where cargo is accepted. An electronic version is adequate.

(3) Make a copy of the security program available for inspection upon the request of TSA.

(4) Restrict the distribution, disclosure, and availability of information contained in its security program to persons with a need to know, as described in part 1520 of this chapter.

(5) Refer requests for such information by other persons to TSA.

§ 1548.7 Approval and amendments of the security program.

(a) Initial approval of security program. Unless otherwise authorized by TSA, each indirect air carrier required to have a security program under this part must submit its proposed security program to the designated official for approval at least 90 calendar days before the date of intended operations. The proposed security program must meet the requirements applicable to its operation as described in §1540.5. Such request will be processed as follows:

(1) The designated official, within 30 calendar days after receiving the proposed indirect air carrier security program, will either approve the program or give the indirect air carrier written notice to modify the program to comply with the applicable requirements of this part.

(2) The indirect air carrier may either submit a modified security program to the designated official for approval, or petition the Under Secretary to reconsider the notice to modify within 30 calendar days of receiving a notice to modify. A petition for reconsideration must be filed with the designated official.

(3) The designated official, upon receipt of a petition for reconsideration, either amends or withdraws the notice, or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of the petition within 30 calendar days of receipt by either directing the designated official to withdraw or amend the notice to modify, or by affirming the notice to modify.

(b) Amendment requested by an indirect air carrier. An indirect air carrier may submit a request to the designated official to amend its security program as follows:

(1) The request for amendment must be filed with the designated official at least 45 calendar days before the date it proposes for the amendment to become effective, unless a shorter period is allowed by the designated official.

(2) Within 30 calendar days after receiving a proposed amendment, the designated official, in writing, either approves or denies the request to amend.

(3) An amendment to an indirect air carrier security program may be approved if the designated official determines that safety and the public interest will allow it, and if the proposed amendment provides the level of security required under this part.

(4) Within 30 calendar days after receiving a denial, the indirect air carrier may petition the Under Secretary to reconsider the denial. A petition for reconsideration must be filed with the designated official.

(5) Upon receipt of a petition for reconsideration, the designated official either approves the request to amend or transmits the petition, together with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary will dispose of the petition within 30 calendar days of receipt by either directing the designated official to approve the amendment or by affirming the denial.

(c) Amendment by TSA. If safety and the public interest require an amendment, the designated official may amend a security program as follows:

(1) The designated official notifies the indirect air carrier, in writing, of the proposed amendment, fixing a period of not less than 30 calendar days within which the indirect air carrier may submit written information, views, and arguments on the amendment.

(2) After considering all relevant material, the designated official notifies the indirect air carrier of any amendment adopted or rescinds the notice. If the amendment is adopted, it becomes effective not less than 30 calendar days after the indirect air carrier receives the notice of amendment, unless the indirect air carrier petitions the Under Secretary to reconsider no later than 15 calendar days before the effective date of the amendment. The indirect air carrier must send the petition for reconsideration to the designated official. A timely petition for reconsideration stays the effective date of the amendment.

(3) Upon receipt of a petition for reconsideration, the designated official either amends or withdraws the notice or transmits the petition together, with any pertinent information, to the Under Secretary for reconsideration. The Under Secretary disposes of

the petition within 30 calendar days of receipt by either directing the designated official to withdraw or amend the notice or by affirming the amendment.

(d) Emergency amendments. If the designated official finds that there is an emergency requiring immediate action with respect to safety in air transportation or in air commerce that makes procedures in this section contrary to the public interest, the designated official may issue an amendment, without the prior notice and comment procedures in paragraph (c) of this section, effective without stay on the date that the indirect air carrier receives notice of it. In such a case, the designated official will incorporate in the notice a brief statement of the reasons and findings for the amendment to be adopted. The indirect air carrier may file a petition for reconsideration under paragraph (c) of this section; however, this will not stay the effective date of the emergency amendment.

§ 1548.9 Acceptance of cargo.

(a) Preventing or deterring the carriage of any explosive or incendiary. Each indirect air carrier must use the facilities, equipment, and procedures described in its security program to prevent or deter the carriage of any unauthorized explosive or incendiary on board a passenger aircraft in cargo.

(b) Refusal to transport. Each indirect air carrier must refuse to offer for transport on a passenger aircraft any cargo if the shipper does not consent to a search or inspection of that cargo in accordance with this part, and part 1544 or 1546 of this chapter. The indirect air carrier must search or inspect cargo, and must request the shipper for consent to search or inspect cargo, as provided in the indirect air carrier's security program.

9. Add new part 1550 to Chapter XII, subchapter C.

PART 1550— AIRCRAFT SECURITY UNDER GENERAL OPERATING AND FLIGHT RULES

Sec.

1550.1 Applicability of this part.

1550.3 TSA inspection authority.

1550.5 Operations using a sterile area.

1550.7 Operations in aircraft of 12,500 pounds or more.

Authority: 49 U.S.C. 114, 5103, 40119, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105.

§ 1550.1 Applicability of this part.

This part applies to the operation of aircraft for which there are no security requirements in other parts of this subchapter.

§ 1550.3 TSA inspection authority.

(a) Each aircraft operator subject to this part must allow TSA, at any time or place, to make any inspections or tests**,** including copying records, to determine compliance with—

(1) This subchapter and any security program or security procedures under this subchapter, and part 1520 of this chapter; and

(2) 49 U.S.C. Subtitle VII, as amended.

(b) At the request of TSA, each aircraft operator must provide evidence of compliance with this part and its security program or security procedures, including copies of records.

§ 1550.5 Operations using a sterile area.

(a) Applicability of this section. This section applies to all aircraft operations in which passengers, crewmembers, or other individuals are enplaned from or deplaned into a sterile area, except for scheduled passenger operations, public charter passenger operations, and private charter passenger operations, that are in accordance with a security program issued under part 1544 or 1546 of this chapter.

(b) Procedures. Any person conducting an operation identified in paragraph (a) of this section must conduct a search of the aircraft before departure and must screen passengers, crewmembers, and other individuals and their accessible property (carry-on items) before boarding in accordance with security procedures approved by TSA.

(c) Sensitive security information. The security program procedures approved by TSA for operations specified in paragraph (a) of this section are sensitive security information. The operator must restrict the distribution, disclosure, and availability of information contained in the security procedures to persons with a need to know as described in part 1520 of this chapter.

(d) Compliance date. Persons conducting operations identified in paragraph (a) of this section must implement security procedures on October 6, 2001.

(e) Waivers. TSA may permit a person conducting an operation under this section to deviate from the provisions of this section if TSA finds that the operation can

be conducted safely under the terms of the waiver.

§ 1550.7 Operations in aircraft of 12,500 pounds or more.

(a) Applicability of this section. This section applies to each aircraft operation conducted in an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more except for those operations specified in § 1550.5 and those operations conducted under a security program under part 1544 or 1546 of this chapter.

(b) Procedures. Any person conducting an operation identified in paragraph (a) of this section must conduct a search of the aircraft before departure and screen passengers, crewmembers, and other persons and their accessible property (carry-on items) before boarding in accordance with security procedures approved by TSA.

(c) Compliance date. Persons identified in paragraph (a) of this section must implement security procedures when notified by TSA. TSA will notify operators by NOTAM, letter, or other communication when they must implement security procedures.

(d) Waivers. TSA may permit a person conducting an operation identified in this section to deviate from the provisions of this section if TSA finds that the operation can be conducted safely under the terms of the waiver.

Issued in Washington, DC on

John W. Magaw

Under Secretary of Transportation for Security