[9110-05-P]

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1515, 1520, 1522, 1540, 1542, 1544, and 1550

[Docket No. TSA-2008-0021]

RIN 1652-AA53

Large Aircraft Security Program, Other Aircraft Operator Security Program, and Airport Operator Security Program

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Transportation Security Administration (TSA) proposes to amend current aviation transportation security regulations to enhance the security of general aviation by expanding the scope of current requirements and by adding new requirements for certain large aircraft operators and airports serving those aircraft. TSA is proposing to require that all aircraft operations, including corporate and private operations, with aircraft with a maximum certificated takeoff weight (MTOW) above 12,500 pounds ("large aircraft") adopt a large aircraft security program (LASP). This security program would be based on the current security program that applies to operators providing scheduled or charter services.

TSA also proposes to require large aircraft operators to contract with TSA-approved auditors to conduct audits of the operators' compliance with their security programs and with TSA-approved watch-list service providers to verify that their passengers are not on the No Fly and/or Selectee portions of the consolidated terrorist

watch-list maintained by the Federal Government. This proposed rule describes the process and criteria under which auditors and companies that perform watch-list matching would obtain TSA approval.

TSA also proposes further security measures for large aircraft operators in all-cargo operations and for operators of passenger aircraft with a MTOW of over 45,500 kilograms (100,309.3 pounds), operated for compensation or hire. TSA also proposes to require that certain airports that serve large aircraft adopt security programs and amend the security program for full program and full all-cargo operators.

DATES: Submit comments by [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at http://www.regulations.gov. Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; Fax 202-493-2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See SUPPLEMENTARY INFORMATION for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: For program questions: Erik Jensen, Branch Chief-Policy, Plans & Stakeholder Affairs, Office of General Aviation, TSNM, TSA-28, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227–2401; facsimile (571) 227-2920; e-mail LASP@dhs.gov.

For questions regarding Sensitive Security Information (SSI): Andrew Colsky, Director, SSI Office, Office of the Special Counselor (OSC), TSA-31, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220; telephone (571) 227-3513; facsimile (571) 227-2945; e-mail SSI@dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking action. See ADDRESSES above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the rulemaking, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under ADDRESSES**,** but please submit your comments and material by only one means. If you submit

comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file in the public docket all comments received by TSA, except for comments containing confidential information and Sensitive Security Information (SSI)[1]. TSA will consider all comments received on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial, or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the rulemaking. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in FOR FURTHER INFORMATION CONTACT section.

Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access,

[1] "Sensitive Security Information" or "SSI" is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS) FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477), or you may visit http://docketinfo.gov.

You may review TSA's electronic public docket on the Internet at http://www.regulations.gov. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366-9826. This docket operations facility is located in the West Building Ground Floor, Room W12-140 at 1200 New Jersey Avenue, SE, Washington, DC 20590.

Availability of Rulemaking Document

You can get an electronic copy using the Internet by--

(1) Searching the electronic Federal Docket Management System (FDMS) web page at http://www.regulations.gov;

(2) Accessing the Government Printing Office's web page at http://www.gpoaccess.gov/fr/index.html; or

(3) Visiting TSA's Security Regulations web page at http://www.tsa.gov and accessing the link for "Research Center" at the top of the page.

In addition, copies are available by writing or calling the individual in the FOR FURTHER INFORMATION CONTACT section. Make sure to identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

AICPA–American Institute of Certified Public Accountants

ALJ–Administrative Law Judge

AOSC–Aircraft Operator Security Coordinator

AOSSP–Aircraft Operator Standard Security Program

ATSA–Aviation and Transportation Security Act

CFR–Code of Federal Regulations

CHRC–Criminal History Records Check

CJIS–Criminal Justice Information Services

CBP–U.S. Customs and Border Protection

DHS–U.S. Department of Homeland Security

FAMs–Federal Air Marshals

FAA–Federal Aviation Administration

FACAOSSP–Full All-Cargo Aircraft Operator Standard Security Program

FBI–Federal Bureau of Investigation

FISMA–Federal Information Security Management Act

GA–General Aviation

HME–Hazardous Materials Endorsement

IPA–Independent Public Accounting firm

IT–Information Technology

LASP–Large Aircraft Security Program

LEO–Law Enforcement Officer

MTOW–Maximum Certificated Take-Off Weight

NIST–National Institute of Standards and Technology

PPSSP–Partial Program Standard Security Program

PCSSP–Private Charter Standard Security Program

SSI–Sensitive Security Information

STA–Security Threat Assessment

TSC-Terrorist Screening Center

TSA–Transportation Security Administration

TWIC–Transportation Worker Identification Credential

TFSSP–Twelve-Five Standard Security Program

Outline of the Notice of Proposed Rulemaking

I. **Introduction**

The aviation industry is composed of thousands of operators that conduct different types of operations in numerous different types of aircraft. Many aircraft operators are air carriers or commercial operators that offer transportation to the public for compensation or hire. Others are general aviation (GA) operators that do not offer

transportation to the public. These operators often are corporate or private owners of aircraft that operate their aircraft for their own use or provide transportation for compensation or hire only to certain customers without offering transportation to the public in general.[2]

To date, the Federal Government's primary focus with regard to aviation security has been on air carriers and commercial operators that offer transportation for compensation or hire to the public. TSA requires these carriers and operators to develop and operate under a particular security program depending on the precise nature of their operations. A security program is a set of security procedures that will meet the requirements of applicable TSA regulations. For example, a security program would include specific measures to screen cargo, to transport Federal Air Marshals, to use personnel identification systems, and to provide training to employees, if the operator were subject to those requirements in TSA's regulation.

With few exceptions, TSA does not currently require security programs for GA aircraft operators. As vulnerabilities and risks associated with air carriers and commercial operators have been reduced or mitigated, terrorists may view general aviation aircraft as more vulnerable and thus attractive targets. If hijacked and used as a missile, these aircraft would be capable of inflicting significant damage.

The Federal Aviation Administration's (FAA) long-standing definition of "large aircraft" is an aircraft with a maximum certificated takeoff weight (MTOW) of over 12,500 pounds. See 14 CFR 1.1. Based on the aviation industry's familiarity with this definition and TSA's belief that aircraft of this size pose a potential risk, TSA is

[2] There is no statutory or regulatory definition of "general aviation." For the purposes of this NPRM, we use the term to refer to aircraft operations that are not air carriers or commercial, governmental or military operators.

proposing to require security programs for all operators of aircraft—GA or otherwise—that have a MTOW of over 12,500 pounds, excluding certain governmental operations (collectively, "large aircraft operators").[3]

Currently, TSA requires many large aircraft operators that are air carriers or commercial operators to implement security programs such as the Twelve-Five Security Program or the Private Charter Security Program.[4] TSA is proposing to expand this requirement to include previously unregulated large aircraft operators—namely, GA with a MTOW of over 12,500 pounds. Doing so will expand the large aircraft operator population required to have a TSA-approved security program to approximately 10,000 operators from the approximately 650 operators today. In addition, TSA is proposing to establish a single large aircraft security program (LASP) to replace the various security programs used by currently regulated large aircraft operators, such as air carriers and commercial operators. It is TSA's view that the proposed rule would enhance security significantly.

TSA recognizes that this would greatly increase the number and type of operators subject to a TSA-approved security program. TSA invites comments on the weight threshold of aircraft covered by this proposed rule. For instance, parties may choose to comment on whether the security goals discussed herein would be met if security programs were required for GA aircraft only over some greater weight threshold. For example, we explain below that aircraft over 45,500 kg (100,309.3 pounds) MTOW are

[3] In general, aircraft that weigh over 12,500 pounds MTOW are those aircraft equipped with twin turboprop or turbojet engines. Typically corporate and charter aircraft have a seating configuration for 6-8 passengers, while similar aircraft used in scheduled passenger service would likely have 18 or more seats.

[4] Although aircraft operators that are subject to the full program under 49 CFR 1544.101(a), or the full all-cargo program under § 1544.101(h), operate large aircraft, TSA does not include them in references to operators of large aircraft and large aircraft operators for purposes of this NPRM. Full program operators are generally known as the commercial airlines.

currently covered by the "private charter" security program, which includes security measures in addition to those outlined in the "twelve-five" security program. Since incidents involving heavier aircraft have the potential to lead to greater damages and loss of life under one of the scenarios studied in our regulatory impact analysis, we specifically solicit comment on whether this would be a logical alternative weight threshold to consider for the increased security requirements for general aviation. Although TSA has concluded in this NPRM that the security benefits of the lower weight threshold of 12,500 lbs are justified by the risk and therefore justify the additional cost of the lower threshold, we welcome commenters' views on that topic, as well as on the cost-benefit impact of alternate weight thresholds.

Below is a list of the major requirements GA aircraft operators would be required to adopt under the LASP; a more detailed discussion of the LASP and the individual requirements is in sections II and III of this preamble:

- Ensure that their flight crew members have undergone a fingerprint-based criminal history records check (CHRC).
- Conduct watch-list matching of their passengers through TSA-approved watch-list matching service providers.
- Undergo a biennial audit of their compliance by a TSA-approved third party auditor.
- Comply with the current cargo requirements for the twelve-five all-cargo program if conducting an all-cargo operation.
- For aircraft with a MTOW of over 45,500 kilograms operated for compensation or hire, screen passengers and their accessible property.

- Check property on board for unauthorized persons.

In addition, TSA is proposing amendments to its regulations regarding airport security programs.[5] TSA is proposing to require additional airports to adopt security programs, because these airports serve aircraft operators that either currently must carry out a security program or would be required to have a security program under the proposed rule. TSA proposes to require the following airports to adopt a security program:

- Reliever airports, which perform the function of relieving congestion at commercial service airports and provide more GA access to the overall community.
- Airports that regularly serve large aircraft with scheduled or public charter service.

A. Current Aircraft Operator Security Programs

TSA requires security programs for air carriers and commercial operators that require security measures for individuals, property, and cargo aboard aircraft. Currently TSA requires security programs for full program, full all-cargo, partial, private charter, and twelve-five program operators. For full program operators,[6] the standard security program[7] is called an aircraft operator standard security program (AOSSP). For the full all-cargo program operators[8] operating all-cargo aircraft over 45,500 kg MTOW, the standard security program is the full all-cargo aircraft operator standard security program

[5] The regulations are in 49 CFR 1542.101.
[6] 49 CFR 1544.101(a).
[7] A standard security program is a security program issued by TSA that serves as the baseline for a particular type of operator. An aircraft operator's security program consists of the appropriate standard security program, together with any amendments and alternative procedures to the security program, if approved by TSA.
[8] 49 CFR 1544.101(h).

(FACAOSSP). The partial program[9] applies to scheduled passenger or public charter operations in an aircraft with 31 or more, but 60 or fewer passenger seats that does not enplane from or deplane into a sterile area. The standard security program for private charters is the private charter standard security program.[10] For other scheduled or charter flights, or all-cargo operations, in an aircraft with a MTOW of over 12,500 pounds, the standard security program is the twelve-five standard security program.[11]

The full program, the full all-cargo program, the partial program, the private charter program, and the twelve-five program aircraft operators all are covered under TSA regulations in 49 CFR part 1544. They all must hold FAA air carrier operating certificates or FAA operating certificates in accordance with the Federal Aviation Administration (FAA) regulations in 14 CFR part 119.[12] They all engage in interstate common carriage or intrastate common carriage.[13] TSA has also required certain operators not engaged in common carriage to hold and carry out security programs. Operators of aircraft with a MTOW of over 12,500 pounds must conduct operations in accordance with the FAA rules in 14 CFR part 125 (part 125 operators).[14] By notice published in the Federal Register, TSA required these operators to carry out the twelve-five standard security program for operations in aircraft over 12,500 pounds but not over 45,500 kg, and to carry out the private charter standard security program for operations in aircraft over 45,500 kg.[15] These part 125 operators conduct operations when common

[9] 49 CFR 1544.101(b).
[10] 49 CFR 1544.101(f).
[11] 49 CFR 1544.101(d).
[12] 49 CFR 1544.1.
[13] 49 U.S.C. 40102 and 14 CFR 119.21.
[14] 14 CFR 119.23.
[15] 69 FR 61516 (Oct. 19, 2004).

carriage is not involved. They may conduct operations for compensation or hire, however, and they may also conduct operations not for compensation or hire.[16]

Finally, all civil aircraft must operate under FAA regulations 14 CFR part 91, Air Traffic and General Operating Rules. These operators, when not also subject to another FAA regulation, such as part 119 or part 125, are often referred to in the industry as part 91 operators. TSA generally has not required such operators to carry out security measures.

The main objectives of the proposed rule are: (1) to merge the partial, private charter and twelve-five programs into a large aircraft security program and to expand its scope to include general aviation operators using aircraft with a MTOW of over 12,500 pounds; and (2) to enhance the security of these operations.

B. Current Security Programs for Large Aircraft

Large aircraft are operated by a diverse group of air carriers, commercial operators, and GA operators. As stated above, to date, TSA has mandated security programs for the air carrier and commercial operator segments of the aviation industry including scheduled passenger operations, private charters, public charters, and all-cargo operations in large aircraft through the twelve-five program, the partial program, and the private charter program. With limited exceptions, TSA has not required security programs for large aircraft in general aviation.

Large GA aircraft are most often operated by corporate entities, though some large GA aircraft are operated by individuals. Corporate aviation, with a population of approximately 10,000 operators flying 15,000 aircraft, is largely unregulated for security

[16] 14 CFR 119.3 and 119.23. After TSA adopted the full all-cargo program, it required part 125 operators in all-cargo operations using aircraft over 45,500 kg to have and carry out a full all-cargo program. See 71 FR 30478 (May 26, 2006).

purposes. Yet many of these aircraft are of the same size and weight of the air carriers and commercial operators that TSA regulates, and they could be used effectively to commit a terrorist act. Complicating the situation is the fact that many GA operators have the authorization to function under several different FAA regulations and operating certificates, which may require different TSA security programs or no TSA security program at all.

TSA considered developing a new regulatory program to be used solely on GA aircraft and their potential security risks. This decision would have created yet another security program applicable to large aircraft operators. Instead of five separate security programs that would apply to large aircraft operators depending on the type of service they provide, TSA is proposing one security program that would apply to all large aircraft operators (except certain government operations) and would replace the current security programs for partial program operators, twelve-five program operators, and private charter operators. The LASP would establish a consistent set of regulations for air carriers and commercial operators, as well as GA operators using large aircraft. Indeed, LASP would provide large aircraft operators not covered under the full program, or the full all-cargo security program, with one set of regulations that would form the core of their security programs distinct to their operational and security needs.

Table 1 below identifies the different types of large aircraft operators that currently are required to have a security program and the major security requirements for these operators. It also identifies the types of operators that would be subject to the new proposed LASP.

Table 1-Standard Security Programs Applicable to Aircraft Operators

An aircraft operator that operates this type of service, other than all-cargo	In this size aircraft	And	Must have this program #	Currently using this standard security program	Would be using this standard security program under the NPRM
Scheduled passenger or public charter passenger*	61 or more passenger seats		Full Program § 1544.101(a)(1)	AOSSP	No change
Scheduled passenger or public charter passenger*	60 or fewer passenger seats	It enplanes from, or deplanes into, an existing sterile area	Full Program § 1544.101(a)(2)	AOSSP	No change
Scheduled passenger or public charter passenger*	31 or more but 60 or fewer passenger seats	It does not enplane from, or deplane into, an existing sterile area	Partial Program § 1544.101(b)(1)	Partial Program Standard Security Program (PPSSP)	Proposed LASSP**** with component for aircraft greater than 45,500 kg (if applicable)
Scheduled, public charter, or private charter; passenger*	More than 12,500 pounds MTOW	It does not enplane from, or deplane into, an existing sterile area, and it is not under a Full Program or a Partial Program	Twelve-Five Program § 1544.101(d)	Twelve-Five Standard Security Program (TFSSP)	Proposed LASSP

Table 1-Standard Security Programs Applicable to Aircraft Operators

An aircraft operator that operates this type of service, other than all-cargo	In this size aircraft	And	Must have this program #	Currently using this standard security program	Would be using this standard security program under the NPRM
Private charter*	Any size	It enplanes from, or deplanes into, an existing sterile area	Private Charter Program § 1544.101(f)(1)(i)	Private Charter Standard Security Program (PCSSP)	Proposed LASSP with component for aircraft greater than 45,500 kg (if applicable) and alternative procedures for enplaning from or deplaning into an existing sterile area
Private charter*	More than 45,500 kg, OR 61 or more passenger seats	It does not enplane from, or deplane into, an existing sterile area, and it is not a government charter	Private Charter Program § 1544.101(f)(1)(ii)	PCSSP	Proposed LASSP with component for aircraft greater than 45,500 kg
Under an FAA certificate issued under 14 CFR part 125**	More than 45,500 kg MTOW	It is carrying passengers or property for compensation or hire and is not under another TSA security program	§ 1550.7; (69 FR 61516, 10/19/2004)	PCSSP	Proposed LASSP with component for aircraft greater than 45,500 kg or 61 or more seats

Table 1-Standard Security Programs Applicable to Aircraft Operators

An aircraft operator that operates this type of service, other than all-cargo	In this size aircraft	And	Must have this program #	Currently using this standard security program	Would be using this standard security program under the NPRM
Under an FAA certificate issued under 14 CFR part 125**	61 or more passenger seats	It is carrying passengers or property for compensation or hire and is not under another TSA security program	§ 1550.7; (69 FR 61516, 10/19/2004)	PCSSP	Proposed LASSP with component for aircraft greater than 45,500 kg or 61 or more seats
Under an FAA certificate issued under 14 CFR part 125**	More than 45,500 kg MTOW	It is not carrying passengers or property for compensation or hire and not under another TSA security program	§ 1550.7; (69 FR 61516, 10/19/2004)	PCSSP	Proposed LASSP
Under an FAA certificate issued under 14 CFR part 125**	61 or more passenger seats	It is not carrying passengers or property for compensation or hire and not under another TSA security program	§ 1550.7; (69 FR 61516, 10/19/2004)	PCSSP	Proposed LASSP
Under an FAA certificate issued under 14 CFR part 125**	More than 12,500 pounds MTOW	It is not under another TSA security program	§ 1550.7	TFSSP	Proposed LASSP

Table 1-Standard Security Programs Applicable to Aircraft Operators

An aircraft operator that operates this type of service, other than all-cargo	In this size aircraft	And	Must have this program #	Currently using this standard security program	Would be using this standard security program under the NPRM
Operating under 14 CFR part 91 only**	More than 12,500 pounds	It enplanes from, or deplanes into, an existing sterile area	General Aviation Operations using a sterile area § 1550.5	No standard program	Proposed LASSP with alternative procedures for enplaning from or deplaning into an existing sterile area
Operating under 14 CFR part 91 only**	12,500 pounds or less	It enplanes from, or deplanes into, an existing sterile area	General Aviation Operations using a sterile area § 1550.5	No standard program	No change
Operating under 14 CFR part 91 only**	More than 12,500 pounds	It is not under another TSA security program, and does not enplane from or deplane to an existing sterile area	Not required to have a security program	Not required to have a security program	Proposed LASSP
Operating under 14 CFR part 91 only**	12,500 pounds or less	It is not under another TSA security program, and does not enplane from or deplane to an existing sterile area	Not required to have a security program	Not required to have a security program	No change

Table 1-Standard Security Programs Applicable to Aircraft Operators

An aircraft operator that operates this type of service, other than all-cargo	In this size aircraft	And	Must have this program #	Currently using this standard security program	Would be using this standard security program under the NPRM
Passenger operations into and out of Ronald Reagan Washington National Airport (DCA)***	Any size	It is not under a Full Program	DCA Access Program part 1562	DCA Access Standard Security Program (DASSP)	No change
Other operations**	Any size	Is not under any other required program but aircraft operator requests a security program	Limited program § 1544.101(g)	No standard program	No change

* These aircraft operators are considered air carriers or commercial operators.
** These aircraft operators are considered general aviation.
*** May be air carriers, commercial operators, or general aviation operators.
**** After issuing the LASP final rule, TSA would develop and issue a standard security program to implement the LASP called the Large Aircraft Standard Security Program (LASSP).
# Cites in this column are to 49 CFR.

An all-cargo aircraft operator that operates this type of service: ##	**In this size aircraft**	**And**	**Must have this program #**	**Currently using this standard security program**	**Would be using this standard security program under the NPRM**
All-cargo	Greater than 45,500 kg, OR 61 or more passenger seats	Operating under a FAA certificate issued under 14 CFR part 119 or 125	Full All-Cargo Program § 1544.101(h)	Full All-Cargo Aircraft Operator Standard Security Program (FACAOSSP)	No change
All-cargo	Over 12,500 lbs but not over 45,500 kg		Twelve-Five Program in all-cargo operations § 1544.101(d)	TFSSP in all-cargo operations	LASSP with all-cargo component
All-cargo under an FAA certificate issued under 14 CFR part 125	More than 45,500 kg		FACAOSSP	FACAOSSP +	No change

Cites in this column are to 49 CFR.

All-cargo operations carry cargo and authorized persons, but no passengers.

In developing the proposed rule, TSA analyzed the existing security programs to determine which security measures have been effective and would be appropriate for inclusion in the proposed LASP. The LASP would combine the essential elements of some of the current security programs into one consolidated and comprehensive program.

In this rulemaking, TSA is also proposing to reorganize certain existing regulations in 49 CFR part 1544. Specifically, TSA has clarified the meaning of the rule, simplified the text, and harmonized regulations between the different industry populations. This reorganization may affect the currently regulated population in addition to the proposed newly regulated population. TSA is also proposing to reorganize certain sections in 49 CFR part 1544 to account for the proposed addition of the LASP. The reorganization would not make any substantive changes to the regulations.

C. Implementation and Compliance Schedule

Based on industry data, TSA anticipates that this proposed rule would require approximately 10,000 aircraft operators and 315 airport operators, most of whom are not currently required to do so, to implement security programs. Due to the large number of aircraft operators and airport operators that would be required to implement security programs, TSA proposes using a phased approach in the implementation of the proposed rule. The proposed compliance schedule would allow for proper and adequate support and staffing within TSA and also would allow sufficient time for compliance on the part of the newly regulated aircraft operators and airport operators. Following issuance of a final rule, TSA would implement a communication plan commencing with a wide distribution of press releases, web-site postings, and industry association briefings and

meetings. These briefings and meetings would communicate, educate, and confirm which operators would be affected by the final rule, what actions the aircraft operators and airport operators would be required to take to comply with the rule, and the time period within which the aircraft operator and airport operators would be required to submit their applications and other supporting documents. At that time, TSA would provide the process, procedures, and necessary forms to the aircraft operators and airport operators to enable the operators to apply for the large aircraft program, or the airport partial program, via a secure web-board.

TSA's implementation schedule would divide the country into five areas, taking into account which areas of the country contain the largest affected populations of aircraft operators and airport operators. TSA anticipates six phases of compliance, targeting approximately 20 percent of the large aircraft operator and airport operators population that currently do not hold security programs in each of the first five phases. The sixth and final phase would include aircraft operators that currently hold a security program.[17] The following timeline for compliance would start upon the effective date of the final rule, which would be 60 days after publication of the final rule in the Federal Register:

Phase 1, Mid-Atlantic region–months 1-4 after the effective date of the final rule.

Phase 2, North-East region–months 5-8 after the effective date of the final rule.

Phase 3, Southern region–months 9-12 after the effective date of the final rule.

Phase 4, Mid-West region–months 13-16 after the effective date of the final rule.

Phase 5, Western region–months 17-20 after the effective date of the final rule.

Phase 6, Existing security program holders–months 21-24 after the effective date of the final rule.

[17] There are no airport operators that currently hold a partial program.

The phase in which a large aircraft operator would fall would be determined by where the aircraft is based. For large aircraft operators that have multiple bases for their aircraft, the phase would be determined by the location of the large aircraft operator's headquarters. We seek comment on this phased approach and on determining which phase would be applicable to each large aircraft operator based on the location of the aircraft or headquarters.

II. Major Elements in this NPRM

A. Major Requirements in the Proposed Large Aircraft Security Program

To provide greater consistency across all large aircraft operations, the proposed regulation would create the Large Aircraft Standard Security Program (LASSP) to replace the current security programs for partial program operators, twelve-five program operators, and private charter program operators. The major requirements in this proposed rule are based on the requirements in the Twelve-Five and the Private Charter Security Programs.

The proposed LASP provides a core security program for all large aircraft, irrespective of the FAA regulations under which they operate, whether they are air carriers, commercial operators, or GA. Beyond the core requirements for large aircraft with a MTOW of over 12,500 pounds, the proposed LASP would include a component for large aircraft with a MTOW of over 45,500 kilograms operated for compensation or hire. The following is a summary of the major security measures in the proposed LASP.

1. Proposed Core Requirements of the Large Aircraft Security Program in § 1544.103(e)

In TSA's experience, the current Twelve-Five Security Program has proven to be effective in safeguarding the operations of scheduled and charter operations in aircraft

with MTOW of over 12,500 pounds without unduly burdening the aircraft operators. Accordingly, TSA would base the core requirements of the LASP on the Twelve-Five Security Program. The LASP, however, would include additional requirements that would strengthen the existing security measures. Below is a discussion of the major requirements of the LASP.

Security Threat Assessment with Criminal History Records Check for Flight Crew Members

Under the current security programs that apply to large aircraft operators, TSA requires aircraft operators to ensure that their flight crew members have undergone a fingerprint-based criminal history records check (CHRC). TSA views this as an important security measure that should apply to flight crew members of all large aircraft. Pilots are in control of the aircraft and other flight crew members are in the cockpit and could obtain control of the aircraft. Consequently, TSA proposes to require that large aircraft operators ensure that all of their flight crew members undergo a security threat assessment (STA) that includes a CHRC and other analyses, including checks of appropriate terrorist watch-lists and other databases. The list of disqualifying crimes of the CHRC would be the same as for the full and full all-cargo operations. 49 CFR 1544.229 and 1544.230.

After TSA adopted the Twelve-Five Security Program requirements, it became clear that most operators of that size were not well-prepared to conduct adjudication of the CHRCs. Accordingly, while the twelve-five operators have been ensuring that their flight crew members submit their fingerprints, TSA has been adjudicating the criminal histories; that is, TSA reviews the history to determine whether the flight crew member

has a disqualifying criminal offense. TSA is proposing to codify that practice and to charge a fee for the services. See the section-by-section analysis for proposed part 1544, subpart G.

TSA recognizes that a flight crew member may be contracted to work for more than one large aircraft operator. We seek comment on whether the STA should be transferable so that the flight crew member would need to undergo only one STA every five years, regardless of the number of employers the flight crew members may have within the five-year period. Potential employers would check the status of the flight crew member's STA through a mechanism required by TSA.

TSA also is considering ways to positively identify pilots conducting both domestic and international flight operations and effectively link them to the aircraft they are operating. We seek comment and recommended methods for positively identifying pilots and effectively linking them to the aircraft they are operating.

Watch-list Matching of Passengers

The Federal Government maintains a terrorist watch-list. The watch-list, which includes the No Fly List and the Selectee List components of the Terrorist Screening Database maintained by the Terrorist Screening Center (TSC), is the basis for the pre-flight passenger watch-list matching currently conducted by certain aircraft operators. Watch-list matching of passengers on large aircraft is an important security measure, because it can prevent individuals who are believed to pose a risk from boarding a large aircraft and, potentially, gaining control of the aircraft, to use it as a weapon. TSA studies have shown that significant loss of lives and other damage could result from such an incident. Matching passenger information against the No Fly List component of the

terrorist watch-list would identify individuals who, if permitted to board aircraft, may pose a threat to the aircraft and/or persons on board. Matching passenger information against the Selectee List component of the terrorist watch-list also would identify individuals who may be potential threats and would allow TSA and/or the aircraft operators to take appropriate action, if necessary.

Under the current watch-list matching process, TSA provides the No Fly and Selectee List to twelve-five, partial program, and private charter aircraft operators to enable them to conduct the watch-list matching. When an aircraft operator receives passenger information that is similar to, or the same as, a name on the No Fly or Selectee List, the aircraft operator is required to notify law enforcement personnel and TSA in order to determine whether that passenger is in fact the individual listed on the No Fly or Selectee List. The aircraft operator may not board a passenger until TSA has instructed the aircraft operator that the passenger is clear to board the aircraft.

a. Removing watch-list from aircraft operators. Per Homeland Security Presidential Directive-16/National Security Presidential Directive-47, section 4012(a) of the Intelligence Reform and Terrorism Prevention Act,[18] and in support of 9/11 commission recommendations, the U.S. government is in the process of assuming control over watch-list matching in the aviation environment. TSA is concerned that providing the watch-list to approximately 10,000 large aircraft operators as part of the LASP program would increase the risk that the watch-list would be disseminated to unauthorized persons and that the watch-list would be misused and/or compromised. Since it is not possible to bring the watch-list matching function into the federal government in one step, TSA is considering ways to provide this list to a more limited set

[18] Pub. L. 108-458, 118 Stat. 3638, Dec. 17, 2004; 49 U.S.C. 44903 (j)(2).

of holders while TSA considers the most effective method to assume the watch-list matching responsibility from all aircraft operators required to conduct watch-list matching through the Secure Flight program.

TSA recognizes that the Secure Flight program has not yet achieved the operational capability to conduct watch-list matching for general aviation, nor is such capability anticipated by the time TSA would require large general aviation and charter aircraft operators to implement the LASP. Therefore, TSA is proposing a solution for watch-list matching in this NPRM for the time period in which the Secure Flight program does not have the capability to conduct watch-list matching for large aircraft passengers. If TSA is able to develop the capability for the Secure Flight program to conduct watch-list matching for large aircraft passengers, TSA may amend the scope of the Secure Flight program to include large aircraft operators in the final rule for this NPRM.[19]

b. Watch-list Service Providers

Under the proposed rule, TSA would not provide the No Fly List to large aircraft operators, which means that TSA would no longer provide the watch-list to the approximately 800 aircraft operators now receiving it under the twelve-five program, partial program and private charter operators and would not begin providing it to the additional approximately 9,300 general aviation operators that would be under the LASP. Instead, TSA would provide the watch-list to watch-list service providers approved by TSA. Large aircraft operators would transmit their passenger information to these watch-list service providers, who would conduct the automated watch-list matching function and transmit the results back to the large aircraft operators.

[19] For example, proposed § 1560.1(a) may be amended to include large aircraft operators. See Secure Flight NPRM, 72 FR at 48387.

TSA is proposing this approach for two reasons. First, this would greatly reduce the number of entities receiving the watch-list, thus reducing the risk that it would be disseminated to unauthorized persons or misused. Second, having a small number of watch-list service providers conduct watch-list matching in accordance with TSA standards would result in greater consistency in the application of the watch-list matching function. These watch-list service providers will have been determined to have appropriate security, including Information Technology (IT) security and performance capabilities, to perform this important function in the interim. TSA invites comments on the role that watch-list service providers may continue to have if the responsibility for watch-list matching shifts to the U.S. Government in the future. For example, would watch-list service providers offer their services to consolidate passenger information from large aircraft operators and to transmit the passenger information to Secure Flight?

While the watch-list service providers would perform the watch-list matching function, large aircraft operators would have several responsibilities under the proposed rule. Large aircraft operators would be responsible for all costs associated with watch-list matching, including any fee charged by the watch-list service providers.

c. Compliance with CBP programs. Large aircraft operators would not be required to transmit passenger information to their watch-list service providers for any flight for which the large aircraft operator has submitted advance passenger information to U.S. Customs and Border Protection (CBP) under 19 CFR part 122. For passengers on flights in commercial aircraft, as defined in 19 CFR 122.1, the large aircraft operator are required to submit advance passenger information under 19 CFR 122.49a and 122.75a and comply with the CBP boarding instruction regarding each passenger.

TSA notes that CBP published a notice of proposed rulemaking, "Advance Information on Private Aircraft Arriving in and Departing from the United States," proposing to implement certain passenger manifest and advance passenger screening requirements for private aircraft departing foreign ports for U.S. destinations or departing the United States for foreign ports. Under the CBP proposed rule, a private aircraft, in contrast to a commercial aircraft,[20] is generally any aircraft engaged in a personal or business flight to or from the United States that is not carrying passengers and/or cargo for commercial purposes.[21] See 19 CFR 122.1(h). CBP's Advance Passenger Information System (APIS) requirements and proposed eAPIS requirements apply to both U.S.-operated and foreign-operated aircraft.

To avoid process redundancies, DHS would require operators and pilots of private large aircraft that would be subject to this TSA proposed rule and CBP's eAPIS private aircraft regulations to submit their passenger manifest to CBP only and not to watch-list service providers. TSA would deem U.S. operators of private large aircraft to be in compliance with the proposed rule's requirements to submit passenger information for watch-list matching for international flights if the pilot submits passenger information required under the proposed eAPIS regulations. See proposed 19 CFR 122.22.

The TSA and CBP screening processes work in tandem for flights departing foreign ports destined for the United States and flights departing the United States for foreign destinations. If CBP grants the pilot landing rights under 19 CFR 122.49a,

[20] 19 CFR 122.1(d) defines "commercial aircraft" as any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered.
[21] 19 CFR 122.1(h) also defines a private aircraft as any aircraft leaving the United States carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or returning to the United States carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes.

122.75a, or 122.22, TSA would allow the large aircraft operator to permit all passengers, for whom the aircraft operator submitted advance passenger information to CBP, to board the aircraft. If CBP identifies a passenger as a selectee under 19 CFR 122.49a, 122.75a, or 122.22, TSA would allow the large aircraft operator to permit the passenger to board the aircraft, and TSA would require the large aircraft operator to comply with the procedures in its security program pertaining to passengers that are identified as selectees, as discussed in further detail below. If CBP identifies a passenger as "not cleared" under 19 CFR 122.49a, 122.75a, or 122.22, TSA would not allow the large aircraft operator to permit the passenger to board the aircraft. CBP would instruct the large aircraft operator to contact TSA regarding the passenger who has been identified as "not cleared" for further resolution.

d. Passenger information. This proposed rule would require large aircraft operators to request full name, gender, date of birth, and redress number[22] (if available) from all passengers. TSA has determined that an individual's full name, gender, and date of birth are critically important for effective automated watch-list matching of that individual against those individuals on the watch-list.[23] The full name is the primary attribute used to conduct watch-list matching and would be required for all passengers. Partial names would increase the likelihood of false positive matches, because partial names are more likely to match a number of different entries on the watch-list. As a result, this proposed rule would require individuals to provide their full names and would prohibit aircraft operators from boarding a passenger who does not provide a full name. Date of birth and gender would be optional for the passenger. This proposed requirement

[22] The redress number is the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C, as proposed in the Secure Flight NPRM.
[23] See Secure Flight NPRM, 72 FR at 48364.

on passengers to provide the full name is consistent with TSA's proposal in the Secure Flight NPRM. In the Secure Flight NPRM, TSA proposes to require passengers on commercial flights operated by full program operators and foreign air carriers to provide their full name when they make a reservation for a flight. See proposed § 1540.107(b) in the Secure Flight NPRM, 72 FR at 48386.

Many names do not indicate gender, because they can be used by either gender. Additionally, names not derived from the Latin alphabet, when transliterated into English, often do not denote gender. Providing information on gender will reduce the number of false positive watch-list matches, because the information will distinguish persons who have the same or similar names but who are of a different gender. The date of birth is also helpful in distinguishing a passenger from an individual on a watch-list with the same or similar name, thereby reducing the number of false positive watch-list matches.

This proposed rule would also require aircraft operators to request an individual's redress number, if available. DHS will assign this unique number to individuals who use the DHS Traveler Redress Inquiry Program (DHS TRIP), because they believe they have been incorrectly delayed or denied boarding. Individuals may be less likely to be delayed by false positive matches to the watch-list if they provide their redress number, if available.

Under the proposed rule, individuals would not be compelled to provide their gender, date of birth, or redress number when requested by the aircraft operators. However, without this information, the watch-list service provider may be unable to perform effective automated watch-list matching and, as a result, the individuals may be

more likely to be denied boarding, or under certain circumstances, be subject to additional screening. TSA is considering whether to require all individuals to provide their gender and date of birth to assist in the watch-list matching and resolution process.

The proposed rule would require large aircraft operators to transmit to the watch-list service provider the passengers' full names and also transmit the passengers' genders, dates of birth, and redress numbers, to the extent they are available. In addition, the proposed rule would require large aircraft operators to transmit certain information from an individual's passport (full name, passport number, country of issuance, expiration date, gender, and date of birth), if it is available and was provided to the aircraft operator. Based on TSA's experience in conducting security threat assessments that include watch-list matching, TSA has determined that passport information would help resolve possible false positive matches and make the watch-list matching process more accurate.

TSA is not proposing a minimum time in advance of the flight that large aircraft operators would be required to submit passenger information to the watch-list service provider. TSA anticipates that the large aircraft operators would work with their service providers to establish a minimum time that the service provider would need to complete watch-list matching in advance of a flight. Nevertheless, TSA seeks comment on whether it should establish a minimum time for submission of passenger information to the service providers, what that minimum time should be, and the reasons supporting the suggested minimum time.

Upon submission of the passenger information by the aircraft operator to the watch-list service provider, the service provider would conduct the automated vetting of the passenger information provided against the watch-list which is

comprised of the No Fly and Selectee List components of the Terrorist Screening Database. The watch-list service provider would inform the aircraft operator of the results of the watch-list matching by transmitting instructions to the large aircraft operator for each passenger. The large aircraft operator would not be able to permit a passenger aboard an aircraft until the large aircraft operator receives the instructions from the watch-list service provider that would allow the aircraft operator to board the passenger. The large aircraft operator would be required to comply with the instructions.

Upon submission of the passenger information by the aircraft operator to the watch-list service provider, the service provider would conduct the automated comparison using the passenger information provided. If an automated comparison indicates that the passenger is not a match to the watch-list, the service provider would instruct the aircraft operator that the passenger is cleared to board the aircraft. If the automated comparison using the passenger information identifies a potential match to the watch-list, the watch-list service provider would contact TSA for resolution of the potential match. TSA would coordinate with the TSC for resolution if necessary and would provide further instructions concerning the passenger to the service provider.

If TSA cannot determine from the information provided by the watch-list service provider whether the individual is a match to the watch-list, it may be necessary for the passenger to provide additional information to resolve the possible match. In these instances, TSA would inform the watch-list service provider to instruct the large aircraft operator to contact TSA directly to resolve

the possible match between the passenger and the watch-list record, and TSA would provide final instructions concerning the possible match and the passenger's status to the large aircraft operator.

e. Aircraft operator procedures. TSA believes that it is important for large aircraft operators and their pilots, as the in-flight security coordinators, to know whether a passenger is identified as a selectee so they can make appropriate security decisions. If the passenger is identified as a selectee, TSA would allow the large aircraft operator to permit the passenger to board the aircraft. However, TSA would require the aircraft operator to comply with the procedures described in its security program pertaining to passengers identified as selectees. Although TSA would not require large aircraft operators to conduct screening of selectees and their accessible property on a normal basis, if warranted by security considerations, TSA may require some or all large aircraft operators to screen selectees and their accessible property. In this circumstance, TSA would coordinate with the large aircraft operators on the appropriate screening protocols.

If the watch-list service provider instructs the large aircraft operator that a passenger must be denied boarding, the large aircraft operator would not be able to permit the passenger to board unless explicitly authorized by TSA.

Additionally, if the aircraft operator becomes aware that any data element in the passenger information has changed, the large aircraft operator would be required to transmit to the watch-list service provider updated passenger information, which includes the full name, and if available, gender, date of birth, redress number, and passport information. If the large aircraft operator sends updated passenger information to the watch-list service provider for a passenger for whom the service provider has already

transmitted instruction, the large aircraft operator would not be able to permit the passenger on board until the large aircraft operator receives updated instructions from the watch-list service provider. Any previous instruction regarding the passenger would be void; the large aircraft operator would be required to comply with any updated instruction from the service provider.

f. Master passenger list. TSA recognizes that many large aircraft operators carry the same passengers on most or all of their flights and that it would be burdensome for the large aircraft operators to send the required information for the same individuals on each flight. Consequently, the proposed rule includes a provision for a master passenger list. Under this optional proposed provision, individuals on a master passenger list would be subject to continuous vetting of their names against the watch-list.[24] TSA would not require large aircraft operators to transmit information on these passengers every time they are on a flight operated by the large aircraft operator. This master list would be applied for domestic flights only; CBP would require aircraft operators and their pilots to transmit advance passenger information to CBP for international flights departing from or arriving in the United States under CBP's eAPIS NPRM, and passengers would need to present their passports pursuant to CBP regulations.

Prior to collecting passenger information from an individual to place that individual on a master passenger list, the large aircraft operator would be required to inform the individual that he or she would have the option of being placed on the master passenger list, to provide the individual with notice of the purpose and procedures related to a master passenger list, and to obtain from the individual a signed, written statement

[24] The proposed rule would define "continuous vetting" as the process in which the passenger's information is continuously matched against the most current watch-list.

affirmatively requesting that he or she be placed on a master passenger list. These requirements would ensure that individuals would be informed that their inclusion in a master passenger list would be voluntary and contingent upon their providing written consent and that a watch-list service provider would continuously maintain their passenger information and compare the information against the watch-list.

In order to place an individual on the master passenger list, the large aircraft operator would be required to comply with the following: (1) request and obtain the full name, gender, date of birth, redress number, and passport information of the individual; (2) transmit the passenger information and any updated passenger information to a watch-list service provider and designate the individual for continuous vetting; (3) ensure that the watch-list service provider is responsible for continuous vetting for that individual at the time the individual boards an aircraft; (4) receive an instruction that the individual is cleared in response to the initial transmission of passenger information or transmission of updated passenger information; and (5) receive any instruction to prohibit the individual from boarding an aircraft.

g. Aircraft operators under a full program. Under 49 CFR 1544.101(a), TSA requires full program aircraft operators to conduct watch-list matching of their passengers under their security program. Some of the full program aircraft operators also operate flights under the other security programs in 49 CFR 1544.101. Many of these aircraft operators use the same system or process to conduct watch-list matching for their flights operated under their full security program, as well as flights operated under their other security programs. Under the proposed rule, TSA would require full program aircraft operators to transmit the passenger information for passengers on their flights operated

under the LASP to watch-list service providers approved by TSA to conduct the watch-list matching on their behalf. TSA requests comment on whether full program aircraft operators should be permitted to conduct watch-list matching for passengers on flights operated under their LASP using the system or process that they use for flights operated under their full security program, including TSA's Secure Flight Program when it is available.

h. Privacy notice and data retention. TSA would only receive passenger information if the watch-list service provider's automated vetting system identifies an individual as a potential match to the watch-list; this is much like the current practice where aircraft operators conduct watch-list matching pursuant to their security programs. TSA is considering requiring aircraft operators to provide a privacy notice to passengers in the LASP. Most LASP aircraft operators do not have a reservation system and are on-demand operations, such as charter, corporate, fractional, and recreational (friends and family) operations. LASP aircraft operators may find it challenging and burdensome to provide a privacy notice to their passengers when collecting the information. TSA is seeking comments on how a privacy notice could be provided during the collection of information while considering the feasibility, costs, and effectiveness of providing such notice. Should TSA require large aircraft operators to provide a privacy notice on web sites through which passenger service is offered, either on their own web site or through an internet travel web site that offers seats on charter flights, or via other means that would provide notice to passengers on aircraft operated by LASP operators?

TSA is considering data and record retention requirements for records for watch-list service providers and large aircraft operators. TSA seeks comment on whether the

proposed record retention for the Secure Flight Program should be applied to large aircraft operators and watch-list service providers to ensure that personally identifiable information is not retained for longer than necessary. As explained in the Secure Flight NPRM, TSA would retain passenger information for seven days for passengers that are cleared, seven years for passengers that have been identified as potential matches to the watch-list, and 99 years for passengers who are confirmed matches to the watch-list under the Secure Flight Program.[25] If TSA were to require a similar record retention schedule for records collected, transmitted, and received under proposed § 1544.245 and part 1544, subpart F, large aircraft operators' watch-list service providers would retain and destroy passenger information and watch-list matching results in accordance to this schedule. TSA is also considering requiring large aircraft operators and watch-list service providers to retain passenger information for passengers who are cleared, for three years, to facilitate the audit that large aircraft operators would undergo every two years under proposed § 1544.243 and compliance oversight.

i. Secure Flight

As noted above, the long-term plan is for TSA to assume the watch-list matching responsibility from all aircraft operators required to conduct watch-list matching and to conduct the watch-list matching through the Secure Flight Program. Under the current stage of Secure Flight development, Secure Flight will not have the capability to conduct watch-list matching for large aircraft operators for several years.

Under the Secure Flight NPRM, TSA would assume the watch-list matching only for full program operators and certain foreign air carriers. If the Secure Flight Program is capable of assuming the watch-list matching responsibility from large aircraft operators

[25] See Secure Flight NPRM, 72 FR at 48363.

when TSA would require implementation of the LASP, TSA may amend the scope of the Secure Flight regulations to include large aircraft operators in the final rule for this NPRM.

Under the Secure Flight Program, TSA may require large aircraft operators to collect and transmit the same data elements, called Secure Flight Passenger Data (SFPD), to TSA for all passengers that full program operators must collect and transmit for their passengers. Although, in the Secure Flight NPRM, TSA did not propose to cover the large aircraft population in the Secure Flight Program, TSA is proposing, in this LASP NPRM, to align the LASP passenger information requirements with those of the Secure Flight Program. Consequently, the passenger information requirement in proposed § 1544.245 of this LASP NPRM is similar to proposed § 1560.101 in the Secure Flight NPRM.[26] TSA's intent is to align the data requirements of LASP and the Secure Flight Program, so that they match when the final rules are implemented.

The methods for transmitting SFPD to TSA would be described in the standard security program for large aircraft operators. Possible methods of transmission may include a direct connection to TSA, similar to the connection that some full program operators will establish, and an internet-based application. Similar to the requirements proposed for the watch-list service provider, large aircraft operators would not be able to board passengers until they received boarding instructions from TSA. TSA would also require large aircraft operators to comply with the boarding instructions. TSA would transmit the boarding instructions after conducting the watch-list matching of the passengers.

[26] 72 FR at 48388.

TSA has determined that watch-list matching of passengers on large aircraft is an important security measure, because it can prevent individuals who are believed to pose a risk from boarding a large aircraft and, potentially, gaining control of the aircraft, to use it as a weapon or to cause harm to aviation or national security. Such considerations extend beyond the simple use of aircraft as missiles, but also include aircraft as delivery vectors for other catastrophic payloads (e.g., chemical, biological, radiological or nuclear materials). Given the security concerns, TSA believes a reliable mechanism for watch-list matching for large aircraft must be operational without undue delay. The watch-list matching service providers would provide the needed security and do so in a timely fashion. While the Secure Flight Program would also provide a reliable mechanism, its ability to absorb the watch-list matching function for the large aircraft population is likely to be several years away, and it is likely that it would not be available to address this important security need when TSA would be ready to implement the LASP. Thus, TSA believes that the using the watch-list service providers will be the more viable security solution for watch-list matching when TSA is ready to implement the LASP.

While TSA anticipates that Secure Flight would be the long-term mechanism for conducting watch-list matching of passengers, TSA seeks comments on whether the watch-list matching service providers should serve as part of the long-term solution to large aircraft watch-list matching, such as by gathering the passenger information from the aircraft operators and submitting it to TSA for watch-list matching, then receiving the results from TSA. One possible advantage of the watch-list service providers may be that the master passenger list system developed by these providers would remain undisturbed, a convenience for passengers on those lists and the large aircraft operators. Additionally,

TSA seeks comment on whether maintaining the watch-list matching service providers may reduce the costs associated with a transition to the Secure Flight Program. There may also be benefit to TSA in limiting the number of different entities to which the Secure Flight program would maintain direct links, requiring only links with the watch-list service providers, not all large aircraft operators.

Audit Requirement

Due to the large size and widely-dispersed geographical locations of the aircraft operator population that would be subject to this proposed rule, TSA would need an effective mechanism to verify large aircraft operators' compliance with the large aircraft program. While TSA intends to develop a compliance program for, and conduct inspections of, large aircraft operators, it is not possible for TSA to visit approximately 10,000 large aircraft operators on a regular basis.

TSA proposes the use of TSA-approved third-party auditors. These TSA-approved third-party auditors would support existing TSA resources and would enhance compliance with TSA regulations and the aircraft operator's security program. Auditors would conduct audits of large aircraft operators for their compliance with their security program and TSA regulations. The auditors would submit their findings in the manner and form prescribed by TSA. Auditors' reports would assist TSA inspectors in the conduct of compliance inspections as necessary. TSA would use the third-party auditors' reports as one tool in establishing inspection priorities. The audits would also assist large aircraft operators in assessing the security measures in place for their own aircraft.

TSA proposes to require large aircraft operators to contract with TSA-approved auditors to conduct a biennial audit of their compliance with TSA regulations and their

security programs. Large aircraft operators would initially undergo an audit within 60 days of TSA's approval of the large aircraft operators' security program and then every two years thereafter. Large aircraft operators would also be required to provide auditors access to their records, equipment, and facilities necessary for the auditor to conduct an audit. The aircraft operators would receive a copy of the audit report and would be provided an opportunity to submit comments on the audit report to TSA.

In this NPRM, TSA is proposing that large aircraft operators may select any TSA-approved auditor to perform the audit function. However, TSA is considering instituting a system that would assign auditors to large aircraft operators on a random basis in order to assure overall consistency of the auditing program, thereby enhancing security. TSA seeks comment on whether to include a system of assigning auditors in the final rule and on methods of doing so.

As stated above, many full program aircraft operators also operate flights under the private charter program. TSA routinely conducts inspections of full program aircraft operators, and these inspections include any private charter operations the aircraft operators may have. Given these TSA inspections, TSA requests comment on whether it is necessary to require full program aircraft operators that also operate flights under a LASP to contract with a third party auditor to conduct a biennial audit of their operations for compliance with their security program and TSA regulations.

Unauthorized Persons and Accessible Weapons on Board Large Aircraft

TSA would require large aircraft operators to apply security measures in their security program to prevent or deter the carriage of unauthorized persons and unauthorized weapons, explosives, incendiaries, and other destructive substances or items

on board a large aircraft. This proposed security measure is designed to prevent unauthorized persons, such as a stowaway, or accessible weapons, from being placed in a large aircraft. Under the proposed security measure, the large aircraft operator would check for weapons and check any container, cargo, or company material that may be used to hide a stowaway, or explosives, incendiaries, or other destructive substances or items. The security program would describe the method for conducting the checks, such as visual inspection of the exterior of the persons or containers of certain sizes and weights, with further evaluation if necessary. This proposed rule would only apply to property that may be accessible to the cabin of the aircraft. For example, if the property is stowed in a cargo hold that would not allow access to the cabin of the aircraft, then that property would be exempt from inspection.

For purposes of screening passengers on air carrier flights under a full program, TSA considers weapons to include items on its prohibited items list, which is posted on TSA's website at www.tsa.gov. This list includes, among other things, guns, firearms, and certain sharp objects or tools such as knives, including steak knives and pocket knives. TSA is proposing to require large aircraft operators to adopt and carry out procedures to prevent passengers from carrying prohibited items onto the aircraft. We understand, however, that large aircraft operators currently not subject to a TSA security program[27] may have special circumstances that should be considered. TSA seeks comment on the following issues: First, for large aircraft operators that are not carrying persons or property for compensation or hire, should "weapons" be limited to guns and

[27] Private charters and twelve-five operators currently must ensure there are no prohibited items accessible in the cabin.

firearms? Further, should there be a different requirement depending on whether the aircraft has a MTOW of 45,500 kg or less or more than 45,500 kg?

TSA understands that a significant portion of the large aircraft population may not have inaccessible cargo hold compartments, but may have a need to transport weapons, such as when transporting hunters. Therefore, TSA proposes that weapons may be stored in a cargo hold, if the aircraft has such a cargo hold, or may be stored in a locked box in the cabin under the direct control of the in-flight security coordinator. In these instances, the weapons would be considered inaccessible to the persons on board.

Additional Requirements

The LASP would also include the following requirements: designation of Aircraft Operator Security Coordinators, Ground Security Coordinators, and In-Flight Security Coordinators; regulations concerning law enforcement personnel; the carriage of TSA Federal Air Marshals (FAMs) onboard an aircraft; the aviation security contingency plan; and procedures for handling bomb and air piracy threats. These proposed requirements are discussed in further detail in the Section-by-Section Analysis portion of the preamble.

The economic analysis for this NPRM suggests that the aircraft operator security coordinator requirement is the highest-cost measure in this proposed rule, and TSA invites comment on whether there is a more cost-effective means of meeting the same or substantially similar security goals as detailed herein. Although our preliminary view is that the benefits of the security coordinator requirements as proposed justify their costs, we are interested in comment on alternatives. Is there a current industry practice that could provide a suitable alternative? Should certain general aviation operators be exempted from the requirements or portions of the requirements? Are there operational

limitations that prevent aircraft operators from designating security coordinators for multiple flight segments? TSA also invites comments on the use of a single individual for multiple security coordinator roles. Comments that specifically address the costs and benefits of alternatives to the security coordinator requirements would be welcome.

2. Aircraft of MTOW over 45,500 kg or with a Passenger Seating Configuration of 61 Seats or More Operated for Compensation or Hire

TSA has determined that aircraft over 45,500 kilograms or with a passenger seating configuration of 61 seats or more operated for compensation or hire should be subject to increased security requirements. The current private charter program, which applies to aircraft of this size and weight, includes more security measures than the current twelve-five program. Part 125 (14 CFR) operators using this size aircraft also currently must comply with the private charter program. This approach is supported by the International Civil Aviation Organization (ICAO), which requires that aircraft of more than 60 passengers, or with a MTOW of over 45,500 kilograms, be regulated and protected from intrusion and ballistic threats.

Although the private charter program would be merged into the large aircraft program, TSA believes that maintaining a higher level of security for aircraft over 45,500 kilograms, or with a passenger seating configuration of 61 seats or more, operated for compensation or hire would be an important security measure. Thus, for these aircraft, the proposed rule would continue the requirements now in the Private Charter Program for the operators to inspect passengers and their property and to perform CHRCs on their employees who conduct screening.

3. All-Cargo Operations

TSA recently issued a final rule regarding air cargo security, including all-cargo operations in an aircraft with a MTOW over 12,500 pounds. See Final Rule for Air Cargo Security Requirements, 71 FR 30478 (May 26, 2006).[28] Because cargo security remains an important part of aviation security, TSA proposes to retain the requirements for all-cargo operations in the LASP. Consequently, large aircraft all-cargo operations would be required to comply with the cargo requirements in 49 CFR 1544.202 and 1544.205(a), (b), (d), and (f) in addition to the core requirements of the LASP.

The large aircraft all-cargo program would replace the existing Twelve-Five All-Cargo Program. Current aircraft operators that are subject to the Twelve-Five All-Cargo Program would be subject to the proposed requirements for large aircraft in all-cargo operations. Additionally, 14 CFR part 125 operators in all-cargo operations, which currently are required to comply with the Twelve-Five All-Cargo Program, would also be subject to § 1544.202.

All-cargo operations with an aircraft with an MTOW of over 45,500 kilograms currently must use the full all-cargo program and this would be reflected in the rule.

4. Sensitive Security Information

Protection of Sensitive Security Information (SSI), as codified at 49 CFR part 1520, would apply to each aircraft operator operating under the large aircraft program. Airport and aircraft operator security programs and related amendments, Security Directives and Information Circulars, technical specifications of security screening and detection systems and devices, among other types of information, constitute SSI under current § 1520.5 and are

[28] The effective date of the final rule was Oct. 23, 2006.

prohibited from public disclosure. Watch-list service providers' instructions to the large aircraft operators would also be SSI. The SSI regulations would apply to LASPs as well.

Access to SSI is strictly limited to those covered persons with a need to know, as defined in 49 CFR 1520.7 and 1520.11. In general, a person has a need to know specific SSI when he or she requires access to the information to carry out transportation security activities that are government-approved, -accepted, -funded, -recommended, or -directed, including for purposes of training on, and supervision of, such activities or to provide legal or technical advice to airport operators, aircraft operators or their employees regarding security-related requirements. Accordingly, the protection of SSI would apply to each large aircraft operator operating under a security program pursuant to § 1544.101(b).

5. Existing and Proposed Requirements for Large Aircraft

Table 2 below illustrates the requirements for large aircraft operators and whether these requirements would be new or modified for current holders of security programs. The table indicates how the proposed rule would affect the current large aircraft operators. The first column describes the proposed content requirements for the LASP. The remaining five columns list five types of aircraft operators that would be required to adopt and implement the large aircraft security program under the proposed rule. The table indicates whether each type of aircraft operator is currently required to comply with each content requirement of the proposed LASP or whether the proposed content requirement is a new requirement for the aircraft operator. Additionally, as part of this rule, TSA would modify some of the content requirements for the current Twelve-Five

Security Program and the Private Charter Security Program. The table also indicates existing requirements that would be modified under the proposed rule.

Table 3 compares the proposed large aircraft program with the Full Program and the Full All-Cargo Program.

Table 2-Regulatory Requirements for Large Aircraft

Description of Proposed LASP Requirement	Scheduled or Charter Operations Required to Have a Twelve-Five Program	All-Cargo Operations Required to Have a Twelve-Five Program	Private Charters Required to Have a Private Charter Program	Scheduled or Charter Operations in Aircraft with 31-60 Seats Required to Have a Partial Program	Large Aircraft Operators Not Currently Required to Have a Security Program
Acceptance & screening of individuals and accessible property (§ 1544.201)	Does not apply	Does not apply	Currently applies and would continue	Does not apply	Does not apply
Acceptance and screening of cargo (§ 1544.205)	Does not apply	Currently applies and would continue	Does not apply	Does not apply	Does not apply
Persons and property on board a large aircraft (§ 1544.206)	New requirement	Does not apply	New requirement	New requirement	New requirement
Screening of individuals and property (§ 1544.207)	Does not apply	Does not apply	Currently applies and would continue	Does not apply	Does not apply
Required to have security coordinators (§ 1544.215)	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	New requirement

Table 2-Regulatory Requirements for Large Aircraft

Description of Proposed LASP Requirement	Scheduled or Charter Operations Required to Have a Twelve-Five Program	All-Cargo Operations Required to Have a Twelve-Five Program	Private Charters Required to Have a Private Charter Program	Scheduled or Charter Operations in Aircraft with 31-60 Seats Required to Have a Partial Program	Large Aircraft Operators Not Currently Required to Have a Security Program
Provision of law enforcement personnel at airports serving the aircraft operators (§ 1544.217)	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	New requirement
Carriage of accessible weapons on board aircraft (§ 1544.219)	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	New requirement
Requirement to transport FAMs (§ 1544.223)	Currently applies; would be modified	Currently applies; would be modified	New requirement	Currently applies; would be modified	New requirement
Provide for security of aircraft and facilities (§ 1544.225)	New requirement	New requirement	Currently applies and would continue	New requirement	New requirement

Table 2-Regulatory Requirements for Large Aircraft

Description of Proposed LASP Requirement	Scheduled or Charter Operations Required to Have a Twelve-Five Program	All-Cargo Operations Required to Have a Twelve-Five Program	Private Charters Required to Have a Private Charter Program	Scheduled or Charter Operations in Aircraft with 31-60 Seats Required to Have a Partial Program	Large Aircraft Operators Not Currently Required to Have a Security Program
Security training for security coordinators and crew (§ 1544.233)	New requirement	New requirement	Currently applies and would continue	New requirement	New requirement
Training Program - Individual security-related duties (§ 1544.235)	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	New requirement
Program to permit passengers to provide volunteer emergency services (§ 1544.241)	New requirement	New requirement	New requirement	New requirement	New requirement
Required to undergo third-party audits (§ 1544.243)	New requirement	New requirement	New requirement	New requirement	New requirement

Table 2-Regulatory Requirements for Large Aircraft

Description of Proposed LASP Requirement	Scheduled or Charter Operations Required to Have a Twelve-Five Program	All-Cargo Operations Required to Have a Twelve-Five Program	Private Charters Required to Have a Private Charter Program	Scheduled or Charter Operations in Aircraft with 31-60 Seats Required to Have a Partial Program	Large Aircraft Operators Not Currently Required to Have a Security Program
Required to send flight manifest to approved vendor for watch-list matching of passengers (§ 1544.245)	New requirement	New requirement	New requirement	New requirement	New requirement
Security threat assessment with criminal history records check for flight crew (part 1544, subpart G)	New requirement	New requirement	New requirement	New requirement	New requirement
Develop and implement contingency plan in response to threats (§§ 1544.301(a) & (b))	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	New requirement
Bomb and hijacking threats (§ 1544.303)	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	New requirement

Table 2-Regulatory Requirements for Large Aircraft

Description of Proposed LASP Requirement	Scheduled or Charter Operations Required to Have a Twelve-Five Program	All-Cargo Operations Required to Have a Twelve-Five Program	Private Charters Required to Have a Private Charter Program	Scheduled or Charter Operations in Aircraft with 31-60 Seats Required to Have a Partial Program	Large Aircraft Operators Not Currently Required to Have a Security Program
Comply with security directives and information circulars (§ 1544.305)	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	Currently applies and would continue	New requirement

Table 3-Comparison of Aircraft Operator Security Programs

Description of Security Requirement	Full Program Operators	Full All-Cargo Program Operators	Proposed Large Aircraft Program Operators
Acceptance & screening of individuals and accessible property (§ 1544.201)	X		X
Screening of individuals and property (watch-list & accessible weapons) (§ 1544.202)		X	X
Acceptance and screening of checked baggage (§ 1544.203)	X		
Acceptance and screening of cargo and accessible property (§ 1544.205)	X	X	X
Check property on board (§ 1544.206)			X
Screening of individuals and property (§ 1544.207)	X	X	X
Use of metal detection devices (§ 1544.209)	X	X	
Use of X-ray systems (§ 1544.211)	X	X	
Use of explosives detection systems (§ 1544.213)	X		
Required to have security coordinators (§ 1544.215)	X	X	X
Provision for law enforcement personnel at airports serving the aircraft operators (§ 1544.217)	X	X	X
Carriage of accessible weapons on board aircraft (§ 1544.219)	X	X	X
Carriage of prisoners under the control of armed law enforcement officers (§ 1544.221)	X		

Table 3-Comparison of Aircraft Operator Security Programs

Description of Security Requirement	Full Program Operators	Full All-Cargo Program Operators	Proposed Large Aircraft Program Operators
Requirement to transport FAMs (§ 1544.223)	X	X	X
Provide for security of aircraft and facilities (§ 1544.225)	X	X	X
Exclusive area agreements (§ 1544.227)	X	X	
Access to cargo and security threat assessments for cargo personnel in the United States (§ 1544.228)	X	X	
CHRC: Unescorted access to SIDA, screening, baggage/cargo checks (§ 1544.229)	X	X	
CHRC: Flight crew members (§ 1544.230)	X	X	
Airport-approved and exclusive area personnel identification systems (§ 1544.231)	X	X	
Security training for security coordinators and crew (§ 1544.233)	X	X	X
Training Program - Individual security-related duties (§ 1544.235)	X	X	X
Flight deck privileges (§ 1544.237)	X	X	
Program to permit passengers to provide volunteer emergency services (§ 1544.241)	X		X
Required to undergo third-party audits (§ 1544.243)			X

Table 3-Comparison of Aircraft Operator Security Programs

Description of Security Requirement	Full Program Operators	Full All-Cargo Program Operators	Proposed Large Aircraft Program Operators
Required to send flight manifest to approved vendor for watch-list matching of passengers (§ 1544.245)			X
Security threat assessment with criminal history records check for flight crew, individuals authorized to perform screening functions, applicants to become TSA-approved auditors, and watch-list service provider cover personnel (Part 1544, subpart G)			X
Develop and implement contingency plan in response to threats (§ 1544.301)	X	X	X
Bomb and hijacking threats (§ 1544.303)	X	X	X
Comply with security directives and information circulars (§ 1544.305)	X	X	X

B. Proposed Requirements for Certain Airports

Currently, the regulations extend airport security program requirements to airports that regularly serve aircraft operations using full programs, partial programs, private charter programs, and corresponding foreign air carriers.[29] These regulations for airport operators provide for the safety and security of persons and property on an aircraft operating in air transportation against an act of criminal violence and aircraft piracy. An enhanced security environment at the airports where large aircraft operate would support

[29] 49 CFR 1544.101(a), (b), and (f), and 1546.101(a), (b), (c), and (d). However, there are no airports that currently hold a security program because they regularly serve an aircraft operator holding a partial program or a private charter program, or their foreign air carrier equivalent.

enhanced security for the large aircraft. Thus, as part of the proposal to provide security for large aircraft through a large aircraft program for aircraft operators, TSA also proposes to require certain airports that serve large aircraft to adopt a security program.

There are thousands of GA airports that serve large aircraft. TSA considered the heavy burden involved for all these airports to adopt a security program. Many are very small and may have limited resources and limited large aircraft activity. TSA proposes to require two types of airports to hold a security program because of the type of service they provide.

The first type of airport that would be required to hold a partial program is a GA airport that is designated as a "reliever" airport by the Secretary of Transportation, as defined in 49 U.S.C. 47102(22). These airports perform the function of relieving congestion at a commercial service airport by diverting GA from the commercial services airport to the reliever airport and provide more GA access to the overall community. Reliever airports are generally near metropolitan areas and thus serve and are close to large populations–thus the need for greater security at these airports.

The second type of airport is an airport that regularly serves scheduled or public charter operations in large aircraft. These operations have fare-paying passengers on a regular basis. TSA proposes to require these airports to adopt the partial program. This program would provide a basic level of security enhancement to compliment and support the security measures that TSA would require large aircraft operators to adopt and implement.

Table 4 below illustrates how the proposed rule would affect the various types of airports. Table 5 compares the three types of airport security programs—complete

program, supporting program, and partial program. TSA believes that the requirements of the partial program for airport operators would not be burdensome for reliever airports, and airports that regularly serve scheduled or public charter operations, to adopt and carry out. TSA also believes that the requirement for these airports to implement security programs will not place a significant burden on local law enforcement agencies, because TSA expects that there will be few incidents requiring law enforcement response at these airports.

Table 4-Airport Operator Security Programs

An airport operator must have this program	Current: If it regularly serves aircraft operations under these security programs in 49 CFR	Proposed: If it meets the following criteria:
Complete program § 1542.101(a)	full program under § 1544.101(a)(1); or foreign air carrier program under § 1546.101(a)	No change
Supporting program § 1542.101(b)	full program under § 1544.101(a)(2); or private charter program under § 1544.101(f); or foreign air carrier program under § 1546.101(b); or foreign air carrier program under § 1546.101(c)	Regularly serves full program aircraft operator under § 1544.101(a)(2) (no change); or Regularly serves foreign air carrier aircraft operator program under § 1546.101(b) (no change); or Regularly serves foreign air carrier under § 1546.101(c) (no change)
Partial program § 1542.101(c)	partial program under § 1544.101(b); or foreign air carrier program under § 1546.101(d)	Regularly serves large aircraft operator in scheduled or public charter passenger operations under § 1544.101(b); or Is a reliever airport
None required*	twelve-five program under § 1544.101(d)	Large aircraft not described above
None required*	limited program under § 1544.101(g)	No change
None required*	full all-cargo program under § 1544.101(h)	No change

* TSA may enter airports to inspect an aircraft operator that is operating under a part 1544 or 1546 security program. 49 CFR 1542.5(e).

Table 5-Comparison of Airport Security Programs

Description of Security Requirement	Complete Program	Supporting Program	Partial Program
Designate Airport Security Coordinator (§ 1542.3)	X	X	X
Description of secured areas of the airport	X		
Description of the Airport Operations Area	X		
Description of the Security Identification Display Area (SIDA)	X		
Description of the sterile area	X		
Criminal history records check of airport operator, airport user, individuals with unescorted access to a SIDA, and individuals seeking unescorted access authority	X		
Description of personnel identification systems (§ 1542.211)	X		
Escort procedures (§ 1542.211(e))	X		
Challenge procedures (§ 1542.211(d))	X		
Training program for individuals performing security-related functions for the airport operator (§ 1542.213)	X		
Training program for law enforcement personnel (§ 1542.217(c)(2)	X	X	X
Description of law enforcement support	X	X	X
System for maintaining records (§ 1542.221)	X	X	X
Procedures and description of facilities and equipment used to support TSA inspection of individuals, property, and aircraft operator and foreign air carrier screening functions	X		
Contingency plan (§ 1542.301)	X	X	

Table 5-Comparison of Airport Security Programs

Description of Security Requirement	Complete Program	Supporting Program	Partial Program
Procedures for the distribution, storage, and disposal of Sensitive Security Information (including security program, Security Directives, Information Circulars, and implementing instructions), and, as appropriate, classified information	X	X	X
Procedures for posting of public advisories (§ 1542.305))	X	X	X
Incident management procedures (§ 1542.307)	X	X	X
Alternate security procedures, if any, that the airport intends to use in the event of natural disasters, and other emergency and unusual conditions.	X		
Exclusive area agreement (§ 1542.111)	X		
Airport tenant security program (§ 1542.113)	X		

In addition to the two types of airports in the proposed rule text, TSA requests comments on whether other types of airports should also be required to adopt a security program, such as the partial program. For example, should TSA require airports that regularly serve aircraft used in private charter operations–aircraft with MTOW of over 45,500 kilograms or a passenger seating configuration of 61 or more seats–to adopt a partial program? If TSA were to adopt such an approach, how should TSA determine whether an airport "regularly serves" a large aircraft with MTOW of over 45,500 kilograms or a passenger seat configuration of 61 or more seats? Should TSA require airports that serve any large aircraft with MTOW of over 45,500 kilograms or a

passenger seat configuration of 61 or more seats to adopt a partial program, regardless of frequency?

In addition to the proposed amendments to § 1542.101(b) and (c), TSA is seeking comments on whether the content requirements of the partial program and the supporting program should be amended. For example, TSA is considering whether it should require airport security coordinators at locations with partial programs to undergo the same security training that airport security coordinators at locations with a supporting or complete program under § 1542.3 undergo or whether a shorter training program would be appropriate.

TSA is also considering whether airport operators should be required to undertake a risk-based self assessment of their security programs. The "TSA Information Publication (A-001), Security Guidelines for General Aviation," includes the Airport Characteristic Measurement Tool, which lists the most significant airport characteristics that can potentially affect a facility's security posture.

TSA may develop a computer based training, available online or in a DVD format, which incorporates GA security awareness, elements of the existing "TSA Information Publication (A-001), Security Guidelines for General Aviation Airports," and industry best practices. Airport operators may be able to use this training and accompanying self-assessment tool to fulfill a risk-based self assessment should TSA decide to include it as part of the partial program.

C. Passenger Checking Against the Watch-list

As discussed above in section II.A of the preamble, the proposed rule would require large aircraft operators to transmit passenger information to third-party entities

called watch-list service providers to conduct watch-list matching of their passengers. Because watch-list service providers would perform an important security function, TSA is proposing to require potential watch-list service providers to obtain approval from TSA prior to conducting watch-list matching for any large aircraft operator. The proposed approval process would ensure that the watch-list service provider has the appropriate personnel and systems to process and keep secure sensitive and personally identifiable information.

The following are the major requirements that potential watch-list matching service providers would have to satisfy to obtain approval from TSA. The individual requirements are described and discussed in further detail in the section-by-section analysis of proposed § 1544.503.

- Demonstrate ability to conduct automated watch-list matching and continuous vetting.
- Adopt and implement a system security plan for the system that contains personally identifiable information or is used to conduct watch-list matching.
- Demonstrate ability to receive passenger information from large aircraft operators and transmit watch-list matching results back to large aircraft operators.
- Successfully undergo a suitability assessment by TSA.
- Watch-list service provider's covered personnel would be required to successfully complete security threat assessments.
- Adopt a security program that complies with TSA requirements.

The proposed rule describes the approval process that would apply and includes a provision allowing prospective watch-list service providers to seek reconsideration of an initial disapproval.

Once TSA approves a watch-list service provider, the provider would have several responsibilities. TSA lists the major responsibilities below and then describes them in greater detail in the section-by-section analysis of proposed §§ 1544.513 and 1544.515.

- Carry out its security program, which details the requirements for conducting watch-list matching, security of the systems and physical property used to conduct watch-list matching, and training of personnel.
- Develop and execute procedures to identify, handle, and protect Sensitive Security Information and maintain the confidentiality of other information provided by TSA and aircraft operators.
- Submit to inspection by TSA.

Under the proposed rule, TSA would retain the authority to withdraw a watch-list service provider's approval to conduct watch-list matching if the watch-list service provider failed to meet the qualification requirements or its responsibilities under the rule or if it were in the interest of transportation or national security. Watch-list service providers would be able to seek reconsideration of the withdrawal of approval to conduct watch-list matching from the Assistant Secretary or designee.

D. Third-Party Audits for Large Aircraft Operators

As described in section II.A of this NPRM, TSA would require large aircraft operators to contract with TSA-approved auditors to conduct audits of their compliance

with TSA regulations and their security programs. To ensure that auditors have the qualification and responsibilities to produce audits that would be useful to TSA and the large aircraft operators and to identify, handle, and protect Sensitive Security Information and other sensitive information, TSA proposes the following major qualifications and responsibilities that would apply to auditors. These qualifications and responsibilities, as well as other requirements, are described and discussed in further detail in the section-by-section analysis of proposed part 1522.

- Successfully undergo a TSA security threat assessment.
- Currently hold or be able to obtain a certification or accreditation from an organization recognized by TSA.
- Have sufficient knowledge and skills to conduct a security audit of an aircraft operator.
- Receive initial and biennial training.
- Conduct independent and impartial audits, submit audit reports to TSA, and retain audit reports for 36 months.
- Identify, handle, and protect Sensitive Security Information and keep confidential other information provided by TSA and large aircraft operators.
- Submit to inspection by TSA.

The proposed rule describes the approval process that would apply to auditors. Auditors would be able to seek reconsideration of the disapproval to be a TSA-approved auditor from the Assistant Secretary or designee.

Under the proposed rule, TSA would be able to withdraw approval of an auditor or responsibilities under the proposed rule or in the interest of transportation or national

security. Auditors would be able to seek reconsideration of the withdrawal of approval to conduct audits from the Assistant Secretary or designee.

E. Proposed Amendments to the Full Program and the Full All-Cargo Program

As part of this NPRM, TSA is also proposing a few minor amendments to the full program and the full all-cargo program. TSA proposes to require these aircraft operators to provide the following information when they submit their security program for approval under § 1544.105: business name; other names including "doing business as;" state of incorporation; tax identification number; and the address of the aircraft operator's primary place of business or headquarters. This information would provide TSA the means to identify the aircraft operators and to obtain basic information about the aircraft operator in the course of reviewing a new security program for approval.

Additionally, TSA proposes to add a provision of voluntary services to the full program and the full all-cargo program, as explained in further detail in the section-by-section analysis of proposed § 1544.241. Finally, as explained in the section-by-section analysis of § 1544.101, TSA proposes to clarify that the full program applies to operators holding FAA operating certificates under 14 CFR part 119 and that the full all-cargo program applies to operators holding FAA operating certificates under 14 CFR part 119 or part 125.

III. Section-By-Section Analysis

The proposed rule sets forth the security regulations that would apply to large aircraft operators, including the requirements for the security program. TSA is also proposing to amend several other sections of part 1544 and adding new subparts F and G to set forth the procedures for watch-list service providers to obtain TSA approval and for

large aircraft flight crews, auditors, and watch-list service providers' covered personnel to obtain security threat assessments, respectively. TSA is proposing to add a new provision in part 1540 to govern withdrawals of approved security programs. In addition, TSA is proposing to add a new part 1522, which establishes procedures for accrediting third-party auditors and for prescribing their functions in the LASP program. With respect to airports serving large aircraft, TSA is proposing to amend portions of part 1542 by regulating reliever airports, as designated by the Secretary of Transportation. TSA is also proposing changes to part 1520 to include the proposed LASP in the coverage of the regulations regarding Sensitive Security Information and minor changes to part 1550 to maintain consistency between regulations.

PART 1520--PROTECTION OF SENSITIVE SECURITY INFORMATION

Section 1520.5 Sensitive Security Information

TSA proposes to amend § 1520.5(b)(1)(i) to protect watch-list service provider security programs as Sensitive Security Information. The watch-list service provider would have access to, and handle information on, the No Fly and Selectee Lists, which are SSI. The proposed change to this section would protect this SSI from unauthorized disclosure by the TSA-approved auditor, the watch-list service provider, the aircraft operator, or any other covered person.

Section 1520.7 Covered persons

As explained in the section-by-section analysis of proposed part 1522 and § 1544.243, TSA would require large aircraft operators to engage independent TSA-approved auditors to audit their compliance with their security programs and TSA regulations. TSA-approved auditors would have access to and handle SSI regarding the

aircraft operator and TSA security standards as they relate to large aircraft operators. Similarly, the watch-list service provider would have access to and handle the No Fly and Selectee Lists, which are SSI. Accordingly, TSA would amend § 1520.7(a) to include TSA-approved auditors and watch-list service providers as covered persons that are subject to the requirements of part 1520 as they apply to SSI.

PART 1522--TSA APPROVED AUDITORS

As described in section II.D, aircraft operators subject to this rule would need to engage independent TSA-approved auditors to audit their compliance with their security programs. TSA is proposing a new part 1522 to establish a framework for this new third-party auditor program. This third-party auditor program would initially apply only to aircraft operators under the LASP. TSA may expand its use to other programs in the future. The broad scope of part 1522 would allow TSA to use the process set forth in part 1522 for other programs that it may determine may benefit from an audit program.

Part 1522 would have two components: (1) qualifications and procedures for individuals who seek TSA's approval for conducting audits; and (2) specific qualifications and required content of audit reports for the LASP. The first of these components would apply to all programs in which TSA would require third-party auditors. The second component would apply to the LASP.

Subpart A--General

Section 1522.1 Scope and Terms Used in This Part

Proposed § 1522.1 explains that individuals who wish to conduct audits of operators' compliance with security programs must obtain TSA's approval in accordance with part 1522. Section 1522.1 also defines terms used in the subpart. Proposed

§ 1522.1 defines "applicant" to mean the individual who is seeking to become a TSA-approved auditor.

Section 1522.1 defines "conflict of interest" as a situation when the TSA-approved auditor has a personal impairment that might affect their ability to do their work and report their findings impartially. This definition is derived from the Government Auditing Standards established by the Government Accountability Office (GAO) for ensuring that auditors do not have personal impairments that would interfere with their ability to maintain their independence. The proposed definition includes examples of conflict of interest situations, such as family or employment relationships. Relationships with family members that may be a conflict of interest would include relationships with parents, children, and siblings.

Other proposed examples of conflict of interest include financial relationships and business relationships between the auditor and the operators to be audited. Financial interest would include, for example, the auditor owning stocks or bonds of the operator or the auditor having an employment, rather than a contractual, relationship with the operator. Examples of business relationships that would give rise to a conflict of interest would be where the auditor had previous decision-making or managerial authority that would affect current operations or program being audited. Additionally, an auditor or the company that employs the auditor would not be able to provide non-audit services to the operator if the non-audit services relate to the operator's security program. TSA seeks comments on these examples as well as suggestions for other examples that TSA should consider. TSA is also considering expressing the conflict of interest concept as auditor independence. Rather than defining and prohibiting conflicts of interest, TSA would

define independence and would require an auditor to have independence from the entity the auditor would audit. If TSA were to adopt a definition of "independence" in the final rule, the definition of "independence" would describe circumstances similar to those described in the proposed definition of "conflict of interest." This approach would be consistent with the GAO's Government Auditing Standards and the Securities and Exchange Commissions regulations at 17 CFR 210.2-01 concerning audits by certified public accountants.

The final definition in proposed § 1522.1 is "TSA-approved auditor" or "auditor." These terms would mean an individual who has been approved under proposed part 1522 to conduct an audit under 49 CFR chapter XII.

Section 1522.3 Qualifications

Section 1522.3 would establish qualifications for third-party auditors that would apply to such auditors in any program in which TSA would require their use. These qualifications are designed to ensure that auditors have the resources and expertise required to conduct an audit and to prepare the required reports. With respect to qualifications, TSA is proposing that auditors have experience with Federal statutes and regulations and have a certification or accreditation from a highly-regarded organization in the appropriate field. Such an organization might include, for example, the International Standards Organization. For auditors that would be involved with the large aircraft program, the International Civil Aviation Organization or the International Business Aviation Council would also be acceptable. TSA would make publicly available a list of acceptable accreditation or certification organizations. TSA requests comments on whether this qualification is appropriate and on other organizations that

might have the stature to provide the necessary certification or accreditation.

Finally, applicants would be required to undergo a successful security threat assessment that includes a criminal history records check.

The proposed rule text does not require auditors to be U.S. citizens, U.S. nationals, or lawful permanent residents of the United States. We invite comments on whether individuals with these important duties should be subject to such a qualification.

Section 1522.5 Application

Proposed § 1522.5 describes the information and documentation that applicants would be required to submit to TSA. The information would include the applicant's name, business address, business phone number, and business email address. TSA would also require the applicant to submit a copy of his or her accreditation or certification from one of the organizations TSA determines are acceptable for this purpose and a statement of how he or she meets the requirements in proposed § 1522.3.

Section 1522.7 TSA Review and Approval

Proposed § 1522.7 describes the review and approval process which TSA would carry out upon receipt of the auditor's application. The procedures by which TSA would review applications for the third-party auditor program may involve several steps. After TSA receives an application, TSA would decide whether to approve or disapprove the application and would send a written notice of approval or disapproval to the applicant. If the application is disapproved, the applicant would be able to seek reconsideration under proposed § 1522.9.

Section 1522.9 Reconsideration of Disapproval of an Application

Proposed § 1522.9 describes the review and petition process for reconsideration of disapproval of the auditor's application. If an applicant seeks to challenge the disapproval of his or her application, the applicant would be required to submit a written petition for reconsideration within 30 days of receipt of the notice of disapproval. The petition would include a statement explaining why the applicant believes he or she meets the criteria in § 1522.3 with any supporting documentation. Reconsideration may result in confirmation of the disapproval or in a determination that the application should be approved.

Section 1522.11 Withdrawal of Approval

Under proposed § 1522.11, TSA would be able to withdraw the approval of an auditor if the auditor ceased to meet the qualification standards, the auditor failed to meet his or her responsibilities, or it is in the interest of security or the public. If TSA withdraws an auditor's approval, the auditor would no longer be able to perform an audit under TSA regulations.

Under proposed § 1522.11, before revoking an auditor's authority, TSA would provide the auditor with a proposed notice of withdrawal of approval that would include the basis for the withdrawal of approval. The auditor would be able to file a written petition for reconsideration to challenge the proposed notice. To challenge the proposed notice of withdrawal of approval, an auditor would be required to submit the petition for reconsideration within 30 days of receipt of the proposed notice. Reconsideration may result in confirmation of the disapproval or in a determination that the application should be approved. If the auditor does not file a petition for reconsideration, the proposed

notice of withdrawal of approval would become a final notice 31 days after the auditor receives the proposed notice.

In emergency situations, proposed § 1522.11 would allow TSA to issue an emergency notice of withdrawal of approval that would be effective upon receipt by the auditor. The auditor would be able to challenge the emergency notice of withdrawal of approval by submitting a written petition for reconsideration but submission of the petition would not stay the withdrawal of approval.

Section 1522.13 Responsibilities of TSA-Approved Auditors

Proposed § 1522.13 prescribes the responsibilities of TSA-approved auditors. Auditors would not be allowed to undertake an audit where the auditor had a conflict of interest as defined in proposed § 1522.1. Auditors would be required to submit reports to TSA that meet TSA standards for the particular program. Auditors would be required to comply with TSA's regulations for identifying, handling, and protecting SSI. Under this section, auditors would also be prohibited from disclosure of any proprietary information. Importantly, if an auditor conducting an audit believes that there is an instance of noncompliance that presents an imminent threat to transportation security or public safety, the auditor would be required to notify TSA immediately. The auditor would not be authorized to require any remedial action.

Section 1522.15 Fraud and Intentional Falsification of Records

Proposed § 1522.15 includes provisions that would prohibit any person from making or providing any fraudulent statements, reports, records, access mediums, or identification. Any falsification of records or fraudulent actions would be a violation of

the regulations and 18 U.S.C. 1001, and it would be a basis for TSA to withdraw the auditor's approval under proposed § 1522.13.

Section 1522.17 Inspections

Under proposed § 1522.17, auditors would be required to permit TSA to inspect their facilities and copy records. This section would allow TSA to evaluate the auditor's performance and an operator's compliance with TSA regulations and its security program.

Subpart C--Auditors for the Large Aircraft Security Program

Section 1522.201 Applicability

Proposed § 1522.201 states that subpart C would apply to auditors seeking to obtain TSA's approval to conduct audits for the large aircraft program.

Section 1522.203 Additional Qualification Requirements

Proposed § 1522.203 describes the additional requirements that auditors for the LASP would be required to meet to be considered for approval. These requirements would include:

- At least five years of experience in inspection or auditing relating to governmental programs in security or aviation;
- Three professional references;
- Accreditation from an outside organization within the last ten years; and
- Knowledge and ability to assess compliance with Federal statutes and regulations.

These additional requirements would demonstrate that the auditor possesses sufficient experience and knowledge in auditing compliance with governmental programs and that the auditor has credentials that reflect knowledge of the aviation industry.

Auditors would be able to satisfy the five-year experience requirement as a government employee or private consultant or contractor. TSA requests comments on these requirements as well as other requirements that TSA should consider for auditors of LASPs.

Section 1522.205 Audit report

Section 1522.205 would require an auditor to prepare an audit report that would include information about the audit process and the auditor's findings and conclusions of the audit. TSA would require the auditor to submit the audit report within 30 days after the audit was conducted. TSA would also require the auditor to sign an attestation that the audit was performed professionally and impartially. The audit report would be an important tool in TSA's compliance program by enabling TSA to evaluate a large aircraft operator's compliance with TSA regulations and the operator's security program and to ascertain if additional TSA action is required.

Section 1522.207 Training

Under proposed § 1522.207, TSA would require auditors to undergo initial and recurrent training. Through the initial training, auditors would acquire the necessary information on the process, procedures, and forms associated with the TSA-required audit. Recurrent TSA prescribed training would provide auditors with up-to-date information and would ensure that the auditor has maintained the necessary expertise to continue to perform audits. Recurrent training would be required every 24 months.

Section 1522.209 Biennial review

To ensure that a TSA-approved auditor continues to possess the requisite qualification and expertise to conduct audits, TSA would require the auditor to submit to

a biennial review. The review would consist of submitting evidence that an auditor's training has been successfully completed and is current and that an auditor continues to hold the necessary accreditation or certification.

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

Section 1540.107 Submission to Screening and Inspection

As discussed in section II.A, TSA would require large aircraft operators to contract with a watch-list service provider to determine whether their passengers may board the aircraft. Watch-list service providers, who must be approved by TSA, would compare passenger names against the watch-list.

Under proposed § 1544.245(b), large aircraft operators would be required to request and obtain the full name of their passengers to transmit their passengers' information to a watch-list service provider to conduct watch-list matching prior to the passengers boarding the aircraft. Because full name is essential in conducting effective watch-list matching, TSA proposes to require passengers to provide their full name when the large aircraft operator requests their full name.

TSA has published the Secure Flight NPRM, which also includes a proposal to require individuals who make reservations for a covered flight to provide their full names.[30] Under the proposed Secure Flight Program, full name would be the full name that appears on the individual's verifying identity document. A verifying identity document would be an unexpired photo identification issued by a government (Federal, State, or tribal) bearing the individual's full name and date of birth or an unexpired foreign passport. Examples of verifying identity documents are driver's licenses and

[30] "Covered flight" is defined as a flight operated by an aircraft operator subject to a full program under 49 CFR 1544.101(a) or by a foreign air carrier subject to 49 CFR 1546.101(a) or (b). Proposed § 1560.3, 72 FR at 48387.

passports. Accordingly, proposed § 1540.107(c) would apply the same requirements to passengers of large aircraft operators.

Section 1540.301 Withdrawal of Approval of a Security Program

Various entities, such as airport operators and aircraft operators, must submit their security programs to TSA for approval. Once TSA approves a security program, the operator must implement and operate under its approved security program. The regulations, however, do not specifically address the process through which TSA may withdraw its approval of a security program, when appropriate.

TSA currently has withdrawal procedures only for indirect air carriers in 49 CFR 1548.7(f). To standardize the regulations, TSA proposes a new § 1540.301 to codify procedures for TSA to withdraw approval of any operator's security program held under subchapter C. The proposed standard for withdrawal would be a TSA determination that the operation is contrary to security and the public interest. Proposed § 1540.301 provides procedures for notice, response, and appeal of a TSA decision to withdraw approval. The affected airport operator, aircraft operator, or large aircraft operator would also be able to request a stay of the withdrawal pending appeal of the notice.

TSA further proposes the codification of emergency withdrawal procedures. This proposal would create procedural guidelines to implement withdrawal of a security program and affords due process to the airport operator, aircraft operator, and large aircraft operator. The emergency procedures would allow the operator to appeal the withdrawal, but the filing of the appeal would not stay the effective date of withdrawal because of the extant circumstances giving rise to the emergency.

PART 1542--AIRPORT SECURITY

Section 1542.103 Content

Section 1542.103 describes the airports that TSA requires to adopt a security program. TSA requires airports that regularly serve full program aircraft operators described in § 1544.101(a)(1) or foreign air carriers described in § 1546.101(a) to adopt a complete program. 49 CFR 1542.103(a). TSA also requires airports that regularly serve full program aircraft operators described in § 1544.101(a)(2), private charter aircraft operators described in §1544.101(f), or a foreign air carrier described in § 1546.101(b) or (c) to adopt a supporting program. 49 CFR 1542.103(b). Additionally, TSA requires airports regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(b) or § 1546.101(d) to adopt a partial program. 49 CFR §1542.103(c).

As explained in section II.B of this NPRM, TSA proposes to expand the types of airports that would be required to adopt a partial program to include reliever airports and airports that regularly serve large aircraft with scheduled or public charter service. Furthermore, TSA would amend § 1542.103(b) to remove airports regularly serving aircraft operators that are subject to the private charter program under § 1544.101(f) from among the airport operators that are subject to the supporting program.

An airport that would not be required to adopt a security program under § 1542.101(a), (b), or (c) may nevertheless seek TSA approval for its security program. To address this situation, TSA proposes to adopt § 1542.101(e), which would allow TSA to approve a security program for this type of airport, if the airport makes a request to TSA.

PART 1544--AIRCRAFT OPERATOR SECURITY

Section 1544.1 Applicability of This Part

Currently, § 1544.1(a)(1) limits part 1544 to aircraft operators that hold a FAA operating certificate under 14 CFR part 119. Because part 1544 would apply to other aircraft operators under this NPRM, TSA would amend § 1544.1(a)(1) to clarify that part 1544 applies to all aircraft operators engaged in civil aviation in an aircraft with a MTOW of more than 12,500 pounds, not just those that hold a operating certificate under 14 CFR part 119.

Section 1544.101 Adoption and Implementation

TSA is proposing this rulemaking to regulate any civil aviation operations. To ensure consistent treatment of similar aircraft operators, TSA proposes, in § 1544.101(b), to apply the same threshold by requiring that the existing partial program, twelve-five program, and private charter program operations be consolidated and covered under a single LASP. Note that the LASP would replace the above stated programs in §§ 1544.101(b) through (f).

Operations under the LASP would include civil operations of aircraft, including passenger and all-cargo operations, and scheduled, charter, or other service, with a MTOW over 12,500 pounds, that do not operate under the full program (§ 1544.101(a)) or the full all-cargo program (§ 1544.101(h)), and do not operate as a public aircraft as described in 49 U.S.C. § 40102 or as a government charter under the definition of private charter in § 1540.5 of this chapter. "Public aircraft" is defined in 49 U.S.C. 40102(37) as follows:

> ‘‘public aircraft’’ means any of the following:
> (A) Except with respect to an aircraft described in subparagraph (E), an aircraft used only for the United States Government, except as provided in section 40125(b).
> (B) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in section 40125(b).
> (C) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).
> (D) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).
> (E) An aircraft owned or operated by the armed forces or chartered to provide transportation to the armed forces under the conditions specified by section 40125(c).

The government maintains direct responsibility for the operation of public aircraft. Public aircraft are not subject to many of the safety regulations that cover other aircraft operations.[31] They are not included in the statutory definition of “civil aircraft” and thus are not subject to many of the same requirements that apply to civil aircraft. See 49 U.S.C. 40102(16). There are strict limitations on how such aircraft may be used. See 49 U.S.C. 40124. Many of the operations are highly specialized and require unique procedures, including security procedures. TSA is proposing to make clear that public aircraft would not be subject to the LASP.

A government private charter under TSA regulations means any aircraft operator flight—

> (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.

[31] FAA limits many of its regulations to operation of civil aircraft, which do not include public aircraft. For example, see 14 CFR part 91, subpart E--Maintenance, Preventive Maintenance, and Alterations.

See 49 CFR 1540.5. Currently TSA regulations exempt most such operations from the Private Charter Security Program. See 49 CFR 1544.101(f)(1)(ii). The rationale has been that such charters can, and do, carry out procedures on a regular basis to address the security concerns at issue. The U.S. Department of Defense (DOD) and Federal agencies use private charter operations to transport persons and property in furtherance of their government missions. See 67 FR 41635 (June 19, 2002). TSA is concerned, however, that the chartering government agency may not always understand that it would be responsible for security of the operation. Unlike with public aircraft discussed above, a government charter may be for a short duration, even one flight at a time, and thus normal safety regulations continue to apply. Accordingly, the rule would make clear that TSA would exempt government charter operations from complying with the LASP, only if the government takes security responsibility for the following:

(A) The aircraft;

(B) Persons onboard; and

(C) Property onboard.

See proposed § 1544.101(b)(3)(iv). If the chartering government agency does not take responsibility for the security of the operation, the normal TSA requirements would apply.

Note, however, that under the current rule, government charters must comply with the Private Charter Program if the charter enplanes passengers from, or deplanes passengers into, a sterile area at an airport. This minimizes the risk that any weapon or other prohibited item the government personnel may be carrying could inadvertently or purposefully be used to taint the sterile area. This requirement would continue under the

proposed rule. TSA would require government charters that deplane into, or enplane from, sterile areas to comply with the LASP, including obtaining an alternate procedure for deplaning into, or enplaning from, a sterile area.

The full program, the limited program, and the full all-cargo program would not be included in the large aircraft regulations. However, because TSA proposes to amend § 1544.1(a) to make part 1544 applicable to operators of aircraft with MTOW of over 12,500 pounds, TSA would also need to amend §§ 1544.101(a) and (h) to maintain the status quo as to which aircraft operators are subject to the full program. Consequently, TSA would amend § 1544.101(a) to state that aircraft operators that hold a FAA certificate under 14 CFR part 119 would have to adopt and carry out a full program if they meet the conditions described in § 1544.101(a)(1) or (a)(2).. Similarly, TSA would amend § 1544.101(h) to state that the full all-cargo program applies to aircraft operators that hold a FAA certificate under 14 CFR part 119 or part 125. The limited program is for aircraft operators that have unique operations that do not fall within any other category of operations requiring a security program under other sections of part 1544. Nevertheless, the aircraft operator adopts a security program for its operations and TSA approves the security program and classifies it as a limited program.

Section 1544.103 Form, Content, and Availability

Proposed § 1544.103 sets forth the form, content, and availability requirements for the security programs required under § 1544.101. There have been standard security programs for certain aircraft operators since 1976. TSA is proposing to recognize the use of standard security programs by TSA and aircraft operators in current requirements for aircraft operators and proposed under part 1544. This proposed rule would clarify that

each particular operator's security program would be the standard security program issued by TSA, together with any amendments and alternate procedures approved or accepted by TSA for that aircraft operator.

Currently, § 1544.103(c) lists the content requirements of a security program for a full program aircraft operator. The specific security regulations are set forth in part 1544, subpart C--Operations. TSA proposes to add new paragraphs (d), (e), and (f) to describe the content requirements for full all-cargo and LASPs, respectively. Also, TSA would amend paragraph (c) to add the new requirements of proposed § 1544.241 regarding volunteer emergency services for full program operators.

The content requirements for the full all-cargo security programs in proposed paragraph (d) are essentially the same requirements in the current § 1544.101(i), except for the addition of proposed § 1544.241 concerning volunteer emergency services. The content requirements for the LASP are described in section II.A of the preamble. The individual elements, not discussed in this section of the preamble, are discussed in further detail in the section-by-section analysis of §§ 1544.202, 1544.205, 1544.206, 1544.207, 1544.215, 1544.217, 1544.223, 1544.225, 1544.233, 1544.235, 1544.241, 1544.245, and subpart G.

The existing partial program and private charter program include a few security measures that would not be part of the LASP, because these measures would be unnecessary under the LASP. First, the partial program requires that aircraft operators under that program participate in any airport-sponsored exercise of the airport contingency plan in § 1544.301(c). Currently, there are very few aircraft operators that hold a partial program and are subject to § 1544.301(c). Also, most large aircraft

operators operate out of GA airports that are not required to have a contingency plan, including those that TSA proposed to require to adopt and carry out a partial program under proposed § 1542.103(c). Thus it would be unnecessary to require large aircraft operators to participate in an airport-sponsored exercise of the airport contingency plan and to include this security measure in the LASP.

TSA is also proposing not to include the requirements in §§ 1544.209 and 1544.211 regarding the use of metal detection devices and X-ray systems that are in the current private charter program. Because private charter operators currently do not use these devices or systems in their screening processes, it would be unnecessary to include those requirements in the LASP. If a large aircraft operator plans to use a metal detection device or an X-ray system, the operator would apply for an amendment or alternate procedure to its security program, which would describe the requirements and procedures for using such devices or systems.

Section 1544.105 Approval and Amendments to the Security Program

Aircraft operators that are required to adopt a security program under § 1544.101 must apply for a security program from TSA. TSA provides the standard security program and may amend the program on its own initiative, or as requested by the aircraft operator and approved by TSA. Similarly, TSA would provide large aircraft operators with a standard security program. At that time, the aircraft operator would be able submit any amendment to their security program to TSA for approval. If the aircraft operator fully accepts the standard TSA security program, they would not be required to submit any amendments to TSA. Accordingly, TSA proposes to amend § 1544.105 to apply to large aircraft operators.

Unlike the full program and full all-cargo program operators, a large aircraft operator would need to submit additional information, such as the names, addresses, and phone numbers of the owners and aircraft operator security coordinator of the large aircraft, and the FAA certificate number if the aircraft operator holds an FAA certificate, when it submits its application for approval of its security program. Full program and full all-cargo program operators hold certificates from the FAA and DOT, and the Federal Government has reviewed the operators, including their key personnel, in connection with the certification processes; thus the operators are known to the Federal Government. Large aircraft operators, however, are a diverse group of operators that range from individuals who own and operate their aircraft to large corporations that operate aircraft using owned and/or leased aircraft. As a result, TSA would need the additional information to identify the owners and operators of large aircraft and to evaluate their security programs for approval.

TSA believes that aviation security will be enhanced if TSA conducts an analysis to determine whether operators of aircraft subject to this proposed regulation are legitimate business entities and whether their owners are individuals who appear to pose a risk to aviation security. Accordingly, TSA is considering various options to achieve the objective. For checking on whether the aircraft operator is a legitimate business entity, TSA may rely on a check against Dun & Bradstreet or a similar commercial database and/or governmental databases, such as the FAA's Aircraft Registration Database. For individuals who would be identified as a proprietor, general partner, officer, director, or owner in proposed section 1544.105(a)(1)(ii)(B), TSA does not intend to use commercial or publicly available data to determine whether the individuals pose or

may pose a threat to transportation or national security. For these individuals, TSA seeks comment on whether it should require these individuals to undergo the security threat assessment (STA) described in proposed part 1544, subpart G. TSA requests public comment on these options and on other approaches that would achieve the desired result.

TSA would also use the information to identify and contact aircraft and their respective operators for operational or security reasons.

The proposed rule would not change the process for amending a security program, either by the aircraft operator or TSA. Proposed § 1544.105(f) would provide TSA with a mechanism to withdraw its approval of an aircraft operator's security program pursuant to the procedures set forth in proposed § 1540.301.

Section 1544.107 Fractional Ownership of Large Aircraft

Proposed § 1544.107 addresses situations in which a large aircraft is under fractional ownership program under the FAA rules in 14 CFR part 91, subpart K, for purposes of determining who would be the aircraft operator under proposed § 1544.101(b). We propose to use essentially the same requirements that apply in the FAA rules for this purpose. See 14 CFR 91.1011. Each owner in operational control of a program flight would be ultimately responsible for safe operations and for complying with all applicable requirements, including those related to security issues. An owner would be considered in operational control when the owner has the legal rights to the aircraft, has directed that the aircraft carry passengers or property designated by the owner, and the aircraft is carrying those passengers or property.

Although TSA would consider each owner as the aircraft operator, the owner would be able to delegate some or all of the performance of the tasks associated with

carrying out this security responsibility to the program manager. For operations where the owner in operational control delegates performance of security tasks to the program manager, the TSA would consider the owner and the program manager to be holding the security program jointly, and the owner and the program manager would be jointly and individually responsible for compliance. In the event that a program manager manages multiple aircraft, the program manager would have one large aircraft program that applies to all its operations.

An owner would be considered not in operational control when an aircraft is used for a flight for administrative purposes, such as demonstration, positioning, ferrying, maintenance, or crew training, and no passengers or property that were designated by the owner are being carried. Further, if the aircraft is operated under 14 CFR part 121 or 135, then the owner would be considered not to be in operational control.

This approach to determining the party that would be considered the aircraft operator for purposes of the LASP is based on the FAA regulations found in 14 CFR part 91, subpart K, regarding fractional ownership operations. TSA invites comments on whether we should provide additional features of subpart K in these regulations, such as the requirement in 14 CFR 91.1013 that the program manager brief the fractional owner.

Section 1544.202 Persons and Property Onboard All-Cargo Aircraft

Current § 1544.202 requires each aircraft operator operating under the full all-cargo program and the twelve-five program in all-cargo operations to apply the security measures in their security programs to persons who board the aircraft and their property. "Cargo" is defined as property tendered for air transportation accounted for on an air waybill. Company materials and other property not under an air waybill are not cargo;

Rather, they are property that would be subject to proposed § 1544.206, as discussed in section II.A of this preamble and below.

Section 1544.202 is intended to prevent persons who may pose a security threat from boarding and to prevent or deter the carriage of any unauthorized persons and unauthorized explosives, incendiaries, and other destructive substances or items. This provides the opportunity for aircraft operators to conduct an on-site check of persons and property for compliance, and provides TSA with the means to perform security database checks. Section 1544.202 remains an important security measure for aircraft with MTOW of over 12,500 pounds in all-cargo operation. Consequently, we propose to revise § 1544.202 to apply to aircraft operated under the LASP in an all-cargo operation and to remove the references to the twelve-five program in all-cargo operations.

Section 1544.205 Acceptance and Screening of Cargo

Section 1544.205 sets forth the requirements for screening cargo on full program operations that carry cargo, full all-cargo operations, and twelve-five all-cargo operations. As with § 1544.202, cargo under § 1544.205 is property tendered for air transportation accounted for on an air waybill. As discussed above, TSA would require operators of large aircraft that are all-cargo operations to screen persons, accessible property, and cargo onboard the aircraft to prevent and deter the carriage of any unauthorized persons or the unauthorized carriage of weapons or explosives. Sections 1544.205(a), (b), (d), and (f) would apply to all large aircraft with an MTOW of over 12,500 pounds in all-cargo operations.

Section 1544.206 Persons and Property on Board a Large Aircraft

As discussed in section II.A of the preamble, TSA proposes § 1544.206, which would require aircraft operators operating under a large aircraft program under § 1544.101(b) to apply security measures in its security program to prevent or deter the carriage of unauthorized persons or unauthorized weapons, explosives, incendiaries, and other destructive substances or items. TSA also notes that 18 U.S.C. 922(e) and (f) impose criminal penalties for the unlawful transport or delivery of firearms or ammunition by any person or by common or contract carriers, respectively.

Section 1544.207 Inspection of Individuals and Property

Current § 1544.207 describes which entities conduct screening under which circumstances: TSA, a foreign government, or the aircraft operator. TSA is proposing to amend § 1544.207 to clarify which aircraft operator is subject to this section and which entity is responsible for conducting the required screening.

TSA would amend § 1544.207(a) to state clearly that this section applies to full program operators, full all-cargo program operators, and operations in a large aircraft with a MTOW over 45,500 kilograms operated for compensation or hire, as described in proposed § 1544.103(f)(1).

Proposed § 1544.207(b) applies to full program operators and is substantively the same as the current requirements for these operators. This section originally was written before TSA assumed the responsibility for all passenger and checked baggage screening in the United States and does not currently clearly state where TSA conducts the screening. TSA proposes to clarify this section. For locations in the United States, each full program operator must not board a passenger, or load his or her accessible or checked

property, unless TSA or a TSA contractor has conducted the necessary inspection. In locations outside of the United States where the foreign country conducts the screening, each full program operator must not board a passenger, or load his or her accessible or checked property, unless the foreign country has conducted the necessary screening. TSA may require supplemental screening of some passengers. In locations outside of the United States where the foreign country does not conduct part or all of the required screening, each full program operator must not board a passenger, or load his or her accessible or checked property, unless the operator or its authorized representative has conducted the required screening.

Proposed § 1544.207(c) applies to full all-cargo programs and to operations in a large aircraft with a MTOW over 45,500 kilograms operated for compensation or hire, which currently are referred to as private charters. These aircraft operators are generally required to conduct their own screening. They would be required to follow the security procedures in their security programs and the requirements in 49 CFR part 1544, subpart E, regarding screener qualifications when the aircraft operator conducts the screening.

In the event that the aircraft enplanes or deplanes from a sterile area, the large aircraft operator would be required to obtain an alternate procedure for its security program.

Section 1544.217 Law Enforcement Personnel

Section 1544.217 currently requires aircraft operators under the partial program, the twelve-five program, the private charter program, and the full all-cargo program to provide for law enforcement personnel that meet TSA's requirements. TSA proposes to replace the referenced partial program, the twelve-five program, and the private charter

program, with the LASP, requiring large aircraft operators to perform the same duties required under § 1544.217. TSA proposes that large aircraft operators must provide their employees, including crewmembers, current information regarding procedures for obtaining law enforcement assistance, to enable them to contact local law enforcement personnel expeditiously in the event of a security need.

Section 1544.223 Transportation of Federal Air Marshals

Current § 1544.223 requires that full program operators and large aircraft over 45,500 kilograms that operate for compensation or hire under § 1544.103(f) carry Federal Air Marshals (FAMs). In this NPRM, TSA proposes to add § 1544.223(g) to require other large aircraft operators not covered by § 1544.103(f)(1) to carry FAMs only upon notification by TSA. This would affect mostly private/corporate aircraft owners. The regulation change would provide TSA with the ability to require these operators to put a FAM on board a large aircraft, pursuant to prior notification, if the need arises. TSA understands that maintaining the confidentiality of the FAM onboard a large aircraft may not be possible, and therefore TSA proposes to limit § 1544.223(g) to those operating under a full program or a LASP in an aircraft with MTOW over 45,500 kilograms.

Section 1544.237 Flight Deck Privileges

Section 1544.237(b) currently allows for access to the flight deck by FAA air carrier inspectors, authorized representatives of the National Transportation Safety Board, and U.S. Secret Service agents. This NPRM proposes to amend § 1544.237(b) to include Department of Defense (DOD) commercial air carrier evaluators who may seek admittance to the aircraft flight deck. TSA proposes to amend § 1544.237 to harmonize with FAA regulations at 14 CFR 121.547. DOD commercial air carrier evaluators will

assess the effectiveness of a carrier's operations department, including crew coordination and safety awareness. DOD evaluators are required to pre-arrange all flight deck evaluations.

Section 1544.241 Voluntary Provision of Emergency Services

Congress has enacted statutory provisions that provide certain exemptions from liability for qualified law enforcement officers, firefighters, and emergency medical technicians who provide emergency services during emergencies; and that directs TSA to establish a program to allow such individuals to volunteer to provide such emergency services. 49 U.S.C. 44944. TSA has already incorporated this program into the AOSSP for full program operators and now proposes to codify the provisions in new § 1544.241. Because the statute limits these provisions to air carriers, TSA proposes to limit the application of § 1544.241 to aircraft operators that hold an air carrier operating certificate under 14 CFR part 119.

The statute provides that a qualified individual shall not be liable for damages in any action brought in Federal or State court which arises from the act or omission of that individual in providing or attempting to provide assistance in an in-flight emergency, absent gross negligence or willful misconduct. TSA must establish the requirements for qualifications of these individuals. Consistent with the statute, TSA's proposed regulation requires air carriers operating under a full program to implement a method or a program for qualified individuals who are law enforcement officers, firefighters, or emergency medical technicians to present their credentials to the carrier and to give their consent to be called upon during an in-flight emergency.

As required in the statute, § 1544.241(b) sets out proposed qualifications for the law enforcement officers, firefighters, and emergency medical technicians who would be exempted from liability under the statute and who would be able to volunteer under this section. TSA proposes that an individual is qualified for purposes of this section if the individual is qualified under Federal, State, local, or tribal law, or under the law of a foreign government, has valid standing with the licensing or employing agency that produced the credentials, and is a scheduled, on-call, paid, or volunteer employee, as one of the following:

1. A law enforcement officer who is an employee or authorized by the Federal, state, local or tribal government or under the law of a foreign government, with the primary purpose of the prevention, investigation, apprehension, or detention of individuals suspected or convicted of Government offenses.

2. A firefighter who is an employee, whether paid or a volunteer, of a fire department of any Federal, state, local, or tribe who is certified as a firefighter as a condition of employment and whose duty it is to extinguish fires, to protect life, and to protect property.

3. An emergency medical technician who is trained and certified to appraise and initiate the administration of emergency care for victims of trauma or acute illness.

We request comments on whether these are the appropriate qualifications to carry out the purposes of the statute.

This exemption from liability provided in the statute is stated for information in proposed § 1544.241(b)(1). The statutory exemption from liability applies only to the three named groups above. The proposed rule in § 1544.241(b)(2) includes the statutory

provision that the exemption shall not apply in any case where an individual provides or attempts to provide assistance in a manner that constitutes gross negligence or willful misconduct. The statute does not require the individual volunteer to identify himself or herself before departure to be subject to this exemption. Proposed § 1544.241(b)(3) states expressly that the exemption would apply regardless of whether the individuals identify themselves in advance of departure. The proposed rule also makes clear that an individual need not have his or her credentials with himself or herself at the time of providing assistance for the exemption from liability to apply. For instance, if a firefighter who did not volunteer before the flight as provided in paragraph (c), and who did not have his credentials with him, were to provide assistance in the case of an in-flight emergency, the statutory exemption from liability would apply. After the incident, to show that the exemption applied, the firefighter may have to establish that he was qualified as provided in paragraph (a), but the lack of credentials present at the time of the emergency would not preclude the application of the exemption.

Proposed § 1544.241(c) contains the requirement for aircraft operators to implement a program for individuals who meet the qualifications in paragraph (a) to volunteer, prior to departure, to be called on by a crewmember or flight attendant to provide emergency services in the event of an in-flight emergency. The required procedures would include a check of the credentials of individuals identifying themselves pre-departure.

Under this program, TSA would not expect FAMs and LEOs who are flying armed under § 1544.219 to volunteer to assist in an emergency situation prior to departure. Since the FAMs and LEOs must identify themselves to the aircraft operator

prior to departure and must have taken appropriate training to fly armed, it is not necessary for the aircraft operator or the FAM or LEO to carry out § 1544.241. The flight crew knows where each FAM and armed LEO is seated and is able to request their assistance if the need arises. The statutory exemption from liability would apply if a FAM or LEO were to assist during an emergency.

Proposed § 1544.241 would not preclude passengers from assisting in an emergency, even if they did not meet the qualifications in paragraph (a). We note that any passenger may assist in an emergency, and in the past, physicians, nurses, and others have provided vital help when needed, and they will continue to be able to do so.

Generally, the aircraft operator will determine whether to request assistance and from whom to request it based on all the circumstances and information available to the aircraft operator. For instance, while the statute does not apply to doctors or nurses, if there is a medical emergency and the aircraft operator is aware that a doctor or a nurse is on board, the aircraft operator may request assistance of them instead of other individuals who may have volunteered under this program. However, the statute limits liability protection to qualified law enforcement officers, firefighters, and emergency medical technicians. State Good Samaritan Laws and other protections may apply to other individuals, not mentioned in the statute, who assist in an emergency.

Additionally, in accordance with 49 U.S.C. 44944(a), the aircraft operator must keep all information of the identity or personal information of the qualified individual confidential and must not provide such information to any individual, other than the appropriate aircraft operator personnel.

Section 1544.243 Third Party Audit

As discussed in section II.A of the preamble, proposed § 1544.243 would require a large aircraft operator to contract with a TSA-approved auditor to audit its compliance with the requirements of 49 CFR chapter XXII and its security program. The regulations include procedures for obtaining TSA approval and for conducting audits.

Section 1544.245 Passenger Vetting for Large Aircraft Operators

TSA would require large aircraft operators to contract with watch-list service providers to conduct watch-list matching of their passengers before allowing them to board. Passengers determined to be on the No Fly list would not be able to board an aircraft. Proposed § 1544.245 establishes the procedures that large aircraft operators would be required to follow in order to comply with the requirements for watch-list matching. Section II.A of this preamble provides a detailed discussion of the requirements and process.

SUBPART F--WATCH-LIST SERVICE PROVIDERS

Under proposed § 1544.245, large aircraft operator would submit passenger information to watch-list service providers approved by TSA to conduct watch-list matching. Proposed part 1544, subpart F, sets forth the proposed requirements and procedures for entities to obtain and maintain TSA approval to conduct watch-list matching. TSA would require watch-list service providers to maintain high IT system security, to develop and implement a robust system capable of conducting automated watch-list matching quickly and continuous vetting of master passenger lists, to protect personally identifiable information and sensitive security information, and to adopt and implement a security program. Because of these requirements, TSA expects that limited

number of entities would be approved to be watch-list service providers. TSA is also considering whether to limit in the final rule the number of watch-list service providers that it would approve. This would preserve the security of the watch-list by restricting the distribution of the watch-list to a small number of entities that would have access to the watch-list. TSA seeks comment on limiting the number of entities that would be approved watch-list service providers, including what criteria would be used to determine which applicants would be approved and how many watch-list service providers should be approved. For instance, TSA is considering criteria such as the level of IT system security, the type of watch-list matching system, and the ability of the service provider to quickly conduct the service.

Section 1544.501 Scope and Terms Used in This Subpart

Subpart F would apply to watch-list service providers who conduct watch-list matching on behalf of large aircraft operators. The definition of "applicant" would mean the entity that is seeking approval from TSA to conduct watch-list matching for large aircraft operators. "Large aircraft operators" are defined as those operators described in §§ 1544.101(b) or 1544.107. The final definition in proposed § 1544.501 is "covered personnel." This term would mean an employee, officer, principal, or program manager of the watch-list service provider who collects, handles or uses passenger information or watch-list matching results or who conducts watch-list matching.

Section 1544.503 Qualification Standards for Approval

Proposed § 1544.503 would establish qualification standards for approval of applicants to conduct watch-list matching. The applicant would need to demonstrate the ability to receive passenger information from large aircraft operators and to conduct

automated watch-list matching, including using continuously updated information from TSA, and to transmit the watch-list matching results to the large aircraft operator in a secure manner. The applicant would be required to obtain an attestation from an independent public accounting (IPA) firm that the system that the applicant would use to contain SSI and personally identifiable information collected as part of the watch-list matching process and to perform the necessary transmissions and matching are in compliance with the applicant's approved system security plan and TSA standards. In addition, TSA would require the applicant to successfully undergo a suitability assessment by TSA, and the applicant's covered personnel to successfully undergo a security threat assessment by TSA.

Finally, TSA would require the applicant to be incorporated within the United States, and the applicant's operations and systems for conducting the watch-list matching to be located in the United States. Under this proposal, eligibility to be a watch-list service provider would be limited to U.S. companies and U.S. subsidiaries of foreign corporations that are incorporated and located in the United States. This requirement would lessen the possibility that the SSI and the personally identifiable information that would be part of the watch-list matching process would be exported to a foreign country, which would limit the U.S. Government's ability to protect that information. The requirement would also allow for better TSA oversight and control over this watch-list matching process. Because the watch-list matching process involves personally identifiable information and SSI, TSA seeks comments on whether to require covered personnel to be U.S. citizens, U.S. nationals, or lawful permanent residents of the United States.

Section 1544.505 Application

Proposed § 1544.505 would require every applicant to submit an application in a form and manner prescribed by TSA. The application would include the following: (1) applicant's full name, business address, business phone, and business email address; (2) a statement and other supporting documentation providing evidence of the applicants' abilities and satisfaction of the required qualifications; (3) a system security plan that would satisfy standards set forth by TSA; and (4) a security program that meets the requirements set out in § 1544.515.

TSA proposes to require watch-list service providers to adopt a system security plan that satisfies TSA standards to ensure that watch-list service providers protect personally identifiable information and SSI. TSA standards would be based on the National Institute of Standards and Technology (NIST) Special Publication 800-53, "Recommended Security Control for Federal Information Systems," (NIST Special Publication 800-53). The objective of NIST Special Publication 800-53 is to provide security controls that are consistent with and complementary to other established security standards. The catalog of security controls provided in NIST Special Publication 800-53 can be effectively used to demonstrate compliance with a variety of governmental, organizational, or institutional security standards. NIST Special Publication 800-53 is a widely recognized body of security criteria for Federal systems.

TSA standards for the systems security plan would likely be organized into three classes: Management, Operational, and Technical. Management controls would focus on security systems program risk. Operational controls would address security methods of mechanisms that people (as opposed to systems) would implement and execute.

Technical controls would manage security controls that the watch-list service provider's systems would execute. These controls would provide automated protection from unauthorized access or misuse, facilitate detection of security violations, and support security requirements for applications and data.

Furthermore, the NIST Federal Information Processing Standards Publication 199, "Standards for Security Categorization of Federal Information and Information Systems," February 2004, establishes security categories for both Federal information and information systems. The security categories are based on potential impact should certain events occur. Based on analysis of potential impacts, TSA believes that security categorization for confidentiality, integrity, and availability would be "High." Consequently, security controls that should be applied are those that are commensurate with a High security category system. NIST Special Publication 800-53 contains implementation requirements for this categorization.

Under proposed §§ 1544.505 and 1544.515, TSA would require watch-list service providers to submit a system security plan as part of their application for TSA approval, and that system security plan would be part of the watch-list service providers' security program. TSA requests comments on which standards and controls in the NIST Special Publication 800-53 should apply to watch-list service providers' systems. TSA would develop the specific standards for the system security by reviewing all of the standards and controls in NIST Special Publication 800-53 and the comments received in response to this NPRM. Based on its review, TSA would issue a system security plan template that would incorporate the standards and controls that TSA determines would be appropriate to require of the watch-list service providers for their systems, similar to the

process that TSA used to develop the information systems security standards for the Registered Traveler Interoperability Pilot.[32] Watch-list service providers would have an opportunity to comment on the template including the standards.

Section 1544.507 TSA Review and Approval

Section 1544.507 proposes procedures for TSA's review and approval of applications to perform watch-list matching. Upon receipt of the application, TSA would review the application and might conduct a site visit of the applicant's place of business to determine whether the applicant meets TSA's qualifications. Upon final review of the application by TSA, TSA would notify the applicant of approval or disapproval by written notice. After TSA approves an application and receives an attestation report for an IPA firm opining that the watch-list service provider's system is in compliance with its system security plan and TSA standards, the watch-list service provider would be able to begin passenger vetting pursuant to the regulations.

Section 1544.509 Reconsideration of Disapproval of an Application

Proposed § 1544.509 would allow an applicant whose application has been disapproved to petition for reconsideration of TSA's decision by submitting a written petition to the Assistant Secretary or designee within 30 days of the notice of disapproval. The petition for reconsideration would need to include the applicant's contact information and any documentation that the applicant believes may assist the Assistant Secretary in making a final decision. The Assistant Secretary or designee would also be able to request additional information from the applicant that may assist in disposing of the petition.

32 "The Registered Traveler Security, Privacy and Compliance Standards for Sponsoring Entities and Service Providers," including all appendices, is available on TSA's website at www.tsa.gov.

Section 1544.511 Withdrawal of Approval

Proposed § 1544.511 would state the procedure for TSA to withdraw the approval of the watch-list service provider if it ceases to meet the standards for approval, fails to fulfill its responsibilities, or if it is in the interest of security or the public. If TSA decides to withdraw the approval of a service provider, TSA would provide the service provider with a written notice of proposed withdrawal of approval, which would include the basis of the withdrawal of approval. The initial notice would become a final notice of withdrawal of approval if TSA does not receive a written petition of reconsideration within 31 days after the service provider's receipt of TSA's notice of proposed withdrawal of approval. Except in an emergency, during the 31 days prior to the TSA's receipt of the written petition, the service provider would be able to continue conducting watch-list matching. Additionally, if the watch-list service provider did file a timely written petition for reconsideration, the service provider would be able to continue conducting watch-list matching, unless and until the service provider receives a final notice of withdrawal of approval. Once the watch-list service provider received a final notice of withdrawal of approval, the service provider would not be able to continue conducting watch-list matching.

If TSA found an emergency situation requiring immediate withdrawal of the service provider's approval, the proposed rule would allow TSA to withdraw the approval without prior notice. The emergency notice would include the basis of the emergency withdrawal of approval and would be effective upon receipt by the watch-list service provider. As above, the service provider would be able to file a written petition

for reconsideration within 30 days of receipt of the emergency notice; however, this would not stay the effective date of the emergency notice of withdrawal of approval.

Section 1544.513 Responsibilities of Watch-list Service Providers

Proposed § 1544.513 describes the responsibilities of watch-list service providers under this part. These responsibilities would ensure that the watch-list service providers are conducting watch-list matching in a manner that is consistent with TSA standards and that protects personally identifiable information and SSI. Under proposed § 1544.513, watch-list service providers would have the following responsibilities: (1) adopt and carry out a security program that meets the requirements of proposed § 1544.515; (2) comply with the system security plan; (3) contract with an IPA firm to perform periodic attestation of their compliance with their systems security plan and TSA standards, as explained in further detail below; (4) identify, handle, and protect SSI in accordance with 49 CFR part 1520; (5) not disclose information received from or sent to the aircraft operator or to TSA, unless otherwise authorized by TSA; (6) allow TSA to inspect watch-list service providers to determine their compliance with TSA regulations and their security programs; (7) adopt and make public a privacy policy; (8) provide documentation establishing compliance if requested by TSA; and (9) only use the watch-list for watch-list matching under proposed part 1544, subpart F.

Because watch-list matching involves security and privacy issues, TSA proposes to require watch-list service providers to contract with a qualified IPA firm to perform an attestation of their compliance with their system security plan and TSA standards. TSA would consider an IPA firm qualified if their selection is consistent with the American Institute of Certified Public Accountants' (AICPA) guidance regarding independence,

and the firm demonstrates the capability to assess information system security and process controls. TSA would reserve the right to reject the IPA firm's attestation if, in TSA's judgment, the IPA firm is not sufficiently qualified to perform these services.

TSA proposes to require that the IPA firm conduct the attestation in accordance with AICPA "Statement for Standards on Attestation Engagements" No. 10 and TSA standards. TSA would also require the IPA firm to prepare and submit a report, in a form and manner prescribed by TSA.

As stated above, TSA would require watch-list service providers to obtain an attestation report prior to commencement of operations to conduct watch-list matching. Additionally, TSA would require watch-list service providers to obtain periodic attestation reports for the duration of their watch-list matching. TSA would require watch-list service providers to undergo an attestation every year and the IPA firm would submit an attestation report to TSA approximately 12 months after submission of the previous attestation report.

Section 1544.515 Security Program

Proposed § 1544.515 would set forth the content requirements for a security program. These requirements would ensure that watch-list service providers have the capability and proper procedures to conduct watch-list matching under this subpart. Watch-list service providers would be required to adopt and carry out security programs that include the procedures for receiving passenger information from the aircraft operators, conducting watch-list matching of the passengers, including continuous vetting of passengers, and transmitting the watch-list matching results to the operator. The

security program would also contain procedures for the service provider to contact TSA for resolution of passengers who are potential matches to the watch-list.

Because a watch-list service provider's system would contain personally identifiable information about passengers and SSI, the security program would include various security requirements to protect this information. These requirements include procedures for compliance with the watch-list service provider's system security plan, and procedures for the physical security of the system used to conduct watch-list matching.

Under proposed § 1544.515, TSA would require service providers to provide personnel who are available to TSA 24-hours a day, 7-days a week. TSA would operate on a 24-hour basis, and therefore TSA would require the service providers to be available at all times for resolution of potential watch-list matches.

The service provider would also be responsible for training its covered personnel on the requirements in the TSA regulations and the security program. TSA training requirements would also include topics related to identifying, handling, and protecting SSI and personally identifiable information, and the procedures used to perform the watch-list matching and to resolve any potential matches.

SUBPART G--SECURITY THREAT ASSESSMENTS FOR LARGE AIRCRAFT FLIGHT CREW, APPLICANTS TO BECOME TSA-APPROVED AUDITORS, AND WATCH-LIST SERVICE PROVIDERS COVERED PERSONNEL

As stated in section II of the preamble, TSA proposes to require that flight crews for large aircraft operators, individuals authorized to perform screening

functions, applicants to become TSA-approved auditors, and key employees to watch-list service providers undergo a TSA security threat assessment (STA). The STA would include fingerprint-based criminal history records checks and other analyses, including checks of appropriate terrorist watch-lists and other databases. The proposed information required and the procedures used for the STA are very similar to the procedures that apply to applicants for a hazardous materials endorsement (HME) on their commercial driver's licenses, or a Transportation Worker Identification Credential (TWIC) under 49 CFR part 1572. The proposed rule would add subpart G to part 1544 to set forth the requirements and procedures that would apply to these individuals.

Section 1544.601 Scope and Expiration

Subpart G would apply to flight crews of large aircraft operators, individuals authorized to perform screening functions, applicants to become TSA-approved auditors, and key employees of watch-list service providers that TSA would require to undergo security threat assessments. The same requirements and procedures would apply to all of these individuals. However, flight crew members or individuals authorized to perform screening functions who have undergone a criminal history records check under §§ 1544.229 or 1544.230 would be grandfathered on a limited basis, such that they would not be required to undergo a STA until five years after TSA provided the results of their original CHRC.

A Determination of No Security Threat would be valid for five years unless TSA withdraws the determination. Prior to the expiration of the five years,

TSA would require flight crew members, applicants to become TSA-approved auditors, and watch-list service providers' key employees to reapply for a new STA to continue with their No Security Threat status.

Section 1544.603 Enrollment for Security Threat Assessments

For TSA to conduct a comprehensive STA, individuals would need to provide TSA with biographic information and their fingerprints. TSA is proposing § 1544.603 to require individuals to provide biographic and biometric information necessary for TSA to complete the fingerprint-based checks and other analyses. These applicants would provide the information necessary for enrollment, including personal information such as gender and date of birth.

To ensure that correct and accurate information is provided to TSA, the application would include, and the individual would sign, a statement providing that the statements made on the application are true, complete, and correct pursuant to penalty of law. TSA would also require the individual to include a statement that he or she has not been convicted, or found not guilty by reason of insanity, of any of the disqualifying crimes listed in § 1544.229(d) during the 10 years before submission of the individual's application. These are the same disqualifying criminal offenses that currently apply to flight crew members under § 1544.230 and to many persons at airports under § 1542.209. The statement would also include language that the individual understands that he or she must immediately inform TSA of any conviction of a disqualifying offense that occurs while he or she is a TSA-approved auditor or a watch-list service provider.

TSA anticipates that the individuals would provide their information though an enrollment provider under contract with TSA. The enrollment provider

would verify the identity of the individual, advise the individual that a copy of the criminal record would be provided if requested, and identify a point of contact for any questions the individual may have, prior to fingerprinting. The enrollment provider would then collect, control, and process the fingerprints of the individual and submit the data and the application to TSA.

Section 1544.605 Content of Security Threat Assessment

TSA proposes that the STA would include a criminal history records check, other analyses, and a final disposition.

Section 1544.607 Criminal History Records Check

As part of the security threat assessment, TSA proposes to perform a CHRC. TSA would submit the fingerprints provided by the individuals as part of the enrollment process to the Federal Bureau of Investigation's (FBI) Criminal Justice Information Services (CJIS) to obtain any criminal history records that correspond to the fingerprints. Upon receipt of the results from FBI/CJIS, TSA would adjudicate the results based on the disqualifying criminal offenses in § 1544.229(d).

At times, a CHRC may result in data that discloses an arrest for a disqualifying offense, but does not provide a disposition for the offense. The individual would be required to provide further documentation that the arrest did not result in a disqualifying offense. A conviction of a disqualifying offense would be reason to disqualify the individual. However, if the disposition did not result in a conviction, or in a finding of not guilty by reason of insanity, of a disqualifying offense, the individual would then not be disqualified under this section, provided that the applicant explains how the arrest was resolved.

If the results received from the FBI provide a reason for disqualifying the individual, TSA would notify the individual of the disqualifying reasons. The individual may request a copy of the record on which TSA's determination is based. The individual would be able to contact the FBI in order to complete or correct his or her record, if the individual contacts TSA within 30 days of being notified that the FBI record disclosed a disqualifying offense. Otherwise, TSA would make a Final Determination of Threat Assessment.

TSA also proposes to require a continuing obligation of individuals who receive a Determination of No Security Threat, by requiring immediate notice (within 24 hours) to TSA of any conviction of a disqualifying offense that occurs while he or she holds a determination of no security threat that has not expired.

Section 1544.609 Other Analyses

TSA proposes to conduct other analyses through domestic and international government databases to confirm the individual's identity and whether he or she poses a security threat. These would include checks against terrorist-related and immigration databases, as well as other governmental information sources such as those that identify open wants and warrants. TSA would adjudicate the results of all searches conducted including searches that reveal extensive foreign or domestic criminal convictions, convictions for a serious crime not listed in 49 CFR 1572.103, or periods of foreign or domestic imprisonment that exceeds 365 consecutive days.

If an individual who has successfully undergone an initial security threat is subsequently found not to meet TSA's criteria, TSA may withdraw its Determination of No Security Threat under proposed § 1544.613.

Section 1544.611 Final Disposition

TSA proposes that after conducting a CHRC and other analyses, it would serve a Determination of No Security Threat if TSA determines that an individual meets the STA standards. TSA also proposes to serve an Initial Determination of Threat Assessment on the individual if TSA determines that the individual does not meet the STA standards. The Initial Determination of Threat Assessment would include the following:

1. A statement that TSA has determined that the individual poses, or is suspected of posing, a security threat warranting disapproval of the application for which a STA is required;

2. The basis for the determination;

3. Information about how the individual may appeal the determination, as described in §1544.615; and

4. A statement that if the individual chooses not to appeal TSA's Initial Determination within 30 days after receipt of the Initial Determination, or does not request an extension of time within 30 days after receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Security Threat Assessment.

TSA also proposes to serve a Withdrawal of the Initial Determination of Threat Assessment or a Withdrawal of Final Determination of Threat Assessment on the individual, if the appeal results in a finding that the individual does not pose a threat to security.

Section 1544.613 Withdrawal of Determination of No Security Threat

TSA would be able to withdraw a Determination of No Security Threat at any time under proposed § 1544.613, if it determines that a TSA-auditor or watch-list service provider poses, or is suspected of posing, a security threat warranting withdrawal of the Determination of No Security Threat. If TSA determines that the individual does not meet the STA standards, TSA would serve a withdrawal of the Determination of No Security Threat on the individual. The notice would include the following:

1. A statement that TSA has determined that the individual poses, or is suspected of posing, a security threat warranting disapproval of the application for which a STA is required;

2. The basis for the determination;

3. Information about how the individual may appeal the determination; and

4. A statement that if the individual chooses not to appeal TSA's Initial Determination within 30 days after receipt of the withdrawal of the Determination of No Security Threat, or does not request an extension of time within 30 days after receipt of the withdrawal of the Determination of No Security Threat to file an appeal, the withdrawal of the Determination of No Security Threat becomes a Final Determination of Security Threat Assessment.

TSA also proposes to serve a Withdrawal of Final Determination of Threat Assessment on the individual, if the appeal results in a finding that the individual does not pose a threat to security.

Section 1544.615 Appeals

If the individual appeals the Initial Determination of Threat Assessment or a Withdrawal of the Determination of No Security Threat as discussed above, the procedures in 49 CFR part 1515 would apply. The section-by-section analysis of part 1515 discusses which provisions of part 1515 would apply.

Section 1544.617 Fees

To comply with the mandates of sec. 520 of the 2004 DHS Appropriations Act, 2004 (Pub. L. 108-90, 117 Stat. 1137, 1156, Oct. 1, 2003), TSA proposes to establish fees for individuals who are required to complete background investigations under this program.

Costs

TSA proposes that individuals required to undergo a STA would be required to pay a fee to cover the following costs:

Operational year	1st Year	2nd Year	3rd year	4th Year	5th Year
Estimated Annual Applicants	27,918	21,034	10,074	9,975	10,115
Cost Components					
Enrollment Costs	$418,776	$315,507	$151,108	$149,626	$151,728
Security Threat Assessment Cost					
FBI Criminal History Records Check	$481,592	$362,833	$173,774	$172,070	$174,488
Other analyses	$139,592	$105,169	$50,369	$49,875	$50,576
System Costs	$0	$0	$0	$0	$0
Personnel Costs	$579,593	$579,593	$579,593	$579,593	$579,593
Security Threat Assessment Cost-Subtotal	$1,200,777	$1,047,594	$803,736	$801,539	$804,657
Grand Totals	$1,619,553	$1,363,102	$954,844	$951,164	$956,385

1. Enrollment. Part of the fee for the STA covers the cost for TSA or its agent to enroll applicants, collect, format, and process the required information and to submit the information accordingly. The STA process would require individuals who apply for a

STA to submit their fingerprints and biographic information to TSA or its agent. Based on TSA's research of the costs of both commercial and government fingerprint and information collection services, as well as a prior competitive bidding and acquisition process for similar services, TSA preliminarily estimates that the per applicant cost to collect and transmit fingerprints and other required data electronically is likely to be $15. TSA may adjust this estimated amount upwards or downwards in the final rule based on its final calculations of its costs. This cost would also cover related administrative support, help desk services, quality control, and related logistics.

2. Security Threat Assessment. Part of the fee for the STA covers the cost for TSA to conduct a STA. For the STA, each applicant's information would be checked against multiple databases and other information sources so that TSA would be able to determine whether the applicant poses a security threat that warrants denial of approval. The threat assessment would include an appeals process for individuals who believe that the records upon which TSA bases its determination are incorrect.

As part of the STA, TSA would submit fingerprints to the FBI to obtain any criminal history records that correspond to the fingerprints. The FBI is authorized to establish and collect fees to process fingerprint identification records. See Title II of the Judiciary Appropriations Act, 1991 (Pub. L. 101-515, Nov. 5, 1990, 104 Stat. 2112), codified in a note to 28 U.S.C. 534. Pursuant to Criminal Justice Information Services Information Letter 07-3 (Jun. 1, 2007), this fee is currently set at $17.25, effective October 1, 2007. If the FBI increases or decreases its fee to complete the criminal history records check, the increase or decrease would apply to this regulation on the date that the new FBI fee becomes effective.

TSA would need to implement and maintain the appropriate systems, resources, and personnel to ensure that fingerprints and applicant information are appropriately linked and that TSA would be able to receive and act on the results of the STA. TSA would need to have the necessary resources–including labor, equipment, database access, and overhead–to complete the STA process.

TSA estimates that the total cost of threat assessment services will be $4,658,303 over five years. This estimate includes $1,364,757 for FBI criminal history records checks, $395,582 for other analyses, and $2,897,965 for personnel necessary to facilitate the STA processing. These estimates are initial estimates and the final costs may be higher or lower depending on the final calculations which would be discussed in the final rule.

Population

TSA estimates that approximately 79,116 applicants would be required to complete a STA during the first five years of the program. This estimate is derived from the following population figures that have been gathered for specific segments of the regulated population.

Operational Year	**1st Year**	**2nd Year**	**3rd Year**	**4th Year**	**5th Year**	**Total**
Flight Crew Estimate*						
Part 91s.....	19,440	16,189	5,427	5,503	5,580	52,139
Part 125s.....	293	244	82	83	84	785
Part 135s.....	7,886	4,586	4,550	4,374	4,436	25,831
Flight Crew Estimate-Subtotal	27,618	21,018	10,058	9,960	10,100	78,755
Third-Party Auditor Estimate.....	150	8	8	8	8	180
Watch-list Service Provider Estimate	150	8	8	8	8	182
Grand Total	27,918	21,034	10,074	9,975	10,115	79,116

* Cites are to FAA regulations, 14 CFR.

Total Fee

TSA would charge a fee to recover its STA and other program management and oversight costs associated with the implementation of this rule. TSA estimates that applicant charge would be $74 per applicant. The estimate is based on the following preliminary calculations by TSA: the cost of services provided ($5,845,049) divided by the estimated population (79,116) receiving the service would equal $74 per applicant. As TSA continues to review and develop the STA program for the large aircraft program and to work to minimize all costs, some or all of its preliminary calculations may change resulting in an increase or decrease of the per applicant cost. In the final rule, TSA will publish the fee based on its final calculations, and the fee may remain $74 or it may be more or less.

TSA proposes to establish the $74 fee to recover all enrollment costs and STA costs. As part of the $74 fee, TSA would collect the current FBI Fingerprinting Fee of $17.25 for the criminal history records checks in the STA process and forward the fee to the FBI. If the FBI increases or decreases that fee in the future, TSA would collect the increased or decreased fee.

Additionally, pursuant to the Chief Financial Officers Act of 1990 (Pub. L. 101-576, Nov. 15, 1990, 104 Stat. 2838), DHS is required to review fees no less than every two years. 31 U.S.C. 3512. Upon review, if it is found that the fees are either too high (i.e., total fees exceed the total cost to provide the services) or too low (i.e., total fees do not cover the total costs to provide the services), the fee would be adjusted. Finally, TSA would be able to adjust the fees for inflation following publication of the final rule. If

TSA were to adjust the fees for this reason, TSA would publish a Notice in the Federal Register notifying the public of the change.

Section 1544.619 Notice to employers

TSA would notify employers of flight crew members, individuals authorized to perform screening functions, and watch-list service provider covered personnel of the results of the security threat assessment under proposed § 1544.619. This notification would allow aircraft operators or watch-list service providers to know whether an individual may be employed to perform the functions that would require a successful STA. Although TSA would notify an aircraft operator or a watch-list service provider that an individual received a Final Determination of Threat Assessment, TSA would not inform the aircraft operator or watch-list service provider the basis of that determination to protect the privacy of that individual.

TSA proposes to require aircraft operators and watch-list service providers to retain the notification of the results of the STA for five years. The notification would serve as documentation that an individual has undergone a STA if the aircraft operator or watch-list service provider is asked to produce such documentation as part of an audit or inspection.

PART 1515--APPEALS AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENT FOR INDIVIDUALS

For individuals who may want to appeal an Initial Determination of Threat Assessment, a Final Determination of Threat Assessment, or a Withdrawal of an Initial or Final Determination of Threat Assessment, TSA proposes to apply the appeals

procedures in current part 1515. These are the same procedures that apply to applicants for a hazardous materials endorsement on their commercial driver's license or a Transportation Worker Identification Credential under 49 CFR part 1572, or for certain air cargo workers under 49 CFR part 1540, subpart C.

Section 1515.1 Scope

TSA proposes to add individuals subject to proposed part 1544, subpart G to the scope of part 1515 to provide these individuals with a process to appeal an Initial Determination of Threat Assessment, a Final Determination of Threat Assessment, or a Withdrawal of an Initial or Final Determination of No Security Threat.

Section 1515.5 Appeal of Initial Determination of Threat Assessment Based on Criminal Conviction, Immigration Status, or Mental Capacity

Because the STAs for flight crew members, individuals authorized to perform screening functions, auditors, and watch-list service provider covered personnel involve criminal history records checks, TSA proposes to apply the procedures in § 1515.5 for these individuals to appeal an Initial Determination of Threat Assessment based on a disqualifying criminal offense.

An individual would be able to appeal an Initial Determination of Threat Assessment under § 1515.5 if he asserts that he does not have a disqualifying criminal offense. These procedures would also apply to appeals of a Withdrawal of Determination of No Security Threat based on a disqualifying criminal offense. An individual would initiate an appeal by providing TSA with a written request for the releasable materials upon which the Initial Determination was based, or by serving TSA with a written reply

to the Initial Determination. The individual would be required to serve TSA with the written request for the releasable material or the written reply with 60 days after the date of service of the Initial Determination. TSA's response would be due no later than 60 days after the individual is served with a written request or the written reply.

In response, TSA cannot provide any classified information, as defined under 6 CFR part 7 (DHS Classified National Security Information); or under E.O. 12958, Classified National Security Information, as amended by E.O. 13292 (68 FR 15315, Mar. 28, 2003); and E.O. 12968, Access to Classified Information, (60 FR 40245, Aug, 7, 1995); or any other information or material protected from disclosure by law. Classified national security information is information that the President or another authorized Federal official has determined, pursuant to E.O. 12958, as amended, and E.O. 12968, must be protected against unauthorized disclosure to safeguard the security of American citizens, the country's democratic institutions, and America's participation within the community of nations. See 60 FR 19825 (Apr. 20, 1995). E.O. 12958, as amended, and E.O. 12968 prohibit Federal employees from disclosing classified information to individuals who have not been cleared to have access to such information under the requirements of that E.O. See also 6 CFR part 7. If TSA determines that an applicant is requesting classified materials, TSA would deny the request for classified information.

In the written reply to the Initial Determination, the individual should explain why he or she is appealing the Initial Determination and provide evidence that the Initial Determination was incorrect. In an applicant's reply, TSA would consider only material that is relevant to whether he or she meets the standards for the STA. If an individual

does not dispute or reply to the Initial Determination, the Initial Determination would become a Final Determination of Threat Assessment.

An individual would have the opportunity to correct a record on which an adverse decision is based. As long as the record is not classified or protected by law from release, TSA would notify the applicant of the adverse information and provide a copy of the record. If the individual wishes to correct the inaccurate information, he or she would need to provide written proof that the record is inaccurate. The individual should contact the jurisdiction responsible for the inaccurate information to complete or correct the information contained in the record. The individual would be required to provide TSA with the revised record or a certified true copy of the information from the appropriate entity before TSA can reach a determination that the applicant does not pose a security threat.

In considering an appeal, the Assistant Secretary would review the Initial Determination, the materials upon which the Initial Determination is based, the applicant's reply and other materials or information available to TSA. The Assistant Secretary would be able to affirm the Initial Determination by concluding that an individual poses a security threat. If this occurs, TSA would serve a Final Determination of Threat Assessment on the applicant. The Final Determination would include a statement that the Assistant Secretary has reviewed the Initial Determination, the materials upon which the Initial Determination was based, the reply, if any, and other available information and has determined that the individual has a disqualifying criminal offense. For purposes of judicial review, a Final Determination based on a disqualifying criminal offense is a final TSA order.

If TSA determines that the individual does not have a disqualifying criminal offense, TSA would serve a Withdrawal of the Initial Determination on the individual and a Determination of No Security Threat on the individual's employer if the individual is a flight crew member, an individual authorized to perform screening functions, or a watch-list service provider covered personnel.

As noted above, TSA is proposing to apply to flight crew members, individuals authorized to perform screening functions, auditors, and watch-list service provider covered personnel the same disqualifying criminal offenses that now apply to certain other aviation workers under 49 CFR 1542.209 and 1544.229. These sections are based on a statutory provision, 49 U.S.C. 44936. The appeal process in § 1515.5 addresses whether or not the applicant has a disqualifying criminal offense, that is, whether the applicant has a conviction or a finding of not guilty by reason of insanity of one or more of the crimes listed in the rule within the time specified in the rule. If the individual does have a disqualifying criminal offense, there is no waiver. Accordingly, the waiver provisions that apply to applicants for an HME or a TWIC in § 1515.7 would not apply.

Section 1515.9 Appeal of Security Threat Assessment Based on Other Analyses

The STA for flight crew members, individuals authorized to perform screening functions, auditors, and key employees of watch-list service providers would also include other analyses, including checks of appropriate terrorist watch-lists and related databases under proposed § 1544.609. TSA proposes to use the appeals procedures in § 1515.9 for individuals who wish to appeal an Initial Determination of Threat Assessment or a withdrawal of a Determination of No Security Threat based on the other analyses.

The procedures in § 1515.9 are similar to the procedures in § 1515.5. However, unlike a Final Determination of Security Threat Assessment based on a disqualifying criminal offense, a Final Determination based on other analyses would not be a final TSA order unless the individual fails to file an appeal to an administrative law judge (ALJ) under § 1515.11.

Further, because other analyses are often based on classified and other sensitive information, there would be limits on what TSA would release in response to a request for materials. If TSA determines that an applicant who is appealing the other analyses is requesting classified materials, TSA would deny the request for classified information.

The denial of access to classified information under these circumstances is also consistent with the treatment of classified information under the Freedom of Information Act (FOIA), which specifically exempts such information from the general requirement under FOIA that government documents are subject to public disclosure. 5 U.S.C. 552(b)(1).

Similarly, under 49 U.S.C. 114(s), the Assistant Secretary of TSA shall, notwithstanding the FOIA statute, prescribe regulations prohibiting the public disclosure of information that would be detrimental to the security of transportation. Information that is designated as SSI must only be disclosed to people with a need to know, such as those needing to carry out regulatory security duties. 49 CFR 1520.11. The Assistant Secretary has defined information concerning threats against transportation as SSI by regulation. See 49 CFR 1520.5. Thus, information that TSA obtains indicating that an applicant poses a security threat, including the source of such information and the methods through which the information was obtained, will commonly be at least SSI and

may be classified information. The purpose of designating such information as SSI is to ensure that persons who seek to harm the transportation system do not obtain access to information that will enable them to evade the government's efforts to detect and prevent their activities. Disclosure of this information, especially to an individual specifically suspected of posing a threat to the transportation system, is precisely the type of harm that Congress sought to avoid by authorizing the Assistant Secretary to define and protect SSI.

Other pieces of information also are protected from disclosure by law due to their sensitivity in law enforcement and intelligence. In some instances, the release of information about a particular individual or his or her supporters or associates could have a substantial adverse impact on security matters. The release by TSA of the identities or other information regarding individuals related to a security threat determination could jeopardize sources and methods of the intelligence community, the identities of confidential sources, and techniques and procedures for law enforcement investigations or prosecution. See 5 U.S.C. 552(b)(7)(D) and (E). Release of such information also could have a substantial adverse impact on ongoing investigations being conducted by Federal law enforcement agencies, by revealing the course and progress of an investigation. In certain instances, release of information could alert co-conspirators to the extent of the Federal investigation and the imminence of their own detection, thus provoking flight.

For the reasons discussed above, TSA would not provide classified information or SSI to an individual, and TSA reserves the right to withhold SSI or other sensitive material protected from disclosure under law. As noted above,

TSA expects that information would be withheld only for determinations based on § 1572.107, which list databases that indicate potential terrorist activity or threats.

The procedures for appeals of Initial Determination of Threat Assessment would also apply to appeals of a Withdrawal of Determination of No Security Threat.

Section 1515.11 Review by Administrative Law Judge and TSA Final Decision Maker

An individual who has received an Initial Determination of Threat Assessment or a withdrawal of Determination of No Security Threat based on the other analyses under § 1544.609 would first appeal that determination using the procedures in § 1515.9. If after that appeal TSA continues its determination that the applicant is not qualified, the applicant would be able to seek review by an ALJ under § 1515.11.

The procedures would provide an individual with 30 calendar days from the date of service of the determination to request a review. An ALJ who possesses the appropriate security clearances to review classified information would conduct the review. Section 1515.11 provides detailed requirements for the conduct of the review, such as information that individuals must submit, requests for extension of time, and the duties of the ALJ.

Within 30 calendar days after the conclusion of the hearing, the ALJ would issue an unclassified decision to the parties. The ALJ may issue a classified decision to TSA. The ALJ may decide that the decision was supported by substantial evidence on the record or that the decision was not supported by substantial evidence on the record. If neither party requests a review of the ALJ's decision, TSA would issue a final order either granting or denying the waiver or the appeal.

Either TSA or the individual would be able to petition for review of the ALJ's decision to the TSA Final Decision Maker. The TSA Final Decision Maker would issue a written decision within 60 calendar days after receipt of the petition or within 30 days of receipt of the other party's response, if a response is filed, unless a longer period is required. The TSA Final Decision Maker may issue an unclassified opinion to the parties and a classified opinion to TSA. For purposes of judicial review, the decision of the TSA Final Decision Maker would be a final agency order.

PART 1550—AIRCRAFT SECURITY UNDER GENERAL OPERATING AND FLIGHT RULES

Section 1550.5 Operations using a sterile area

TSA proposes to remove the reference to scheduled passenger operations, public charter passenger operations, and private charter passenger operations, and replace the language with "aircraft operators that have a security program" to maintain consistency between regulations. TSA also proposes to delete the compliance date section since the date has passed. Operators that must follow this section should currently be adhering to the applicable regulations.

Section 1550.7 Operations in Aircraft Over 12,500 Pounds

TSA proposes to amend references to "12,500 pounds or more," and replace the language with "over 12,500 pounds" to maintain consistency between regulations. The proposed changes would provide that § 1550.7 only applies to aircraft over 12,500 pounds, excluding operations specified in § 1550.5 and operations under a security program under part 1544 and 1546. The aircraft that remain subject to this regulation are

the foreign aircraft with an MTOW of over 12,500 pounds that are not an all-cargo operation or are under a security program under part 1546.

IV. Regulatory Requirements

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et seq.) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

This proposed rule contains amended information collection activities subject to the PRA. TSA is revising a collection that OMB has previously approved and assigned OMB Control Number 1652-0003 (Aircraft Operator Security). Accordingly, TSA has submitted the following information requirements to OMB for its review.

Title: Large Aircraft Security Program

Summary: TSA proposes to amend current aviation transportation security regulations (49 CFR part 1544) to enhance and improve the security of GA by issuing this NPRM that would require revisions to a currently approved information collection. Through this NPRM, TSA is proposing the following seven required information collections in addition to those already approved under this OMB control number: (1) require security programs for all operators of aircraft that have a maximum certificated takeoff weight of over 12,500 pounds, except for aircraft operators under a full program, full all-cargo program, limited program, or certain government aircraft ("large aircraft"); (2) require that aircraft operator flight crews, individuals authorized to perform screening

functions, TSA–approved auditors, and TSA-approved watch-list service providers' key personnel undergo STAs that include a fingerprint-based criminal history records check; (3) require large aircraft operators to submit to an independent, third-party audit conducted by TSA-approved auditors (i.e., large aircraft operators would be required to maintain records, and provide auditors access to their records, equipment, and facilities necessary for the auditor to conduct an audit); (4) require TSA oversight of auditors (i.e., TSA-approved auditors would submit to any TSA inspection, include copying of their records, to determine their compliance with TSA regulations); (5) require large aircraft operators to transmit passenger information to TSA-approved watch-list service providers to conduct watch-list matching against the No-Fly and Selectee Lists; (6) require auditors and watch-list service providers to submit applications to become TSA-approved; and (7) require watch-list service providers to submit security programs for approval.

Use of: The LASP requirement would replace some existing security programs for large aircraft operators and would include additional GA operators, such that TSA would apply consistent security procedures to operators of large aircraft. TSA would use the identifying information and fingerprints collected from flight crew members, auditors, and key employees of TSA-approved watch-list service providers to conduct STAs that include a criminal history records check. The TSA-approved auditors would review and inspect the records aircraft operators would be required to maintain to demonstrate compliance with TSA requirements during their audits. TSA would inspect the records maintained by the auditors to determine their compliance with TSA regulations and to ensure that auditors have the qualification to produce useful audits to TSA and the aircraft operators. The watch-list service providers would use the passenger information

transmitted by the aircraft operators to conduct watch-list matching against the No Fly and Selectee Lists. TSA would use the applications submitted by auditors and watch-list service providers to ensure the entities are eligible and qualified. TSA would require watch-list service providers to adopt and carry out a security program to ensure that they are taking appropriate security measures and are consistent and accurate in performance of their duties.

Respondents (including number of): The likely respondents to this proposed information requirement are: operators of aircraft that have a maximum certificated takeoff weight of over 12,500 pounds, except for aircraft operators under a full program, full all-cargo program, limited program, or certain government aircraft ("large aircraft"); individuals authorized to perform screening functions; entities seeking to become TSA-approved auditors; and entities seeking to become TSA-approved watch-list matching service providers and key personnel.

Frequency: The proposed recordkeeping requirements would be ongoing and continuous. The requirement that operators ensure their flight crewmembers, other employees, and individuals authorized to perform screening functions undergo a security threat assessment, which includes a criminal history records check, would be a frequency of every five years. The aircraft operators would be required to transmit passenger information to watch-list service providers to conduct watch-list matching on a per flight basis. The watch-list service providers would be required to report matches to the Federal watch-list as matches occur. Individuals and firms desiring to become TSA-approved auditors as well as firms seeking approval to become watch-list service providers would be required to send TSA an application only once. Watch-list service

providers also would be required to submit a security program to TSA once, and would be required to ensure their covered personnel undergo a STA conducted by TSA once every five years. Auditors would be required to submit an audit report to the aircraft operator and to TSA for every audit that they perform.

Annual Burden Estimate: TSA is amending this information collection to reflect the addition of approximately 9,544 new respondents, as well as new collection burdens, for an estimated total 10,374 respondents. Over three years, the new population includes 9,363 new large aircraft operators, 166 TSA-approved auditors, and 15 watch-list service providers. TSA estimates that the large aircraft operators would spend approximately 1 million hours annually establishing and/or maintaining appropriate security programs, completing passenger watch-list matching in the prescribed manner, completing STAs on flight crewmembers, and completing third party audits of established security programs.

TSA estimates that the TSA-approved auditors would spend approximately 19,660 hours annually, with an annual 4,990 responses, submitting application materials and profiles, completing STAs on their employees, and writing up their findings and submitting copes to the aircraft operator and TSA. TSA estimates that the total annual hour burden for watch-list service providers would be approximately 88 hours, which includes submitting application materials (including a security program and profile information) and conducting STAs on their employees in order to receive TSA approval.

TSA is also amending the cost burden for this information collection to reflect an expanded respondent population and new information collection costs. As a result of the LASP, non-AOSSP operators would be required to pay fees to submit passenger information to watch-list service providers, conduct security threat assessments on their

flight crew members and individuals authorized to perform screening functions, and contract with TSA-approved auditors. TSA-approved auditors and watch-list service providers would also pay fees to conduct STAs on their employees. In total, these requirements would add $10.5 million to the average annual cost of this information collection, bringing the total annual cost of the information collection (which includes costs to AOSSP aircraft operators) to $12.9 million.

TSA is soliciting comments to--

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements by [Insert date 60 days after publication in the Federal Register]. Direct the comments to the address listed in the ADDRESSES section of this document, and fax a copy of them to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395-5806. A comment to OMB is most effective if OMB receives it within 30 days of publication.

TSA will publish the OMB control number for this information collection in the Federal Register after OMB approves it.

As protection provided by the Paperwork Reduction Act, as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Regulatory Impact Analyses

1. Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

TSA has prepared a separate detailed analysis document, which is available to the public in the docket. With respect to these analyses, TSA provides the following conclusions and summary information.

- TSA has determined that this is an economically significant rule within the definition of E.O. 12866, as estimated annual costs or benefits exceed $100 million in any year. The mandatory OMB Circular A-4, Regulatory Analysis, accounting statement is included in the separate complete analysis and is not repeated here.
- As a normal practice, we provide the Initial Regulatory Flexibility Analysis (IRFA) to the public, but withhold the final formal certification of determination as required by the RFA until after we receive public comments and publish the Final Regulatory Flexibility Analysis. The IRFA reflects substantial gaps in data where TSA was unable to identify either impacted entities or revenues for those that are businesses. TSA has provided the analysis based upon available data and requests public comment on all aspects of the analysis. As a result, TSA makes no preliminary finding as to whether there is or is not a significant impact on a substantial number of small businesses.
- The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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. TSA has assessed the potential effect of this notice of proposed rulemaking and has determined this rule would not have an adverse impact on international trade.

- The regulatory evaluation provides the required written assessment of Unfunded Mandates. The proposed rule is not likely to result in the expenditure by State, local, or tribal governments, in the aggregate, of $100 million or more annually (adjusted for inflation). However, because the rule is economically significant as defined by E.O. 12866, it does have an unfunded mandate impact on the economy as a whole.

2. Executive Order 12866 Assessment

Benefits

The proposed rule would yield benefits in the areas of security and quality governance. The security and governance benefits are four-fold. First, the rule would enhance security by expanding the mandatory use of security measures to certain operators of large aircraft that are not currently required to have a security plan. These measures would deter malicious individuals from perpetrating acts that might compromise transportation or national security by using large aircraft for these purposes. Second, it would harmonize, as appropriate, security measures used by a single operator in its various operations and between different operators. Third, the new periodic audits of security programs would augment TSA's efforts to ensure that large aircraft operators are in compliance with their security programs. Finally, it would consolidate the regulatory framework for large aircraft operators that currently operate under a variety of security programs, thus simplifying the regulations and allowing for better governance. When taken together, the security-related benefits would act as part of the larger benefits yielded by TSA's layered security approach.

At this time, TSA cannot quantify these benefits; however, TSA conducted a "break-even" analysis to determine what reduction of overall risk of a terror attack and resulting reduction in the expected losses for the nation due to a terror attack would be necessary in order for the expected benefits of the rule to exceed the costs. Because the types of attacks that would be prevented by this regulation vary widely in their intensity and effects, depending both on the intent of those undertaking the attack and their effectiveness in completing it, TSA considered three example attack scenarios and the monetized losses associated with each. Similar break-even analyses have been undertaken in support of other DHS rules, and TSA has coordinated the current analysis with these earlier ones, with the aim of maintaining consistency in DHS analyses and results. In the case of the LASP proposed rule, some of the types of terror attacks that might be undertaken using aircraft operated by those covered under the proposed rule are similar to those that were considered by U.S. Customs and Border Protection (CBP), and this similarity has informed the current analysis and examples. For one scenario, however, TSA has relied on DHS research into the effects of successful delivery of a weapon of mass destruction (WMD) by an aircraft of the type affected by the proposed rule. The conclusions of this DHS research are consistent with results from existing academic and think tank research into similar issues.

In order to compare the losses associated with each scenario to the cost of the proposed rule, TSA converted casualties into a monetary total. TSA used the Value of a Statistical Life (VSL) of $5.8 million that is used by the Department of Transportation (DOT), and which was recently revised to reflect current academic and other research

into this quantity.[33] The VSL represents an individual's willingness to pay to avoid a fatality onboard an aircraft, based on economic studies of the value individuals place on small changes in risk. Similarly, based on the same DOT guidance, TSA valued moderate injuries at 1.55 percent of the VSL and severe injuries at 18.75 percent of the VSL. *TSA emphasizes that the VSL is a statistical value of a unit decrease in expected fatalities to be used for regulatory comparison, and does not suggest that the actual value of a particular individual's life can be stated in dollar terms.*

The following paragraphs present a description of the four scenarios considered by TSA with corresponding estimates of their monetary consequences. These scenarios make up a wide range of possible consequences, which reflects the varied opportunities for attack and targeting that may exist for those intent on doing the nation harm. In order to compare direct costs to direct benefits, TSA presents only the direct economic losses estimated to result from the attack scenarios and has omitted economic "ripple effects" and economic transfers from its calculations.

Scenario 1 contemplates a situation where a large aircraft is used as a missile to attack an unpopulated or lightly populated area, resulting in minimal loss of life, moderate injuries and destruction of the aircraft. Of the scenarios considered, this is the most restrained in its level of envisioned harm. It is assumed that a loss of 3 lives occurs, along with 10 moderate injuries and the complete hull loss of the aircraft. Using the DOT VSL of $5.8 million, the monetary estimate associated with the loss of life is $17.4 million. Again using DOT guidance, moderate injuries to those affected are valued at 1.55% of the VSL, or $89,900. To estimate the value of the lost aircraft, TSA used $9.3

[33] U.S. Department of Transportation memorandum, *Treatment of the Economic Value of a Statistical Life in Departmental Analyses.* Office of the Secretary of Transportation, February 5, 2008.

million, which is the 2008 average market value of a General Aviation jet aircraft weighing between 12,500 and 65,000 pounds.[34] Taken together, the monetary consequence of this scenario totals $32 million, or $0.032 billion.

Scenario 2 also contemplates a situation where a large aircraft is used as a missile to attack a populated area, resulting in significantly greater loss of life and injuries, and destruction of the aircraft. It is assumed that a loss of 250 lives occurs, along with 250 severe injuries and the complete hull loss of the aircraft. Using the DOT VSL of $5.8 million, the monetary estimate associated with the loss of life is $1.45 billion. Again using DOT guidance, severe injuries to those affected are valued at 18.75% of the VSL, or $1.1 million, the monetary impact of these injuries total $272 million. To estimate the value of the lost aircraft, TSA used $9.3 million, which is the 2008 average market value of a General Aviation jet aircraft weighing between 12,500 and 65,000 pounds. Taken together, the monetary consequence of this scenario totals $1.73 billion. The level of damage in this type of scenario is consistent with the scenarios considered for the CBP APIS Final Rule analysis, although the current analysis also includes a component of severe injuries.[35]

Scenario 3 contemplates a situation where a large aircraft is used as a missile to carry out a direct attack on a building in a densely populated urban area. Because of these locational details, a successful attack would result in much more severe

[34] Federal Aviation Administration. 2007. Economic Values for FAA Investment and Regulatory Decisions, A Guide. Prepared by GRA, Inc. December 31, 2004 (updated). Table 5-7. This table reports 2003 value estimates, and the 2003 estimate of $7.2 million was brought to the 2008 value of $9.3 million using the FAA recommended method described in the document in Section 9.6 (page 9-9), which relies on the BLS producer price index series for civil aircraft, available in the producer price index values for commodities at http://stats.bls.gov/ppi/home.htm .

[35] Regulatory Assessment & Final Regulatory Flexibility Analysis for the Final Rule, *Passenger Manifests for Commercial Aircraft Arriving in and Departing from the United States; Passenger and Crew Manifests for Commercial Vessels Departing from the United States.* Table 12, page 35.

consequences, including significantly increased loss of life and widespread real property damage, compared to Scenario 1. For valuation purposes for this scenario, TSA assumes 3,000 fatalities, valued at $17.4 billion using the DOT VSL of $5.8 million. To maintain consistency with existing DHS analyses, in particular the APIS analysis,[36] TSA assumes property losses totaling $21.8 billion; this total is motivated by comparison to the City of New York Comptroller's estimate of direct losses to the city due to the September 11 attacks.[37] However, TSA also assumes that 9,000 severe injuries would also result from such an attack. These severe injuries, valued at 18.75% of the VSL based on the DOT guidance, have a monetary valuation of $9.79 billion. Finally, based on the FAA estimate of aircraft value, losses in Scenario 3 include $9.3 million due to complete hull loss of the aircraft used in the attack. The scenario elements aggregate to a total consequence of $49.0 billion.

Finally, **Scenario 4** contemplates a catastrophic situation in which a large aircraft is used to deliver a nuclear or biohazard device to an urban center. The costs associated with a scenario such as this have been examined by DHS in detail for a nuclear device.[38] This research concludes that the consequences of such an event would be immense, with a wide range of uncertainty. For the present analysis, TSA is using a value of $1 trillion for the direct consequences of an attack of this severity. This value falls in the midrange of the values developed in the DHS research, and is consistent with results obtained from a review of academic and think tank research into the consequences of nuclear and

[36] Regulatory Assessment & Final Regulatory Flexibility Analysis for the Final Rule, *Passenger Manifests for commercial Aircraft Arriving in and Departing from the United States; Passenger and Crew Manifests for Commercial Vessels Departing from the United States*. Table 13, page 36.
[37] Thompson, Jr., William C. Comptroller, City of New York. "One Year Later: The Fiscal Impact of 9/11 on New York City." September 4, 2002.
[38] "Economic Consequences of a Nuclear Detonation in an Urban Area" undated DHS draft.

bioterror attacks on urban areas. The value of $1 trillion results from loss of life in an attacked urban area in the hundreds of thousands and enormous loss of property and productive assets.

Figure 1 below displays the impacts and monetary consequences identified for each of these scenarios. TSA compared the monetary consequence from a successful attack with the cost of the proposed LASP. To judge the value or effectiveness of the LASP proposed rule in the context of these scenarios, it is necessary to compare the extent of monetary consequence from a successful attack with the cost of a program like LASP that would be deployed to reduce the risk or likelihood of such an attack being successfully undertaken. The annual risk reductions required for the proposed rule to break even under each of the four scenarios are presented in below. In this analysis the comparison is made between the estimated scenario consequence and the LASP discounted annualized cost of $194.1 million, using a discount rate of 7%; the "required risk reduction" for breakeven is simply the ratio between this annualized program cost and the scenario consequence total. As shown, depending on the attack scenario, underlying baseline risk of terror attack would have to be reduced less than 1 percent (Scenarios 3 and 4) to 11 percent (Scenario 2) in order for the rule to break even. If only avoidance of quantified direct losses is considered, preventing the impact characterized in Scenario 1 is not sufficient to offset the LASP program's annualized costs, even if a Scenario 1 outcome were a certainty, expressed as a baseline risk of 100%, and the chance of this were eliminated entirely (100 percent risk reduction).

Figure 1: Required Reduction in Annual Risk Necessary (%) for LASP Annualized Discounted Costs ($194.1 M) to Equal Expected Benefits, by Attack Scenario

Scenario	Scale	Loss of Life	Valuation at VSL of $5.8 M ($ B)	Hull Loss ($ B)	Property Loss ($ B)	Injuries ($ billion)	Total ($ B)	Required Risk Reduction by LASP
1	Minimal	3	$0.02	$0.009	None	$0.005	$0.03	N/A
2	Moderate	250	$1.45	$0.009	None	$0.27	$173	11.0%
3	Major	3000	$17.4	$0.009	$21.8	$9.79	$49.0	0.7%
4	Catastrophic	Large and Variable across Studies					$1,000	0.019%

Costs

The following summarizes the estimated costs of this rulemaking by general category of who pays. A summary table provides an overview of the cost items and a brief description of cost elements. Both in this summary and the economic evaluation, descriptive language is used to try and relate the consequences of the regulation. Although the regulatory evaluation attempts to mirror the terms and wording of the proposed rule text, no attempt is made to precisely replicate the regulatory language and readers are cautioned that the actual regulatory text, not the text of the evaluation, would be binding. Throughout the evaluation rounding in displayed values may result in minor differences in displayed totals.

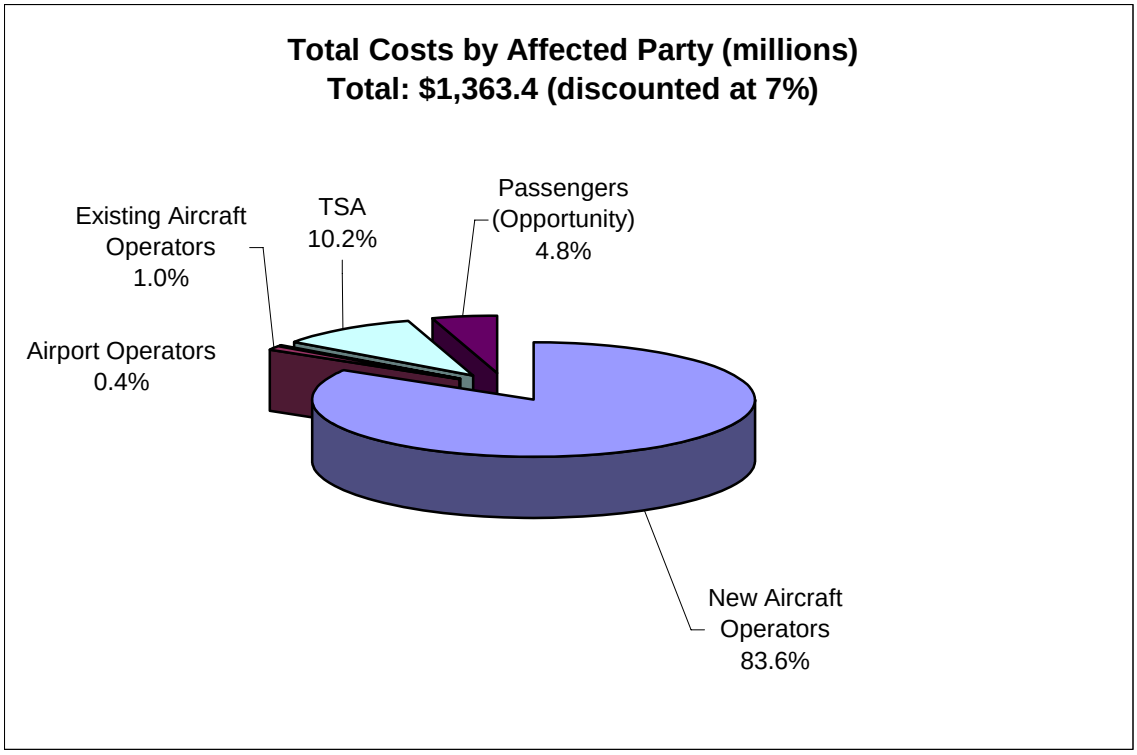
Aircraft operators, airport operators, and TSA would incur costs to comply with the requirements of the proposed LASP rule. TSA estimated the total 10-year cost of the program at $1.4 billion, discounted at 7%. At this rate, the annualized total rule cost per flight is estimated at $44. Aircraft operator costs comprise 85 percent of all estimated costs. This is due to the large number of newly regulated aircraft operators and the amount of time security coordinators are anticipated to spend on their duties.

TSA estimated approximately 9,000 GA aircraft operators use aircraft with a maximum takeoff weight exceeding 12,500 pounds and would thus be subject to the

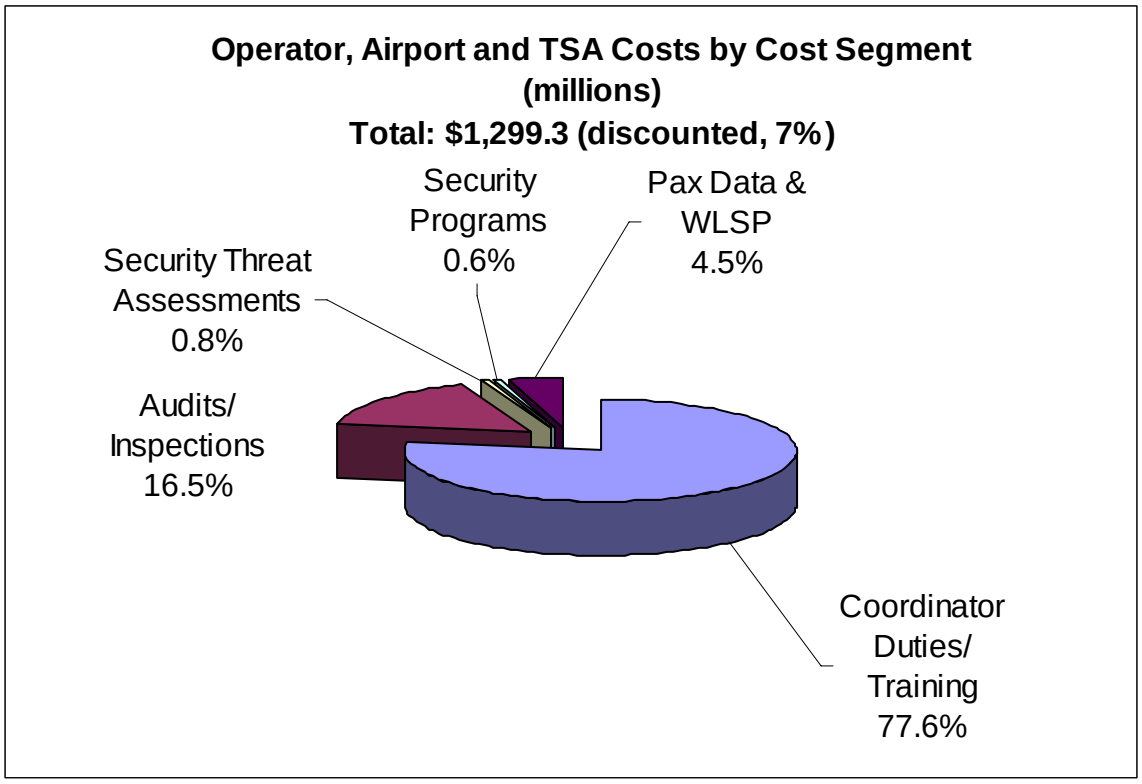
proposed rule. These aircraft operators are currently not required to operate under any existing TSA security programs. Costs to these newly regulated aircraft operators represent 84 percent of total estimated costs, with security coordinator duties and training making up 89.5 percent of those new aircraft operator costs. Security coordinator duties and training for these operators are estimated at $1.0 billion over 10 years, discounted at 7 percent. The following figure provides the total 10-year costs as well as annualized costs at the 0, 7, and 3 percent discount rates for the principal populations affected by the proposed rule.

Total and Annualized Costs by Affected Entity

	10-Year Total Costs			**Annualiz**	
Affected Entity	0%	3%	7%	0%	3
New Aircraft Operators	$1,655.8	$1,402.3	$1,143.5	$165.6	
Existing Aircraft Operators	$19.6	$16.7	$13.6	$2.0	
Airport Operators	$7.5	$6.5	$5.5	$0.8	
TSA	$194.4	$165.9	$136.6	$19.4	
Passengers (Opportunity)	$91.9	$78.2	$64.1	$9.2	
Total, Primary	**$1,969.3**	**$1,669.5**	**$1,363.4**	**$196.9**	
Total, High	**$2,720.7**	**$2,305.9**	**$1,882.3**	**$272.1**	
Total, Low	**$1,239.1**	**$1,051.2**	**$859.2**	**$123.9**	



Given several areas of uncertainty in the cost estimates, TSA estimates of the total cost of the rule range from $859 million to $1.9 billion, discounted at 7 percent. TSA was unable to model some requirements, such as aircraft operator expenses to collect and submit passenger information for watch-list matching. TSA is requesting detailed comments to enable quantification of this impact for new and existing operators. The figure below displays the cost segments of the proposed rule grouped into four major cost categories: security coordinator duties and training; audits and inspections; STAs; and security programs.



TSA estimated covered aircraft operators would expend $1.1 billion over 10 years to comply with the proposed LASP, discounted at 7 percent. All covered aircraft operators would incur costs to develop and submit security programs and profiles. Newly regulated aircraft operators would be required to designate security coordinators who would perform a variety of security-related duties and complete annual security training. These aircraft operators also would be required to ensure that their flight crewmembers successfully undergo STAs conducted by TSA. All aircraft operators would need to control access to any weapons and check property in the cabin for possible stowaways. Further, aircraft operators would be required to submit names of passengers aboard their flights to TSA-approved service providers for purposes of matching names against terrorist watch-lists. Finally aircraft operators would contract with TSA-approved

auditors to undergo biennial reviews demonstrating compliance with their security programs.

Since TSA views security programs as a package, this rule would also require a partial airport security program for non-federalized airports regularly serving large aircraft, in scheduled or public charter operations and airports designated by the Secretary of Transportation as "Reliever Airports." TSA has determined these airports frequently serve as a base for aircraft operators covered by the LASP. Covered airports would be required to develop and submit security programs to TSA and comply with program requirements. This would include the designation of airport security coordinators and completion of attendant training. TSA estimated airport operators would expend $5.5 million over 10 years, discounted at 7 percent.

To implement and oversee this new security program regime, TSA would expend monies to conduct outreach to covered aircraft and airport operators and process security programs and profiles, enforce compliance with the proposed requirements, and enroll auditors and watch-list service providers. TSA estimated its 10-year costs to implement the proposed regulation would range from $133.5 million to $139.8 million, discounted at 7 percent, with a primary estimate of $136.6 million.

Entities wishing to participate as auditors or watch-list service providers would incur voluntary costs to apply to TSA for authorization to provide those services. These service entities would likely pass their enrollment expenses to subscribing aircraft operators; thus, in the regulatory evaluation TSA assesses the costs directly to the affected aircraft operators. To avoid double-counting, the analysis does not provide a separate estimate of auditor and watch-list service provider enrollment costs. However,

TSA has included a description of the enrollment process and anticipated unit costs within the discussion of TSA's costs to process auditor and watch-list service provider applications.

Passengers on covered aircraft would incur opportunity costs from the time spent providing personal information to aircraft operators, for use in Watch List Matching, and, to a much more modest degree, from time spent delayed when pre-flight Watch List Matching issues need to be resolved in real time. TSA estimated that these passenger opportunity costs total $64 million, discounted at 7 percent.

As previously noted, TSA estimates that the total 10-year cost of the program would be $1.4 billion, discounted at 7 percent; the annualized cost (at a 7 percent discount rate) per flight would be $44.

2. Initial Regulatory Flexibility Assessment (IRFA)

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

When issuing a rulemaking, agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory

flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As part of implementing this NPRM, TSA conducted this Initial Regulatory Flexibility Analysis. The IRFA describes the reasons for and objectives of the proposed rule; includes a description and estimate of the number of small entities that would be impacted by the proposed rule; estimates the cost of complying with requirements for small entities; addresses significant alternatives to the rulemaking considered by TSA; and, identifies duplicative, overlapping, and conflicting rules.

Reason For The Proposed Rule

The Aviation and Transportation Security Act (ATSA) (Pub. L. 107-71, 115 Stat. 597, Nov. 19, 2001) granted TSA broad statutory authority to take measures to increase the security of civil aviation in the United States. Since the passage of ATSA, TSA has used its authority to implement an array of aviation security programs, focusing mainly on the commercial aviation segment of the industry.

TSA is aware that as vulnerabilities within the air carrier and commercial operator segment of the aviation industry are reduced, GA operations may become more attractive targets. With thousands of operators flying over 100,000 aircraft, firms operating in the GA market–including some smaller airports–are largely unregulated with respect to security. Many GA aircraft, however, are of the same size and weight of the commercial

operators that TSA regulates, meaning that they potentially and effectively could be used to commit a terrorist act.

Consequently, this portion of the aviation industry may be vulnerable to exploitation by terrorists. Except for limited security requirements for certain classes of GA aircraft, TSA does not currently require security programs for many GA aircraft operators. This situation presents a security risk.

The proposed rule would mitigate this risk by requiring GA aircraft operators and certain airports to enact an assortment of security measures.

Objectives Of The Proposed Rule

The objective of the proposed rule is to strengthen the security of civil aviation.

Description And Estimate Of The Number Of Small Entities

The proposed rule would impact certain firms flying aircraft with a maximum take-off weight greater than 12,500 pounds in the civil aviation market. It would also impact certain publicly- and privately-owned airports. This section of the IRFA attempts to describe and identify all small entities within the aforementioned industries, including those operating under existing security regulations and those that are currently not regulated.

Currently Regulated Aircraft Operators

The proposed rule would affect aircraft operators currently offering services under existing security regulations. Aircraft operators utilizing TSA-required security programs, including the Twelve-Five Standard Security Program (TFSSP), the All Cargo Twelve-Five Standard Security Program (TFSSP-AC), the Partial Program Standard

Security Program (PPSSP), and the Private Charter Standard Security Program (PCSSP) would be covered by the proposed rule.

Aircraft operators offering services under the TFSSP and the TFSSP-AC utilize aircraft with a maximum takeoff weight of more than 12,500 pounds; offer scheduled or charter service; carry passengers or cargo or both; and do not operate under a PPSSP or PCSSP.

The PPSSP is used by scheduled passenger or public charter passenger operations using aircraft with seating configurations of 31 or more, but 60 or fewer seats that do not enplane from or deplane into a sterile area, and by scheduled passenger or public charter passenger operations using aircraft with seating configurations of 60 or fewer seats engaged in operations to, from, or outside the United States that do not enplane from or deplane into a sterile area.

The requirements of the PPSSP are identical to those of the TFSSP, with the exception that the PPSSP requires operators to participate in airport operator-sponsored exercises of airport contingency plans. TSA estimated that approximately 649 operators, utilizing 4,540 large aircraft, were conducting operations either solely or primarily under the TFSSP or PPSSP at the time of writing. (Within the text of this IRFA, Twelve-Five and Partial Program operators may be referred to collectively as TFSSP operators due to the extremely small number of Partial Program operators, the similarities between the two groups, and the fact that they would be merged under the proposed regulation.)

Conversely, aircraft operators using privately chartered aircraft (aircraft hired by, and for, one specific group of people), having a MTOW greater than 45,500 kg (100,309.3 pounds); or, a passenger seating configuration of 61 or more seats, or, that

enplane from or deplane into a sterile area, operate under the PCSSP. To be considered a private charter, the charterer must have engaged the total passenger capacity of the aircraft, invited all of the passengers, borne all of the costs of the charter, and must not have advertised to the public, in any way, to solicit passengers.

In conducting research for the Regulatory Evaluation, TSA generated estimates of the number of operators offering services under each security program described above. The estimates are shown in the figure below.

LASP Aircraft Operators Currently Operating Under a TSA Security Program

Existing Security Program or Operating Certificate	Number of Aircraft Operators
Twelve-Five Standard Security Program.....	649
All Cargo Twelve-Five Standard Security Program.....	48
Private Charter Standard Security Program.....	77
Total	**774**

To determine if the firms identified in the figure above qualify as small entities as defined by the RFA and the Small Business Administration (SBA), TSA first attempted to classify each firm using North American Industry Classification System (NAICS) codes maintained by the U.S. Census Bureau. After analyzing the various operators' characteristics and the NAICS codes, TSA determined that the aircraft operators described above would broadly fall into the nonscheduled air transportation market. Firms in NAICS code 481211, Nonscheduled Chartered Passenger Air Transportation, and code 481212, Nonscheduled Charter Freight Air Transportation, are classified as large or small based on employee measures. Firms in these markets with less than 1,500 employees are considered small by the SBA.

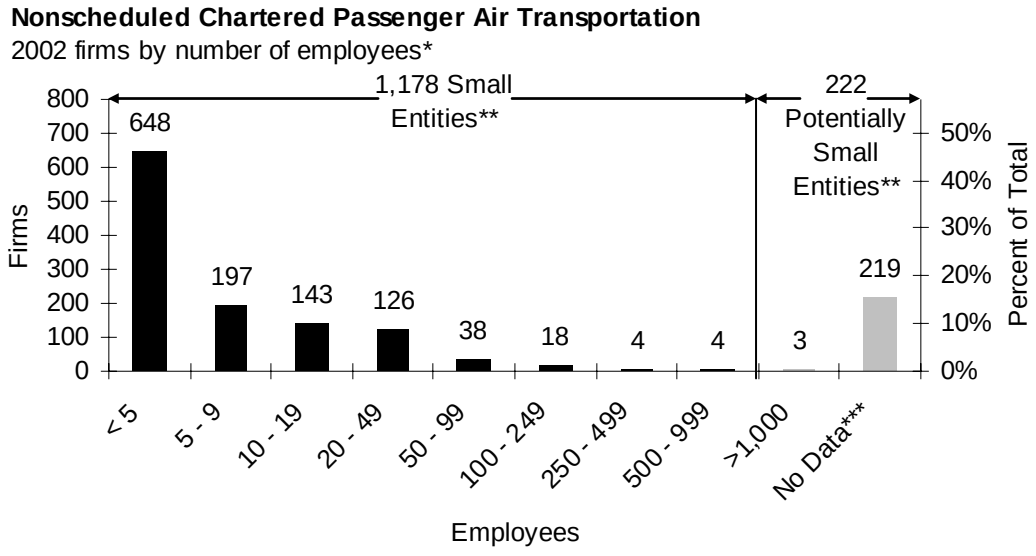
Unfortunately, TSA could not obtain current, detailed employee data for the respective firms, making it difficult to discern whether the firms are small or large

according to standards set by the SBA. In light of the lack of current employee data on these firms, TSA turned to U.S. Census Bureau information to gauge the number of currently regulated entities affected by the proposed rule that may be considered small.

NAICS 481211–Nonscheduled Chartered Passenger Air Transportation

As stated above, the SBA defines any firm in the Nonscheduled Chartered Passenger Air Transportation industry with less than 1,500 employees as small. Using 2002 data maintained by the U.S. Census Bureau, TSA determined that there are 1,400 firms in the industry, and at least 1,178 of these firms are small entities. The average annual revenue for firms in this industry in 2002 was approximately $3.9 million. The data that TSA accessed from the Census Bureau to make this determination did not have enough detail for the Agency to draw a conclusion on the remaining 222 firms. See the figure below.

NAICS 481211: Estimate of Small Currently Regulated Passenger Aircraft Operators



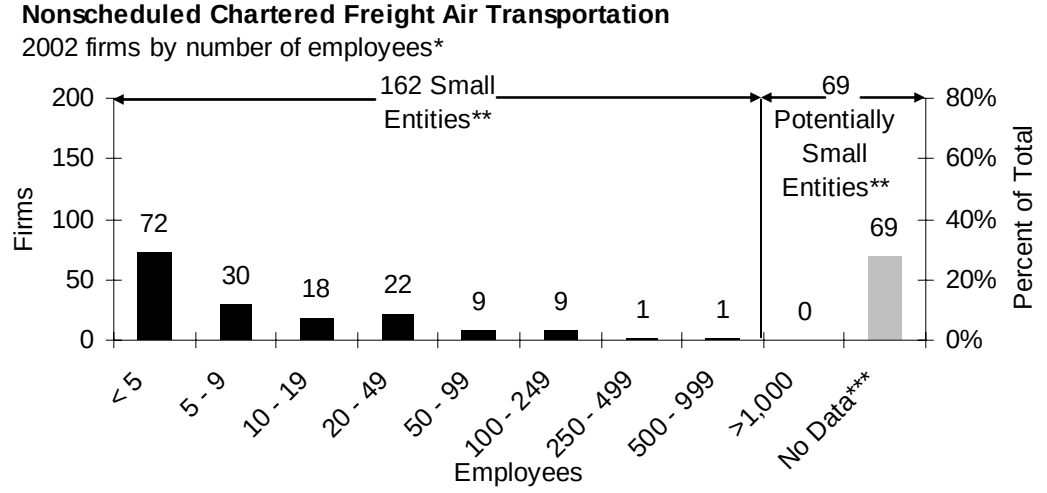
Source: 2002 Economic Census

Notes: *These estimates do not include non-employers. **The SBA defines firms with less than 1,500 employees as small. ***The Census Bureau does not maintain employee data for these firms, which operate less than 12 months per year.

NAICS 481212–Nonscheduled Chartered Freight Air Transportation

As previously stated, the SBA defines any firm in the Nonscheduled Chartered Freight Air Transportation industry with less than 1,500 employees as small. Again using Census Bureau data, TSA determined that there are 231 firms in the overall industry, and at least 162 of these firms are small entities. The average annual revenue for firms in this industry in 2002 was approximately $5.0 million. The data that TSA accessed from the Census Bureau to make this determination did not have enough detail for the Agency to draw a conclusion on the remaining 69 firms.

NAICS 481212: Estimate of Small Currently Regulated Freight Aircraft Operators



Source: 2002 Economic Census

Notes: *These estimates do not include non-employers. **The SBA defines firms with less than 1,500 employees as small. ***The Census Bureau does not maintain employee data for these firms, which operate less than 12 months per year.

Firms operating aircraft under the TFSSP and the PCSSP likely fall into NAICS code 481211, Nonscheduled Chartered Passenger Air Transportation, described above. As previously stated, TSA estimated that there are 649 and 77 TFSSP and PCSSP operators, respectively, that would be affected by the NPRM. In all likelihood, these operators represent a subset of the firms TSA identified using the Census data. So while TSA identified 1,178 small entities (and 222 potentially small entities) in the overall

Nonscheduled Chartered Passenger Air Transportation market, it is not likely that all of those firms would be impacted by the proposed rule.

Firms operating under the TFSSP-AC most likely are classified by the Census Bureau by NAICS code 481212, Nonscheduled Chartered Freight Air Transportation. As stated above, TSA estimated that the proposed rule would only affect 48 of these operators. It is likely that the 48 operators represent a subset of the firms TSA identified in the Census data described above.

By adding the estimated number of TFSSP, PCSSP, and TFSSP-AC operators together, TSA was able to conclude that the proposed rule would affect a total of 774 currently regulated operators. In 2003, pursuant to another rulemaking, TSA estimated that of 767 TFSSP, TFSSP-AC, and PCSSP operators, all but 15 were small entities. Typically, these types of operators are independently owned and operated, and rarely employ more than 1,500 employees, making them small entities according to the SBA. Given that TSA has not received any new data on these operators since 2003, and given the lack of detail in the Census Bureau data, the Agency assumed for the purposes of this analysis that all but 15 of the 774 operators that would be affected by this NPRM are small entities. The Agency seeks comment on this preliminary conclusion.

Newly Regulated Aircraft Operators

The proposed rule would also cover any aircraft operator using an aircraft having a MTOW greater than 12,500 pounds. Such operators primarily conduct operations under 14 CFR part 91 and 14 CFR part 125. Currently, these types of operators are generally not covered by existing security regulations.

Part 91 operations, commonly referred to as GA operations, can be undertaken for a wide range of purposes, but a basic distinction is drawn between flight activity used to provide "common carriage" and other flight activity. Common carriage means any operation for compensation or hire where the operator holds itself out as willing to furnish transportation to any member of the public seeking the services offered. The operator openly offers a service for a fee (by advertising or any other means) to members of the public.

In contrast, "private" or "non-common carriage" does not involve offering or holding out by the operator through advertising or any other means. Non-common carriage includes the following:

- Carriage of operator's own employees or property.
- Carriage of participating members of a club.
- Carriage of persons and property, which is only incidental to the operator's primary business.
- Carriage of persons or property for compensation or hire under a contractual business arrangement that did not result from the operator's holding out or offering. In this situation, the customer seeks out an operator to perform the desired service and enters into an exclusive mutual agreement; the operator does not seek out the customer.

Under the proposed rule, both common carriage and non-common carriage large aircraft operators would be required to establish and implement the security requirements of the LASP. Those firms operating under common carriage have been discussed in the

currently regulated section of this IRFA; the following discussion relates to non-common carrier operations.

Part 125 of 14 CFR applies to some large aircraft operations that may provide private carriage (but not common carriage). Part 125 governs the operation of large aircraft that are able to carry 6,000 pounds or more of payload capacity and 20 or more passenger seats.

In conducting research for the Regulatory Evaluation, TSA subject matter experts determined that the proposed rule would affect 9,000 aircraft operators regulated by 14 CFR part 91, and 61 aircraft operators regulated by 14 CFR part 125. Due to the unique conditions under which these firms conduct operations, TSA could not identify the respective NAICS codes for these operators. Consequently, TSA could not determine the small entity size standards for these businesses. Without this information, TSA could not reliably estimate the number of small entities operating aircraft in these operating categories. Moreover, TSA could not find reliable revenue and employee data for these firms, further complicating the effort.

Given the constraints discussed above, TSA could only conclude that the proposed rule would affect between 0 and 9,000 small entities currently regulated by 14 CFR part 91, and between 0 and 61 small entities currently regulated by 14 CFR part 125. TSA seeks comment on information that would allow it to refine its estimate of small entities as defined by the RFA.

Airport Operators

Airports that would be affected by the proposed rule include airports regularly serving scheduled or public charter operations in large aircraft and “reliever airports,” as

designated by the Secretary of Transportation. TSA determined approximately 42 airports regularly serving scheduled or public charter operations and 273 reliever airports would be subject to the proposed rule, a total of 315 airports.

The 42 affected airports TSA has identified that regularly serve scheduled or public charter operations and do not already have a TSA security program are all owned by public entities. Because the airports are publicly owned, the Census Bureau classifies them using NAICS Code 926120, Regulation and Administration of Transportation Programs.

Reliever airports are airports designated by the FAA to relieve congestion at commercial service airports and to provide improved GA access to members of the local community.[39] The 273 reliever airports that would be impacted by the rule are owned by public entities–such as State and local governments–and private, for-profit concerns. The publicly- and privately-owned airports, due to their different ownership characteristics, are classified by different NAICS codes by the U.S. Census Bureau. Privately-owned airports are classified by NAICS code 48811, Airport Operations, while publicly owned airports are classified by NAICS code 926120, Regulation and Administration of Transportation Programs.

NAICS 48811–Airport Operations

Private firms operating reliever airports fall into NAICS code 48811, Airport Operations. The SBA defines firms in this industry with less than $6.5 million in annual revenues as small. To discern the number of small firms likely to be impacted by the

[39] U.S. Department of Transportation, Federal Aviation Administration, "Categories of Airports," Available from: http://www.faa.gov/airports_airtraffic/airports/planning_capacity/passenger_allcargo_stats/categories/. Accessed on February 28, 2007.

proposed rule, TSA first obtained data on the total number affected reliever airports from FAA. From the FAA information, which identified 273 total reliever airports that would be subject to the rule, TSA was able to identify 46 privately-held reliever airports.

Unfortunately, TSA could not find any revenue information on the 46 privately-owned reliever airports, making it impossible to determine if they are classified as small entities. However, given that the average annual revenues in the industry were $3.8 million in 2002, well below the $6.5 million threshold set by SBA, it is likely that some of the affected firms are small entities. Due to the lack of available revenue data, TSA assumed for the purposes of this analysis that there are between 0 and 46 small entities in this industry that would be impacted by the rule. TSA seeks comment on this assumption.

NAICS 926120–Regulation and Administration of Transportation Programs

As previously stated, publicly owned reliever airports likely fall into NAICS code 926120, Regulation and Administration of Transportation Programs. Because firms in this industry are not privately held, for-profit companies, the SBA does not use revenue or employment measures to determine if they are small entities.

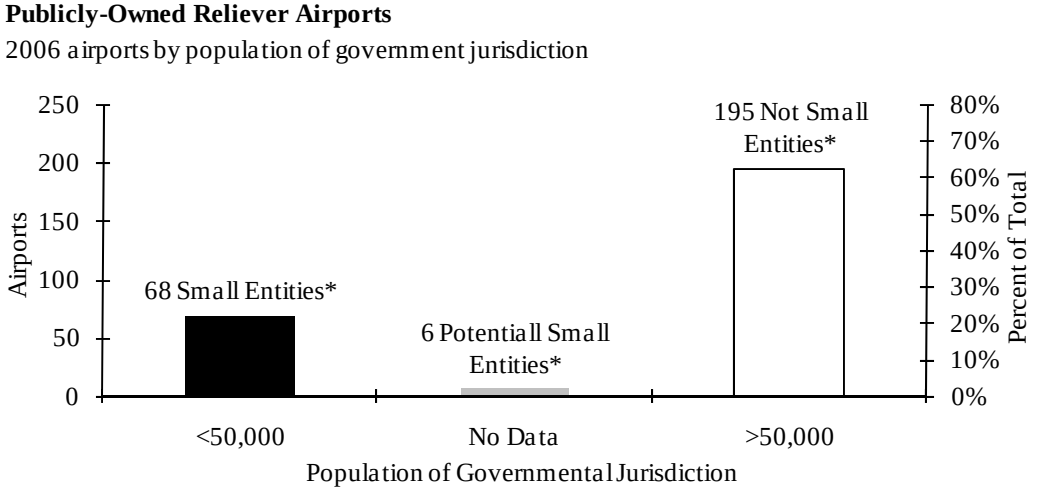
Instead, the SBA uses the population of the government jurisdiction that owns the firm to determine if it is a small governmental jurisdiction. Specifically, sec. 601(5) of the RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.[40]

To determine if the proposed rule would have an impact on any small governmental jurisdictions, TSA again accessed the FAA airport data. Of the 315

[40] Regulatory Flexibility Act, Pub. L. 96-354, Sep. 19, 1980, 94 Stat. 1164 (codified at 5 U.S.C 601).

affected airports, TSA discerned that 269 are owned by governments. After researching the population of all the affected governments using U.S. Census Bureau population data, TSA concluded that between 68 and 74 small governmental jurisdictions would be impacted by the proposed rule. See the figure below.

NAICS 926120: Estimate of Small Publicly Owned Airports



Source: US Census Bureau, 2005 Population Estimates, Census 2000, 1990 Census; FAA
Notes: *The SBA defines firms owned by government jurisdictions to be small if the jurisdiction has a population of less than 50,000.

Summary of Number of Small Entities

Using the data discussed above, TSA concluded that the NPRM would impact between 827 and 9,955 small entities. The ambiguous nature of the revenue and employee data for the firms in some of the affected industries, coupled with the lack of information on operators covered by 14 CFR part 91 and 14 CFR part 125, prevented TSA from making a more refined estimate. See the figure below.

Total Estimate of Small Entities Potentially Affected by the LASP

Total Small Entities Impacted
The NPRM would impact between 827 and 9,957 small entities.

Operator Classification	NAICS Code	Industry	SBA Size Standard	Low Estimate	High Estimate
Currently Regulated Aircraft Operators (TFSSP, PCSSP, TFSSP-AC)	481211	Nonscheduled Chartered Passenger Air Transportation	1,500 employees	759	774
	481212	Nonscheduled Chartered Freight Air Transportation			
Newly Regulated Aircraft Operators (14 CFR part 91, 14 CFR part 125)	U	U	U	0	9,061
Privately-Owned Airports	48811	Airport Operations	$6.5 million in annual revenue	0	46
Public Airports	926120	Regulation and Administration of Transportation Programs	50,000 population of governmental jurisdiction	68	74
Total				**827**	**9,955**

Source: 2002 Economic Census, FAA, SBA, TSA calculations
Notes: U means data unavailable.

The data used to determine the number of impacted small entities in this analysis exhibit some critical shortcomings. First, TSA did not have access to any comprehensive employment data for some of the affected aircraft operators in the nonscheduled air transportation industry.

Second, TSA was unable to access comprehensive revenue or employment data for the aircraft operators offering services under 14 CFR part 91 and 14 CFR part 125. Additionally, TSA could not identify the appropriate NAICS codes for these operators, making it impossible to identify the size standard that would be necessary to determine if the firms are large or small.

Third, TSA could not obtain revenue data for firms operating privately-owned reliever airports, making it impossible to generate an accurate estimate of the number of small entities in that industry.

Finally, TSA was unable to find reliable information on some of the governmental jurisdictions operating covered airports. This situation prevented TSA from making a more accurate estimate of the number of small governmental jurisdictions that would be subject to the proposed rule.

Due to the reasons described above, TSA may have under- or over-estimated the number of affected small entities. TSA seeks comment on this possibility.

Description and Estimate Of Compliance Requirements

The proposed rule would require firms operating certain classes of aircraft and airports to undertake a number of measures aimed at increasing civil aviation security. This section of the analysis provides a brief description of each requirement, followed by an estimate of the unit cost per operator to comply with each requirement. This part of the analysis also attempts to make an initial determination on whether the proposed rule would have a significant economic impact on a substantial number of small entities.

Given the operational and regulatory differences between the various firms that would be affected by the proposed rule, compliance requirements and their attendant costs are described separately for currently regulated aircraft operators, newly regulated aircraft operators, and airport operators. Furthermore, costs are estimated as ranges rather than absolute values in order to reflect the uncertainty surrounding different estimates.

Currently Regulated Aircraft Operators

Security Programs and Profiles

Currently regulated aircraft operators affected by the proposed rule would be required to submit a profile containing several pieces of information and to develop and submit a security program. TSA would make available to all covered aircraft operators a template Large Aircraft Standard Security Program that operators would have the option to either accept without modification or use as the basis of developing their own security program. In estimating costs for this requirement, TSA assumed that nearly all covered operators would choose to adopt the template security program. These requirements would impose costs on currently regulated aircraft operators, which are shown in the figure below. For a more robust discussion on how TSA estimated these costs, see the section on security programs and profiles located above in the Regulatory Evaluation.

Unit Cost: Security Programs/Profiles, Currently Regulated Aircraft Operators

Hourly	**Hours**			**Total Unit Cost**		
Compensation	Low	Primary	High	Low	Primary	High
a	*b*	*c*	*d*	*(a x b)*	*(a x c)*	*(a x d)*
$62.43	2	4	6	$125	$250	$375

Security Coordinator Duties

Currently regulated aircraft operators have existing security coordinators and would not incur new costs as a result of this requirement.

Security Threat Assessments for Flight Crews

Aircraft operators offering services under existing security regulations must utilize flight crew personnel that have undergone a criminal history records check. The proposed rule would require LASP aircraft operators to begin ensuring that their flight

crewmembers undergo STAs and would limit the validity of a STA to five years. As proposed, the STA would consist of a CHRC and a check against government terrorism watch-lists and related databases. Existing aircraft operators currently pay an estimated $30 to $35 for CHRCs; however, the collection system used by these operators does not include the terrorism check component of the proposed STA. As a result, TSA intends to establish a new system to enable it to process STA applications from covered aircraft operators. TSA is thus proposing a fee of $74 to recover its costs associated with this new system and the processing of STAs.

Flight crewmembers of currently regulated aircraft operators would be required to submit a new STA application upon publication of a final rule if their most recent CHRC had been completed five or more years prior to the compliance date of the final rule. Flight crewmembers having CHRCs completed within five years prior to the compliance date in a final rule would be required to submit a STA application once five years had passed since their CHRC. Since TSA instituted the existing operator security programs in early 2003, several existing operators may need to conduct a STA on their flight crewmembers in the first year of the LASP.

Because this represents a new requirement, TSA used the full proposed fee, plus opportunity costs, to estimate a unit cost to existing operator small entities. As noted above, the proposed fee is $74. TSA estimated opportunity costs would consist of 0.5 hours of flight crewmember time to provide the information required for the STA application and to have fingerprints taken. Using an average wage rate of $51.40 for

aircraft operator flight crews,[41] 30 minutes represents an opportunity cost of $25.70 per STA, for a total STA unit cost of $99.70. TSA estimated existing operators each employ an average of 18 flight crewmembers based on data provided by TSA subject matter experts and the American Association of Airport Executives, the entity that processes existing operator CHRCs. Based on an assumed turnover rate of 15 percent, however, TSA estimated that on average an existing operator would have only about eight crewmembers whose CHRCs would be expired under the proposed rule. Thus, the maximum per-operator cost for STAs would be approximately $800.

Unit Cost: Security Threat Assessments, Currently Regulated Aircraft Operators

Unit Fee (inc. opportunity costs)	Flight Crewmember STAs	Total Unit Cost per Operator
a	*b*	*(a x b)*
$99.70	8	$800

Control of Access to Weapons

Aircraft operators utilizing the TFSSP-All Cargo would be required to control access to weapons. Presently, these operators are required to "apply the security measures in its security program for persons who board the aircraft for transportation, and for their property, to prevent or deter the carriage of any unauthorized persons, and any unauthorized weapons, explosives, incendiaries, and other destructive devices, items, or substances."[42] The proposed rule modifies current law by inserting between "unauthorized weapons" the words "or accessible." TSA has determined this requirement would have a de minimis impact, because few passengers are carried aboard

[41] The flight crew wage reported here is a weighted average of the following occupations from the 2006 NBAA Salary Survey: Aviation Department Manager II (does some flying), Chief Pilot, Senior Captain, and Copilot.
[42] 49 CFR 1544.202.

such flights and operators are already required to screen them. Further, operators would have a variety of means of rendering weapons inaccessible to passengers.

Check of Accessible Property

The proposed rule would require an aircraft operator to inspect, pursuant to the terms and method in its security program, any property brought on board that would be accessible to the cabin. Property, for this section, is defined as any container, cargo, or company material that may be used to hide a stowaway or explosives, incendiaries or other destructive devices.

TSA has determined that in most cases affected operators already comply with the anticipated inspection requirements during the normal course of the pre-flight check. Costs associated with this responsibility are captured in the security coordinator duties above. Because currently regulated aircraft operators are not expected to incur any marginal costs for security coordinators, this requirement also would not add any additional costs for these operators.

Watch-list Matching

The proposed regulation would require each aircraft operator to request and obtain certain passenger information from every passenger on each flight operated by the aircraft operator, and transmit the information to an entity approved by TSA to conduct watch-list matching (known as a watch-list service provider). Any changes to the passenger information prior to boarding would be required to be resent to the watch-list service provider.

TSA has estimated the compliance costs for this requirement as the 10-year undiscounted cost of WLSP averaged over the forecast number of flights. This average

cost per flight multiplied by the average flights per operator produces and estimated annual cost per operator for WLSP. TSA estimates the cost for compliance would range from $245 to $736 per operator with a primary cost estimate of $491 per operator. To the extent that small entities may make fewer flights per year than large entities, the actual impact to small entities may be lower. However, TSA believes these costs provide a conservative estimate of the impact to small operators. For more discussion on the costs of this requirement, see the section on watch-list matching above, located in the Regulatory Evaluation.

Components	**Cost Estimates**		
	Low	Primary	High
WLSP Costs……	$22,787,364	$45,574,727	$68,362,091
Flight Forecast…….	87,932,347	87,932,347	87,932,347
Cost Per Flight…….	$0.26	$0.52	$0.78
Flights per Operator…….	946	946	946
**Cost per Operator……. **	**$245**	**$491**	**$736**

Audits of Aircraft Operators

Under the proposed rule, each aircraft operator must contract with an auditor approved by TSA to conduct an audit of the aircraft operator's compliance with its security program.

Based on similar audits undertaken relative to other federal aviation programs, TSA estimated the cost for these audits to be approximately $2,257 per audit, on average. Currently, audits are performed to review safety, operations, and maintenance. TSA anticipates that many of these firms will offer the "security" audit as part of their offerings to their current customers and, perhaps, where feasible, bundle the security audit with already scheduled audits.

Based on interviews with 3 International Standard for Business Aircraft Operations auditors, TSA estimated costs for audits could range from $1,464 to $3,050. As stated above, TSA adopted the average of $2,257 as its primary estimate. For more discussion on these costs, see the section in the Regulatory Evaluation that describes this requirement.

Total Cost per Currently Regulated Aircraft Operator

The following figure is a summary of the requirements and compliance costs of the proposed rule for currently regulated aircraft operators. As described above, TSA estimated that between 759 and 774 currently regulated small entities would be impacted by the proposed rule.

Total Compliance Unit Cost, Currently Regulated Aircraft Operators

Requirement	**Unit Cost**		
	Low	Primary	High
Security Programs and Profiles.....	$125	$250	$375
Security Coordinator Duties.....	-	-	-
STAs for Flight Crew.....	$800	$800	$800
Control Access to Weapons	-	-	-
Screening of Accessible Property	-	-	-
Watch-list Matching.....	$245	$491	$736
Audits	$1,464	$2,257	$3,050
Total.....	$2,634	$3,797	$4,960

Given the uncertainty in this analysis, it was difficult for TSA to conclusively determine if the proposed rule would have a significant economic impact on a substantial number of currently regulated aircraft operators. Although neither the RFA nor the SBA define the term "significant economic impact," TSA attempted to compare compliance costs to average firm revenues to determine if the rule would have a considerable economic impact on covered small entities. Unfortunately, this review proved difficult due to the lack of revenue data on covered firms.

As previously stated, currently regulated aircraft operators are likely categorized by the Census Bureau using NAICS codes 481211, Nonscheduled Chartered Passenger Air Transportation, and 481212, Nonscheduled Chartered Freight Air Transportation. In 2002, according to the Economic Census, firms in these industries earned annual revenues of approximately $3.9 million and $5.0 million, respectively. For a firm with average annual revenues in either of these industries, a compliance cost of approximately $2,634 to $4,960 would not likely constitute a significant economic impact, given that the cost would equal less than 1 percent of annual revenues.

For the proposed rule to have a significant economic impact on a currently regulated aircraft operator, the aircraft operator would likely have to earn annual revenues of approximately $367,000 or less. In this scenario, the highest estimated compliance costs associated with the proposed rule would represent approximately 1 percent of the firm's annual revenue.

While conducting research for this analysis, TSA was unable to acquire comprehensive revenue data on currently regulated aircraft operators, and therefore could not make a conclusive determination on whether these firms would experience a significant economic impact under the proposed rule. However, in light of the average annual revenues of firms in the respective industries in 2002, TSA does not believe the proposed rule would represent a significant economic impact on a substantial number of currently regulated aircraft operators. TSA requests comment on this preliminary determination.

Newly Regulated Aircraft Operators

Security Programs and Profiles

As described above, covered aircraft operators would be required to submit a profile to TSA and to develop and submit a security program. TSA estimated it would take newly regulated aircraft operators between 8 and 16 hours to review the template security program, assemble the requisite profile information, and submit the requisite documents to TSA for review. TSA assumed an average of 12 hours for its primary estimate. To calculate costs for newly regulated aircraft operators to review security programs and submit the required profile information, TSA again multiplied the estimated hourly range by the hourly wage of $62.43.

Unit Cost: Security Programs/Profiles, Newly Regulated Aircraft Operators

Hourly	**Hours**			**Total Unit Cost**		
Compensation	Low	Primary	High	Low	Primary	High
a	*b*	*c*	*d*	*(a x b)*	*(a x c)*	*(a x d)*
$62.43	8	12	16	$500	$750	$1,000

Security Coordinator Duties

Newly regulated large aircraft operators would be required to designate Aircraft Operator Security Coordinators (AOSC), Ground Security Coordinators (GSC), and In-Flight Security Coordinators (ISC), and ensure they are properly trained. Each security coordinator position would have unique responsibilities; however, aircraft operator employees could be trained to serve as one or all three of these positions.

The principal AOSC or an alternate, if applicable, must be available for contact by TSA 24 hours a day, seven days a week to ensure TSA is able to quickly disseminate any intelligence of a threat to a specific aircraft operator or industry segment. The AOSC

bears the further responsibility for maintaining any and all records necessary to demonstrate to an auditor or TSA inspector the aircraft operator's compliance with its security program. In addition to these AOSC duties, security coordinators are responsible for the enforcement of policies and procedures relative to the security of the aircraft, including the vetting of crew (where required) and passengers which must be carried out in accordance with the operator's security program. Many of the aircraft operator requirements discussed in the following cost sections fall under the responsibility of the security coordinators.

TSA estimated the amount of time security coordinators of newly regulated aircraft operators would spend on their duties. For a detailed discussion of these estimates, see the section on security coordinator duties in the Regulatory Evaluation. The figure below displays the annual cost per operator of having an AOSC.

Unit Cost: Security Coordinator Duties, Newly Regulated Aircraft Operators

Hourly	**Hours**			**Total Unit Cost**		
Compensation	Low	Primary	High	Low	Primary	High
a	*b*	*c*	*d*	*(a x b)*	*(a x c)*	*(a x d)*
$53.59	164	284	404	$8,780	$15,210	$21,650

Newly regulated aircraft operators would also need to ensure that security coordinators underwent appropriate security training in order to carry out their required functions. The AOSC would thus coordinate with TSA to provide training to GSCs and ISCs. Training would cover topics such as procedures to notify authorities when dealing with suspect items, unauthorized access to the aircraft, threat notification and response, implementation of security directives, and other security related topics. Security coordinators would be required to complete both an initial training course and annual

recurring training. TSA again provided a range of estimates of the amount of time newly regulated operators would spend conducting new and recurring training.

For the purposes of estimating costs for this IRFA, TSA assumed that an operator would need to conduct an initial and recurring training of GSCs and ISCs in one year. Although this timeframe is unlikely, TSA feels that it is a conservative assumption that accounts for the maximum potential cost of this requirement.

Unit Cost: Security Coordinator Training, Newly Regulated Aircraft Operators

Requirement	**Unit Cost**		
	Low	Primary	High
New Training	$460	$680	$890
Recurring Training.....	$230	$340	$440
Total.....	**$690**	**$1,020**	**$1,330**

Security Threat Assessments for Flight Crews

The proposed rule would also require newly regulated aircraft operators to ensure that their flight crewmembers undergo security threat assessments. The STA process would require each flight crewmember to submit fingerprints, along with information such as name, date and place of birth, Social Security Number (voluntary), and other information necessary for TSA to determine whether an applicant has committed a disqualifying crime or poses a threat to transportation or national security. For a comprehensive discussion of how TSA derived the total cost of this provision, see the section of the Regulatory Evaluation that describes this requirement.

For the purposes of estimating costs for this IRFA, TSA estimated the cost of flight crews obtaining STAs on a per operator basis. Based on input from TSA subject matter experts, TSA assumed 1.5 flight crewmembers per aircraft, and 1.8 aircraft per

Part 91 operator and 4 aircraft per part 125 operator. The figure below displays the average cost that each newly regulated operator would incur as a result of this NPRM.

Unit Cost: Security Threat Assessments, Newly Regulated Aircraft Operators

Requirement	Total Unit Cost		
	Low	Primary	High
Security Threat Assessment.....	$580	$580	$580

Control of Access to Weapons

As described in the more comprehensive Regulatory Evaluation and in the section on currently regulated aircraft operators of this IRFA, this requirement is anticipated to have a de minimis impact on covered operators.

Check of Accessible Property

As previously stated, TSA determined that in most cases affected operators already comply with the anticipated inspection requirements during the normal course of the pre-flight check. Costs associated with this responsibility are captured in the security coordinator duties above.

Watch-list Matching

The estimated cost for WLSP compliance is the same for the newly covered and existing operators. TSA utilizes the same methodology as above to estimate the total unit compliance cost for newly regulated aircraft operators. TSA estimates the cost for compliance would range from $245 to $736 with a primary cost of $491 per operator.

Audits of Aircraft Operators

Under the proposed rule, each aircraft operator must contract with an auditor approved by TSA to conduct an audit of the aircraft operator's compliance with its

security program. The cost of this requirement for newly regulated aircraft operators would be identical to the cost for currently regulated operators. TSA estimated that the unit cost of an audit would range from $1,464 to $3,050, with $2,257 being TSA's primary estimate for the cost of this requirement.

Total Cost per Newly Regulated Aircraft Operator

The following figure is a summary of the requirements and compliance costs of the proposed rule for newly regulated aircraft operators. TSA estimated that the cost of complying with the proposed rule would range from $12,259 to $28,356 for newly regulated aircraft operators. As described above, TSA estimated that between 0 and 9,061 small entities in this operator category would be impacted by the proposed rule.

Total Compliance Unit Cost, Newly Regulated Aircraft Operators

Requirement	**Unit Cost**		
	Low	Primary	High
Security Programs and Profiles	$500	$750	$1,000
Security Coordinator Duties	$9,470	$16,230	$22,990
STAs for Flight Crew	$580	$580	$580
Control Access to Weapons	-	-	-
Screening of Accessible Property	-	-	-
Watch-list Matching	$245	$491	$736
Audits	$1,464	$2,257	$3,050
Total	$12,259	$20,308	$28,356

TSA again encountered analytical difficulties when attempting to determine if the proposed rule would have a significant economic impact on a substantial number of newly regulated aircraft operators. As previously stated, TSA was unable to acquire annual revenue data for these operators. This lack of information prevented TSA from making a conclusive determination of the rule's impact on small entities in this operator category.

For the proposed rule to have a significant economic impact on a newly regulated aircraft operator, the aircraft operator would likely have to earn annual revenues of $2.7 million or less. If a firm with this level of annual revenues incurred compliance costs of $28,356 (the high estimate in the figure above), it would represent 1 percent of annual revenue. Given the uncertainty in its estimates, TSA requests comment on whether the proposed rule would have a significant economic impact on a substantial number of newly regulated aircraft operators.

Airport Operators

Security Programs and Profiles

The proposed rule would require certain privately-owned airports to develop security programs and submit security profiles to TSA. TSA would make available a template partial airport security program that operators would have the option to either accept without modification or use as the basis of developing their own security program.

To calculate the unit cost for airports to comply with this requirement, TSA assumed that nearly all covered airport operators would choose to adopt the template security program, thereby minimizing the cost of implementing this requirement. Second, TSA estimated it would take these newly regulated private airport operators between 8 and 16 hours to review and implement the template security program and assemble the requisite profile information. TSA adopted an average of 12 hours as its primary estimate. Finally, TSA multiplied each hour estimate by a middle management wage rate of $31.24 per hour to generate a unit cost between $250 and $500, with a primary estimate of $375. The requirement to adopt and submit security programs and profiles is not recurring; therefore, airport operators would only incur this cost once over

the ten-year period of analysis. This estimate does not include completion of a risk-based self-assessment tool that may complement the security program. TSA has requested comments on whether such a tool should be mandatory but has not set it forth as a requirement in the proposed rule.

Unit Cost: Security Programs/Profiles, Airport Operators

Hourly	**Hours**			**Total Unit Cost**		
Compensation	Low	Primary	High	Low	Primary	High
a	*b*	*c*	*d*	*(a x b)*	*(a x c)*	*(a x d)*
$31.24	8	12	16	$250	$375	$500

Airport Security Coordinators

The proposed rule would also require airport operators to maintain airport security coordinators (ASC). For a more in-depth discussion of this requirement, see the airport security coordinator section of the Regulatory Evaluation.

TSA estimated airport security coordinators would spend an average of between 0.5 and 1 hour per week on their duties, adopting 0.75 hours per week as its primary estimate. To calculate the cost on an annual basis, TSA translated the weekly hour estimates into annual estimates of 26, 39, and 52 hours, respectively. Finally, to calculate the unit cost associated with this requirement, TSA multiplied the anticipated number annual hours by the ASC average hourly cost of compensation. See the figure below.

Unit Cost: Security Coordinator Duties, Airport Operators

Hourly	**Hours**			**Total Unit Cost**		
Compensation	Low	Primary	High	Low	Primary	High
a	*b*	*c*	*d*	*(a x b)*	*(a x c)*	*(a x d)*
$31.24	26	39	52	$810	$1,220	$1,620

Airport security coordinators would need to undergo training to comply with the proposed rule. TSA training requirements for airport security coordinators differ from

those for aircraft operator security coordinators. ASC training is only offered twice per year by the American Association of Airport Executives. This 8-hour training course is taught by professional trainers and requires payment of a $350 registration fee. Since this training is offered at a single location, TSA estimated ASCs would need to expend an additional $450 to cover travel and other incidental expenses. TSA assumed the need to travel to and from the training would effectively add an additional eight hours to the training.

To estimate the cost of this requirement, the eight hours of class time are added to the eight hours of assumed travel time for a total of 16 hours of compensated ASC time. TSA estimated airports would need to train between one and three ASCs in order to meet the requirements that an ASC be available 24-hours per day. Without more detailed information, TSA adopted the average for its primary estimate. See the figure below for a summary of the costs of complying with this requirement. TSA has requested comments on whether it should adopt a self-paced training program for these airports that would reduce the impact of this requirement. For the purposes of the RFA, however, TSA estimated costs for this requirement as it is proposed in the NPRM.

Unit Cost: Security Coordinator Training, Airport Operators			
Training Cost Item	**Unit Cost**		
	Low	Primary	High
Training Course Fee		$350	
Travel Expenses		$450	
ASC Compensation	$500	$1,000	$1,500
Total	**$1,300**	**$1,800**	**$2,300**

Total Cost per Airport Operator

Using the estimates described above, TSA concluded that the proposed rule would impose a compliance cost of between approximately $2,360 and $4,420 per airport

operator. The range of compliance costs reflects the uncertainty surrounding many of the variables used to generate the estimates. See the figure below.

Total Compliance Unit Cost, Airport Operators

Requirement	**Unit Cost**		
	Low	Primary	High
Security Program and Profile	$250	$375	$500
ASC Duties	$810	$1,220	$1,620
ASC Training.....	$1,300	$1,800	$2,300
**Total ..... **	**$2,360**	**$3,395**	**$4,420**

After making the estimates described above, TSA has initially concluded that the proposed rule would not impose a significant economic impact on a substantial number of privately-owned airport operators. In 2002, the latest year for which data are available, firms in this industry earned on average approximately $3.8 million in annual revenue according to the U.S. Census Bureau. The cost of complying with the proposed rule, as calculated above, would therefore represent less than 1 percent of revenue for a firm with average industry revenues. Alternatively, if an airport operator incurred the highest estimated compliance cost described above ($4,420), it would need annual revenues of less than $442,000 for the proposed rule to impose costs of 1 percent of firm revenue. Consequently, TSA has initially determined that the rule would not impose a significant economic impact on these types of firms. TSA seeks comment on this preliminary conclusion.

As stated above, the proposed rule would also affect publicly owned airports. These airport operators would have to follow the same requirements as privately-held airport operators: adopt security programs, submit security profiles to TSA, and designate and maintain airport security coordinators.

Because the requirements for these airports are the same as for the privately-owned airports, TSA estimated the unit compliance costs using the same methodology. As stated above, TSA calculated that the proposed rule would impose a cost of between $2,360 and $4,420 per airport operator. Although these airports are publicly owned, TSA was unable to locate revenue information for them. The Agency was thus unable to compare compliance costs to revenue in order to make a judgment on whether the costs represent a significant economic impact to these firms.

TSA therefore requests comment on whether the proposed rule would have a significant economic impact on the 68 to 74 publicly owned small airport operators that TSA identified in its research. Specifically, TSA requests any information that would allow it to compare estimated compliance costs to revenues typically earned by these types of airport operators.

Significant Alternatives Considered

TSA considered four substantive alternatives to the proposed regulation that would have reduced compliance costs for small businesses. First, TSA considered using the current method of watch-list matching employed by aircraft operators under the TFSSP and PCSSP rules. Second, TSA considered using TSA inspectors to conduct audits instead of TSA approved third party auditors. Third, TSA considered leveraging the Secure Flight program currently under development, which would use a web-based application for transmission of passenger information to the Secure Flight vetting engine. Fourth, TSA evaluated the incremental impact of raising the aircraft weight threshold from 12,500 pounds MTOW to 16,500 pounds MTOW and the incremental impact of lowering the aircraft weight threshold to 10,500 pounds MTOW. This section describes

those alternatives relative to the proposed regulation. TSA invites comments on these or other substantive alternatives to the proposed rule.

TSA Inspectors

TSA considered using TSA inspectors instead of approved third-party auditors to complete the audits proposed in the rule. Under such a scenario, TSA would need to hire several new employees to complete the inspections. Each operator would complete a TSA inspection every other year. Because TSA would conduct all of the inspections, aircraft operators would no longer pay a biennial fee for audits. This arrangement would reduce the primary unit cost estimate for newly regulated small aircraft operators from $20,308 to $18,051. Assuming a "significant impact" is 1 percent of an operator's revenues, this change would reduce the number of affected small entities to those having annual revenues less than $2.5 million. Unfortunately, TSA was unable to estimate how many operators would be affected by this change and, as noted in the alternatives analysis in the Regulatory Evaluation, TSA requests comments that would enable it to quantify these impacts.

Watch-list Matching

TSA considered requiring all large aircraft operators to conduct watch-list matching as currently done under the Twelve-Five and Private Charter Rules. These aircraft operators currently run their passengers against the No Fly List, which they retrieve from TSA. The proposed rule would require aircraft operators to send passenger information to a TSA-approved watch-list service provider. The alternative to the proposed rule is to extend the current method of watch-list matching under the Twelve-Five and Private Charter Rules to large aircraft operators that are not currently required to

have a security program. Operationally, this would require that a total of approximately 9,835 aircraft operators have direct access to the watch-list from TSA.

TSA has rejected this alternative based on security grounds. Expanding direct access to the watch-list from 750 aircraft operators today to 9,835 under this alternative increases the opportunity for the list to be compromised and would contradict other TSA initiatives to limit distribution of the watch-lists. To limit the number of entities that have access to the watch-list, TSA proposes to require large aircraft operators to submit passenger information to a TSA-approved watch-list service provider. The proposal would reduce the number of entities with direct access to the watch-list, thus improving security.

Secure Flight Web-Based Application

TSA has indicated the use of a web-based application for some transmissions of passenger information to the Secure Flight vetting engine. While the design and development of the Secure Flight web-based application is in its early stages, TSA subject matter experts have provided two approaches to extending an already established web-based application. These costs reflect an early stage of development and cannot, given this early stage, include costs that may be identified as TSA proceeds with system development. The first approach would be developed and implemented with the absence of an implemented LASP and would amount to $23.2 million undiscounted over ten years. This approach posits that without an implemented LASP, Secure Flight would be required to establish a relationship with each of the aircraft operators. TSA would work with aircraft operators to develop the formatting and transmission procedures for not only for the upload of passenger information but also the download of passenger vetting

results. These out-reach or ramp-up activities will be borne by the Secure Flight process. The second approach would be developed and implemented with the ability to leverage activities associated with a fully implemented LASP and would amount to $24.2 million undiscounted over ten years. This approach posits that an implemented LASP would establish a relationship with each of the aircraft operators during the initial deployment of the watch-list service provider process. During this period both TSA and the watch-list service providers would work with aircraft operators to develop the formatting and transmission procedures for not only for the upload of passenger information but also the download of passenger vetting results. As a result, Secure Flight would assume a relatively mature process.

Comparison of the First Three Alternatives:

TSA opted for the proposed plan as the more efficient and effective way of applying its limited compliance and enforcement resources towards the objective of increasing security. The use of third-parties would allow TSA to meet its security mission into four important ways.

First, third-party auditors would increase effective TSA oversight by reviewing each aircraft operator's compliance with its security program six months after TSA approves its security program and every two years thereafter.

Second, given the number of large aircraft operators (approximately 10,000), the third-party auditor program would allow TSA to ramp up more quickly thereby obtaining the assessment of all large aircraft operators more quickly relative to a program that relied solely on TSA inspectors, given the associated hiring and training associated with new hires.

Third, the third-party auditor program would allow TSA to focus more of its compliance and enforcement resources on aircraft operators that are experiencing problems with implementing and complying with their security programs.

Fourth, the watch-list matching service providers would provide the needed security and do so in a timely fashion. Given the security concerns, TSA believes a reliable mechanism for watch-list matching for large aircraft must be operational without undue delay. While the Secure Flight Program would also provide a reliable mechanism, its development is likely to be several years away and it is likely that it would not be available to address this important security need when TSA would be ready to implement the LASP.

This proposal is consistent with current practices in the aviation industry, which frequently rely on the Federal Aviation Administration's designee program. This type of program has been successfully implemented in other related aviation requirements.

Additionally, the GA industry is very familiar with the third party auditor concept as it relates to safety inspections. Many GA operators undergo third party audits each year to comply with customer requirements. The proposal should be easily integrated into most GA operator's existing audit schedules.

Evaluating Different Aircraft Weight Thresholds

The determination of weight must take into account a number of factors such as the effect on international harmonization, existing policies and programs, and the economic effect on the GA community. Discussed below are two alternatives to the threshold weight issue.

Alternative 1: Lower threshold weight to 10,500 pounds MTOW. This solution will reduce the associated risk and number of unknown aircraft operators by incorporating an additional 3,000-5,000 aircraft into a mandatory security program. This alternative would also include a portion of currently unregulated types of aircraft, including large turboprops and smaller jet aircraft. However, in order to successfully implement this threshold weight, significant modifications to existing security programs and new rulemaking would be required, which would result in delayed program/rule timelines. These additional aircraft require TSA oversight and place an additional strain on existing TSA resources. Furthermore, this change would require additional international coordination, since TSA would be moving away from the globally accepted International Civil Aviation Organization standards.

TSA estimates the cost impact of option one, in terms of undiscounted annualized dollars would add $23.7 million to the undiscounted annualized cost of the rule as proposed.

Alternative 2: Raise threshold weight to 16,000 pounds MTOW. This option would reduce the number of regulated aircraft and parties by approximately 9,000 aircraft which would ultimately decrease the inspection requirements on TSA resources. However, excluding these aircraft would increase the potential risk and could result in higher damage potential. TSA believes that this increased risk and damage potential of aircraft between greater than12,500 pounds MTOW and 16,000 pounds MTOW are not justified by the reduction in cost. Furthermore, moving away from the common greater than 12,500 pounds MTOW threshold will yield the same concerns discussed in alternative one.

TSA estimates the cost impact of option two, in terms of undiscounted annualized dollars would subtract $26.4 million from the undiscounted annualized cost of the rule as proposed.

Based on the above discussion and analysis by TSNM-GA technical experts, the program office recommends that the threshold of greater than 12,500 pounds MTOW be maintained as the recognized security threshold weight standard for current and future GA security programs and policies. Selecting a lower threshold weight would improve security because more aircraft would be subject to the LASP but would also increase the burden to industry to the point where the burden may not be fully supported by increased security. Selecting a higher threshold weight would lower the burden on the industry because a lower number of aircraft would be subject to the LASP. However, with this higher threshold weight, the proposed LASP would not cover many aircraft that can cause significant damage if used as a missile or to deliver a biological, chemical, or nuclear weapon. TSA believes that mitigating the potential security risk and damage potential of large aircraft 16,000 pounds MTOW or under outweighs the cost difference. Consequently, TSA believes that the weight threshold of greater than 12,500 pounds MTOW is the appropriate balance of risk and burden

Identification of Duplication, Overlap, and Conflict with Other Federal Rules

TSA has identified an overlap between the proposed LASP and U.S. Customs and Border Protection's (CBP) regulations governing its Advance Passenger Information System (APIS). CBP requires certain aircraft flying to or from the United States to submit passenger manifests to APIS for comparison to the watch-lists. CBP's watch-list comparison would thus duplicate TSA's proposed requirement that large aircraft

operators submit passenger information to watch-list service providers for comparison to the watch-lists.

In recognition of this overlap, TSA would exempt a flight from its watch-list requirement flights covered by its NPRM that also are subject to APIS regulations.

Preliminary Conclusion

Based on this preliminary analysis, TSA has made no determination whether the proposed rule would have a significant economic impact on a substantial number of small entities under section 605(b) of the RFA. TSA requests comment on all aspects of this analysis. TSA will make a final determination in the Final Regulatory Flexibility Analysis for the Final Rule.

3. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in 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. TSA has assessed the potential effect of this notice of proposed rulemaking and has determined this rule would not have an adverse impact on international trade.

4. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II 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 an expenditure of $100 million or more (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." This notice of proposed rulemaking does not exceed this threshold for State, local, and tribal governments; however, proposed security measures for city- or county-owned airports may nevertheless impose a burden on some small municipalities. The impact on the overall economy does exceed the threshold, resulting in an unfunded mandate on the private sector. This regulatory evaluation documents costs and alternatives. TSA will publish a final analysis, including its response to public comments, when it publishes a final rule.

A. Executive Order 13132, Federalism

TSA has analyzed this notice of proposed rulemaking under the principles and criteria of E.O. 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, and therefore, does not have federalism implications.

B. Environmental Analysis

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

C. Energy Impact Analysis

TSA has assessed the energy impact of the action in accordance with the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, as amended (42 U.S.C. 6362). We

have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1515

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

49 CFR Part 1520

Air transportation, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1522

Accounting, Aircraft operators, Aviation safety, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1540

Aircraft operators, Airports, Aviation safety, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1542

Airports, Arms and munitions, Aviation safety, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1544

Aircraft, Aircraft operators, Airmen, Airports, Arms and munitions, Aviation safety, Explosives, Freight forwarders, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1550

Aircraft, Aviation safety, Security measures.

The Proposed Amendments

In consideration of the foregoing, the Transportation Security Administration proposes to amend Chapter XII of Title 49, Code of Federal Regulations, as follows:

SUBCHAPTER A--ADMINISTRATIVE AND PROCEDURAL RULES

PART 1515—APPEAL AND WAIVER PROCEDURES FOR SECURITY THREAT ASSESSMENTS FOR INDIVIDUALS

1. The authority for part 1515 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

2. Amend § 1515.1 by revising paragraph (a) to read as follows:

§ 1515.1 Scope.

(a) Appeal. This part applies to applicants who are appealing an Initial Determination of Threat Assessment or an Initial Determination of Threat Assessment and Immediate Revocation in a security threat assessment as described in:

(1) 49 CFR part 1572 for a hazardous materials endorsement (HME) or a Transportation Worker Identification Credential (TWIC);

(2) 49 CFR part 1540, subpart C, for air cargo workers; or

(3) 49 CFR part 1544, subpart G, for large aircraft flight crew members, individuals authorized to perform screening functions, TSA-approved auditors and watch-list service provider covered personnel.

* * * * *

3. Amend § 1515.5 by revising introductory text in paragraphs (a), (c), and (h), and adding paragraphs (a)(4) and (h)(3) to read as follows:

§ 1515.5 Appeal of Initial Determination of Threat Assessment based on criminal conviction, immigration status, or mental capacity.

(a) Scope. This section applies to applicants appealing from an Initial Determination of Threat Assessment that was based on one or more of the following:

* * * * *

(4) TSA has determined that a large aircraft flight crew member, an individual authorized to perform screening functions, an applicant to become a TSA-approved auditor, or a watch-list service provider covered personnel has a disqualifying criminal offense described in 49 CFR 1544.229(d).

* * * * *

(c) Final Determination of Threat Assessment. (1) If the Assistant Administrator concludes that an HME or TWIC applicant does not meet the standards described in 49 CFR 1572.103, 1572.105, or 1572.109, or that a large aircraft flight crew member, an individual authorized to perform screening functions, an applicant to become a TSA-approved auditor, or a service provider covered personnel does not meet the requirements in 49 CFR 607, TSA serves a Final Determination of Threat Assessment upon the applicant. In addition—

* * * * *

(h) Appeal of immediate revocation. If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies—

* * * * *

(3) If TSA withdraws a Determination of No Security Threat issued to a large aircraft flight crew member, an individual authorized to perform screening functions, a TSA-approved auditor, or a service provider covered personnel.

4. Amend § 1515.9 by revising the introductory text in paragraphs (a) and (f), and adding paragraphs (a)(3) and (f)(4) to read as follows:

§ 1515.9 Appeal of security threat assessment based on other analyses.

(a) Scope. This section applies to an applicant appealing an Initial Determination of Threat Assessment as follows:

* * * * *

(3) TSA had determined that a large aircraft flight crew member, an individual authorized to perform screening functions, an applicant to become a TSA-approved auditor, or a watch-list service provider covered personnel poses a security threat as provided in 49 CFR 1544.609.

* * * * *

(f) Appeal of immediate revocation. If TSA directs an immediate revocation, the applicant may appeal this determination by following the appeal procedures described in paragraph (b) of this section. This applies—

* * * * *

(4) If TSA withdraws a Determination of No Security Threat issued to a large aircraft flight crew member, an individual authorized to perform screening functions, a TSA-approved auditor, or a service provider covered personnel.

5. Amend § 1515.11 by revising the introductory text in paragraph (a) and adding paragraph (a)(4) to read as follows:

§ 1515.11 Review by administrative law judge and TSA Final Decision Maker.

(a) Scope. This section applies to the following applicants:

* * * * *

(4) A large aircraft flight crew member, an individual authorized to perform screening functions, a TSA-approved auditor, or a service provider covered personnel, or an applicant to become one, who has been issued a Final Determination of Threat Assessment after an appeal as described in 49 CFR 1515.5 or 1515.9.

* * * * *

SUBCHAPTER B--SECURITY RULES FOR ALL MODES OF TRANSPORTATION

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

6. The authority citation for part 1520 continues to read as follows:

Authority: 46 U.S.C. 70102–70106, 70117; 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

7. Amend § 1520.5 by revising paragraph (b)(1)(i) to read as follows:

§ 1520.5 Sensitive security information.

* * * * *

(b) * * *

(1) * * *

(i) Any aircraft operator, airport operator, watch-list service provider, or fixed base operator security program, or security contingency plan under this chapter;

* * * * *

8. Amend § 1520.7 by revising the introductory text and paragraph (a) to read as follows:

§ 1520.7 Covered persons.

Persons subject to the requirements of part 1520 are:

(a) Each airport operator, aircraft operator, TSA-approved auditor, independent public accounting firm attesting to compliance under part 1544, subpart F, watch-list service provider, and fixed base operator subject to the requirements of subchapter C of this chapter, and each armed security officer under subpart B of part 1562.

* * * * *

9. Add new part 1522 to subchapter B to read as follows:

PART 1522—TSA-APPROVED AUDITORS

Subpart A--General

Sec.

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

PART 1522—TSA-APPROVED AUDITORS

Subpart A--General

§ 1522.1 Scope and terms used in this part.

(a) This part governs the approval and responsibilities of persons conducting security audits of large aircraft operators that are required to have a security program under part 1544.

(b) In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply in this part:

Applicant means an individual who seeks to become a TSA-approved auditor under this part.

Conflict of interest means a situation when the TSA-approved auditor has impairments that might affect their ability to do their work and report their findings impartially. Examples of situations where a TSA-auditor would have a conflict of interest include but are not limited to any of the following:

(1) The TSA-approved auditor has official, professional, personal, or financial relationships that might cause an auditor to limit the extent of the inquiry, to limit disclosure, or to weaken or distort audit findings in any way.

(2) The TSA-approved auditor had previous responsibility for decision-making or managing an entity that would affect current operations of the entity or program being audited.

(3) The TSA-approved auditor currently or previously maintained the official records that are the subject of the audit.

(4) The TSA-approved auditor has financial interest that is direct, or is substantial though indirect, in the audited entity or program.

(5) An immediate family member of the TSA-approved auditor is an officer of the operator that is the subject of the audit.

(6) The TSA-approved auditor or an entity with which the TSA-approved auditor has an employment relationship provides to the operator being audited non-audit services that relate to the operator's security program.

TSA-approved auditor or auditor means any individual who has been approved under this part to conduct an audit required under this chapter.

§ 1522.3 Qualifications.

To be considered for approval as an auditor, the applicant must—

(a) Have sufficient facilities, resources, and personnel to perform the required audit responsibilities;

(b) Have knowledge of the Federal statutory and regulatory requirements and experience understanding and interpreting Federal statutes and regulations;

(c) Have sufficient, relevant experience to perform the required audit responsibilities;

(d) Obtain a certification or accreditation from an organization that TSA recognizes as qualified to certify or accredit an auditor for the type of audit that the applicant seeks to perform; and

(e) Demonstrate the ability to prepare clear and thorough written reports and other documents required for the auditing function they will perform and demonstrate excellent oral communication skills.

§ 1522.5 Application.

(a) Each applicant must submit an application in a form and manner prescribed by TSA.

(b) An application must include the following information:

(1) The applicant's full name, business address, business phone number, and business email address;

(2) A copy of the applicant's certification from an organization that TSA recognizes as qualified to certify or accredit an auditor for the type of audit that the applicant seeks to perform; and

(3) A statement of how the applicant meets the qualifications set forth on § 1522.3.

§ 1522.7 TSA review and approval.

(a) Review. Upon receiving an application, TSA will review the application. TSA will approve the application if the applicant meets the qualifications described in § 1522.3 and other applicable qualifications described in this part and TSA determines that approval is in the interest of safety and the public.

(b) Approval. If an application is approved, TSA will send the applicant a written notice of approval. Once approved, an auditor may conduct audits in which he or she does not have a conflict of interest.

(c) Disapproval. TSA will send a written notice of disapproval to an applicant whose application is disapproved. The notice of disapproval will include the basis of the disapproval of the application.

§ 1522.9 Reconsideration of disapproval of an application.

(a) Petition for reconsideration. If an application is disapproved, the applicant may seek reconsideration of the decision by submitting a written petition for reconsideration to the Assistant Secretary or designee within 30 days of receiving the notice of disapproval. The written petition for reconsideration must include a statement and any supporting documentation explaining why the applicant believes the reason for disapproval is incorrect.

(b) Review of petition. Upon review of the petition for reconsideration, the Assistant Secretary or designee disposes of the petition by either affirming the disapproval of the application or approving the application. The Assistant Secretary or designee may request additional information from the applicant prior to rendering a decision.

§ 1522.11 Withdrawal of approval.

(a) Basis for withdrawal of approval. TSA may withdraw approval of a TSA-approved auditor if the auditor ceases to meet the standards for approval, fails to fulfill his or her responsibilities under § 1522.11, or it is in the interest of security or the public, such as failure to report an imminent threat under § 1522.11(c).

(b) Notice of withdrawal of approval. (1) Except as provided in paragraph (c) of this section, TSA will provide a written notice of proposed withdrawal of approval to the auditor.

(2) The notice of proposed withdrawal of approval will include the basis of the withdrawal of approval.

(3) Unless the auditor files a written petition for reconsideration under paragraph (d) of this section, the notice of proposed withdrawal of approval will become a final notice of withdrawal of approval 31 days after the auditor's receipt of the notice of proposed withdrawal of approval.

(c) Emergency notice of withdrawal of approval. (1) If TSA finds that there is an emergency requiring immediate action with respect to a TSA-approved auditor's ability to perform audits, TSA may withdraw approval of that auditor without prior notice.

(2) TSA will incorporate in the emergency notice of withdrawal of approval a brief statement of the reasons and findings for the withdrawal of approval.

(3) The emergency notice of withdrawal of approval is effective upon the TSA-approved auditor's receipt of the notice. The auditor may file a written petition for reconsideration under paragraph (d) of this section; however, this petition does not stay the effective date of the emergency notice of withdrawal of approval.

(d) Petition for reconsideration. An auditor may seek reconsideration of the withdrawal of approval by submitting a written petition for reconsideration to the Assistant Secretary or designee within 30 days of receiving the notice of withdrawal of approval.

(e) Review of petition. Upon review of the written petition for reconsideration, the Assistant Secretary or designee disposes of the petition by either affirming or withdrawing the notice of withdrawal of approval. The Assistant Secretary or designee may request additional information from the auditor prior to rendering a decision.

§ 1522.13 Responsibilities of TSA-approved auditors.

(a) Standards for audit. Each auditor must perform an audit, in a form and manner prescribed by TSA, to determine whether the operator is in compliance with applicable TSA requirements.

(b) Conflict of interest. No auditor may undertake an audit in which he or she has a conflict of interest as defined in § 1552.1.

(c) Audit report. Each auditor must prepare and submit a report, in a form and manner prescribed by TSA, for each audit that he or she performs.

(d) Immediate notification to TSA. If during the course of an audit the auditor believes that there is or may be an instance of noncompliance with TSA requirements that presents an imminent threat to transportation security or public safety, the auditor must report the instance immediately to TSA.

(e) Change in information. Each auditor must inform TSA of any change in the information described in §§ 1522.3 and 1522.5.

(f) No authorization to take remedial or disciplinary action. The auditor is not authorized to require any remedial or disciplinary action against the person subject to the audit.

(g) Sensitive Security Information. Each TSA-approved auditor must comply with the requirements in 49 CFR part 1520 regarding the handling and protection of Sensitive Security Information.

(h) Non-disclosure of proprietary information. Unless explicitly authorized by TSA, each auditor may not make an unauthorized release or dissemination of any information that TSA or a large aircraft operator indicates as proprietary information and provides to the auditor.

§ 1522.15 Fraud and intentional falsification of records.

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

(a) Any fraudulent or intentionally false statement in any application under this part.

(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 part.

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

§ 1522.17 TSA inspection authority.

(a) Each TSA-approved auditor must allow TSA, at any time or place, to make any inspections, including copying records, to determine compliance of a TSA-approved auditor or an operator required to submit to an audit under this subchapter 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 TSA-approved auditor must provide evidence of compliance with this part.

Subpart B [Reserved]

Subpart C--Auditors for the Large Aircraft Security Program

§ 1522.201 Applicability.

This subpart applies to auditors who seek to obtain approval from TSA to conduct audits of operators of large aircraft that are required to have a security program under 49 CFR 1544.101(b).

§ 1522.203 Additional qualification requirements.

In addition to the requirements set forth in § 1522.3, an applicant seeking to obtain approval to audit aircraft operators that are required to have a security program under 49 CFR 1544.101(b) must have the following qualifications:

(a) The applicant must have at least five years of experience in inspection or auditing compliance with State or Federal regulations in the security industry, the aviation industry, or government programs. The five years of experience must have been obtained within 10 years of the date of the application.

(b) The applicant must present three professional references that address the applicant's abilities in inspection or auditing and written communications.

(c) Maintain a current accreditation or certification required in § 1522.3(d).

(d) The applicant must have sufficient knowledge of, and ability to determine compliance with, regulations, policies, directives, rules, and regulations, pertaining to the large aircraft security program.

(e) The applicant must have sufficient knowledge of and ability to apply the concepts, principles, and methods of compliance with the requirements of the large aircraft security program to include assessment, inspection, investigation, and reporting of compliance with the large aircraft security program.

(f) The applicant must successfully undergo a security threat assessment under 49 CFR part 1544, subpart G, and have a valid Determination of No Security Threat.

§ 1522.205 Audit report.

(a) Each TSA-approved auditor must prepare and submit a written audit report to TSA in a manner and form prescribed by TSA within 30 days of completing an audit.

(b) The audit report must include the following information:

(1) A description of the facilities, equipment, systems, processes, and/or procedures that were audited.

(2) The auditor's findings regarding the operator's compliance with TSA requirements.

(3) Conclusions on the systems, processes, and/or procedures that were audited.

(4) Signed attestation by the auditor that he or she did not have any conflicts of interest in conducting the audit and that the audit was conducted impartially, professionally, and consistent with the standards set forth by TSA.

(5) The third party auditor must retain copies of completed audit reports for 36 calendar months.

§ 1522.207 Training.

(a) Initial training. Each TSA-approved auditor must complete the initial training prescribed by TSA before conducting any audit under this subchapter.

(b) Recurrent training. Each TSA-approved auditor must complete recurrent training proscribed by TSA 24 months after his or her most recent TSA-prescribed training. If the TSA-approved auditor completes the recurrent training in the month before or the month after it is due, the TSA-approved auditor is considered to have taken it in the month it is due.

§ 1522.209 Biennial review.

(a) Initial review. Except as otherwise required by TSA, each TSA-approved auditor must submit the following information within 24 months after the auditor is approved under § 1522.5. If the TSA-approved auditor submits the following information in the month before or the month after it is due, the TSA-approved auditor is considered to have submitted the information in the month it is due:

(1) Evidence that the auditor successfully completed the initial training under § 1522.207(a) and any recurrent training described § 1522.207(b); and

(2) Evidence that the auditor continues to be certified or accredited by an organization that TSA recognizes as qualified to certify or accredit an auditor for the large aircraft security program.

(b) Recurrent review. Except as otherwise required by TSA, each TSA-approved auditor must submit the following information 24 months after the auditor submitted the information required under paragraph (a) or (b) of this section. If the TSA-approved auditor submits the following information in the month before or the month after it is due, the TSA-approved auditor is considered to have submitted the information in the month it is due:

(1) Evidence that the auditor successfully completed the initial training under § 1522.207(a) and any recurrent training described § 1522.207(b); and

(2) Evidence that the auditor continues to be certified or accredited by an organization that TSA recognizes as qualified to certify or accredit an auditor for the large aircraft security program.

SUBCHAPTER C--CIVIL AVIATION SECURITY

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

10. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

Subpart A--General

11. Amend § 1540.5 by adding the definition of "Standard security program" in alphabetical order to read as follows:

§ 1540.5 Terms used in this subchapter.

*** * * * ***

Standard security program means a security program issued by TSA that serves as a baseline for a particular type of operator. If TSA has issued a standard security program for a particular type of operator, unless otherwise authorized by TSA, each operator's security program consists of the standard security program together with any amendments and alternative procedures approved or accepted by TSA.

* * * * *

Subpart B—Responsibilities of Passengers and Other Individuals and Persons

12. Revise § 1540.107(c) to read as follows:

§ 1540.107 Submission to screening and inspection.

* * * * *

(c) An individual must provide his or her full name, as defined in § 1560.3, when--

(1) The individual makes a reservation for a covered flight, as defined in § 1560.3.

(2) The individual makes a request for authorization to enter a sterile area.

(3) An aircraft operator described in § 1544.101(b) requests the individual's full name under § 1544.245(b).

13. Add new subpart D to part 1540 to read as follows:

Subpart D--Responsibilities of Holders of TSA-Approved Security Programs

§ 1540.301 Withdrawal of approval of a security program.

(a) Applicability. This section applies to holders of a security program approved or accepted by TSA under 49 CFR chapter XII, subchapter C.

(b) Withdrawal of security program approval. TSA may withdraw the approval of a security program, if TSA determines continued operation is contrary to security and the public interest, as follows:

(1) Notice of proposed withdrawal of approval. TSA will serve a Notice of Proposed Withdrawal of Approval, which notifies the holder of the security program, in writing, of the facts, charges, applicable law, regulation, or order that form the basis of the determination.

(2) Security program holder's reply. The holder of the security program may respond to the Notice of Proposed Withdrawal of Approval no later than 15 calendar days after receipt of the withdrawal by providing the designated official, in writing, with any material facts, arguments, applicable law, and regulation.

(3) TSA review. The designated official will consider all information available, including any relevant material or information submitted by the holder of the security program, before either issuing a Withdrawal of Approval of the security program or rescinding the Notice of Proposed Withdrawal of Approval. If TSA issues a Withdrawal of Approval, it becomes effective upon receipt by the holder of the security program, or 15 calendar days after service, whichever occurs first.

(4) Petition for reconsideration. The holder of the security program may petition TSA to reconsider its Withdrawal of Approval by serving a petition for consideration no later than 15 calendar days after the holder of the security program receives the Withdrawal of Approval. The holder of the security program must serve the Petition for Reconsideration on the designated official. Submission of a Petition for Reconsideration will not stay the Withdrawal of Approval. The holder of the security program may request the designated official to stay the Withdrawal of Approval pending review of and decision on the Petition.

(5) Assistant Secretary's review. The designated official transmits the Petition together with all pertinent information to the Assistant Secretary for reconsideration. The Assistant Secretary will dispose of the Petition within 15 calendar days of receipt by either directing the designated official to rescind the Withdrawal of Approval or by affirming the Withdrawal of Approval. The decision of the Assistant Secretary constitutes a final agency order subject to judicial review in accordance with 49 U.S.C. 46110.

(6) Emergency withdrawal. If TSA finds that there is an emergency with respect to aviation security requiring immediate action that makes the procedures in this section contrary to the public interest, the designated official may issue an Emergency Withdrawal of Approval of a security program without first issuing a Notice of Proposed Withdrawal of Approval. The Emergency Withdrawal would be effective on the date that the holder of the security program receives the emergency withdrawal. In such a case, the designated official will send the holder of the security program a brief statement of the facts, charges, applicable law, regulation, or order that forms the basis for the

Emergency Withdrawal. The holder of the security program may submit a Petition for Reconsideration under the procedures in paragraphs (b)(4) through (b)(5) of this section; however, this petition will not stay the effective date of the Emergency Withdrawal.

(c) Service of documents for withdrawal of approval of security program proceedings. Service may be accomplished by personal delivery, certified mail, or express courier. Documents served on the holder of a security program will be served at its official place of business as designated in its application for approval or its security program. Documents served on TSA must be served to the address noted in the Notice of Withdrawal of Approval or Withdrawal of Approval, whichever is applicable.

(1) Certificate of service. An individual may attach a certificate of service to a document tendered for filing. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered, served by certified mail on a specific date, or served by express courier on a specific date.

(2) Date of service. The date of service is—

(i) The date of personal delivery;

(ii) If served by certified mail, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark; or

(iii) If served by express courier, the service date shown on the certificate of service, or by other evidence if there is no certificate of service.

(d) Extension of time. TSA may grant an extension of time to the limits set forth in this section for good cause shown. A security program holder's request for an

extension of time must be in writing and be received by TSA at least two days before the due date in order to be considered. TSA may grant itself an extension of time for good cause.

PART 1542—AIRPORT SECURITY

14. The authority citation for part 1542 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

15. Amend § 1542.103 by revising introductory text of paragraphs (a) and (b), revising paragraphs (c) and (d), and adding new paragraphs (e) and (f) to read as follows:

Subpart B--Airport Security Program

§ 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 adopt and carry out a complete program, and include in its security program the following:

* * * * *

(b) Supporting program. Except as otherwise approved by TSA and except for airports that are required to adopt a complete program under paragraph (a) of this section, each airport regularly serving operations of an aircraft operator or foreign air carrier described in § 1544.101(a)(2) or § 1546.101(b) or (c) of this chapter, must adopt and carry out a supporting program, and include in its security program a description of the following:

* * * * *

(c) Partial program. Except as otherwise approved by TSA and except for airports that are required to adopt a complete program under paragraph (a) of this section or a supporting program under paragraph (b) of this section, each of the following airports must adopt and carry out a partial program, and must include in its security program the requirements in paragraph (d) of this section.

(1) Each airport regularly serving large aircraft operations of an aircraft operator described in § 1544.101(b) with scheduled or public charter operations.

(2) Each reliever airport as defined in 49 U.S.C. 47102 (22).

(d) Partial program content. Except as otherwise approved by TSA, each airport described in paragraph (c) of this section must include in its security program a description of the following:

(1) Name, means of contact, duties, and training requirements of the airport security coordinator 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 Sensitive Security Information (which, as defined in § 1520.5, includes security programs, Security Directives, Information Circulars, and 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.

(e) Provisional program. (1) An airport operator that is not subject to paragraph (a), (b), or (c) of this section may request TSA to review and approve its security program.

(2) TSA may approve the security program if it determines that approval is in the interest of safety and the public using the procedures described in § 1544.105(a).

(3) The airport operator must comply with the security program approved under this paragraph (e).

(4) An airport operator or TSA may amend an approved security program using the procedures described in § 1544.105.

(5) TSA may withdrawal approval of a security program using the procedures described in § 1540.301 if it determines that withdrawal of approval is in the interest of safety and the public.

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

PART 1544—AIRCRAFT OPERATOR SECURITY

16. The authority citation for part 1544 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

Subpart A--General

17. Amend § 1544.1 by revising paragraph (a)(1) to read as follows:

§ 1544.1 Applicability of this part.

(a) * * *

(1) The operations of aircraft operators engaged in any civil operation in an aircraft with a maximum certificated takeoff weight of over 12,500 pounds.

* * * * *

Subpart B—Security Program

§ 1544.101 [Amended]

18. Amend § 1544.101 as follows:

a. Revise paragraph (a) introductory text;

b. Revise paragraph (b);

c. Remove and reserve paragraphs (c), (d), (e), and (f);

d. Revise paragraph (g) to read as follows;

e. Revise paragraph (h) introductory text; and

f. Remove paragraph (i).

Revisions to read as follows:

§ 1544.101 Adoption and implementation.

(a) Full program. Each aircraft operator holding an operating certificate under 14 CFR part 119 must carry out the requirements in subparts C, D, and E of this part specified in § 1544.103 (c) and must adopt and carry out a security program that meets the requirements of §§ 1544.103(a), (b), and (c) for each of the following operations:

* * * * *

(b) Large aircraft program. Each aircraft operator must carry out the requirements in subparts C, D, and E of this part specified in §§ 1544.103(e) and (f) and must adopt and carry out a security program that meets the requirements of §§ 1544.103(a), (b), (e), and (f) for each operation that meets all of the following:

(1) Is an aircraft with a maximum certificated takeoff weight of over 12,500 pounds.

(2) Is in any civil operation.

(3) Is not one of the following:

(i) Operating under a full program under paragraph (a) of this section;

(ii) Operating under a full all-cargo program under paragraph (h) of this section;

(iii) A public aircraft as described in 49 U.S.C. 40102, provided that the aircraft operator obtains security procedures from TSA if the aircraft deplanes into or enplanes from a sterile area; or

(iv) A government charter under paragraph (2) of the definition of private charter in § 1540.5 of this chapter, provided that aircraft does not deplane into or enplane from a sterile area and the government takes security responsibility for the following:

(A) The aircraft;

(B) Persons onboard; and

(C) Property onboard.

* * * * *

(g) Limited program. Each aircraft operator that is not required to have a full program, a large aircraft program or a full all-cargo program, as identified in paragraphs (a), (b), and (h) of this section respectively, may request a security program from TSA. Each aircraft operator with a limited program must carry out selected provisions of subparts C, D, and E of this part, as provided by TSA and must adopt and carry out the provisions of § 1544.305, as specified in its security program.

(h) Full all-cargo program. Each aircraft operator holding an operating certificate under 14 CFR part 119 or 14 CFR part 125 must carry out the requirements in subparts C, D, and E of this part specified in § 1544.103(d) and must adopt and carry out a security program that meets the requirements of §§ 1544.103(a), (b), and (d) for each operation that is—

* * * * *

19. Amend § 1544.103 by adding paragraph (a)(4), revising paragraph (c), and adding paragraphs (d), (e), and (f) to read as follows:

§ 1544.103 Form, content, and availability.

(a) * * *

(4) Includes the standard security program issued by TSA, together with any amendments and alternate procedures approved or accepted by TSA for the aircraft operator.

* * * * *

(c) Content of a security program for a full program aircraft operator. The standard security program for a full program aircraft operator described in § 1544.101(a) is the Aircraft Operator Standard Security Program (AOSSP). The security program must include the following:

(1) Section 1544.201, Acceptance and screening of individuals and accessible property.

(2) Section 1544.203, Acceptance and screening of checked baggage.

(3) Section 1544.205, Acceptance and screening of cargo.

(4) Section 1544.207, Inspection of individuals and property.

(5) Section 1544.209, Use of metal detection devices.

(6) Section 1544.211, Use of X-ray systems.

(7) Section 1544.213, Use of explosives detection systems.

(8) Section 1544.215, Security coordinators.

(9) Section 1544.217, Law enforcement personnel.

(10) Section 1544.219, Carriage of accessible weapons.

(11) Section 1544.221, Carriage of prisoners under the control of armed law enforcement officers.

(12) Section 1544.223(a) through (h), Transportation of Federal Air Marshals.

(13) Section 1544.225, Security of the aircraft and facilities.

(14) Section 1544.227, Exclusive area agreements.

(15) Section 1544.228, Access to cargo and security threat assessments for cargo personnel in the United States.

(16) Sections 1544.229 and 1544.230, Fingerprint-based criminal history records checks.

(17) Section 1544.231, Airport-approved and exclusive area personnel identification systems.

(18) Sections 1544.233 and 1544.235, Security coordinators and crewmember training and training for individuals with security-related duties.

(19) Section 1544.237, Flight deck privileges.

(20) Section 1544.241, Regarding voluntary provision of emergency services.

(21) Section 1544.301, Contingency plan.

(22) Section 1544.303, Bomb or air piracy threats.

(23) Section 1544.305, Security directives and information circulars.

(d) Content of a security program for a full all-cargo program. The standard security program for a full all-cargo aircraft operator described in § 1544.101(h) is the Full All-Cargo Aircraft Operator Standard Security Program (FACAOSSP). The security program must include the following:

(1) Section 1544.202, Persons and property onboard an all-cargo aircraft.

(2) Section 1544.205, Acceptance and screening of cargo.

(3) Section 1544.207, Inspection of individuals and property.

(4) Section 1544.209, Use of metal detection devices.

(5) Section 1544.211, Use of x-ray systems.

(6) Section 1544.215, Security coordinators.

(7) Section 1544.217, Law enforcement personnel.

(8) Section 1544.219, Carriage of accessible weapons.

(9) Section 1544.223(a) through (h), Transportation of Federal Air Marshals.

(10) Section 1544.225, Security of the aircraft and facilities.

(11) Section 1544.227, Exclusive area agreements.

(12) Section 1544.228, Access to cargo and security threat assessments for cargo personnel in the United States.

(13) Sections 1544.229 and 1544.230, Fingerprint-based criminal history records checks.

(14) Section 1544.231, Airport-approved and exclusive area personnel identification systems.

(15) Sections 1544.233 and 1544.235, Security coordinators and crewmember training and training for individuals with security-related duties.

(16) Section 1544.237, Flight deck privileges.

(17) Section 1544.301, Contingency plan.

(18) Section 1544.303, Bomb or air piracy threats.

(19) Section 1544.305, Security directives and information circulars.

(20) Other provisions of subpart C of this part that TSA has approved upon request.

(21) The remaining requirements of subpart C of this part when TSA notifies the aircraft operator in writing that a security threat exists concerning that operation.

(e) Content of a security program for a large aircraft operator. The standard security program for large aircraft operators described in § 1544.101(b) is the large aircraft security program (LASP). The security program must include the following and any applicable requirements in paragraph (f) of this section:

(1) Section 1544.206, Person and property onboard a large aircraft.

(2) Section 1544.215, Security coordinators.

(3) Section 1544.217, Law enforcement personnel.

(4) Section 1544.219, Carriage of accessible weapons.

(5) Section 1544.223(i), Transportation of Federal Air Marshals.

(6) Section 1544.225, Security of the aircraft and facilities.

(7) Sections 1544.233 and 1544.235, Security coordinators and crewmember training.

(8) Section 1544.241, Voluntary provision of emergency services if the large aircraft operator holds an Air Carrier Certificate under 14 CFR part 119.

(9) Section 1544.243, Third party audit.

(10) Section 1544.245, Passenger vetting for large aircraft operators.

(11) Sections 1544.301(a) and (b), Contingency plan.

(12) Section 1544.303, Bomb or air piracy threats.

(13) Section 1544.305, Security directives and information circulars.

(14) Part 1544, subpart G, Security threat assessment for flight crew.

(15) Except as provided in paragraph (f)(1) of this section, an aircraft operator must seek alternative procedures from TSA for the screening of individuals and property for an aircraft that enplanes from or deplanes into a sterile area.

(16) Other provisions of subparts C, D, and E of this part that TSA has approved upon request.

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

(f) Additional requirements for large aircraft operators. In addition to the requirements in paragraph (e) of this section each aircraft operator described in § 1544.101(b) must include in its security program, the applicable requirements of this paragraph (f).

(1) Large aircraft over 45,500 kilograms (100,309.3 pounds) or with a passenger-seating configuration of 61 or more. For large aircraft operated for compensation or hire with a maximum certificated take-off weight of over 45,500 kilograms (100,309.3 pounds), or a passenger-seating configuration of 61 or more, each aircraft operator must include in its security program the following:

(i) Section 1544.201, Acceptance and screening of individuals and their accessible property.

(ii) Section 1544.207(c), Inspection of individuals and property.

(iii) Section 1544.223(a) through (h), Transportation of Federal Air Marshals.

(iv) Procedures for ensuring that each of the following individuals have successfully undergone a security threat assessment under subpart G of this part before granting the individual authority to perform screening functions:

(A) Individuals who screen passengers or property that will be carried in a cabin of the aircraft.

(B) Individuals who serve as immediate supervisors or the next supervisory level to those individuals described in paragraph (a)(1)(iv)(A) of this section.

(2) All-Cargo operations for aircraft with an MTOW of over 12,500 pounds. A large aircraft operator in an all-cargo operation must include the following in its security program:

(i) Section 1544.202, Persons and property onboard an all-cargo aircraft.

(ii) Sections 1544.205(a), (b), (d), and (f), Acceptance and screening of cargo.

20. Revise § 1544.105 to read as follows:

§ 1544.105 Approval and amendments to the security program.

(a) Initial approval of security program. (1) Application. Unless otherwise authorized by TSA, each aircraft operator required to have a security program under this part must apply for a security program in a form and a manner prescribed by TSA at least 90 days before the intended date of operations. The application must be in writing.

(i) Each aircraft operator must include in its application the following:

(A) The aircraft operator's business name and other names, including "doing business as";

(B) Address of the aircraft operator's primary place of business or headquarters;

(C) The aircraft operator's state of incorporation, if applicable; and

(D) The aircraft operator's tax identification number.

(ii) Each aircraft operator under the large aircraft program as described in § 1544.101(b) must include the following in its application:

(A) The business name and other names, including "doing business as." If the applicant holds or is applying for a FAA operating certificate, the business name must be the same as the name on the FAA operating certificate.

(B) The names and addresses of each proprietor, general partner, officer, director, and owner of an aircraft identified under § 1544.101(b).

(C) A signed statement from each person listed in paragraph (a)(1)(ii) of this section stating whether he or she has been a proprietor, general partner, officer, director,

or owner of a large aircraft that had its security program withdrawn or suspended by TSA.

(D) If the applicant holds a FAA operating certificate, the FAA operating certificate number.

(E) If the applicant does not have a FAA operating certificate, the type of operation under which the applicant operates, for example operating under 14 CFR part 91.

(F) The name, title, address, phone number, and electronic mail address of the Aircraft Operator Security Coordinator (AOSC) and any alternates. The telephone number provided must be a number where at least one AOSC may be reached.

(G) A statement acknowledging and ensuring that each employee and agent of the aircraft operator, who is subject to training under §§ 1544.233 and 235, will have successfully completed the training outlined in its security program before performing security-related duties.

(2) Standard security program. TSA will provide to the aircraft operator security coordinator the appropriate standard security program, any security directives, and amendments to the security program and other alternative procedures that apply to the aircraft operator. The aircraft operator may either accept the standard security program or submit a proposed modified security program to the designated official for approval. TSA will approve the security program under paragraph (a)(3) of the section or issue a written notice to modify under paragraph (a)(4) of this section.

(3) Approval. TSA will approve the security program upon determining that—

(i) The aircraft operator has met the requirements of this part, its security program, and any applicable Security Directives;

(ii) The aircraft operator is able and willing to carry out the requirements of its security program;

(iii) The approval of the security program is not contrary to the interests of security and the public interest; and

(iv) The aircraft operator has not held a security program that was withdrawn, unless otherwise authorized by TSA.

(4) Modification. (i) If a security program does not satisfy the requirements in paragraph (a)(3) of this section, TSA will provide the aircraft operator written Notice to Modify the security program to comply with the applicable requirements of this part.

(ii) The aircraft operator may either submit a modified security program to TSA for approval, or a petition for Reconsideration of Notice to Modify within 30 days of receipt of the Notice to modify. A Petition for Reconsideration must be filed with the designated official.

(iii) 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 Assistant Secretary for reconsideration. The Assistant Secretary may dispose of the Petition within 30 days of receipt by either directing the designated official to withdraw or amend the Notice to Modify, or by denying the Petition and affirming the Notice to Modify.

(5) Commencement of operations. The aircraft operator may operate under an approved security program when it meets all requirements, including but not limited to

successful completion of training and Security Threat Assessments by relevant personnel, if applicable.

(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 in writing, with the designated official at least 45 days before the date the aircraft operator 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 security and the public interest will allow it, and the proposed amendment provides the level of security required under this part.

(4) If the proposed amendment is denied, within 30 days after receiving a denial, the aircraft operator may petition the Assistant 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 Assistant Secretary for reconsideration. The Assistant Secretary disposes of the petition within 30 days of receipt by either directing the designated official to approve the amendment, or denying the Petition and 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 security 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 Assistant Secretary, in writing, to reconsider no later than 15 days before the effective date of the amendment. The aircraft operator must send the written 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 Assistant Secretary for reconsideration. The Assistant Secretary disposes of the Petition within 30 days of receipt by either directing the designated official to withdraw or amend the amendment, or by denying the Petition and affirming the amendment.

(d) Emergency amendments. If the designated official finds that there is an emergency requiring immediate action with respect to 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 emergency 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 written Petition for Reconsideration under paragraph (c) of this section; however, this does not stay the effective date of the Emergency Amendment.

(e) Requirement to report changes in information. Each aircraft operator with an approved security program under this part must notify TSA, in a form and manner approved by TSA, of any changes to the information submitted during its initial application under paragraph (a)(1) of this section.

(1) This notification must be submitted in writing to the designated official not later than 30 days after the date the change occurred.

(2) Changes included in the requirement of this paragraph include, but are not limited to, changes in the holder of a security program's contact information, owners, business addresses and locations, and form of business entity.

(f) TSA may withdraw its approval of an aircraft operator's security program under § 1540.301.

21. Add new § 1544.107 to subpart B to read as follows:

§ 1544.107 Fractional ownership of large aircraft.

(a) This section applies to aircraft operators operating aircraft under a large aircraft program under § 1544.101(b) that are under a fractional ownership program under 14 CFR part 91, subpart K. For operations where the owner in operational control delegates performance of security tasks to the program manager, the security program is

considered to be held jointly by the owner and the program manager, and the owner and the program manager are jointly and individually responsible for compliance.

(b) A fractional program manager that manages multiple aircraft may have one large aircraft program that applies to all its operations.

Subpart C—Operations

22. Revise § 1544.201 to add introductory text to read as follows:

§ 1544.201 Acceptance and screening of individuals and accessible property.

This section applies to each aircraft operator required to comply with this section under 49 CFR 1544.103.

* * * * *

23. Revise § 1544.202 to read as follows:

§ 1544.202 Persons and property onboard all-cargo aircraft.

Each aircraft operator operating under a full all-cargo program or a large aircraft program in an all-cargo operation as described in § 1544.103(f)(2) must apply the security measures in its security program for persons who are carried on the aircraft, and for their property, to prevent or deter the carriage of any unauthorized persons, and any unauthorized or accessible weapons, explosives, incendiaries, and other destructive substances or items.

24. Amend § 1544.205 by revising paragraphs (a), (b), and (d) to read as follows:

§ 1544.205 Acceptance and screening of cargo.

(a) Preventing or deterring the carriage of any explosive or incendiary. Each aircraft operator operating under a full program, a full all-cargo program, or a large aircraft program in an all-cargo operation as described in § 1544.103(f)(2) must use the

procedures, facilities, and equipment described in its security program to prevent or deter the carriage of any unauthorized persons, and any unauthorized explosives, incendiaries, and other destructive devices, substances or items in cargo onboard an aircraft.

(b) Screening and inspection of cargo. Each aircraft operator operating under a full program or a full all-cargo program, or a large aircraft program in an all-cargo operation, as described in § 1544.103(f)(2), must ensure that cargo is screened and inspected for any unauthorized person, and any unauthorized explosive, incendiary, and other destructive substance or item as provided in the aircraft operator's security program and § 1544.207, and as provided in § 1544.239 for operations under a full program, before loading it on its aircraft.

* * * * *

(d) Refusal to transport. Except as otherwise provided in its program, each aircraft operator operating under a full program, a full all-cargo program, or a large aircraft program in an all-cargo operation as described in § 1544.103(f)(2) 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.

* * * * *

25. Add new § 1544.206 to subpart C to read as follows:

§ 1544.206 Persons and property on board a large aircraft.

Each aircraft operator operating under a large aircraft program under § 1544.101(b), except for a large aircraft operator in an all-cargo operation as described in § 1544.103(f)(2), must apply the security measures in its security program for any persons and accessible property onboard the aircraft, including company materials

(COMAT), to prevent or deter the carriage of any unauthorized persons, and any unauthorized or accessible weapons, explosives, incendiaries, and other destructive devices, substances or items.

26. Revise § 1544.207 to read as follows:

§ 1544.207 Inspection of individuals and property.

(a) Applicability of this section. This section applies to the inspection of individuals, accessible property, checked baggage, and cargo by each full program operator under § 1544.101(a); the inspection of individuals, accessible property and cargo by each full all-cargo program operator under § 1544.101(h); and the inspection of individuals and accessible property by a large aircraft program operator under § 1544.103(f)(1), as required under this part.

(b) Full program aircraft operators. Each aircraft operator must ensure that passengers and their accessible property do not board an aircraft and that checked baggage is not loaded onto an aircraft unless inspection is conducted as follows:

(1) Locations within the United States. The inspection of passengers, accessible property, and checked baggage is conducted by TSA.

(2) Locations outside the United States. (i) In non-U.S. locations where the foreign country conducts inspection of passengers, accessible property, and checked baggage, the aircraft operator must ensure that the foreign country or its designee conducts such inspection. TSA may require aircraft operators to conduct supplemental inspection operations.

(ii) In non-U.S. locations where the foreign country does not conduct inspection of passengers, accessible property, and/or checked baggage, an aircraft operator must

conduct any inspection not conducted by the foreign country or must not permit non-inspected individuals on the aircraft. The aircraft operator's personnel must be trained and authorized to inspect individuals, accessible property, and checked baggage, as provided in subpart E.

(3) All locations. Each aircraft operator must ensure the inspection of all cargo prior to loading on the aircraft. The cargo must be inspected as provided in each aircraft operator's security program or by TSA, or by the foreign country. Where the foreign country does not conduct inspection of cargo, the aircraft operator must conduct the inspection or must not permit non-inspected cargo on the aircraft.

(c) Full all-cargo aircraft operators and large aircraft operators. Each aircraft operator must use the measures in its security program and in subpart E of this part to inspect individuals and property.

27. Amend § 1544.217 by revising the introductory text of paragraphs (a)(2) and (b) to read as follows:

§ 1544.217. Law enforcement personnel.

(a) * * *

(2) For operations under a large aircraft program under § 1544.101(b) or a full all-cargo program under § 1544.101(h), each aircraft operator must--

* * * * *

(b) This paragraph (b) applies to operations at airports required to hold security programs under part 1542 of this chapter. For operations under a large aircraft program under §1544.101(b), or a full all-cargo program under §1544.101(h), each aircraft operator must—

* * * * *

28. Amend § 1544.219 by adding introductory text, and revising the introductory text of paragraphs (a) and (b) to read as follows:

§ 1544.219 Carriage of accessible weapons.

This section applies to each aircraft operator required to comply with this section under 49 CFR 1544.103.

(a) Flights for which screening is conducted. The provisions of §§ 1544.201(d) and 1544.202, with respect to accessible weapons, do not apply to a law enforcement officer (LEO) traveling armed aboard a flight for which screening is required, if the requirements of this section are met.

* * * * *

(b) Flights for which screening is not conducted. The provisions of §§ 1544.201(d) and 1544.202, 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.

* * * * *

29. Amend § 1544.223 by adding an introductory paragraph and a new paragraph (i), and revising paragraphs (b), (f), and (g) to read as follows:

§ 1544.223 Transportation of Federal Air Marshals.

Each aircraft operator under the full program as described in § 1544.101(a), full all-cargo program as described in § 1544.101(h), or the large aircraft program and required to comply with § 1544.103(f)(1), must comply with paragraphs (a) through (h) of this section. Each aircraft operator under the large aircraft program as described in §

1544.101(b), other than large aircraft operators described in § 1544.103(f)(1), must comply with paragraph (i) of this section.

* * * * *

(b) Each aircraft operator must carry Federal Air Marshals, in the number and manner specified by TSA.

* * * * *

(f) The requirements of §§ 1544.219(a) and 1544.241 do not apply for a Federal Air Marshal on duty status.

(g) Each aircraft operator operating under a security program pursuant to §§ 1544.101(a), (b) and (h), 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.

* * * * *

(i) Upon prior notification from TSA, large aircraft operators must carry Federal Air Marshals, in the number and manner specified by TSA.

30. Amend § 1544.237 by adding introductory text and revising paragraph (b) to read as follows:

§ 1544.237 Flight deck privileges.

This section applies to each aircraft operator required to comply with this section under 49 CFR 1544.103:

* * * * *

(b) This section does not restrict access for an FAA air carrier inspector, a DOD commercial air carrier evaluator, an authorized representative of the National

Transportation Safety Board, or an Agent of the U.S. Secret Service, under 14 CFR parts 121, 125, or 135, or a Federal Air Marshal under this part.

31. Add new § 1544.241 to subpart C to read as follows:

§ 1544.241 Voluntary provision of emergency services.

This section applies to each aircraft operator that is required to comply with this section under 49 CFR 1544.103 and that is an air carrier.

(a) Qualification under this section. An individual is qualified for purposes of this section if the individual is qualified under Federal, State, local, or tribal law, or under the law of a foreign government, has valid standing with the licensing or employing agency that issued the credentials, and is a scheduled, on-call, paid, or volunteer employee, as one of the following:

(1) A law enforcement officer who is an employee or authorized by the Federal, state, local, or tribal government or under the law of a foreign government, with the primary purpose of the prevention, investigation, apprehension, or detention of individuals suspected or convicted of government offenses.

(2) A firefighter who is an employee, whether paid or a volunteer, of a fire department of any Federal, state, local, or tribal government who is certified as a firefighter as a condition of employment and whose duty it is to extinguish fires, to protect life, and to protect property.

(3) An emergency medical technician who is trained and certified to appraise and initiate the administration of emergency care for victims of trauma or acute illness.

(b) Exemption from liability. (1) Under 49 U.S.C. 44944(b), an individual shall not be liable for damages in any action brought in a Federal or State court that arises from

an act or omission of the individual in providing or attempting to provide assistance in the case of an in-flight emergency in an aircraft of an air carrier if the individual meets the qualifications described in paragraph (a) of this section.

(2) Under 49 U.S.C. 44944(c), exemption described in paragraph (b)(1) of this section shall not apply in any case in which an individual provides, or attempts to provide, assistance in a manner that constitutes gross negligence or willful misconduct.

(3) The exemption described in paragraph (b)(1) of this section applies whether or not the individual has volunteered prior to departure under the program described in paragraph (c) of this section.

(4) For purposes of this paragraph (b), the qualified individual need not have his or her credentials present at the time of providing or attempting to provide assistance.

(c) Program for pre-departure volunteers. Each aircraft operator must adopt and carry out a program for qualified individuals to volunteer, prior to departure, to be called upon by a crew member or flight attendant to provide emergency services in the event of an in-flight emergency. Prior to accepting an offer of voluntary emergency services from a qualified individual prior to departure, the aircraft operator must request and review any credential, document, and identification offered by the individual to determine whether he or she meets the definition of a qualified individual.

(1) The credential, document, or identification must identify the service category and bear the individual's name, clear full-face picture, and signature and must not have expired, except as provided in paragraph (c)(3) of this section.

(2) If the credential does not bear an expiration date, the qualified individual must also present an official letter identifying current employment in the relevant service category.

(3) If the credential does not bear a full-face image of the individual, the individual must also present a photo identification issued by a government authority.

(4) An individual whose credential bears an expiration date that has passed on the date of the intended flight is not considered a qualified individual for purposes of paragraph (c) of this section.

(d) Law enforcement officers flying armed and federal air marshals. The aircraft operator need not apply the requirements of paragraph (c) to a law enforcement officer traveling armed pursuant to § 1544.219 or to a Federal Air Marshal on duty status pursuant to §§ 1544.219 and 1544.223.

(e) Discretion of the aircraft operator. The aircraft operator has full discretion to request, accept, or reject a qualified individual's offer of assistance. Nothing in this section prohibits or requires any passenger's assistance in an emergency.

(f) Confidentiality. The aircraft operator must not provide any individual, other than the appropriate aircraft operator personnel who need to know, the identity or any other personal or professional information of any qualified individual offering to provide emergency services.

32. Add new § 1544.243 to subpart C to read as follows:

§ 1544.243 Third party audit.

(a) Applicability. This section applies to aircraft operators operating under a large aircraft program under § 1544.101(b).

(b) General. Each aircraft operator must contract with an auditor approved under 49 CFR part 1522 to conduct an audit of the aircraft operator's compliance with this chapter and its security program in accordance with this section.

(c) Timing. (1) Initial audit. Except as approved by TSA, each aircraft operator must cause the initial audit to be conducted within sixty days of the approval of the aircraft operator's security program under § 1544.105.

(2) Biennial audit. Each aircraft operator must cause an audit to be conducted 24 months after the aircraft operator's most recent audit conducted to meet the requirements in paragraph (c)(1) of this section or this paragraph (c)(2). If the aircraft operator completes the audit in the month before or the month after it is due, the aircraft operator is considered to have completed the audit in the month it is due.

(d) Auditor's access. Each aircraft operator must provide the auditor access to all records, equipment, and facilities necessary for the auditor to conduct an audit of the aircraft operator's compliance with this chapter and its security program.

(e) Audit report. Each aircraft operator will receive a copy of the audit report from its auditor.

(f) Comments on audit report. Within 30 days of receiving a copy of an audit report from the auditor, an aircraft operator may submit written comments on the report to TSA.

33. Add new § 1544.245 to subpart C to read as follows:

§ 1544.245 Passenger vetting for large aircraft operators.

(a) Applicability and terms used in this section. (1) Applicability. (i) Except as provided in paragraph (a)(1)(ii) of this section, this section applies to aircraft operators operating under a large aircraft program described in § 1544.101(b).

(ii) This section does not apply to any flight operated by a large aircraft operator for which the large aircraft operator has submitted advance passenger information to U.S. Custom and Border Protection (CBP) under 19 CFR 122.49a, 122.75a, or 122.22 and has complied with CBP's instructions. If CBP grants the pilot landing rights under 19 CFR 122.49a, 122.75a, or 122.22, the large aircraft operator may permit all passengers for whom the aircraft operator submitted advance passenger information to CBP to board the aircraft. If CBP identifies a passenger as a selectee under 19 CFR 122.49a, 122.75a, or 122.22, the large aircraft operator may permit the passenger to board the aircraft and the large aircraft operator must comply with the procedures in its security program pertaining to passengers that are identified as selectees. If CBP identifies a passenger as "not cleared" under 19 CFR 122.49a, 122.75a, or 122.22, the large aircraft operator must not permit the passenger to board the aircraft.

(2) Terms used in this section. In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply in this section:

Continuous vetting means the process in which an individual's full name, date of birth, gender, passport information, and Redress Number (if available) are continuously matched against the most current watch-list in a manner prescribed by TSA.

Passenger information means:

(1) Full name of the passenger.

(2) Date of birth of the passenger, if available.

(3) Gender of the passenger, if available.

(4) Passport information, if available.

(5) Redress Number of the passenger, if available.

Passport information means the following information from an individual's passport:

(1) Passport number.

(2) Country of issuance.

(3) Expiration date.

(4) Gender.

(5) Full name.

Redress Number means the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

Watch-list refers to the No Fly List and Selectee List components of the Terrorist Screening Database maintained by the Terrorist Screening Center.

Watch-list service provider is an entity that TSA has approved under 49 CFR part 1544, subpart F, to conduct watch-list matching for large aircraft operators required under this section.

(b) Request for and transmission of passenger information. (1) Passenger information list. Except as provided in paragraph (b)(2) of this section, each aircraft operator must:

(i) Request and obtain the full name of every passenger on each flight operated by the aircraft operator;

(ii) Request the gender, date of birth, and Redress Number for every passenger on each flight operated by the aircraft operator;

(iii) Transmit the full name and other available passenger information, and any available passport information, to an entity approved to conduct watch-list matching under 49 CFR part 1544, subpart F ("Watch-list service provider"); and

(iv) Transmit updated passenger information to its watch-list service provider if there are revisions to the passenger's full name, date of birth, gender, passport information, or Redress Number.

(2) Master passenger list. An aircraft operator does not need to transmit passenger information required under paragraph (b)(1) of this section or await boarding instructions required under paragraph (c) of this section for individuals who satisfy all of the following:

(i) Prior to obtaining and transmitting passenger information under paragraphs (b)(2)(ii) and (iii) of this section, the aircraft operator must inform the individual that inclusion in the master passenger list is voluntary, provide the individual with notice of the purpose and procedures related to a master passenger list, and obtain from the individual a signed, written statement affirmatively requesting that he or she be placed on the master passenger list.

(ii) The aircraft operator has obtained the full name, gender, date of birth, and Redress Number (if available) of the individuals.

(iii) The aircraft operator has transmitted the full name, gender, date of birth, passport information, and Redress Number (if available) of the individual and any updated passenger information to a watch-list service provider and identified the individual as an individual that should be subject to continuous vetting.

(iv) The aircraft operator ensures that the watch-list service provider has responsibility for conducting continuous vetting of the individual at the time that the individual boards a flight operated by the aircraft operator.

(v) The watch-list service provider that conducts the continuous vetting of the individual has informed the aircraft operator that the individual is cleared to board an aircraft after the aircraft operators transmits the initial passenger information to the watch-list service provider. If the aircraft operator transmits updated passenger information, the aircraft operator must wait until the watch-list service provider informs the aircraft operator that the individual is cleared to board an aircraft.

(vi) The watch-list service provider that conducts the continuous vetting of the individual has not informed the aircraft operator that the individual must be inhibited from boarding the aircraft, unless explicitly authorized by TSA to permit boarding of the individual.

(c) Watch-list matching results. An operator must not permit a passenger to board an aircraft until the aircraft operator's watch-list service provider informs the aircraft operator of the results of watch-list matching for that passenger in response to the aircraft operator's most recent submission of passenger

information for that passenger. The aircraft operator must comply with instructions transmitted by the watch-list service provider under this paragraph (c), unless explicitly instructed otherwise by TSA.

(1) Cleared to board an aircraft. If the aircraft operator's watch-list service provider instructs the aircraft operator that a passenger is cleared, the aircraft operator may permit the passenger to board an aircraft.

(2) Passenger identified as a selectee. If the aircraft operator's watch-list service provider instructs the aircraft operator that a passenger is a selectee, the aircraft operator may permit the passenger to board an aircraft. The aircraft operator must comply with the procedures in its security program pertaining to passengers that are identified as selectees.

(3) Denial to board an aircraft. If the aircraft operator's watch-list service provider instructs the aircraft operator that the passenger must be inhibited from boarding an aircraft, the aircraft operator must not permit the passenger to board an aircraft. If the aircraft operator's watch-list service provider instructs the aircraft operator to contact TSA for further resolution of the watch-list matching results, the aircraft operator must contact TSA in accordance with procedures set forth in its security program.

(4) Override by an aircraft operator. No aircraft operator may override an instruction to inhibit a passenger from boarding an aircraft, unless explicitly authorized by TSA to do so.

(5) Updated passenger information from an aircraft operator. When an aircraft operator sends updated passenger information to its watch-list service

provider under paragraph (b)(1)(iv) of this section for a passenger for whom the watch-list service provider has already transmitted an instruction, all previous instructions concerning that passenger are voided. The aircraft operator may not permit the passenger to board an aircraft until it receives an updated instruction concerning the passenger from its watch-list service provider. Upon receiving an updated instruction from its watch-list service provider, the aircraft operator must comply with the updated instruction and disregard all previous instruction.

(d) Use of the watch-list matching results. An aircraft operator must not use any watch-list matching results provided by the watch-list service provider or TSA for purposes other than those provided in paragraph (c) of this section and security purposes.

35. Add new subparts F and G to part 1544 to read as follows:

Subpart F--Watch-list Service Providers

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Subpart F--Watch-list Service Providers

§ 1544.501 Scope and terms used in this subpart.

(a) This subpart applies to entities that conduct watch-list matching for large aircraft operators under § 1544.245.

(b) In addition to the terms in §§ 1500.3 and 1540.5 of this chapter, the following terms apply in this part:

Applicant means an entity that seeks approval from TSA to conduct watch-list matching for large aircraft operators under § 1544.245.

Covered personnel means:

(1) Employees who have access to passenger information, the watch-list, or watch-list matching results; and

(2) Officers, principals, and program managers responsible for access of passenger information, the watch-list, or watch-list matching results.

Large aircraft operator means an aircraft operator described in §§ 1544.101(b) or 1544.107.

Passenger information means -

(1) Full name of the passenger.

(2) Date of birth of the passenger, if available.

(3) Gender of the passenger, if available.

(4) Passport information, if available.

(4) Redress Number of the passenger, if available.

Passport information means the following information from an individual's passport:

(1) Passport number.

(2) Country of issuance.

(3) Expiration date.

(4) Gender.

(5) Full name.

Continuous vetting means the process in which an individual's full name, date of birth, gender, passport information, and Redress Number (if available) is continuously matched against the most current watch-list in a manner prescribed by TSA.

Redress Number means the number assigned by DHS to an individual processed through the redress procedures described in 49 CFR part 1560, subpart C.

Watch-list refers to the No Fly List and Selectee List components of the Terrorist Screening Database maintained by the Terrorist Screening Center.

Watch-list service provider is an entity that TSA has approved under this subpart to conduct watch-list matching for large aircraft operators under § 1544.507.

§ 1544.503 Qualification standards for approval.

To be considered for approval to conduct watch-list matching under § 1544.245, the applicant must satisfy all of the following requirements.

(a) The applicant must demonstrate the capability to receive passenger information from large aircraft operators described in § 1544.101(b).

(b) The applicant must demonstrate the capability to conduct automated watch-list matching and continuous vetting of individuals in a system that satisfies standards set forth by TSA for the protection of personally identifiable information and the security of the system.

(c) The applicant must demonstrate the capability to transmit watch-list matching results to the large aircraft operator.

(d) The applicant must successfully undergo a suitability assessment conducted by TSA including a determination that it does not pose or is suspected of posing a threat to transportation or national security.

(e) Every covered personnel of the applicant must successfully undergo a security threat assessment under 49 CFR part 1544, subpart G and have a valid Determination of No Security Threat.

(f) The applicant is incorporated within the United States. The applicant's operations and systems for conducting watch-list matching under this subpart must be located in the United States.

§ 1544.505 Application.

(a) Each applicant must submit an application in a form and manner prescribed by TSA.

(b) An application must include the following information:

(1) The applicant's full name, business address, business phone number, and business email address.

(2) A statement and other documentary evidence of how the applicant meets the qualification standards set forth on § 1544.503.

(3) A system security plan for its information technology system that contains personally identifiable information collected under this part and § 1544.245 or is used to conduct watch-list matching. The system security plan must comply with standards established by TSA.

(4) An attestation report of the attestation conducted under § 1544.513(c)(1)(i).

(5) A security program that meets requirements in § 1544.515.

§ 1544.507 TSA review and approval.

(a) Review. Upon receiving an application, TSA will review the application including the system security plan as described in § 1544.505(b)(3). TSA may conduct a site visit as part of its review process. At its discretion, TSA may approve or disapprove the application.

(b) Approval. If an application is approved, TSA will send the applicant a written notice of approval. Once approved, the watch-list service provider may perform passenger vetting in accordance with this subpart after TSA receives an attestation report for an attestation conducted under § 1544.513(c)(1)(i) in which the independent public accounting (IPA) firm opines that the watch-list service provider's system is in compliance with its system security plan and TSA standards.

(c) Disapproval. TSA will send a written notice of disapproval to an applicant whose application is disapproved.

§ 1544.509 Reconsideration of disapproval of an application.

(a) Petition for reconsideration. If an application is disapproved, the applicant may seek reconsideration of the decision by submitting a written petition for reconsideration to the Assistant Secretary or designee within 30 days of receiving the notice of disapproval.

(b) Review of petition. Upon review of the petition for reconsideration, the Assistant Secretary or designee disposes of the petition by either affirming the disapproval of the application or approving the application. The Assistant Secretary or

designee may request additional information from the applicant prior to rendering a decision.

§ 1544.511 Withdrawal of approval.

(a) Basis for withdrawal of approval. TSA may withdraw approval to conduct watch-list matching if a watch-list service provider ceases to meet the qualification standards for approval, fails to fulfill its responsibilities, or in the interest of security or the public.

(b) Notice of withdrawal. (1) Except as provided in paragraph (c) of this section, TSA will provide a written notice of proposed withdrawal of approval to the watch-list service provider.

(2) The notice of withdrawal of approval will include the basis of the withdrawal of approval.

(3) Unless the watch-list service provider files a written petition for reconsideration under paragraph (d) of this section, the notice of proposed withdrawal of approval will become a final notice of withdrawal of approval 31 days after the watch-list service provider's receipt of the notice of proposed withdrawal of approval.

(c) Emergency notice of withdrawal of approval. (1) If TSA finds that there is an emergency requiring immediate action with respect to a watch-list service provider's ability to conduct watch-list matching, TSA may withdraw approval of that watch-list service provider without prior notice.

(2) TSA will incorporate in the emergency notice of withdrawal of approval a brief statement of the reasons and findings for the withdrawal of approval of approval.

(3) The emergency notice of withdrawal of approval is effective upon the watch-list service provider's receipt of the notice. The watch-list service provider may file a written petition for reconsideration under paragraph (d) of this section; however, this does not stay the effective date of the emergency notice of withdrawal of approval.

(d) Petition for reconsideration. A watch-list service provider may seek reconsideration of the withdrawal of approval of approval by submitting a written petition for reconsideration to the Assistant Secretary or designee within 30 days of receiving the notice of withdrawal of approval.

(e) Review of petition. Upon review of the petition for reconsideration, the Assistant Secretary or designee disposes of the petition by either affirming or withdrawing the withdrawal of approval. The Assistant Secretary or designee may request additional information from the watch-list service provider prior to rendering a decision.

§ 1544.513 Responsibilities of watch-list service providers.

(a) Security program. Each watch-list service provider must adopt and carry out a security program that meets the requirements of § 1544.515.

(b) System security plan. Each watch-list provider must comply with its approved system security plan.

(c) Authorized watch-list matching. Each watch-list service provider may only conduct watch-list matching for aircraft operators that hold a large aircraft program, as described in § 1544.101(b), that is approved by TSA under § 1544.105. Each watch-list service provider must confirm with TSA that an

aircraft operator holds an approved large aircraft program prior to commencement of watch-list matching for that aircraft operator.

(d) Attestation of compliance. (1) Each watch-list service provider must contract with a qualified IPA firm to conduct an attestation of the watch-list service provider's compliance with its system security plan and TSA standards for systems that are used to conduct watch-list matching as follows:

(i) An attestation must be conducted prior to commencement of watch-list matching operations;

(ii) An attestation must be conducted 6 months after commencement of watch-list matching operations; and

(iii) An attestation must be conducted 12 months after the watch-list service provider's most recent attestation conducted to meet the requirements in paragraph (c)(1)(ii) of this section or this paragraph (c)(1)(iii). If the watch-list service provider completes the attestation in the month before or the month after it is due, the watch-list service provider is considered to have completed the attestation in the month it is due.

(2) The IPA firm conducts the attestation in accordance with the American Institute of Certified Public Accountants' (AICPA) Statement for Standards on Attestation Engagements 10 and TSA standards;

(3) The IPA firm must prepare and submit a report, in a form and manner prescribed by TSA, for each audit conducted under paragraph (c)(1) of this section.

(4) An IPA firm is qualified for purposes of paragraph (c)(1) of this section if:

(i) The selection of the IPA firm was in accordance with the relevant AICPA guidance regarding independence; and

(ii) The IPA firm demonstrates the capability to assess information system security and process controls. TSA reserves the right to reject the IPA firm's attestation if, in TSA's judgment, the IPA firm is not sufficiently qualified to perform these services.

(e) Sensitive Security Information. Each watch-list service provider must comply with the requirements in 49 CFR part 1520 regarding the handling and protection of Sensitive Security Information.

(f) Non-disclosure of proprietary information. Unless explicitly authorized by TSA, each watch-list service provider may not further release or disseminate any information that TSA or a large aircraft operator indicates as proprietary information and provides to the watch-list service provider.

(g) Privacy policy. Each watch-list service provider must adopt and make public a privacy policy.

(h) TSA inspection authority. (1) Each watch-list service provider must allow TSA, at any time or place, to make any inspections or tests, including copying records, to determine compliance of a watch-list service provider or a large aircraft operator with--

(i) This subpart, 49 CFR 1544.245, and part 1520 of this chapter; and

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

(2) At the request of TSA, each watch-list service provider must provide evidence of compliance with this subpart.

(i) Use of watch-list. Watch-list service providers may not use the passenger information transmitted under § 1544.245 and obtained under this subpart, the watch-list, or the watch-list matching results for any purpose other than to conduct watch-list matching under this part in accordance with their security programs.

§ 1544.515 Security program.

(a) Each watch-list service provider must adopt and carry out a security program that includes all of the following requirements:

(1) Procedures for conducting watch-list matching in a manner prescribed by TSA.

(2) Procedures for sending instructions back to aircraft operators based on the results of the watch-list matching.

(3) Procedures for contacting TSA for resolution of passengers that are potential matches to the watch-list.

(4) Procedures for identifying passengers about whom a large aircraft operator must contact TSA for resolution of a potential match to the watch-list.

(5) Procedures for complying with its system security plan.

(6) Procedures for ensuring the physical security of the system used to conduct watch-list matching and the space and furniture used to receive passenger information from aircraft operators, to conduct watch-list matching, to transmit watch-list results to aircraft operators, and to store documents related to watch-list matching.

(7) Procedures for training covered personnel on the requirements of this subpart.

(8) Procedures for conducting continuous vetting of individuals.

(9) Procedures for providing personnel that is available to TSA 24 hours a day, 7 days a week.

(10) Procedures to identify, handle, and protect Sensitive Security Information.

(11) Procedures to maintain confidentiality of proprietary information.

(b) A watch-list service provider or TSA may amend an approved security program using the procedures in § 1544.105.

(c) TSA may withdraw approval of a security program using procedures in § 1540.301.

Subpart G--Security Threat Assessments for Large Aircraft Flight Crew, Applicants to Become TSA-approved Auditors and Watch-list Service Providers Covered personnel

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Subpart G--Security Threat Assessments for Large Aircraft Flight Crew, Applicants to Become TSA-approved Auditors and Watch-list Service Providers Covered personnel

§ 1544.601 Scope and expiration.

(a) Scope. This subpart applies to the following individuals who must undergo a security threat assessment:

(1) Flight crew member for aircraft operators required to hold a large aircraft security program under § 1544.101(b);

(2) Individuals authorized to perform screening functions under § 1544.103(f)(1);

(3) Applicant to become a TSA-approved auditor under § 1522.203; and

(4) Watch-list service provider covered personnel under § 1544.503.

(b) Expiration. A Determination of No Security Threat issued under § 1544.611(a) is valid for five years from the date that the individual receives the determination unless TSA issues a withdrawal of Determination of No Security Threat under § 1544.613 that results in a Final Determination of Security Threat Assessment. An individual may renew a Determination of No Security Threat using the procedures set forth in this subpart.

(c) Individuals who have undergone a CHRC under § 1544.229 or 1544.230. Flight crew members or employees or contract employees authorized to perform screening functions who have undergone a fingerprint-based criminal history records check under §§ 1544.229 or 1544.230 within five years of the effective date of this rule are not required to undergo a security threat assessment

under this part until 5 years after the date of their notification of the results of their criminal history records check.

§ 1544.603 Enrollment for security threat assessments.

(a) Except for paragraphs (a)(4) and (a)(12)-(16) of this section, an individual who is required to undergo a security threat assessment under this subpart must provide the following information to TSA in a manner and time prescribed by TSA:

(1) Legal name, including first, middle, and last; any applicable suffix; and any other name used previously.

(2) Current mailing address and residential address if it differs from the mailing address; and the previous residential address.

(3) Date of birth.

(4) Social security number. Providing the social security number is voluntary; however, failure to provide it will delay and may prevent completion of the threat assessment.

(5) Gender.

(6) Height, weight, hair and eye color.

(7) City, state, and country of birth.

(8) Immigration status and date of naturalization if the individual is a naturalized citizen of the United States.

(9) Alien registration number, if applicable.

(10) The name, telephone number, and address of the individual's current employer(s). If the individual's current employer is the U.S. military service, include the branch of the service.

(11) Fingerprints in a manner prescribed by TSA.

(12) Passport number, city of issuance, date of issuance, and date of expiration. This information is voluntary and may expedite the adjudication process for individuals who are U.S. citizens born abroad.

(13) Department of State Consular Report of Birth Abroad. This information is voluntary and may expedite the adjudication process for individuals who are U.S. citizens born abroad.

(14) If the individual is not a national or citizen of the United States, the alien registration number and/or the number assigned to the applicant on the U.S. Customs and Border Protection Arrival-Departure Record, Form I–94. This information is voluntary and may expedite the adjudication process for individuals who are not U.S. citizens.

(15) Whether the applicant has previously completed a TSA threat assessment, and if so the date and program for which it was completed. This information is voluntary and may expedite the adjudication process for applicants who have completed a TSA security threat assessment.

(16) Whether the applicant currently holds a federal security clearance, and if so, the date of and agency for which the clearance was performed. This information is voluntary and may expedite the adjudication process for applicants who have completed a federal security threat assessment.

(b) The individual must certify and date receipt of the following statement:

> Privacy Act Statement: Authority: 49 U.S.C. 114, 40113. Purpose: This information will be used to verify your identity and to conduct a security threat assessment to evaluate your suitability for a position for which this security threat assessment is required. Furnishing this information, including your SSN, is voluntary; however, failure to provide it will delay and may prevent the completion of your security threat assessment.

> Routine Uses: Includes disclosure to the FBI to retrieve your criminal history record; to appropriate governmental agencies for licensing, law enforcement, or security purposes, or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement. For further information, see TSA 002 System of Records Notice.

(c) The individual must provide a statement, signature, and date of signature that he or she--

(1) Was not convicted, or found not guilty by reason of insanity, of a disqualifying criminal offense identified in § 1544.229(d) in any jurisdiction during the 10 years before the date of the individual's application for a security threat assessment under this subpart.

(2) Is not wanted, or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in § 1544.229(d);

(3) Has, or has not, served in the military, and if so, the branch in which he or she served, the date of discharge, and the type of discharge; and

(4) Has been informed that Federal regulations under 49 CFR 1544.607 impose a continuing obligation on the individual to disclose to TSA if he or she is convicted, or found not guilty by reason of insanity of a disqualifying crime.

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

(e) The individual must certify and date receipt of the following statement, immediately before the signature line:

> 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, or an omission of a material fact on this application, can be punished by fine or imprisonment or both (see section 1001 of Title 18 United States Code),

and may be grounds for denial of approval for the position or privilege for which this security threat assessment is required.

(f) A flight crew member for a large aircraft, an individual authorized to perform screening functions, or a watch-list service provider covered personnel must certify the following statement in writing:

I acknowledge that if the Transportation Security Administration determines that I pose a security threat, my employer may be notified.

(g) If an Enrollment Provider enrolls an individual, the Enrollment Provider must:

(1) 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.

(2) 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;

(3) Identify a point of contact if the individual has questions about the results of the CHRC; and

(4) Collect, control, and process one set of legible and classifiable fingerprints under direct observation by the enrollment provider or a law enforcement officer.

(5) Submit the biographic or biometric data and the application to TSA in the manner specified by TSA.

§ 1544.605 Content of the security threat assessment.

The security threat assessment TSA conducts under this subpart includes a criminal history records check, other analyses, and a final disposition.

§ 1544.607 Criminal history records check (CHRC).

(a) Fingerprints and other information used. In conducting criminal history record checks under this subpart, TSA uses fingerprints and may use other identifying information.

(b) Submission of fingerprints to FBI/CJIS. In order to conduct a fingerprint-based criminal history records check, TSA transmits the fingerprints to the FBI/CJIS in accordance with the FBI/CJIS fingerprint submission standards, receives the results from the FBI/CJIS, and adjudicates the results of the check in accordance with this section.

(c) Adjudication of results. (1) TSA determines that an individual does not pose a security threat warranting denial of approval based on a disqualifying criminal offense if the individual does not have a disqualifying criminal offense described in § 1544.229(d).

(2) An applicant who is wanted, or under indictment in any civilian or military jurisdiction for a felony listed in this section, is disqualified until the want or warrant is released or the indictment is dismissed.

(d) Determination of arrest status. When a CHRC on an individual described in this subpart discloses an arrest for any disqualifying criminal offense listed in § 1544.229(d) without indicating a disposition, the individual must provide documentation demonstrating that the arrest did not result in a disqualifying offense before the individual may assume a position or perform a function for which a criminal history records check under this Subpart is required. 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 § 1544.229(d), the individual is not disqualified under this section.

(e) Limits on dissemination of results. Criminal record information provided by the FBI may be used only to carry out this section and § 1544.229. 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) Entities who are determining whether to grant the individual a position or function for which the criminal history records check in this subpart is required.

(3) Others designated by TSA.

(f) Correction of FBI records and notification of disqualification. (1) Before making a final decision to deny a position or privilege to an individual required to undergo a criminal history records check prescribed by this section, TSA will serve an Initial Determination of Threat Assessment and advise him or her that the FBI criminal record discloses information that would disqualify him or her from the position or privilege and will provide the individual a copy of the FBI record if he or she requests it.

(2) 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--

(i) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify TSA of his or her intent to correct any information he or she believes to be inaccurate.

(ii) If no notification, as described in paragraph (f)(3)(1) of this section, is received within 30 days, TSA will make a final determination to deny the individual the position or privilege.

(g) Continuing obligations to disclose. An individual who received a Determination of No Security Threat under this subpart must disclose to TSA or to another entity identified by TSA within 24 hours if he or she is convicted of any disqualifying criminal offense that occurs while he or she is has a Determination of No Security Threat that has not expired.

§ 1544.609 Other analyses.

To conduct other analyses, TSA completes the following procedures:

(a) Reviews the individual information required in 49 CFR 1544.603.

(b) TSA may search domestic and international Government databases to determine if an individual meets the requirements of 49 CFR 1572.107 or to confirm an individual's identity. TSA may determine that an applicant poses a security threat based on a search of the following databases:

(1) Interpol and other international databases, as appropriate.

(2) Terrorist watch-lists and related databases.

(3) Any other databases relevant to determining whether an applicant poses, or is suspected of posing, a security threat, or that confirm an applicant's identity.

§ 1544.611 Final disposition.

Following completion of the procedures described in §§ 1544.607 and 1544.609, the following procedures apply, as appropriate:

(a) TSA serves a Determination of No Security Threat to the individual if TSA determines that an individual meets the security threat assessment standards described in §§ 1544.607 and 1544.609.

(b) TSA serves an Initial Determination of Threat Assessment on the individual if TSA determines that the individual does not meet the security threat assessment standards described in §§ 1544.607 and 1544.609. The Initial Determination of Threat Assessment includes—

(1) A statement that TSA has determined that the individual poses or is suspected of posing a security threat warranting disapproval of the application to assume a position or perform a function for which a security threat assessment under this subpart is required;

(2) The basis for the determination;

(3) Information about how the individual may appeal the determination, as described in § 1544.615; and

(4) A statement that if the individual chooses not to appeal TSA's determination within 30 days after receipt of the Initial Determination, or does not request an extension of time within 30 days after receipt of the Initial Determination in order to file an appeal, the Initial Determination becomes a Final Determination of Threat Assessment.

(5) TSA serves a Withdrawal of the Initial Determination of Threat Assessment or a Withdrawal of Final Determination of Threat Assessment on the individual, if the appeal results in a finding that the individual does not pose a threat to security.

§ 1544.613 Withdrawal of Determination of No Security Threat.

(a) TSA may withdraw a Determination of No Security Threat issued under § 1544.611(a) at any time it determines that a flight crew member, an individual authorized to perform screening functions, a TSA-approved auditor, or a watch-list

service provider poses or is suspected of posing a security threat warranting withdrawal of the Determination of No Security Threat.

(b) TSA serves withdrawal of the Determination of No Security Threat on the individual if TSA determines that the individual does not meet the security threat assessment standards described in §§1544.607 and 1544.609. The withdrawal of the Determination of No Security Threat includes—

(1) A statement that TSA has determined that the individual poses or is suspected of posing a security threat warranting disapproval of the application to assume a position or perform a function for which a security threat assessment under this subpart is required;

(2) The basis for the determination;

(3) Information about how the individual may appeal the determination, as described in § 1544.615; and

(4) A statement that if the individual chooses not to appeal TSA's Initial Determination within 30 days after receipt of the withdrawal of the Determination of No Security Threat, or does not request an extension of time within 30 days after receipt of the withdrawal of the Determination of No Security Threat in order to file an appeal, the withdrawal of the Determination of No Security Threat becomes a Final Determination of Threat Assessment.

(5) TSA serves a Final Determination of Threat Assessment on the individual, if the appeal results in a finding that the individual does not pose a threat to security.

§ 1544.615 Appeals.

If the individual appeals the Initial Determination of Threat Assessment or a withdrawal of the Determination of No Security Threat, the procedures in 49 CFR part 1515 apply.

§ 1544.617 Fees.

(a) Individuals required to undergo a security threat assessment must pay the Security Threat Assessment fee of $56.75 and the cost for the FBI to process fingerprint identification records under Public Law 101–515.

(b) The Security Threat Assessment fee described in paragraph (a) of this section may be adjusted annually on or after October 1, 2007, by publication of an inflation adjustment. A final rule in the Federal Register will announce the inflation adjustment. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by the pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees to reflect the enacted level.

(c) If the FBI amends its fee to process fingerprint identification records under Public Law 101-515, TSA or its agent will collect the amended fee.

(d) When an individual submits the enrollment information, as required under 1544.603, to obtain or renew a security threat assessment, the fee must be remitted to TSA or its approved agent in a form and manner approved by TSA

(e) TSA will not issue any refunds of fees required under this section.

(f) Information about payment options is available though the designated TSA headquarters point of contact. Individual personal checks are not acceptable.

§ 1544.619 Notice to employers.

(a) If the individual is a large aircraft flight crew member, an individual authorized to perform screening functions, or a watch-list service provider covered personnel, TSA will notify the individual's employer that it has served a Determination of No Security Threat, a Final Determination of Threat Assessment, or a Withdrawal of Final Determination of Threat Assessment, as applicable, to the individual.

(b) Each employer must retain a copy of the notification described in paragraph (a) of this section for five years.

PART 1550—AIRCRAFT SECURITY UNDER GENERAL OPERATING AND FLIGHT RULES

35. The authority citation for part 1550 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

36. Amend § 1550.5 by revising paragraph (a), and removing and reserving paragraph (d) to read as follows:

§ 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 aircraft operators that have a security program accepted or approved under part 1544 or 1546 of this chapter.

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(d) [Reserved]

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37. Amend § 1550.7 by revising paragraph (a) to read as follows:

§ 1550.7 Operations in aircraft over 12,500 pounds.

(a) Applicability of this section. This section applies to each aircraft operation conducted in an aircraft with a maximum certificated takeoff weight of over 12,500 pounds except for those operations specified in §1550.5 and those operations conducted under a security program under part 1544 or 1546 of this chapter.

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Kip Hawley,
Assistant Secretary.