NATIONAL AIR TRANSPORTATION ASSOCIATION

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Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, S.W.
Washington, DC 20590

RE: Docket No. TSA-2002-11604; Final Rule - Security Programs for Aircraft 12,500 Pounds or More

Dear Sir or Madam:

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

NATA submits the following comments to the Transportation Security Administration (TSA) on behalf of our members impacted by this final rule requiring security programs for operators of aircraft weighing 12,500 pounds or more.

Scope of This Regulation

In its preamble to this regulation, TSA states that this rule was promulgated in response to a mandate in the Aviation and Transportation Security Act (ATSA). Specifically, the regulation was created in response to Section 132 (a) of ASTA. However, TSA fails to explain in the preamble that it is exceeding the scope of Section 132 (a) in that this rule applies to a much wider population than mandated by Congress.

Section 132 (a) of ATSA, including those portions omitted by TSA in this regulation, states:

> *(a) AIR CHARTER PROGRAM- Within 90 days after the date of enactment of this Act, the Under Secretary of Transportation for Transportation Security shall implement an aviation security program for charter air carriers (**as defined in***

> ***section 40102(a)(13) of title 49, United States Code****) with a maximum certificated takeoff weight of 12,500 pounds or more.* **(pertinent restored portion in bold)**

Review of 49 USC 40102 (a) (13) identifies a specific class of commercial charter air carriers: those holding Certificates of Public Convenience and Necessity issued by the Department of Transportation[1]. In fact, Federal Aviation Administration (FAA) certificated Part 135 on-demand operators, which are subject to the air taxi regulations of Part 298, Title 14 of the Code of Federal Regulations (CFR), are prohibited by regulation from holding these certificates.

While it is arguable that TSA possesses the authority to go beyond the scope specified by Congress in Section 132 (a), NATA is troubled that the agency chose to overlook this issue without providing a rationale for its decision or requesting comment on the necessity or appropriateness of its action. NATA believes that TSA or any other federal agency, when acting beyond its statutory authority, has an obligation to inform the public of its decision and comply with the appropriate administrative requirements. In our opinion, this would include, at a minimum, a formal Notice of Proposed Rulemaking encompassing cost-benefit, Regulatory Flexibility Act and Paperwork Reduction Act analyses.

NATA anticipates TSA's explanation and justification for not following the normal rulemaking process to revolve around national security. However and to the best of our knowledge, no aircraft of any size operated under 14 CFR 135 has ever been involved in an act threatening national security and at no time has any federal government agency formally stated that a clearly defined threat involving such operations exists. While that segment of the aviation industry NATA represents and which is impacted by the instant rule is dramatically aware of the events leading to creation of the TSA and this regulation, the agency's failure to provide any of the normally required analyses—presumably justified in the name of national security—must be at least acknowledged and stated by TSA in this rule.

Of similar concern to NATA is the inconsistent terminology used to identify operators holding Part 135 certificates issued by the FAA. There are two established terms used to describe the industry represented by NATA: "on-demand air charter operators"[2], and "air taxi operators"[3]. Throughout this regulation, TSA uses the term "charter." Discussions with TSA representatives indicate that the agency is interpreting "charter" to include these small businesses holding Part 135 certificates.

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[1] 49 USC 40102 (a) (13) defines "charter air carrier" as "an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation."

[2] 14 CFR 119 defines on-demand air charter operations. 14 CFR 135, which is the operating regulations for on-demand air charter operations, is titled, "Operating Requirements: Commuter and On-Demand Operations."

[3] 14 CFR 298 defines air taxi operators, in part, as those that do not hold a certificate of public convenience and necessity or economic authority issued by the Department or the Civil Aeronautics Board.

NATA believes TSA should continue to employ DOT-accepted terminology regarding Part 135 on-demand operators to ensure consistency and uniform understanding of regulations promulgated by TSA now and in the future. It is imperative that a clear distinction between small on-demand air taxi businesses and other large-aircraft commercial charter carriers be maintained. As "charter" appears within the regulations, we have provided suggested language to accomplish this objective in these comments. Further, NATA recommends inclusion of an appropriate definition of on-demand air taxi operators, consistent with existing DOT and FAA definitions, within §1540.5.

Also troubling is the regulation's applicability to aircraft ***weighing*** 12,500 pounds. The FAA's existing regulatory framework often uses aircraft weight as a distinguishing factor. However, the current regulations always state applicability to aircraft weighing ***more than 12,500 pounds***[4]. NATA does not believe Congress intended to expand rules to small aircraft weighing 12,500 pounds. Instead, extending coverage of the Twelve-Five Program to aircraft weighing 12,500 pounds sets a new precedent and, as with the use of the term "charter," creates a strong possibility for confusion and misunderstanding of the applicability of the regulation to these aircraft. NATA requests that TSA amend the applicability language and appropriate regulations to include aircraft weighing "more than 12,500 pounds," in lieu of those weighing "12,500 pounds or more." This same confusion is possible when considering Part 1550, Aircraft Security Under General Operating and Flight Rules. NATA recommends TSA also amend §1550.7, which is currently applicable to operations in aircraft of 12,500 pounds or more, so that it applies to aircraft of more than 12,500 pounds.

Finally, NATA notes that the regulation seems to envision only the operations of fixed-wing, land-based airplanes weighing at least 12,500 pounds to and from well-equipped airports staffed and operated around the clock. In reality, however, on-demand air taxi operations involve both fixed-wing airplanes and helicopters flying to and from remote locations. Often, such operations involve airports that are not staffed 24 hours a day. In the case of the few helicopters and seaplanes weighing at least 12,500 pounds operated under 14 CFR 135, even the use of an airport cannot be presumed. Yet, TSA fails to recognize or make provisions for such operators to comply with—or be exempted from—the regulation.

Enforcement of the Rule

It is unclear how TSA will investigate and enforce its rules. The Undersecretary for Transportation is authorized by ATSA to enforce security regulations and requirements, but NATA is unaware of any existing or pending regulations setting forth the processes by which this enforcement will occur. Of concern to NATA is that no regulations or procedural guidance pertaining to inspection, fines, penalties, findings of violations and due process rights is available within the TSA regulatory body.

[4] See 14 CFR 1, definition of "large" aircraft.

For example, the FAA has established within 14 CFR Part 13 information for regulated entities explaining how the FAA will investigate and whom within the FAA is authorized to inspect for compliance. The FAA regulations explain the process involved in determining the level of a fine for non-compliance and the actions the FAA may take to prevent or stop actions in violation of the Federal Aviation Act of 1958. Elsewhere, at 14 CFR Part 14, FAA regulations provide for implementation of the Equal Access to Justice Act under which eligible individuals may be awarded attorney's fees when the individual prevails over the FAA in an administrative proceeding.

NATA believes that a clear understanding by regulated parties of how they will be inspected for compliance and what their due process rights are is critical. No information is currently available indicating which TSA employees operators must allow to inspect their operations for compliance with security-program requirements. Likewise, there is no information regarding the rights of regulated parties to refuse access to records for persons presenting a document showing employment with TSA. Since security program documents, by regulation, must be protected from unauthorized dissemination, this lack of guidance may place an operator unwilling to provide sensitive documents to anyone and everyone in TSA's employ in jeopardy of a violation for refusing to allow an inspection.

As this example illustrates, it is imperative that any enforcement action by TSA related to compliance with security program regulations be preceded by guidance and/or formal rules advising regulated entities of their rights under the law and providing detailed information on TSA's inspection and enforcement policies. NATA expects that such regulations and/or guidance will be issued expeditiously.

Applicability, §1544.1

NATA believes that, as written, the language requiring security programs found in §1544.1 may cause confusion within the industry. Instead, we suggest this regulation be amended to further clarify those operators to whom it applies and suggests the following language.

> §1544.1 Applicability of this part.
> (a) * * *
>
> (1) The operations of aircraft operators holding operating or air carrier certificates under 14 CFR part 119 for scheduled passenger operations, public charter passenger operations, private charter passenger operations, aircraft operators operating aircraft with a minimum certificated takeoff weight of more than 12,500 pounds, and other aircraft operators adopting and obtaining approval of an aircraft operator security program.
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> * * * *

Many on-demand Part 135 operators simultaneously use aircraft weighing more than, equal to and less than 12,500 pounds, which NATA refers to as "mixed operators." In discussions with agency officials regarding this regulation's applicability, TSA indicated that the security program and its specific requirements are intended to apply only to the affected aircraft and those pilots who serve on them. In an example of this distinction, the pilot of an aircraft weighing less than 12,500 pounds at a mixed operator would not require a criminal history record check (CHRC). Also, should a Security Directive (SD) be issued involving such operations, the action directed would apply only to the aircraft covered by the security program. NATA recommends that TSA issue guidance stating this position. This distinction is particularly important to prevent both misunderstanding of the regulation's or any SD's applicability and undue hardships on mixed operators.

Adoption, §1544.101

The regulation states that the aircraft operator must carry out the program requirements for "each operation" meeting the qualifying criteria. One of these criteria is the carriage of passengers, cargo or both. Because the applicability of the security program is triggered by a specific operation of an aircraft—not simply the fact that the aircraft *may* be used in passenger or cargo service—NATA infers that on flights where there are no paying passengers or cargo present the operator need not comply with program requirements.

It is common within the Part 135 on-demand industry for aircraft to be managed by a certificate holder for an owner. In this type of an arrangement, the certificate holder may operate the aircraft for the private business of the owner and also in commercial operations. While being operated for the owner, the flights are considered non-commercial and are operated under the provisions of 14 CFR Part 91. Similarly, when an aircraft operator must reposition the aircraft to its home base after completing a passenger or cargo flight, it is operated under Part 91. Finally, aircraft often are flown "empty" (without passengers or cargo) in order to be positioned to another airport or landing area in order to load passengers or cargo for a commercial operation.

In all these instances, NATA understands it is TSA's intent that the security program requirements would not apply to those flight operations. NATA requests that TSA issue clear guidance on this matter to avoid any misunderstanding at a regional or local level as to the applicability of the security program to individual flights.

NATA believes this distinction is critical to maintain the availability of managed aircraft for charter operations. If an aircraft owner on a private flight is required to comply with the security program simply because the aircraft is occasionally used by the manager for Part 135 operations, that owner could likely decide to terminate the aircraft management agreement, which could pose a significant reduction in the number of aircraft available for on-demand air charter operations. Importantly, TSA has made no formal attempt to require security programs for other private operations of aircraft in this category, and NATA does not encourage such requirements.

NATA recommends the following language to clarify the type of operation and aircraft weight requirements of this regulation.

§1544.101 Adoption and implementation
(d) * * *
(1) Is in an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds;
(2) Is in scheduled, public charter, private charter or air taxi service;

* * * *

Form and Content, §1544.101 and 1544.103

As written, the Twelve-Five Program content regulation only requires compliance with the appropriate provisions of §1544.103 (c). However, NATA understands that TSA intends to require approval of the security program. NATA notes that the approval and availability requirements for security programs are found within other paragraphs of §1544.103. Therefore, if it is TSA's intention to require certain approval and availability of the Twelve-Five Program from operators, then the regulation should be amended as follows:

§1544.101 Adoption and implementation.
(e) *Twelve-five program-contents:* For each operation described in paragraph (d) of this section, the aircraft operator must carry out the following, and must adopt and carry out a security program that meets §1544.103 (a) (2) and (3), §1544.103 (b) (1), (3), (4), and (5), and the applicable requirements of §1544.103 (c):

* * * *

Finally, we note that, as of this writing, TSA has not yet made the contents of its "model" security program available to affected operators. Since this is an integral part of the regulation with which operators must comply, it is reasonable that TSA should accept comments on the security program's contents, applicability and appropriateness for on-demand air taxi operators as part of the rulemaking process. By letter dated April 3, 2002, NATA formally requested an extension of the associated comment period for this specific reason. Although our request has not yet been granted, we once again urge TSA to honor it and to ensure that comments submitted to the docket after the comment period closes are formally considered to have been submitted within it.

Security Coordinators, §1544.215

Paragraph (a) of §1544.215 requires that the Aircraft Operator Security Coordinator (AOSC) or an alternate is available on a 24-hour basis. However, TSA must clarify the meaning of "available" in this context. For example, must the AOSC be on-site or may he or she be reached by telephone or other communications means? NATA believes that TSA's ability to contact the

AOSC to relay security-related information is the primary intent of this section. Therefore, NATA sees no justification to require physical presence on the airport or landing area. Furthermore, if the AOSC is not required to be on-site, does TSA expect that the AOSC remain within a certain time or distance from the primary business location on the airport or landing area? In determining who within a business will be designated as the AOSC and alternates, NATA requests guidance as to TSA's expectations regarding qualifications or experience for these persons.

Paragraph (b) of this regulation requires a Ground Security Coordinator (GSC). This requirement, if applied to air taxi operators as it is to Part 121 carriers, would pose a significant and unjustified burden on this industry. From day to day, the on-demand operator does not necessarily know what airports or landing areas they will serve and there is no FAA approval necessary to conduct operations to an airport or landing area that has not been previously used. Also, as opposed to the mere hundreds of airports served domestically by the airlines, there are literally *thousands* of airports and even more landing areas available to an air taxi operator, not including international airports. Even more complicating, operators of helicopters weighing more than 12,500 pounds may routinely operate from remote sites. Similarly, other aircraft impacted by this regulation may include seaplanes or amphibians operating from remote lakes or seashores. Requiring every air taxi operator to employ in advance of the aircraft's arrival, either directly or by contract, a GSC at each of the airports or landing areas served would be at best impractical and at worst would fiscally devastate this industry.

Another unique feature of airports or landing areas served by on-demand air taxis is that there may or may not be a fixed base operator (FBO) at that location. Further, such FBO may or may not be staffed on a 24-hour basis. This is true even though the airport is open for operations 24 hours per day.

While airlines have hubs where they employ numerous persons, air taxi operators generally do not have any fixed facilities other than their primary business location. NATA believes that the GSC concept was developed with the hub-and-spoke operations of scheduled airlines, public charter and private charter operators of large transport aircraft in mind. It is understandable that the AOSC for a major airline, public charter or private charter operator could not adequately address the security concerns at each of their hubs or destinations, thereby dictating the need for GSCs. However, because of the small-business nature of on-demand air taxis, multiple coordinators for security are inappropriate, are impractical and are unnecessary.

Instead, NATA believes that the on-site security needs for aircraft covered by the Twelve-Five Program can be fulfilled by the flightcrew members. This includes the pilot in command, already designated as the In-flight Security Coordinator (ISC), and the second in command (when a second in command is required by operating rule).

Accordingly and in lieu of compliance with the GSC mandate of §1544.215 (b), NATA proposes designating ground security requirements to the ISC and recommends the following revisions.

§ 1544.215 Security coordinators.

(a) * * *

(b) Ground Security Coordinator. Except as authorized in paragraph (d), each aircraft operator must designate and use a Ground Security Coordinator for each domestic and international flight departure to carry out the Ground Security Coordinator duties specified in the aircraft operator's security program.

* * *

(c) * * *

(d) For operations described in §1544.101(d), the aircraft operator may designate the In-flight Security Coordinator for each domestic and international flight departure to carry out ground security duties specified in the aircraft operator's security program. The In-flight Security Coordinator must conduct the following prior to conducting operations at an airport or landing area other than one where the aircraft operator has aircraft operations facilities:

(1) Prior to departure to an airport or landing area described above, the In-flight Security Coordinator shall request information from the sponsor, or other designated facility representative if one exists, at the intended arrival airport or landing area to determine the existence of any current security threats to that airport or landing area. The aircraft operator may request this information on behalf of the In-flight Security Coordinator.
(2) Prior to departure from an airport or landing area described above, the In-flight Security Coordinator shall request information regarding any threats to the departure airport, landing area or to the aircraft. If the In-flight Security Coordinator was not on-site for the duration of the aircraft's presence at the airport or landing area, the In-flight Security Coordinator shall conduct a security inspection of the aircraft as described in the aircraft operator's security program.
(3) If no sponsor or other designated facility representative exists or is available at either the departure airport or landing area or at the intended destination airport or landing area, nothing in this section shall prohibit the operator from conducting the flight.
(4) Nothing in this section shall prohibit the operator from changing the aircraft's destination after the aircraft becomes airborne.

The above recommendation is not intended to prohibit an operator from conducting a flight to an airport or landing area if no one is available to speak with the ISC due to unavailability, time of

day or other factors. Rather, it places on the aircraft operator a burden only to seek this information prior to initiating a flight. Likewise, the same request must be made prior to departing these airports or landing areas.

NATA believes that this suggested language provides a sufficient opportunity, in addition to current pre-flight briefings where runway closures and additional airport or landing area information is obtained, for the crew to be alerted to any security threats or irregularities related to the operation. Additionally, many operators have flight schedulers who coordinate flight and ground services for the crew and then prepare a briefing for them on those matters. NATA believes it would be appropriate to allow these schedulers to contact the destination airport or landing area facility on behalf of the ISC and provide any related information to the ISC during the pre-flight crew briefing.

Often passengers are merely delivered to their destination and then the aircraft immediately departs for another mission or returns to its home base. In the case of immediate departure for another commercial operation where the ISC remains on-site, NATA believes it unnecessary to require a special security inspection beyond the normal pre-flight inspection of the aircraft. However, when the aircraft is left unattended by the ISC for several hours or days, NATA is concerned that there may have been an opportunity for aircraft tampering to occur and, therefore, recommends that the ISC complete a security inspection prior to aircraft departure.

Importantly, the requirements of §1544.215 would apply only when the aircraft is departing on a covered operation as identified in §1544.101 (d). That is, only when that aircraft is departing with commercial passengers or cargo would the ground security provisions apply to that departure. In all other cases, the flight does not trigger the security program applicability requirements of §1544.101, as previously discussed in the "Adoption" section of these comments.

Law Enforcement, §1544.217

This section deals with requirements to provide law enforcement personnel under certain circumstances. Paragraph (a) of §1544.217 only applies to those operators with full or partial programs and, therefore, a Twelve-Five Program operator would not be responsible for providing the law enforcement personnel discussed in this regulation. Paragraph (b) of the same section applies only to operations at airports subject to Part 1542 and states that at these airports the airport sponsor is responsible for providing law enforcement.

At most if not all Part 1542 airports, air taxi operators do not access the sterile area and/or the Security Identification Display Area (SIDA). Instead, on-demand air taxi aircraft use the general aviation facilities at these airports, which are usually located outside of these sensitive areas. In considering the need to reduce aircraft congestion and maintain safety, NATA believes that TSA does not intend to require on-demand air taxi operators to load or unload their aircraft within the

SIDA. However, TSA should make this clear in the disposition of comments and in the preamble discussion for any amendments resulting from this request for comments.

Should TSA decide to require airport sponsors of Part 1542 airports to provide law enforcement personnel at the general aviation terminal areas, NATA believes that sponsors should be given adequate time to plan for this change and that air taxi operators should not be prohibited from utilizing the general aviation areas during this time.

Weapons, §1544.219

An on-demand operator may permit the carriage of weapons as authorized in 14 CFR 135.119.[5] None of the weapons-related regulations of the Twelve-Five Program amend this provision and, therefore, it remains in full force and effect. NATA opposes any change to this authority.

There are many reasons why a customer may wish to have a firearm or other weapon on the aircraft. There are numerous flights conducted by air charter operators each year transporting sportsmen to hunting locations. Security-sensitive individuals such as celebrities and corporate executives often seek out on-demand air taxi transportation because of the security and privacy it affords. Additionally, armed bodyguards often accompany these persons to protect them from kidnapping and other threats. Finally, the aircraft operator may, when traveling to certain regions of the world, hire a security agent to accompany the aircraft and protect it while on the ground.

Furthermore, unlike airliners, most aircraft used in Part 135 on-demand air taxi operations do not have a cargo/storage area that is inaccessible during flight. Most baggage storage areas are readily accessible from the cabin. Therefore, there is no place to stow weapons to make them inaccessible during flight.

For these reasons, NATA sees no conflict between §135.119 and §1544.219, except that when a law enforcement officer (LEO) is carried, the provisions of §1544.219 apply only to that LEO and requests the TSA state this in any guidance related to weapons carriage.

Recognizing the unique operating environment that exists in Alaska, TSA amended the language of §1544.103 (c) (1) to permit the carriage of weapons on aircraft when mandated by a State as part of emergency equipment requirements. NATA concurs with the TSA that such a provision is warranted, but we note that the requirements of §1544.103 (c) (1) apply only to aircraft operators required to have full and private charter programs. Therefore, although no specific provision exists within Part 1544 authorizing State-mandated weapons carriage by Twelve-Five Program operators, such operators will remain able to carry required weapons as no conflict between the FAA regulations authorizing the weapons and the new security program regulations

[5] 14 CFR 135.119 "Prohibition against carriage of weapons" states, in part, that the certificate holder may authorize crewmembers and other persons to carry firearms.

exists. Again, NATA opposes any changes to the existing weapons-related authority that affected Twelve-Five Program operators currently have.

FAMs, §1544.223

This portion of the regulation sets forth the manner in which a Federal Air Marshal (FAM) will be accommodated on a flight. However, NATA is concerned about its applicability to on-demand, non-scheduled, operations. Both paragraphs (b) and (c) of §1544.223 reference scheduled passenger operations. Paragraph (b) also refers to public charter passenger operations. Because on-demand operations are not identified within these regulations, NATA infers that air taxi operators are not required to carry FAMs.

While air taxi operators are sensitive to the fact that FAMs require transportation at certain times to address security threats, NATA feels that due to the fact that on-demand Part 135 flights are often planned, changed or cancelled on short notice, it is difficult to foresee a circumstance where a FAM would expect transportation on an on-demand flight or where carriage of a FAM would meet a defined security need.

NATA requests that TSA elaborate on when, or if, a FAM would approach an air taxi operator for transportation and the intent of applying §1544.223 to Part 135 on-demand air taxi operators.

Training, §1544.235

NATA requests that TSA provide specifics on the length, frequency, timing and content of employee training in order to prevent regional or inconsistent interpretation of this requirement. Because air taxi operations are not as complex as those of scheduled airlines, public charter or private charter operations, TSA should not automatically require training synonymous to their programs. The required training should be specific to the operations conducted in both duration and content. Furthermore, as many small businesses are impacted by the Twelve-Five Program requirements, NATA requests that TSA develop training programs to educate those within a company who will train other employees.

CHRC, §1544.230

NATA agrees with TSA that assuring that pilots have not committed serious crimes is valuable and supports the CHRC requirement in general. However, there are problems with the process to obtain these checks that must be addressed by TSA.

As stated previously in these comments, it is NATA's understanding that CHRCs are required only for those pilots/navigators qualified to operate aircraft covered by a Twelve-Five Program for an aircraft operator. Therefore, a pilot working for a Twelve-Five Program operator but not qualified to "serve" as flightcrew aboard an aircraft weighing more than 12,500 pounds is not covered, nor would a pilot conducting only private, non-commercial Part 91 flights be subject to a CHRC.

Paragraph (b) of this section requires completion of the CHRC "before allowing that individual to serve as a flightcrew member." NATA seeks clarification of the term "serve" in this regulation. Specifically, may the operator conduct initial classroom indoctrination training with the pilot while the CHRC is processing? And, may the operator conduct flight training or simulator training during the CHRC processing period?

The CHRC requirement presents serious problems for contract, seasonal and other temporary pilots. NATA understands that a Federal Bureau of Investigation (FBI) CHRC for an individual is only permitted every six months. Part 135 on-demand operators often fulfill temporary pilot needs by using contract pilots. These pilots may be independent contractors or may be employed by a contract pilot agency. Such a pilot may work for one on-demand operator in a given month and another operator the next month. Currently, there is no portability of the CHRC for such a pilot. Under current standards, these pilots would become unemployable and aircraft operations would be severely impacted if the pilots are forced to wait six months between jobs with an operator. NATA does not believe it is the intent of TSA or the government in general to prohibit these professionals from employment. Therefore, NATA requests that TSA work with the FBI to establish a system that will ensure that these pilots have satisfactorily passed a background check when moving from operator to operator.

Also problematic is the process by which an on-demand air taxi operator would obtain the required checks. The current infrastructure for collection of fingerprints exists only on Part 1542 airports. The overwhelming majority of Part 135 on-demand operators are not based on Part 1542 airports.

NATA has approached TSA, FAA, and FBI in efforts to resolve these problems and encourages TSA to continue working with us to address the situation and to develop an accessible, rapid means by which the industry may comply with the CHRC requirement.

Flight Deck, §1544.237

This regulation is of great concern to NATA. Unlike large airline aircraft, the aircraft utilized in on-demand operations are not required to have a flight deck door of any kind. NATA understands that TSA is not seeking to require doors in aircraft that do not presently have them, and we support this decision.

However, for those aircraft that do have a door there is little information as to what procedures TSA is considering. Those aircraft with doors do not generally have a locking mechanism; rather they serve only a privacy function. For safety reasons, NATA opposes any requirement to lock or otherwise secure the door in a closed position. Doing so would compromise the safety of both passengers and crew.

The aircraft typically used in on-demand air taxi operations are not equipped with facilities allowing emergency crew egress from the flight deck as airliners are required to have. Locking a

flight deck door could then trap the crew within the flight deck in an emergency evacuation situation. Also, these aircraft do not typically have intercom communications with the passenger cabin area. In both normal and emergency situations, the crew is required to communicate with their passengers. A closed door would prohibit this communication, thereby jeopardizing passenger safety and presenting yet another conflict with existing operating regulations.

It is imperative that passengers and crew are readily accessible to each other during all phases of flight for transmission of safety-critical communications. On any given flight, the crew may need to advise passengers of impending rough weather, route changes or problems at the destination airport that may require diversion to an alternate airport. Likewise, the passengers must be permitted access to the crew if adjustments to cabin atmosphere (heating and cooling), itinerary changes or passenger medical emergencies arise. In fact, the Aircraft Flight Manuals (AFM) state that, if present, the door is to be open for takeoff and landing so as to prevent it from becoming jammed and preventing emergency evacuation. The AFM is a regulatory document which specifies proper aircraft operation and procedures.

For these reasons, NATA is opposed to any requirement to lock or otherwise isolate the crew from the passengers with a door.

The regulation also requires restricting access as required by the operator's security program. In many on-demand air taxi situations where the aircraft is equipped with a jumpseat, that seat is often authorized as the flight attendant seat, when flight attendants are required by regulation. In these types of aircraft, the flight attendant must have authority to access the flight deck. In the smallest aircraft impacted by the Twelve-Five Program, the operator may have FAA approval to allow passenger seating in the jumpseat. Eliminating the jumpseat as a passenger seat in these aircraft could significantly alter the appeal of the aircraft to customers and reduce the operator's revenue.

Furthermore, with regard to general access to the flight deck, NATA believes that the sizes of these flight decks are an access restriction in and of themselves. Flight decks of on-demand aircraft are very small and leave little room for even the crew to maneuver in and out of their in-flight positions. For these reasons, NATA requests that Twelve-Five Program operators retain the ability to utilize the jumpseat during commercial operations.

Contingency, §1544.301

NATA is concerned that this regulation states nothing more than that a contingency plan is required and must be implemented when directed by TSA. Absent specific guidance, NATA is concerned that operators do not have the expertise to develop a comprehensive plan acceptable to TSA and encourages the agency to provide Twelve-Five Program operators with as much detailed guidance on this subject as possible.

Participation in the exercise of an airport contingency plan is not required for Twelve-Five Program operators. NATA supports this decision considering the operational burden it would pose and the fact that on-demand air taxis do not generally access the SIDA or other secured areas of Part 1542 airports. Additionally, and as discussed above, on-demand operators are primarily located at non-Part 1542 airports where contingency plans are not required.

Threats, §1544.303

Paragraph (a) (1) of §1544.303 requires the operator to "immediately notify" the GSC and ISC, when a credible threat to the security of a flight is received. This regulation poses a serious problem for on-demand air taxi operators. Unlike the scheduled airlines operating under 14 CFR 121 which are required to have air-to-ground communications capability between the operator and the flightcrew, no such capability is required for Part 135 on-demand operators. Therefore, it is impossible for the Twelve-Five Program operator to "immediately" notify the flightcrew of a threat.

NATA recommends that TSA amend the language of this regulation to state that immediate notification is not required in all circumstances. Should the operator receive a threat to a certain aircraft already in flight, the operator may request that air traffic control (ATC) facilities relay a threat message to the crew if the flight is conducted under Instrument Flight Rules (IFR) or is otherwise in contact with ATC.

Importantly, FAA regulations for on-demand Part 135 operations do not require the operator to conduct flights under IFR or even require constant contact with an air traffic control facility (unless otherwise required by ATC regulations). Therefore, flights are frequently operated without being under positive radar control and without constant communication with ATC.

In addition, the very nature of the operations conducted by on-demand air taxi operators provides an inherent level of security. When considering a scheduled airline flight operation, its aircraft, flight destinations, times of arrivals and departures and number of passengers carried can all be determined simply by obtaining a published timetable. In contrast, these characteristics of on-demand aircraft cannot be readily discerned. For example, the specific aircraft to be used for a trip may be substituted on short notice and, as previously explained, the customer may alter the destination, number of passengers or departure times and dates at any point, even while airborne. NATA believes that these facts strongly mitigate the threat to on-demand air taxi aircraft and operations and that they must be considered by the TSA before imposing regulations and in conducting any cost/benefit analyses.

In light of these facts and the substantial economic burden for the equipment necessary to ensure constant communications between the ISC and the aircraft operator while providing only minimal benefit, NATA opposes any future attempt by TSA or FAA to require air-to-ground communications between aircraft and operators for Part 135 on-demand operators.

NATA recommends the following language to address this circumstance.

§1544.303 Bomb and air piracy threats.

(a) * * *

(1) If possible, immediately notify the ground and/or in-flight security coordinators of the threat, any evaluation thereof and any measures to be applied; and

* * * *

Finally, inspection of the aircraft is required upon receipt of a threat by §1544.303 (b). Because the operator, its pilots and other employees are not necessarily familiar with explosives or how they may be hidden on an aircraft or disguised, NATA requests that TSA provide specific guidance to operators that includes this and any other relevant information necessary to ensure reliable identification of such materials in clear and common terms.

On behalf of the approximately 3,000 mostly small businesses throughout the United States who are on-demand air taxi operators, NATA appreciates the opportunity to present these comments. We look forward to working with TSA and its staff to develop and implement a body of regulation which accomplishes Congress' and the agency's objectives while preserving the unique flexibility, security and safety that is one of the hallmarks of this industry.

Sincerely,

Joseph E. (Jeb) Burnside
Vice President