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

RE: Security Programs for Aircraft With a Maximum Certificated Takeoff Weight of 12,500 Pounds or More (Docket: TSA-2002-11604)

Dear Sir or Madam:

Express One International Inc is a 14 CFR Part 121 supplemental air cargo air carrier with air carrier operating certificate EISA069B. Attached are our comments on the rule above published in the February 22, 2002 Federal Register.

We envision that the rule and Twelve Five program will apply to our operations and request issuance of the program once TSA develops it.

Sincerely,

Don K. Berry II
Vice President, Safety & Security

Attached:
Comments on Docket TSA-2002-11604

Comments of Express One International Inc on Docket TSA-2002-11604

Summary: This rule requires that certain aircraft operators using aircraft with a maximum certificated takeoff weight of 12,500 pounds or more carry out security measures. This rule requires that certain aircraft operators conduct criminal history records checks on their flight crew members, and restrict access to the flight deck. These measures are necessary to comply with Congressional mandates and to enhance security in air transportation.

1. In general. Concept and administration for aircraft operator security programs remains extremely scheduled passenger "centric". Charter passenger and cargo operations are inherently at lower risk than scheduled passenger and cargo operations from the stand point that an outside entity wanting to access an aircraft for the purpose of using it as a weapon of mass destruction cannot readily determine when or where an aircraft will be to take it. Charter cargo air transportation is at the lowest risk from an operator being overcome in flight or on the ground do the absence of passengers who could commandeer an aircraft. Persons having access to the aircraft on the ground and aboard it inflight are specifically cleared and controlled by the operator.

In short, the most significant hazard associated with charter cargo operations is the cargo which is screened or known shipper's are validated under Part 1548 which is totally outside the Part 1544 or 1550 aircraft operator's scrutiny. Further, the actions contemplated with this and previous civil air security rules promulgated by previous legislation or ATSA focus on securing corporate not private operators.

There are no instances where a U.S. registered operator's employee has taken an aircraft and used it as a weapon of mass destruction. Further, if this rule were in place prior to 11 September 2001, the hijackers who commandeered the aircraft were not employed by an air carrier so would not have been subject to a fingerprint-based CHRC through an employment screen.

Even if an aircraft operator employed them, in the absence of disqualifying crimes a fingerprint-based CHRC would not have provided the operator reason to not employ them.

Further, despite a national focus on air security there remains no provision in any legislation or rule which would require the FAA from first performing a fingerprint-based CHRC before issuing an airman's certificate. This means an individual who would be disqualified were he employed by an operator could still own and operate a large aircraft under 14 CFR Part 91 and use it as a weapon. This deficiency needs to be addressed up front rather than throwing responsibility for screening on an employer when history reveals that it would have served no purpose in the past for carriers to have screened their flight crews.

Present initiatives are patchwork and completely miss the potential for a trained individual from operating his own aircraft or private chartering an aircraft direct from an owner and operating it as a weapon.

Recommend: TSA in conjunction with the aviation community in consultation with Congress develop a top-down approach to mitigate the risks to the Nation caused by the potential for large aircraft to be used as weapons. Programs need to be parallel to avoid loopholes and treat all components of the entire transportation industry and public equitably. There is far more danger of a weapon of mass destruction being introduced by surface carrier than there is for an aircraft despite the events of 11 September. The events of 11 September just made for better media coverage when the terrorists used commercial passenger aircraft. We must ensure we address the highest risks ... not just the more easily addressed air transportation one.

Continuing more specifically to language addressed by the rule or affected or amended by the rule.

2. 1544.101(d)

Subparagraph establishes eligibility for the new Twelve Five program.

Comment:
- **All** subparagraphs must exist to make the section applicable. Leaves open that it would not apply to an empty aircraft either on revenue ferry or Part 91 ferry flight. Don't believe that is the intent of Congress.
- If the concern is for a large aircraft taken and used as a weapon of mass destruction then the Twelve Five program should apply to those operations where a passenger or cargo aircraft is empty as well.

Recommend: Change to subparagraph (d)(3) to read: "Is carrying passengers or cargo or both; or on a flight positioning to or from carrying passengers or cargo under 14 CFR Parts 121, 135, or 91; and"

Rationale: Requires a security program for all flights whether loaded or not.

3. 1544.101(e)

Subparagraph establishes that an aircraft operator must carry out and which must be addressed in its Twelve-Five security program.

Comment:
- Need for TSA to provide its model security program prior to commenting fully.
- Final phrase in this subparagraph could be interpreted to mean the entire applicable portions of 1544.103 (c) apply when it does not appear to be TSA's intent since 1544.101(e)(1) lists specifically 10 reference subparagraphs of the 21 subparagraphs in 1544.103 (c).

- Several of the referenced sections in subparagraph (e)(1) do not apply to all cargo operators

Recommend: Change subparagraph (e) final phase wording and subparagraph (e)(1) wording to ensure it is understood that only applicable requirements of this list of 10 requirements are the baseline requirements of a twelve-five program.

Rationale: Interpretation could be that all 21 1455.103(c) paragraphs apply without disqualifying language. Additionally, certain specific requirements in the list of sections in 1544.101(e) may not be applicable to all cargo carriers without provision to carry people on their aircraft because of there are only seats in the flight deck and no there are no in-flight supervision or facilities for passengers.

4. 1544.103 (a)(2)

Subparagraph requires at a minimum "pertinent portions of its security program ... at each airport served".

Comment:
- Does not recognize the inherent ad hoc nature of the charter air carrier industry, which does not operate necessarily to known airports at the beginning of each day.
- What agency at "each airport" the operator or TSA would maintain the carrier's security program?
- Requirement is not limited to those airports with a Part 1542 security program of its own.
- What is the advantage of an airport either with or without a security program having air carrier programs? Do all airports supply all aircraft operators a copy of their plans?
- How do we ensure "need to know" and SSI is protected?
- Security programs implemented and approved by TSA under this Part document the operator's program. If there is further requirement and operational necessity for airports to have access to an operator's program recommend approved operator's programs be posted on a secure website and give airports access to review operators programs. Ditto put airport programs on the same secure website and give authorized carriers access to them.

Recommend: Delete subparagraph 1544.103(a)(2) in its entirety and replace with guidance as to where approved operator's programs may be found or as an alternate a web location where a list of carriers with approved program may be found.

Rationale: Eliminates an unnecessary operational and administrative burden and provides better protection of SSI.

5. 1544.215 Security coordinators.

Comment:
- Establishing requirement for GSCs at each airport for each flight presumes that charter operators have a presence at an airport, a very scheduled passenger centric requirement.
- Actions to be carried out by a GSC on behalf of the operator could be carried out by a flight crew member.

Recommend: Incorporate authority in 1544.215(b) for the aircraft operator to assign duties of a GSC to the In-flight Security Coordinator at those locations where the carrier does not have a permanent presence. Additionally, the GSC requirement could be met by a customer freight forwarder or integrated airfreight network who have TSA-approved security programs.

6. 1544.217 Law enforcement personnel.

Establishes requirements for aircraft operator coordination for law enforcement support to their operations.

Comment:
- Although 1544.217 is listed in the series of sections to be addressed in a twelve-five program the section establishes requirements for only operators with full or limited security programs.
- If deemed applicable to "twelve-five" operators in the future ... how will the operator know which airports have or don't have an approved security program to determine whether 1544.217 (a) or if (b) applies?
- Will TSA provide an airport listing of the appropriate law enforcement agency for each airport both covered or not covered by a program?
- Will TSA in addition provide phone numbers and approved air to ground radio frequencies for each agency?
- In the case of a security incident warranting emergency response the rule eliminates notification of the FAA's air traffic control agency from the communication/notification loop.
- At locations without a presence the operator's only presence may be the flight crew in the flight deck.
- More logical local focal point may be the customer who more than likely is a freight forwarder or integrated freight network who has a security program itself.
- Charter cargo (or passenger) operators are less at risk from becoming a target due to the inherent ad hoc nature of their business, which does not establish high visibility recurring schedules.

Recommend: Clarify notification requirements for all kinds of programs and recognize that charter operators may fly to an airport with little more than hours notice. Procedures to notify law enforcement ahead of schedule are problematic absent the information needed as to whether the airport has a program, which law enforcement agency has jurisdiction, and how to contact them for those operations where there the operator has a

presence. Otherwise there must still be a means to obtain an armed response via radio via the air traffic control agency.

7. 1544.219 Carriage of accessible weapons.

Pertains to carriage of law enforcement officers and their weapons.

Comment:
- 14 CFR Part 121.583 makes no provision for the carriage of an LEO armed or unarmed on all cargo air carries due to lack of seats or in flight supervision outside the flight deck.
- Were procedures established for all cargo carriers to carry an LEO for the purposes of mitigating a national security issue carriage and access to the weapon would be not possible as no baggage of any kind (to include checked or hand carried) is accessible in flight for any non-primary flight crewmember. All bags must be carried in the lower cargo compartment to preclude it becoming a safety hazard in turbulence.

Recommend: Clearly specify that this paragraph does not apply where 14CFR Part 121 does not authorize carriage of personnel.

8. 1544.223 Federal Air Marshals.

Pertains to carriage of Federal Air Marshals.

Comment:
- Like LEOs in 1544.219 carriage may not be authorized by 14 CFR Part 121 all cargo carriers without seating provisions outside of the flight deck.

Recommend: Clearly specify that this paragraph does not apply where 14CFR Part 121 does not authorize carriage of personnel in the absence of seats outside of the flight deck and in flight supervision.

9. 1544.229 and 230. Fingerprint-based CHRCs.

Establishes requirement for fingerprint-based CHRCs for those individuals with unescorted duties inside the SIDA, performing screening, and flight crew members (230).

Comment:
- While not an issue with our carrier does it make sense for there to be a federal requirement for a fingerprint-based CHRC for employees who work curbside check in of passengers and their bags ... but there is no requirement even under this paragraph for cabin attendants? Cabin attendants are not flight crew. They are not FAA-licensed certificated airmen either.
- As stated in our general comments had there been a program in place for finger-print based CHRCs for flight crew personnel ... the 11 September hijackers even if they had been airline employees (which they weren't) would not have been screened out because they did not have prior record of a disqualifying crime.

- Even if they had a disqualifying crime they could still obtain an airman's certificate from the FAA since they do not screen based on a finger-print based CHRC prior to issuing a certificate.
- An airman who relocates from one company to another will require another finger-print based CHRC creating a workload and redundancy as there is no means to carryover this background results from the FBI or screening vendor to another employer.
- Determining an individual's identity and suitability is important ... yet why does the FAA have no responsibility to take the same screening actions prior to issuing a flight crew member or mechanic a license?
- Individuals can obtain a certificate following training and operate an aircraft after chartering it themselves without working for an employer. Why are we creating a fingerprint-based CHRC process for aircraft operators without requiring the FAA to have a program first?

Recommend:
- Onus for screening flight crew and licensed mechanics be taken over by the FAA as a part of the certificating process versus as a part of the employer's process.
- Aircraft operators should be able to query the FAA as to the individual's employability and they would provide the employer employment approval.
- The FAA would maintain all fingerprint-based CHRC records not the employer.
- FAA/TSA should develop standard FAA certificate badges reflecting the individual's identity. This super badge could be used in lieu of a SIDA badge unique to every airport.
- Individual's CHRC would be portable from employer to employer as administered by the FAA. Payment for the service would be charged to the individual as part of the licensing fee.

10. 1544.235. Training and knowledge of individuals with security-related duties.

Self explanatory.

Comment:
- Makes requirement for individuals to have knowledge of "airport security programs applicable to their location" but since charter air cargo operations may operate into airports without knowing whether it has a program and without an employee at that location ... how will the operator know the extent of an airport's program in order to train its GSC for example?
- Short of being able to implement security response through common air traffic control interface what value is there for an aircraft operator to know the provisions of an airport's security program on an event-by-event basis?

Recommend: Provisions of 1544.235 (b) apply only when an aircraft operator has a permanent presence at that location.

11. 1544.237 Flight deck privileges.

Limits flight deck access.

Comment:
- Wording in 1544.237 (b) makes provision which could be interpreted to mean that a Federal Air Marshal has flight deck access when that is not permitted under 14 CFR Part 121.

Recommend: Ensure provisions of both operating rules are in agreement to make provision for a Federal Air Marshal and then determining justification for the FAM to be armed aboard. Carriers will question need for an armed FAM in the flight deck on all cargo aircraft without provisions for passengers aboard.

12. 1544.301 (a) and (b) Contingency plan.

Comment:
- No description of the contents of a contingency plan.

Recommend: Establish contingency plan contents.

13. 1544.303 Bomb or air piracy threats.

Comment:
- No provision or requirement for notification of FAA air traffic control is outlined until the final sentence of 1544.303 (d). This should be a primary notification to initiate responses ... not as an afterthought and solely to notify TSA.
- Establishes requirement to notify other aircraft operators of a threat at a ground facility when the airport operator, FAA, or TSA if notified by the carrier having the incident would be far more effective way to ensure all affected get notified.
- On airport notification of other tenants along with law enforcement should be the responsibility of either the airport operator or air traffic control.
- 1544.303 (d) reads as it is an afterthought to notify the TSA. TSA must notify all airports and aircraft operators how to notify it at all locations.

Recommend. Eliminate ambiguity in emergency notification processes. An aircraft operator should notify both air traffic control and the airport authority for destination aircraft for in-flight or ground bomb or air piracy threats.

14. 1544.305 Security Directives and Information Circulars.

Comment:
- Paragraph requires compliance with Security Directives yet our carrier has been turned down by the TSA in our efforts to obtain all SD's in order to ensure we are complying with the intent of present guidance in order to develop a plan ... despite provisions of 1520.5 would indicate that a new carrier petitioning for operating authority has authority

for SD and IC access. In our case we are an existing company, with an ACSSP issued to us by FAA based on our prior Part 108 operations.
- Emergency amendments and security directives ought to be one and the same. Having both is an unnecessary redundancy.
- Establishes requirement to verbally acknowledge SD when written email would be a far easier and more auditable means of communication.

Recommend. TSA needs to establish more effective means the facsimile to distribute both SDs and ICs, perhaps an email alert upon which the operator accesses a secure TSA website to download other otherwise review the SD or IC.
- SD and IC distribution should be direct from Hq TSA and bypass PSIs who are simply an administrative node and do not add value on the distribution. Procedures for approval of alternate implementation actions could involve the PSI if necessary.