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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Parts 1540 and 1544

[Docket No. TSA-2002-11604]

RIN 2110-AA04

Security Programs For Aircraft 12,500 Pounds Or More

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final rule; request for comments.

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 flightcrew members, and restrict access to the flight deck. These measures are necessary to comply with Congressional mandates and to enhance security in air transportation.

DATES: This rule is effective [insert date 120 days after publication in the Federal Register]. Submit comments by [insert date 60 days after publication in the Federal Register].

ADDRESSES:

Comments Submitted by Mail: Address written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the docket number TSA-2002-11604 at the beginning of your comments, and you should submit two copies of your

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comments. If you wish to receive confirmation that TSA received your comments, include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. TSA-2002-11604." The postcard will be date-stamped and mailed to you.

Comments Filed Electronically: You may also submit comments through the Internet at http://dms.dot.gov.

Reviewing Comments in the Docket: You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Lon Siro, Transportation Security Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone 202-267-3413.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however provides that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to

participate in this rulemaking by submitting written data, views, or arguments. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with TSA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

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

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

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (http://dms.dot.gov/search).

(2) On the search page type in the last digits of the docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the docket summary information for the docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140html.

In addition, copies are available by writing or calling the Transportation Security Administration's Air Carrier Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202-267-3413.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in "For Further Information Contact" for information. You can get further information regarding SBREFA on the Small Business Administration's web page at http://www.sba.gov/advo/laws/law_lib.html.

Abbreviations And Terms Used In This Document

ATSA—Aviation and Transportation Security Act
CHRC—Criminal history records check
SIDA—Security identification display area

Background

History and Current Regulations

On November 16, 2001, the Aviation and Transportation Security Act (ATSA) (Pub.L. 107-71), was enacted. ATSA created the Transportation Security Administration (TSA), and transferred aviation security functions from the Federal Aviation Administration (FAA) to TSA. The civil aviation security rules have been transferred

from the FAA (in title 14, Code of Federal Regulations) to TSA (in title 49, Code of Federal Regulations) in a separate rulemaking (see docket number TSA-2002-11602).

Section 132(a) of ATSA requires the Under Secretary of Transportation for Security to "implement a security program for charter air carriers ...with a maximum certificated takeoff weight of 12,500 pounds or more."

Title 49 of the Code of Federal Regulations (CFR) part 1544 requires that certain aircraft operators have security programs. These include:

- Those operating scheduled or public charter passenger operations with 61 or more passenger seats (full programs).
- Those operating scheduled or public charter passenger operations with any size aircraft that enplane passengers from or deplane passengers into a sterile area (full programs).
- Those operating scheduled or public charter operations in aircraft with 31 to 60 passenger seats (partial programs).
- Those operating private charter operations that enplane passengers from or deplane passengers into sterile areas (private charter program).

In addition, an aircraft operator that is not required to have a security program under part 1544 may request a limited program in order to carry out certain activities. For instance, certain all-cargo aircraft operators have security programs that allow them to take over from the airport certain security functions at an airport, or that allow them to perform certain security measures to facilitate transferring cargo to passenger aircraft operators.

Further, Special Federal Aviation Regulation (SFAR) 91 imposed security requirements on certain operators. See 66 FR 50531 (October 4, 2001). Paragraph 1(b) required that aircraft operations in aircraft with a maximum certificated takeoff weight of more than 12,500 pounds carry out security procedures when notified by the Administrator of the FAA. In October 2001, the FAA notified all-cargo operators using aircraft with a maximum certificated takeoff weight of more than 95,000 pounds to carry out certain security procedures. SFAR 91 was transferred, with changes, to 49 CFR part 1550.

ATSA section 132(a) expands the number of aircraft operations that must be under a security program. It requires security measures for smaller aircraft, and for cargo aircraft, that are not required to be under security programs under current rules.

Aircraft that have a maximum certificated takeoff weight of 12,500 pounds or more generally have 18 or more passenger seats. Part 1544 does not require security programs for passenger operations in aircraft with 30 seats or fewer. Accordingly, this rule requires security programs for the operation of smaller aircraft than under current rules. Note that some aircraft operators have full programs for operation of aircraft with 30 or fewer seats to allow them to enplane from and deplane into sterile areas.

Part 1544 does not require all-cargo operators to have security programs. However, section 132(a) is not limited to passenger operations. Further, the events on September 11, 2001, demonstrate the ability to use aircraft to endanger persons on the ground. An aircraft so used is just as dangerous whether it holds cargo or passengers. Accordingly, this rule requires security programs for both passenger and all-cargo operations using aircraft with a maximum certificated takeoff weight of 12,500 pounds or

more. As noted above, some all-cargo aircraft operators currently have limited security programs under part 1544, or have security programs under §1550.7.

Section 132(a) requires additional security measures for charter air carriers. In addition, there is no reason to apply additional security measures to charter air carriers, however, without also applying them to scheduled operations. Both carry passengers and property for hire. For both, the passengers rely on the aircraft operator to provide a safe and secure flight, and the potential for a criminal or terrorist threat against a scheduled operation is no less than against a charter operation. Accordingly, this rule applies security measures for both scheduled and charter service.

Analysis of the Amendments

These amendments incorporate the new requirements in section 132(a) of ATSA, and require aircraft operators with aircraft having a maximum certificated takeoff weight of 12,500 pounds or more to have security programs for certain operations. This rule also requires certain additional measures for operators with full and partial security programs.

Twelve-Five Security Program

This rule introduces a new security program, the twelve-five program. It applies to operations conducted in an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more; in scheduled or charter service; carrying passengers or cargo or both; and not presently required to have a full program or partial security program. The contents of this new security program are similar to that for partial security programs. The main difference is that holders of twelve-five security programs are not required to

participate in an airport operator-sponsored exercise of the airport contingency plan as described in §1544.301 (c). These operators are often small and conduct operations at airports without such contingency plans, or use only remote areas of airports that have them. Participation in this exercise may be very burdensome. Note that the airport operator may require any aircraft operator using its airport to participate is such exercises as a condition of using the airport.

Fingerprint-Based Criminal History Records Checks (CHRC): Flightcrew Members

Currently, under §1544.229, individuals with unescorted access to the security identification display area (SIDA), individuals with authority to perform screening functions, and individuals with authority to perform certain checked baggage and cargo functions must undergo a CHRC. New §1544.230 applies this same requirement to flightcrew members. "Flightcrew member" is defined in 14 CFR 1.1, and now in 49 CFR 1540.5, as a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.

It is important that TSA require additional background checks to be conducted on flightcrew who operate aircraft that could be used to endanger others. Congress has determined that fingerprint-based CHRCs are an important measure in checking the background of individuals who have access to aircraft. See 49 U.S.C. 44936. The use of CHRCs for flightcrew will provide an additional assurance that they are suitable to carry out essential duties in the aviation system.

Section 1544.230 (a) states the scope of the section. It applies to each flightcrew member for each aircraft operator. Amendments to §§1544.101 and 1544.103 make clear

that §1544.230 is applicable to flightcrew members not only under a twelve-five program, but also flightcrew members for each aircraft operation under a full program, a partial program, or a private charter program, unless the individual is already subject to §1544.229. In considering what security measures to apply to the twelve-five operators, it was apparent that the enhanced security of a CHRC for flightcrew should apply to all operations in the larger aircraft. Most flightcrew members in operations under full security programs are now subject to CHRCs under §1544.229 because they need unescorted access to the SIDA to perform preflight inspections of their aircraft and other functions. Some flightcrew of all-cargo carriers also have undergone CHRCs because they operate in a SIDA, too. This rule, however, will require flightcrew members who operate under partial security programs or SFAR 91 security programs and those that, until now, have not operated under security programs, to undergo CHRCs. Note that this rule does not specifically apply to flightcrew for operations under limited programs. If the limited program includes access to the SIDA, however, §1544.230 will be incorporated into the program.

Under §1544.230, the aircraft operator must ensure that flightcrew members undergo a fingerprint-based CHRC that is largely the same as in §1544.229. See 66 FR 63474 (December 6, 2001) and the rule (docket number TSA-2002-11602) that adopts §1544.229 for a full discussion of these procedures.

Aircraft operators that now hold partial programs or that will hold twelve-five programs have not, for the most part, been required to carry out CHRCs in the past. They must be provided with sufficient time to learn how to perform this function and make all necessary arrangements. On the other hand, Congress made clear in ATSA section

132(a) that additional security measures must be implemented without undue delay. The compliance date for this section is December 6, 2002, which is intended to give sufficient time to perform this function without undue delay. This is the same date that operators under full programs must complete CHRCs on certain current employees. See 66 FR 63474.

Flight Deck Privileges

Section 1544.237 requires that each aircraft operator restrict access to the flight deck, as provided in its security program. There currently are restrictions on access to the flight deck, such as 14 CFR 121.547, 121.548, and 121.550. After September 11, the FAA issued Security Directives to operators with full programs further restricting access to the flight deck to provide increased security for the flightcrew. The security program for all-cargo operators under SFAR 91 also includes increased flight deck restrictions. ATSA clearly requires that the flight deck must have additional protections. See section 104. The increased security measures for access to the flight deck provide additional protection by limiting the opportunity for an individual to endanger the flightcrew members and thereby endanger the flight.

This section incorporates such restrictions into the security program for each aircraft operator. Amendments to §§1544.101 and 1544.103 make clear that this section applies to all operators with full programs, partial programs, and twelve-five programs.

Paragraph (b) makes clear that this section does not restrict access for an FAA air carrier inspector or an authorized representative of the National Transportation Safety Board under 14 CFR 121.547, 121.548, 125.315, 125.317, or 135.75; or for an Agent of

the United States Secret Service under 14 CFR 121.550. Further, this section does not restrict access for a Federal Air Marshal under §1544.223. Such individuals have essential safety and security duties and, if they are authorized in accordance with 14 CFR 121, 125, or 135, or 49 CFR 1544.223, they must be admitted to the flight deck on request.

Carriage of Emergency Equipment in Alaska

TSA is aware that in the state of Alaska, operators of some aircraft of the size covered by the twelve-five program are required to carry emergency equipment to use if they must make a forced landing at a remote site. Alaska has vast areas that are accessible only by air. If an aircraft is forced to land in that kind of area, it may take some time to locate. Wildlife can pose serious threats to individuals. Alaska law provides that aircraft must have emergency equipment on board, including such things as food for each occupant sufficient to sustain life for two weeks, an axe or hatchet, a firearm, a knife, matches, and signaling devises such as smoke bombs. See Alaska Stat. section 02.35.110. While there are exemptions from some of these requirements for larger aircraft, some aircraft subject to the twelve-five security program are required under Alaska law to have firearms, signaling devises, and other items that otherwise would not be permitted.

TSA recognizes that travel in Alaska poses unique circumstances and dangers for which the aircraft operator must be prepared. Accordingly, TSA will approve amendments to the security programs of operators in Alaska to ensure that they may

comply with Alaska law and carry emergency equipment for the safety of the passengers and crew.

Good Cause for Immediate Adoption

This action is necessary to prevent a possible imminent hazard to aircraft and persons and property within the United States. Because the circumstances described herein warrant immediate action, Under Secretary of Transportation for Security finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

Paperwork Reduction Act

This emergency rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). In accordance with the Paperwork Reduction Act, the paperwork burden associated with the rule will be submitted to the Office of Management and Budget (OMB) for review. As protection provided by the Paperwork Reduction Act, 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. The OMB control number for this information collection will be published in the Federal Register after it has been approved by the Office of Management and Budget.

Need: This rule requires aircraft operators using aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to implement an aviation security program.

Description of Respondents: All new and existing aircraft operators using aircraft with a maximum certificated takeoff weight of 12,500 pounds or more.

Burden: TSA does not currently have concise data on which aircraft operators have aircraft 12,500 pounds or more. Accordingly, TSA will calculate the paperwork burden assuming that all aircraft operators will be subject to this rule. Thus, these assumptions will overestimate the overall burden. In addition, TSA assumes no change in the number of aircraft operators over the next 10 years. Without this simplifying assumption, it would be impossible to estimate the total effects of these changes over the ten-year period.

Each air carrier subject to this rule will need to fingerprint all its flightcrew members; train all employees with security-related duties; acknowledge receipt of, and distribute, Security Directives and Information Circulars; and prepare, maintain, and accommodate modifications to a security program. The total ten-year burden is approximately 608,470 hours at a cost of $14,613,040. The annual burden sums to about 60,850 hours at a cost of $1,461,300.

TSA anticipates that the regulated entities will have to purchase no additional equipment.

Economic Analyses

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

Executive Order 13132, Federalism

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

Trade Impact Assessment

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

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

Environmental Analysis

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

Energy Impact

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

List of Subjects

49 CFR Part 1540

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

49 CFR Part 1544

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

The Amendments

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

Part 1540—Civil Aviation Security: General Rules

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

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

2. Amend 1540.5 by adding the definition of "Flightcrew member" in alphabetical order as follows:

§ 1540.5 Terms used in this subchapter.

* * * * *

Flightcrew member means a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.

* * * * *

Part 1544—Aircraft Operator Security: Air Carriers And Commercial Operators

3. The authority for part 1544 continues to read as follows:

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

4. 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 holding operating certificates under 14 CFR part 119 for scheduled passenger operations, public charter passenger operations,

private charter passenger operations; the operations of aircraft operators holding operating certificates under 14 CFR part 119 operating aircraft with a maximum certificated takeoff weight of 12,500 pounds or more; and other aircraft operators adopting and obtaining approval of an aircraft operator security program.

* * * * *

5. Amend §1544.101 by revising paragraphs (c), (f), and (g), and by adding paragraphs (d) and (e) to read as follows:

§ 1544.101 Adoption and implementation.

* * * * *

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

(1) The requirements of §§1544.215, 1544.217, 1544.219, 1544.223, 1544.230, 1544.235, 1544.237, 1544.301, 1544.303, and 1544.305.

(2) Other provisions of subparts C, D, and E of this part that TSA has approved upon request.

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

(d) Twelve-five program—adoption: Each aircraft operator must carry out the requirements of paragraph (e) of this section for each operation that meets all of the following--

(1) Is in an aircraft with a maximum certificated takeoff weight of 12,500 pounds or more;

(2) Is in scheduled or charter service;

(3) Is carrying passengers or cargo or both; and

(4) Is not under a full program or partial program under paragraph (a) or (b) of this section.

(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 the applicable requirements of §1544.103 (c):

(1) The requirements of §§1544.215, 1544.217, 1544.219, 1544.223, 1544.230, 1544.235, 1544.237, 1544.301 (a) and (b), 1544.303, and 1544.305.

(2) Other provisions of subparts C, D, and E that TSA has approved upon request.

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

(f) Private charter program: In addition to paragraph (d) of this section, if applicable, each aircraft operator must carry out §§1544.201, 1544.207, 1544.209, 1544.213, 1544.215, 1544.217, 1544.219, 1544.229, 1544.230, 1544.233, 1544.235, 1544.303, 1544.305, and subpart E, and must adopt and carry out a security program that meets the applicable requirements of §1544.103 for each private charter operation in which passengers are enplaned from or deplaned into a sterile area.

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

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

(2) Carry out the provisions of §1544.305, as specified in its security program; and

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

6. Amend §1544.103 by revising (c)(1), (c)(15), and adding (c)(21) to read as follows:

§1544.103 Form, content, and availability.

* * * * *

(c) ***

(1) The procedures and description of the facilities and equipment used to comply with the requirements of § 1544.201 regarding the acceptance and screening of individuals and their accessible property, including, if applicable, the carriage weapons as part of State-required emergency equipment.

* * * * *

(15) The procedures used to comply with the applicable requirements of §§1544.229 and 1544.230 regarding fingerprint-based criminal history records checks.

* * * * *

(21) The procedures used to comply with §1544.237 regarding flight deck privileges.

* * * * *

7. Add §1544.230 to read as follows:

§1544.230 Fingerprint-based criminal history records checks (CHRC): Flightcrew members.

(a) Scope. This section applies to each flightcrew member for each aircraft operator, except that this section does not apply to flightcrew members who are subject to §1544.229.

(b) CHRC required. Each aircraft operator must ensure that each flightcrew member has undergone a fingerprint-based CHRC that does not disclose that he or she has a disqualifying criminal offense, as described in §1544.229 (d), before allowing that individual to serve as a flightcrew member.

(c) Application and fees. Each aircraft operator must ensure that each flightcrew member's fingerprints are obtained and submitted as described in §1544.229 (e) and (f).

(d) Determination of arrest status. (1) When a CHRC on an individual described in paragraph (a) of this section discloses an arrest for any disqualifying criminal offense listed in §1544.229 (d) without indicating a disposition, the aircraft operator must determine, after investigation, that the arrest did not result in a disqualifying offense before the individual may serve as a flightcrew member. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in §1544.229 (d), the flight crewmember is not disqualified under this section.

(2) When a CHRC on an individual described in paragraph (a) of this section discloses an arrest for any disqualifying criminal offense listed in §1544.229 (d) without indicating a disposition, the aircraft operator must suspend the individual's flightcrew member privileges not later than 45 days after obtaining a CHRC, unless the aircraft operator determines, after investigation, that the arrest did not result in a disqualifying criminal offense. If there is no disposition, or if the disposition did not result in a conviction or in a finding of not guilty by reason of insanity of one of the offenses listed in §1544.229 (d), the flight crewmember is not disqualified under this section.

(3) The aircraft operator may only make the determinations required in paragraphs (d)(1) and (d)(2) of this section for individuals whom it is using, or will use, as a flightcrew member. The aircraft operator may not make determinations for individuals described in § 1542.209 (a) of this chapter.

(e) Correction of FBI records and notification of disqualification. (1) Before making a final decision to deny the individual the ability to serve as a flightcrew member,

the aircraft operator must advise the individual that the FBI criminal record discloses information that would disqualify the individual from serving as a flightcrew member and provide the individual with a copy of the FBI record if the individual requests it.

(2) The aircraft operator must notify the individual that a final decision has been made to allow or deny the individual flightcrew member status.

(3) Immediately following the denial of flightcrew member status, the aircraft operator must advise the individual that the FBI criminal record discloses information that disqualifies him or her from retaining his or her flightcrew member status, and provide the individual with a copy of the FBI record if he or she requests it.

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

(1) Within 30 days after being advised that the criminal record received from the FBI discloses a disqualifying criminal offense, the individual must notify the aircraft operator in writing of his or her intent to correct any information he or she believes to be inaccurate. The aircraft operator must obtain a copy, or accept a copy from the individual, of the revised FBI record or a certified true copy of the information from the appropriate court, prior to allowing the individual to serve as a flightcrew member.

(2) If no notification, as described in paragraph (f)(1) of this section, is received within 30 days, the aircraft operator may make a final determination to deny the individual flightcrew member status.

(g) Limits on the dissemination of results. Criminal record information provided by the FBI may be used only to carry out this section. 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) Others designated by TSA.

(h) Recordkeeping. (1) Fingerprint application process. The aircraft operator must physically maintain, control, and, as appropriate, destroy the fingerprint application and the criminal record. Only direct aircraft operator employees may carry out the responsibility for maintaining, controlling, and destroying criminal records.

(2) Protection of records. The records required by this section must be maintained by the aircraft operator in a manner that is acceptable to TSA that protects the confidentiality of the individual.

(3) Duration. The records identified in this section with regard to an individual must be made available upon request by TSA, and maintained by the aircraft operator until 180 days after the termination of the individual's privileges to perform flightcrew member duties with the aircraft operator. When files are no longer maintained, the aircraft operator must destroy the CHRC results.

(i) Continuing responsibilities. (1) Each flightcrew member identified in paragraph (a) of this section who has a disqualifying criminal offense must report the

offense to the aircraft operator within 24 hours of the conviction or the finding of not guilty by reason of insanity.

(2) If information becomes available to the aircraft operator indicating that a flightcrew member identified in paragraph (a) of this section has a possible conviction for any disqualifying criminal offense in §1544.229 (d), the aircraft operator must determine the status of the conviction. If a disqualifying criminal offense is confirmed, the aircraft operator may not assign that individual to flightcrew duties in operations identified in paragraph (a).

(j) Aircraft operator responsibility. The aircraft operator must—

(1) Designate a direct employee to maintain, control, and, as appropriate, destroy criminal records.

(2) Designate an individual(s) to maintain the CHRC results.

(3) Designate an individual(s) at appropriate locations to receive notification from individuals of their intent to seek correction of their FBI criminal record.

(k) Compliance date. Each aircraft operator must comply with this section for each flightcrew member described in paragraph (a) of this section not later than December 6, 2002.

8. Add §1544.237 to read as follows:

§ 1544.237 Flight deck privileges.

(a) For each aircraft that has a door to the flight deck, each aircraft operator must restrict access to the flight deck as provided in its security program.

(b) This section does not restrict access for an FAA air carrier inspector, an authorized representative of the National Transportation Safety Board, or for an Agent of the United States Secret Service, under 14 CFR parts 121, 125, or 135. This section does not restrict access for a Federal Air Marshal under this part.

Issued in Washington, DC on FEB 15 2002

John W. Magaw

John W. Magaw
Under Secretary of Transportation for Security