

Comments relating to 49 CFR §§ 1544.1 and 1544.237

Docket Number: TSA-2002-11604

Docket Title: Security Programs For Aircraft 12,500 Pounds Or More.

### **Comments regarding §1544.1 – Applicability of this part**

This section specifies that Part 1544 is applicable to “aircraft operators holding **operating certificates** [emphasis added] under 14 CFR part 119....”

14 CFR Part 119 prescribes requirements for the certification of Air Carriers and/or Commercial Operators. 14 CFR §119.1 states, in pertinent part:

(b) This part prescribes-

- (1) The types of air operator certificates issued by the Federal Aviation Administration, including **air carrier certificates and operating certificates** [emphasis added];

Direct Air Carriers (as defined in Part 119) are required to hold an Air Carrier Certificate, not an Operating Certificate. This would include operators conducting scheduled passenger operations and many operators conducting operations with aircraft weighing more than 12,500 pounds.

If the intent of this rulemaking is to apply Part 1544 to all operators holding certificates of all types issued in accordance with Part 119, then §1544.1 should not specifically refer to “operating certificates.” Rather, it should specify “air operator certificates” or “air carrier and operating certificates.”

The rulemaking also repeatedly makes reference to aircraft “with a maximum certificated takeoff weight (MCTW) of **12,500 pounds or more.**” [emphasis added] Aircraft certification rules and definitions under 14 CFR have always made a distinction between aircraft with a MCTW of **more than 12,500 pounds** and those with a MCTW of exactly 12,500 pounds or less. If this rule applies to aircraft certificated for a maximum certificated takeoff weight of exactly 12,500 pounds, the impact may be vastly greater than anticipated. Clarification is needed with respect to the language in §132(a) of the ATSA and §1544.1. Applying this rulemaking to aircraft with a MCTW of exactly 12,500 pounds would be extremely burdensome and potentially beyond the intent of the Congress.

### **Comments regarding §1544.237 – Flight deck privileges**

Clarification is needed with regard to the language in paragraph (a). With the exception of open-cockpit aircraft, all aircraft have some sort of “door” to the flight deck. Further details on what constitutes a “door” for the purposes of this section should be specified. It appears that §104 of the ATSA intended this rulemaking to apply to aircraft that are

“required” to have a cockpit door by 14 CFR (for example, §121.313). Section 104 of the ATSA states, in pertinent part:

(a) IN GENERAL- As soon as possible after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall--

(1) issue an order (without regard to the provisions of chapter 5 of title 5, United States Code)--

(A) prohibiting access to the flight deck of aircraft engaged in passenger air transportation or intrastate air transportation that are **required** to have a door between the passenger and pilot compartments under title 14, Code of Federal Regulations, except to authorized persons;

If this is the intent of the rulemaking, the regulations that specify the “requirement” for a cockpit door should be included (such as 14 CFR §121.313) or other appropriate exclusionary language. Section 104 of the ATSA is specific in its applicability. Section 1544.237 should be as well. Many aircraft operations that will be required to comply with §1544.237 are not required to have a door by any rules in 14 CFR, and therefore it should be made clear that §1544.237 need not be complied with in these cases.