



**COMMENTS BY THE AIR COURIER CONFERENCE OF AMERICA  
TO THE TRANSPORTATION SECURITY ADMINISTRATION  
REGARDING AIR CARGO SECURITY REQUIREMENTS  
Docket No. TSA-2004-19515**

**January 10, 2005**

This statement is submitted by the Air Courier Conference of America (ACCA) in response to the *Federal Register* notice in which the Transportation Security Administration (TSA) issued a notice of proposed rulemaking (NPRM) on air cargo security requirements (69 F. R. 65258). ACCA is the trade association representing the express delivery services industry; our members include large firms with global delivery networks, such as DHL Express, Federal Express, Purolator, TNT U.S.A. and UPS, as well as smaller businesses with strong regional delivery networks, such as Direct Link, International Bonded Couriers and Midnite Express. Our members include all-cargo carriers as well as indirect air carriers (IACs); the common element of ACCA members' business is the expedited nature of our shipments. Together, ACCA members employ over 500,000 American workers. Worldwide, ACCA members have operations in over 200 countries; move more than 20 million packages each day; employ more than 800,000 people; operate 1,200 aircraft; and earn revenues in excess of \$50 billion annually.

Before providing ACCA's comments on the NPRM, we would like to note that we have reviewed the comments to be submitted by the Cargo Airline Association (CAA) in response to the NPRM, and we support them. In contrast to CAA's, our comments are principally concerned with the potential impact of certain provisions of the NPRM on IACs. Furthermore, we wish to commend TSA for incorporating many of the recommendations made by the Aviation Security Advisory Committee (ASAC), of which ACCA was a member, into the NPRM. The ASAC and its working groups comprised a broad spectrum of aviation interests and we are pleased that TSA has adopted many of its recommendations. Nevertheless, as detailed below, we believe the NPRM contains certain provisions that should be modified prior to the rule's finalization.

### **Overview of IACs**

IACs are a category of highly regulated express and freight forwarding companies that are certified annually by the TSA; the term IAC is an official designation given by

TSA to freight forwarders who have approved Indirect Air Carrier Standard Security Programs (IACSSPs) set forth in 49 CFR Part 1540.103.1. However there are many freight forwarders who continue to operate as indirect air carriers without benefit of TSA certification. In the past, the IAC certification was a relatively simple process with certification and IACSSP approval accomplished using fax machines and/or email. Site visits to IAC locations were rarely conducted, and FAA/TSA approvals were given to businesses ranging from “mom and pop” operations up to and including global companies with millions of dollars in annual revenue. Not surprisingly, compliance with IACSSPs varied significantly within this community and was minimally enforced until the tragedy of September 11.

Emergency Amendments (EA) and Security Directives (SD) issued by TSA after September 11 did not distinguish by IAC size, quality, revenue or even strength of a particular security program. Those regulations effectively smothered the IACs’ ability to offer services to the occasional or ad-hoc customer so vital to the industry. These regulations severely affected the IAC business, and that negative impact continues today. Since September 11, IACS have not been permitted to place domestic cargo from unknown shippers on passenger aircraft, nor have they been able to consider previously flown international cargo as safe to be tendered to a domestic U.S. passenger carrier. As an example, cargo flown on an all-cargo foreign carrier from Liege (LGG) to New York (JFK) is considered to be “Unknown Shipper” and cannot be tendered to a domestic carrier. This material either must be trucked or lodged on all-cargo aircraft to its final destination, adding time and expense to express customer shipments. (All-cargo flights do not have the frequency or destination schedule so desirable in the PAX market.)

In reviewing ACCA’s comments, it is important to keep in mind the way IACS operate and, in particular, the fact that there are a range of security programs in place at IACs. As detailed below, ACCA believes that those IACs with strong security programs should be able to resume certain shipping activities that have been proscribed since September 11.

### **Unknown shipper cargo on passenger airplanes**

Perhaps the biggest issue in the NPRM for ACCA members relates to an ASAC recommendation that TSA did not incorporate into its proposed rule: ASAC recommended that cargo from unknown shippers be allowed on passenger aircraft, provided the cargo is subject to physical screening before it is loaded onto the plane. Such shipments, which have been suspended since September 11, 2001, previously constituted a major source of business for ACCA members, and ACCA urges TSA to reconsider and adopt ASAC’s recommendation as part of its final rule.

ACCA’s members estimate they have lost over \$200 million in business since September 11 due to the elimination of unknown shipper business. This has had negative repercussions not just within our industry (in terms of reduced employment, cash flow, etc.), but also in the many business and consumer sectors that formerly relied on these

shipments. As discussed below, we believe there is a way to allow a resumption of this significant business without detriment to the security of passenger aircraft.

TSA appears to have rejected the ASAC recommendation out of concern that there is no single technology that could be used to screen all potential unknown shipper cargo effectively and efficiently. ACCA strongly disagrees that a uniform technological approach is necessary. What is required is that any cargo from an unknown shipper be screened in an effective manner prior to departing on a passenger airline. Appropriate technology may differ company-by-company and even location-by-location, depending on the types of shipments handled and the volume level in a given situation, and TSA should evaluate each situation independently. If unknown shipper cargo is subject to 100 percent screening, passenger airlines should be allowed to transport it. Such screening should be part of a TSA-approved security program, and TSA could audit or monitor compliance as it deems necessary. Under such a system, U.S. economic interests (not just ACCA members but the many businesses and consumers we serve) could recapture an important line of business, without compromising security.

ACCA would welcome the opportunity to work with TSA to flesh out how ASAC's recommendation could be implemented, and urges TSA to allow the resumption of properly screened unknown shipper cargo on passenger aircraft.

### **Authorization to screen cargo**

As a corollary to the above, ACCA further believes that IACs should be allowed to screen cargo from known and unknown shippers and that carriers should be authorized to accept this screening as sufficient. There is no reason that screening should be done only by the carriers themselves. If an IAC can demonstrate to TSA's satisfaction that it has the capability to screen cargo and has in place the security protocols that require it to conduct appropriate screening, the IAC should be authorized to screen, and carriers should be allowed to accept this screening as sufficient. Proposed sections 1544.205 and 1546.205 should be modified to reflect this.

### **Interline carriage of cargo**

ACCA believes the final rule should allow for interline carriage of cargo, provided that such cargo has been adequately screened prior to the first leg of its journey and is stored in a sterile or SIDA-designated area. For domestic shipments, this would mean that shipments originating on an all-cargo flight must be screened to meet the standards for that flight. However, once the all-cargo leg is completed, such shipments should be allowed on either all-cargo or passenger aircraft. There is no security justification for proscribing this, because the shipments would have already safely completed a journey by air - and terrorists would not know in advance that a second or third leg would take place on passenger aircraft. With respect to international shipments, this would mean that cargo arriving in the United States that has been screened abroad in

compliance with acceptable/approved standards of the originating country should be allowed to proceed on either all-cargo or passenger flights departing from U.S. airports.

### **Known shipper database**

The NPRM calls for a web-enabled database of known shippers. Many of the details of this system are necessarily sketchy, given the sensitive nature of the subject. Nonetheless, the information provided in the NPRM is cause for concern, and ACCA urges TSA to consult formally and confidentially with aviation interests prior to finalizing any rules in this regard.

ACCA is particularly concerned that the database may be unworkable within the timeframes of express operators. We are the most expedited mode of delivery, and our service hinges on moving shipments in the quickest manner possible. We are concerned that the database could be slow and could suffer from glitches at times and, at others, may not have up-to-the-minute information, thereby causing us to miss our delivery windows. Furthermore, it seems this loss of service would not be offset by increased security: our members already validate known shippers against their own databases.

We are also concerned that a web-based system may not be compatible with operational procedures currently in use by many express operators, some of whom conduct known shipper screening with hand scanners that are not linked to the Internet. Shifting to a web-based system would involve significant changes to the operational procedures of express companies, with concomitant costs incurred. Again, these costs would be borne for no appreciable gains in security.

Finally, we are also concerned that implementing a web-enabled known shipper database within the proposed 90 days may be extremely difficult to do, given the scope of changes some express operators would have to undertake. We believe that, if the web-enabled database is adopted, a longer transition phase will be necessary.

### **Background checks**

In the NPRM, TSA proposes to impose new background checks on persons with unescorted access to air cargo. ACCA is uncertain as to which employees this would apply, and urges TSA to clarify this in its final rule. ACCA also is uncertain as to why some employees would need to undergo a background check against TSA's lists of known and suspected domestic and international terrorists, whereas others may undergo checks against the FBI Criminal History Records Check, and urges TSA to clarify the rationale for this as well. We note that most ACCA members already check employee names against the "no fly" and "selectee" watchlists as an added safeguard as a standard element of their security directives.

Under no circumstances does ACCA believe that companies should have to pay \$39 per person for TSA to conduct a background check mandated by this rule. We note

that, under the Advance Passenger Information System, airlines currently provide passenger names to the government, which then screens them against watch lists free of charge; we believe the same philosophy should apply to any additional background checks required by TSA of cargo-related personnel.

If TSA requires any new screening, ACCA recommends that TSA carefully define the population subject to such screening, and conduct the screening against watch lists and the NCIC. ACCA believes that, at a minimum, TSA should clarify that this provision exempts not only those employees with unescorted SIDA access but also those with U.S. Customs airport security access identification badges (seals). Furthermore, the specific results of TSA's screening do not have to be shared with companies - only a red light/green light indication. This would preclude any hiring of "suspect" candidates before they get close to a cargo operation. This extra step should be fully funded by the government and all records subject to audit.

### **Security Identification Display Areas (SIDAs)**

ACCA shares TSA's desire to make the airport areas around aircraft more secure. However, rather than expanding the SIDA as called for in the NPRM, ACCA believes the ASAC's recommendation should be adhered to in this regard - specifically, that "SIDA-like" requirements be established for those operating in such areas. ACCA highlights the fact that many of our all-cargo members have existing security systems and programs that far exceed SIDA requirements. These systems are in place and have been working effectively for years as witnessed by the FAA, TSA, CBP and local airport authorities. Such systems would preclude any SIDA expansion providing they meet or in this case exceed TSA standards. Again, these measures are subject to audit by DHS agencies. That way, carriers would be required to modify their security programs to adopt SIDA-like procedures in the areas they use for sorting and loading/unloading cargo.

### **Harmonization of security requirements**

Finally, ACCA notes that other countries are evaluating and, in some cases, implementing new aviation security requirements of their own. Many ACCA members operate internationally and are finding it increasingly difficult to cope with the proliferation of different security regimes. ACCA urges TSA to work with its counterpart agencies in other countries towards harmonized security standards.

### **Conclusion**

Again, we commend TSA for integrating many of ASAC recommendations into its NPRM. However, as noted above, we believe certain aspects of the NPRM would operate to the severe detriment of ACCA members, and would do so without providing

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commensurate improvements in security. These provisions should be revised, and ACCA stands ready to work with TSA to finalize alternate approaches that meet our shared goal of facilitating trade while enhancing security.

Respectfully submitted,

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