



Driving Trucking's Success

January 10, 2005

***Via Electronic Submission
and Facsimile (202) 493-2251***

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

**RE: Air Cargo Security Requirements
Notice of Proposed Rulemaking - Docket No. TSA-2004-19515**

To Whom It May Concern:

The American Trucking Associations, Inc. ("ATA") is submitting the following comments in response to the Department of Homeland Security's Transportation Security Administration's (TSA) Notice of Proposed Rulemaking on Air Cargo Security Requirements, *69 Federal Register*, page number 65258 dated (November 10, 2004) ("proposed rule"). ATA is a national trade association representing the interests of the trucking industry.¹ ATA has supported post 9/11 security measures designed to close security gaps in the transportation sector and continues to support security improvements that strive to balance supply chain security with the efficient flow of trade. The trucking industry is a crucial link in the air cargo supply chain. As such, ATA has a strong interest in this proposed rule and offers the following comments from the motor carrier industry perspective.

¹ ATA is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. Its membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

Security Threat Assessments

The proposed rule expands general security requirements throughout the air cargo supply chain, including the protection of en route cargo, by requiring persons with unescorted access to air cargo to undergo a Security Threat Assessment (STA), focused on the threat of terrorism. In sections 1540.203 and 1548.15, TSA has placed direct responsibility on aircraft operators and Indirect Air Carriers (IAC), (hereafter collectively referred to as “Operator”) to ensure that an individual who has accepted air cargo on their behalf has undergone a STA as outlined in the rule. The definition of covered persons in the rule is ambiguous. In discussing the STA requirement, the preamble to the proposed rule provides clearer insight stating that any Operator employee, agent, contractor, or subcontractor with unescorted access to air cargo is subject to the STA. The fact that motor carriers transporting cargo on behalf of an Operator could conceivably, and likely would, be covered under this rule raises several concerns.

The rule is intended to strengthen the air cargo supply chain by holding Operators responsible for securing the supply chain links below them. While this is well intentioned, the multiple delivery mechanisms and complexities within the air cargo system make this a complicated undertaking.

Section 1540.5 of the regulations codifies the definition of “cargo” as “...property tendered for air transportation accounted for on an air waybill”. Shipments tendered to an Operator often arrive by motor carrier as a ground shipment on a bill of lading with the Operator preparing the actual air waybill for air transportation. By definition, it is not until the shipment has an air waybill attached that it becomes air cargo subject to the provisions of this rule. As the air waybill is the controlling document, motor carriers who deliver cargo on documentation other than an air waybill should not be required to undergo a STA administered through the Operator.

Placing direct responsibility on Operators to perform STAs on their agents, contractors, or subcontractors places substantial burden and cost on both the Operator and driver and creates significant potential for a confusing, frustrating, and unworkable system. Section 1540.203 requires Operators to authenticate the identity of the individual applying for a security threat assessment, submit the individual's security threat assessment application to TSA, update the individual's permanent record with the security threat assessment results, and retain the individual's security threat assessment documentation for 180 days following the individual's termination of service to the Operator.

Practically, ATA questions how this can be accomplished when the motor carriers transporting air cargo are not direct employees but contractors or subcontractors providing services to multiple Operators. This requirement essentially places personnel responsibilities on the Operator for individuals who

are not in their direct employ. Under this scenario, contracted drivers would be required to undergo a STA with each Operator for whom they provide transport services and provide notification to each Operator when they leave the employ of their company.

In addition to the above issues, many more details of how the STA will function remain unanswered including what the disqualifying criteria are for STAs, whether security authorizations are transferable, and how often covered individuals are required to renew their security authorization. While ATA appreciates the intent of the rule to strengthen the air cargo supply chain, as proposed, it appears to create significant cost and chaos to the air cargo system.

ATA proposes an alternative solution to implementing STAs on individuals having unescorted access to air cargo. As will be further discussed in the comments below, TSA's Transportation Worker Identification Credential (TWIC) should serve as the common credential for meeting the security threat assessment standards as required under this rule. The TWIC program is on schedule to begin its implementation phase in a timeframe similar to that of the air cargo rule's effective date and more effectively accomplishes the security objective without creating a new, redundant, and burdensome credentialing process.

Cross Border Air Cargo

It is noted that the proposed rule does not address STA requirements for Canadian and Mexican motor carriers who transport cargo across the border to tender at a U.S. airport. ATA recommends that TSA continue to work with both Canadian and Mexican authorities to establish approved STA guidelines for foreign motor carriers transporting cross border air cargo. It should also be noted that current Customs and Border Protection (CBP) requirements accept a truck manifest as the only acceptable document for cross border air cargo shipments.

Security Threat Assessment Notification

ATA has consistently advocated for employer notification of federally mandated driver STA results. Without employer notification, trucking companies are unable to make informed personnel decisions regarding their drivers. This creates a major security loophole and compromises the program's security objectives. Section 1540.205 makes clear that both the individual who applied for the security threat assessment and the Operator will be given results notification including, the granting of a security authorization, an initial denial of a security authorization and basis for the determination, a final denial of authorization, and any appeal status.

As commented above, the Operator may, or may not, be the driver's actual employer. In the case where the Operator is the direct employer, that employer

is given driver security authorization status results and can make an informed decision regarding not only driver risk to the air cargo supply chain but the potential security risk to the company and areas outside the air cargo supply chain. Where the Operator utilizes an owner/operator contractor or subcontractor to provide transport to air carriers, the direct employer of those contracted drivers is kept out of the notification loop and is unaware of an employees' potential security risk. As written, the rule excludes certain employers from receiving security threat assessment results on their drivers. To fully achieve the intended security objective, ATA advocates that section 1540.205 be amended to include notification to the individual, Operator, *and employer*.

Other TSA Approved Security Threat Assessment

Section 1540.203(b)(1)(ii) states that before gaining unescorted access to cargo, individuals must successfully complete either a STA *or* another STA approved by TSA.

Currently, there are some 2.7 million drivers who hold a hazardous materials endorsement (HME) on their commercial driver's licenses. Each of these drivers has undergone a name-based background check administered by TSA and deemed to pose no security risk. Beginning in 2005, the same drivers will be required to submit to a fingerprint-based background check to receive a new or renewal HME. TSA has indicated their plan to leverage the Hazardous Materials Endorsement Screening Gateway System (HMESG) for processing air cargo security threat assessments,² therefore it seems particularly unwarranted for these drivers to again submit to, and pay for, the same security threat assessment simply to carry air cargo.

The Department of Defense, Defense Industry Security Clearance Office (DISCO), manages secret clearances for numerous trucking industry personnel. DISCO secret clearances are issued to individuals only after they have undergone a thorough vetting process, including a fingerprint-based background check and personal history investigation that exceeds the HME background check requirements.

Additionally, there are over 17,000 commercial drivers who possess a Free and Secure Trade (FAST) card. Under Customs & Border Protection's Customs-Trade Partnership Against Terrorism (C-TPAT) program, FAST drivers are certified and approved into the C-TPAT low-risk supply chain only after they have undergone an extensive, fingerprint-based, criminal background check by both CBP and their Canadian counterparts.

² 69 *Federal Register* at 65276

TSA should accept the HME, FAST, and DISCO credential as in compliance with both the focused STA requirement as well as the criminal history records check requirement in section 1542.205(b)(2) for individuals with unescorted access to security identification display areas.

ATA recommends that TSA provide a list of compatible credentials that will be accepted in lieu of an STA. Drivers who are previously vetted and known should be exempted from undergoing an additional security threat assessment specifically for air cargo when it is duplicative, costly and time consuming for both the driver and Operator and unproductive in achieving added supply chain security benefits.

Running along a parallel track, TSA's TWIC card is progressing towards implementation with the goal of improving security by establishing a common credential used across all transportation modes for individuals requiring unescorted access to secure areas of the national transportation system. TWIC cards will be issued to an anticipated 12 million transportation workers who have successfully completed an extensive background check to ensure they do not pose a security risk. The objective of the TWIC program is to strengthen transportation security and enhance commerce by eliminating the need for redundant credentials and background investigations imposed on transportation workers through a multitude of existing employer, local, state, and federal credentialing programs. The TWIC program is currently in phase III prototype testing scheduled for completion in mid 2005 with the final implementation phase to follow.

The TSA estimates the total cost for air cargo security threat assessments (including start up and recurring costs over five years) using the existing HAZMAT HMESG at just under \$2.5 million.³ To implement this system, TSA must modify hardware and software on the HMESG system, employ program management personnel, and employ a third party to establish the infrastructure and process for collecting and processing data and fees. TSA also estimates a \$3.4 million cost over 10 years to impose IAC's STA requirements.⁴ With an estimated population of 63,000 individuals undergoing air cargo security threat assessments over a five-year period, ATA questions whether the substantial cost and burden to implement the air cargo focused security threat assessment program is sound, risk-based resource management. With the TWIC card's implementation phase on track to coincide with the implementation of the air cargo rule, ATA sees no rationale in initiating this costly and duplicative effort. TSA notes that, "Since its establishment in November 2002 by the Homeland Security Act of 2002 (Pub. L. 107-296), the Department of Homeland Security has had, as one of its central tenets, the goals to reduce redundancy and improve effectiveness".⁵ ATA cautions TSA from introducing another redundant

³ 69 *Federal Register* at 65277

⁴ 69 *Federal Register* at 65278

⁵ 69 *Federal Register* at 65261

background check requirement on transportation workers and advocates fulfilling the air cargo security threat assessment requirement through the TWIC program.

Indirect Air Carriers Security Program

Section 1548.5 requires IACs to adopt and implement a security program which covers “the time the indirect air carrier accepts the cargo to the time it transfers the cargo to an entity that is not an employee, agent, contractor or subcontractor of the indirect air carrier”. The IAC must also assure that covered persons comply with the requirements of the security program.

It is unfeasible for motor carrier contractors and subcontractors to be bound by a multitude of different security programs from multiple IACs for which they provide transport services. ATA recognizes that in an industry as diverse as air cargo a “one size fits all” security program will not work; however, as proposed the rule is unnecessarily redundant, imposes excessive paperwork requirements on industry which is inconsistent with both the intent and substance of the Paperwork Reduction Act, and offers little enhanced security benefit. It is of further concern that the proposed rule gives IACs far reaching responsibilities into the trucking sector over which they have no legal or regulatory authority.

Indirect Air Carriers Security Training

As part of the IAC security program, section 1548.11 requires Indirect Air Carriers to provide comprehensive, annual security training and knowledge for “individuals who accept, handle, transport, or deliver cargo for or on behalf of the IAC”. ATA again requests clarification as to who the rule considers covered individuals requiring additional security training. As previously stated, many motor carriers who accept and deliver cargo on behalf of an IAC do so as a ground shipment, not as air cargo accounted for on an air waybill. These carriers by definition should not be subject to additional security training.

Applying the security training requirements to an IAC’s contracted or subcontracted delivery companies presents the same complications as the IACs performing STAs on the same group. It is impractical to impose responsibility on the IAC for ensuring that every driver with each contracted company with whom they do business undergoes annual security training. Conversely, drivers cannot reasonably be expected to undergo duplicative, annual security training, with multiple IACs for which they carry cargo. This creates additional cost and burden to both the IACs and motor carriers. ATA is not opposed to security training; however, it must be accomplished in a less burdensome, more efficient manner. ATA welcomes the opportunity to participate in TSA stakeholder discussions on how to best implement a comprehensive security program, to include security training, which reduces redundancies while meeting the stated security objectives.

TSA-CBP Air Cargo Coordination

ATA has been actively involved with CBP's C-TPAT program development since its inception. This international security initiative operates on the premise that, through voluntarily meeting strict security guidelines as established by CBP, each component throughout the supply chain is a known entity thus reducing cargo carried to a low risk category. Benefits to participating trucking companies and their FAST certified drivers include tangible incentives such as dedicated crossing lanes and fewer inspections at the border. The results are faster border crossing times, increased cost and time savings to the trucker, eased pressure on scarce custom's agent resources allowing them to concentrate on higher risk cargo, and smoother facilitation of trade.

ATA is a strong supporter of the C-TPAT initiative and commends CBP and TSA for engaging in interagency dialogue and coordination with the goal of reducing program redundancies. To date, C-TPAT remains an evolving international supply chain security program. While expanding C-TPAT, or a C-TPAT-like concept, to the domestic air cargo supply chain is worthy of further discussion, there are substantial logistical obstacles that may prevent successful inclusion of domestic links into the international security program. Without further detail as to how TSA envisions a domestic C-TPAT program to operate, ATA cannot, at this time, provide specific comment on the expansion concept. ATA offers their full support in working in partnership with TSA to develop the extended program.

Conclusion

ATA and the trucking industry remain committed to ensuring our nation's security and in contributing to our economic prosperity. ATA looks forward to working with TSA in developing a workable program that secures the air cargo supply chain in the most effective and efficient manner. Should you have any questions or comments, please contact Martin Rojas at 703-838-7950 or Jeanne Dumas at 703-838-1703.