



[9110-05-P]

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1548

[Docket No. TSA-2020-0001]

Air Cargo Security Options to Mitigate Costs of Compliance with International Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: Request for information (RFI).

SUMMARY: The Transportation Security Administration (TSA) requests information from the public, specifically the air cargo industry (including manufacturers, shippers, suppliers, warehouses, e-commerce fulfillment centers, third-party logistics providers, and air carriers) relating to compliance with international security standards for the transport of air cargo by commercial aircraft operators. Effective June 30, 2021, international standards require that all international air cargo carried by commercial aircraft operators (passenger and all-cargo) be either screened or be received from another TSA-regulated entity that has applied security controls and/or screened the cargo. TSA is seeking information regarding options to reduce the burden on U.S. and foreign all-cargo aircraft operators in complying with the international standard, such as security controls implemented throughout the supply chain that provide a level of security commensurate with the screening of cargo before transport. Because TSA does not expect these standards to require changes to current procedures for cargo transported on passenger aircraft, this RFI is focused only on all-cargo operations.

DATES: Submit comments by [90 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system. To avoid duplication, please use only one of the following methods:

- *Electronic Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.
- *Hand Delivery/Courier:* At the same location as the mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 1-800-647-5527.
- *Fax:* (202) 493-2251.

See the "Public Participation" portion of the **SUPPLEMENTARY**

INFORMATION section for format and other information about comment submissions.

FOR FURTHER INFORMATION, CONTACT: John Beckius, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6028 telephone (571) 227-5411; e-mail john.beckius@tsa.dhs.gov.

SUPPLEMENTARY INFORMATION:

Public Participation

TSA invites interested persons to participate in this action by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from any security program relating to this request. See the **ADDRESSES** section above for information on where to submit comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

With each comment, please identify the docket number at the beginning of your comment, reference a specific portion of the requested information, explain the reason for any recommended change, and include supporting data. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material electronically, in person, by mail, or fax as provided under the **ADDRESSES** section, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments to our docket address, as well as items sent to the address or email under the **FOR FURTHER INFORMATION CONTACT** section, in

the public docket, except for comments containing confidential information and sensitive security information (SSI).¹ Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual submits a request to examine or copy information that is not in the public docket, TSA will treat it as any

¹ “Sensitive Security Information” or “SSI” is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

other request under the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Department of Homeland Security's (DHS) FOIA regulation found in 6 CFR part 5.

Privacy Act

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the *Federal Register* on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

Reviewing Docket Comments and Documents

You may review TSA's electronic public docket material on the Internet at <http://www.regulations.gov>. In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review items in TSA's public docket, you may visit this facility between 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding Federal holidays, or call 1-800-647-5527. This docket operations facility is located in the West Building Ground Floor, Room W12-140 at 1200 New Jersey Avenue, SE, Washington, DC 20590.

Availability of Document

You can get an electronic copy of published documents through the internet by--

(1) Searching the electronic Federal Docket Management System (FDMS) web page at <http://www.regulations.gov>; or

(2) Accessing the Government Publishing Office's web page at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> to view the daily

published *Federal Register* edition; or accessing the “Search the Federal Register by Citation” in the “Related Resources” column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

I. Background

A. International Civil Aviation Organization (ICAO) Security Standards

The Convention on International Civil Aviation, also known as the Chicago Convention, established the International Civil Aviation Organization (ICAO), a specialized agency of the United Nations Economic and Social Council (ECOSOC), charged with coordinating international air travel. ICAO’s core mandate is to help member states achieve consensus on international civil aviation regulations, standards, procedures, and practices. Under the terms of the Chicago Convention, member states collaborate to implement and comply with ICAO security standards and recommended practices, and must send official notice to ICAO whenever their domestic regulatory framework differs from an established ICAO standard. Since its establishment, ICAO has issued more than 12,000 international standards and recommended practices (SARPs).

Annex 17 of the Chicago Convention provides standards and SARPs concerned with the security of international air transport and is regularly amended to address evolving threats. Chapter 4.6 of Annex 17 (ICAO 4.6) includes security standards related

to cargo and mail for safeguarding international civil aviation, especially to identify and/or detect the presence of concealed explosive devices or prevent the introduction of concealed explosive devices.

In March 2013, ICAO revised the air cargo security standard in ICAO 4.6 to remove the distinction between cargo transported on passenger aircraft and cargo transported on all-cargo aircraft, *i.e.*, the same security controls must be applied regardless of the commercial aircraft used for international transport of cargo.² On September 1, 2016, the ICAO Secretariat notified ICAO member states that they should phase out elements of their air cargo security frameworks that are inconsistent with the ICAO framework in the revised ICAO 4.6³ no later than June 30, 2021.

The ICAO Secretariat identified three options for Chicago Convention member states to meet the requirements of revised ICAO 4.6 applicable to the international shipment of cargo:

1. Subject all cargo to 100 percent screening before loading on a commercial aircraft.

² The following provide the pertinent revised security standards in the revised ICAO 4.6 include:

- Standard 4.6.1: Each Contracting State shall ensure that appropriate security controls, including screening where practicable, are applied to cargo and mail, prior to their being loaded onto an aircraft engaged in commercial air transport operations.
- Standard 4.6.2: Each Contracting State shall establish a supply chain process, which includes the approval of regulated agents and/or known consignors, if such entities are involved in implementing screening or other security controls of cargo and mail.
- Standard 4.6.5: Each Contracting State shall ensure that operators do not accept cargo or mail for carriage on an aircraft engaged in commercial air transport operations unless the application of screening or other security controls is confirmed and accounted for by a regulated agent, or an entity that is approved by an appropriate authority. Cargo and mail which cannot be confirmed and accounted for by a regulated agent or an entity that is approved by an appropriate authority shall be subjected to screening.

³ The ICAO air cargo security framework recognize six “pillars” of supply chain security: facility security, personnel security, training, screening, chain of custody, and oversight and compliance.

2. Establish a Known Consignor program, for entities that originate cargo and have procedures that meet common security rules and standards sufficient to allow the carriage of cargo or mail on any aircraft.

3. Establish an alternative framework recognizing an entity other than a Regulated Agent (agent, freight forwarder or other entity conducting business with an operator) or Known Consignor that applies security controls to cargo or mail sufficient to allow its carriage on any commercial aircraft.⁴

In sum, member states must ensure that all international air cargo transported on commercial aircraft is either (1) screened to a level intended to identify and/or detect the presence of concealed explosive devices or (2) under appropriate security controls throughout the cargo supply chain to prevent the introduction of concealed explosive devices.

B. United States Compliance with ICAO 4.6

As previously noted, member states of the Chicago Convention must either ensure that all international air cargo is (1) screened to a level intended to identify and/or detect the presence of concealed explosive devices which may be used to commit an act of unlawful interference before being transported in an aircraft or (2) subject to appropriate security controls throughout the cargo supply chain to prevent the introduction of concealed explosive devices (*i.e.*, a *secure* supply chain). Under 49 U.S.C. § 114(f)(10), TSA is also required to ensure the adequacy of security measures for the transportation of cargo.

⁴ For example, manufacturers, shippers, etc., that implement sufficient security controls to allow transport of cargo on any commercial aircraft.

U.S. requirements consistent with ICAO 4.6 already are in place for cargo transported by aircraft operators and foreign air carriers engaged in commercial passenger transportation,⁵ because U.S. law already requires 100 percent of cargo loaded aboard commercial passenger aircraft to be screened.⁶ To provide additional means of compliance with the requirements for cargo transported on passenger aircraft, TSA developed the Certified Cargo Screening Program (CCSP), *see* 49 CFR part 1549, and also approves technologies that can be used to screen cargo.

Through this notice, TSA is seeking options to similarly mitigate the burden of applying additional security requirements consistent with ICAO 4.6 as applied to all-cargo aircraft. ICAO suggests that one solution to increase supply chain security capacity is for member states to recognize “other entities” who demonstrate a system of government approved security controls sufficient to prevent the introduction of concealed explosives into the air cargo supply chain.⁷ Under the ICAO framework, such a government-approved entity may introduce cargo into the secured supply chain without screening if the entity has implemented appropriate security controls at all times while the cargo is in its custody.

TSA is considering whether the option of relying on other security controls, consistent with the ICAO framework and providing a commensurate level of security,

⁵ TSA’s regulations require certain commercial aircraft operators and foreign carriers to operate under a TSA approved or accepted security program. TSA provides standard, or pre-approved programs, that covered aircraft operators and foreign air carriers may adopt to expedite the review process and reduce the burden for regulated parties. There are separate security programs that reflect differences among the industry, e.g., passenger or cargo and U.S. or foreign-based. TSA also has standard programs for operations that support the aviation industry, such as Indirect Air Carriers and Certified Cargo Screening Facilities. TSA’s current security programs for cargo transported on passenger aircraft include measures that meet the Chicago Convention’s standards.

⁶ 49 U.S.C. § 44901(g).

⁷ *See supra* n. 2.

could be applied to entities not currently regulated by TSA in order to meet TSA and ICAO security standards. Such a program could enable manufacturers, warehouse operators, or other shipping or logistics services providers to be recognized by TSA as having a system of security controls that are sufficient to allow them to introduce cargo into the secure supply chain for all-cargo aircraft, without a need for screening.⁸

This regulatory framework would align conceptually with TSA's Certified Cargo Screening Standard Security Program (CCSSSP), under which certain types of shippers operate.⁹ By complying with the security controls required of a shipper Certified Cargo Screening Facility (shipper CCSF) under the CCSSSP, cargo may be transported on passenger aircraft without the type of screening generally required for cargo on passenger aircraft because the security controls applied by the shipper CCSF have been determined by the TSA Administrator to provide a commensurate level of security with the standards established in 49 U.S.C. § 44901.

II. Request for Information

A. General

Information provided in response to this notice will be used to inform the possible development of a new regulation, order, or security program to allow the transport of air cargo on all-cargo aircraft without additional screening based on the TSA-recognized security controls implemented by other entities, such as manufacturers and shippers. To support this effort, TSA is specifically seeking public comment relating to the operational

⁸ This option would not be available to passenger aircraft. Cargo tendered for transport on passenger aircraft would still be subject to screening before loading in order to meet the screening requirement in 49 U.S.C. § 44901 and TSA's implementing regulations and programs.

⁹ Generally referred to as "shipper CCSFs," these shippers operate as Certified Cargo Screening Facilities pursuant to 49 CFR part 1549.

concerns, costs, and benefits of such a program, if it were to be implemented. TSA will use the results of this RFI, in part, to determine whether such program would be of value to U.S. businesses and taxpayers.

TSA's existing regulatory structure permits TSA to impose a 100 percent screening requirement for all-cargo aircraft through revision of TSA's standard security programs.¹⁰ TSA acknowledges that a 100 percent screening requirement will increase the cost of transporting air cargo and therefore seeks to identify less costly alternatives. Any alternatives to 100 percent screening would need to be consistent with the ICAO framework and provide a level of security commensurate with TSA's screening requirements in terms of their effectiveness in identifying and preventing threats to transportation security.

Before developing such an option, TSA seeks comments on the broad areas outlined within this RFI and the approaches TSA can take to integrate existing requirements to meet the ICAO security standards in a manner that maximizes security benefits without imposing excessive, unjustified, or unnecessary costs.

Commenters are asked to provide as much information or data on the potential costs to meet the revised air cargo security standards in ICAO 4.6. In some areas, very specific information is requested. Whenever possible, please provide citations and copies of any relevant studies or reports on which you rely, as well as any additional data which supports your comment. Explaining the basis and reasoning underlying your comment will also increase the relevancy of the information as TSA determines what, if any, options are feasible to industry, government, and the public to meet the revised ICAO

¹⁰ See 49 CFR §§ 1544.205 and 1546.205.

standards. While specific cost information or data is preferable, general information may also be helpful.

While complete answers are preferable, TSA recognizes that providing detailed comments on every question could be burdensome. TSA also does not expect that every commenter will be able to answer every question. Any information is appreciated and will be considered, regardless of whether it is a complete response.

TSA encourages responses from all interested entities, not just the air transportation sectors to which any new regulation, order, or security program would apply. TSA also requests that each comment filed by a party or their representatives, explain their interest in this request, or the association/industry they represent, and how their comments may assist TSA.

B. Specific Requests

Please refer to the number of the specific question(s) when responding.

1. Please comment on the existing combinations of security procedures in place in the warehousing, shipping, and other ground-based portions of the air cargo shipping industry, given the ICAO framework of physical security, personnel security, chain of custody, employee training, and oversight and compliance described above.

2. Please comment on any existing security procedures, for example, quality controls, theft prevention measures, or employee training programs in place in the warehousing, shipping, and other ground-based portions of the air cargo shipping industry that could be adapted to meet any of the areas of the ICAO security control framework in a cost effective manner. Please also explain how these procedures could be adapted, and how TSA could assess and approve them.

3. Please also comment on any additional security procedures, investments, or other actions that would be required for your business to establish a system of security controls that would meet the ICAO security control framework described above. Of those additional procedures, please comment on which procedures would be most expensive and least expensive to implement and maintain, and please explain why.

4. Please comment on whether warehouses, e-commerce fulfillment centers, third-party logistics providers, or other owners or operators of facilities that process cargo for air transport have an economic incentive to seek TSA recognition of their security controls, rather than pay the costs associated with 100 percent screening of their air cargo shipments by another party.

5. Assuming that TSA develops an air cargo regulatory program for manufacturers, warehouses, third-party logistics providers, or others consistent with the ICAO security framework described above, please comment on how the program could reduce costs, and how much the costs could be reduced.

6. Assuming that TSA develops a regulatory or program framework for the secure warehousing, processing, packing, and tendering for shipment of air cargo consistent with the ICAO standard described above, please comment on the economic data, metrics, calculations, or procedures that TSA should consider when evaluating the costs and benefits of such a framework. Please also identify any relevant publicly available datasets or other information that may inform TSA's decisions.

7. Assuming that TSA implements a new regulatory or standard security program consistent with the ICAO standard described above, please comment on the likely operational implications of such a program for your business practices, including but not

limited to any future audits, control standards, account databases, or training requirements that may be required. Please also comment on any potential solutions TSA should consider.

8. Please comment on any new technologies in use or under development that may be relevant to the future secure transport of air cargo, and how those technologies could be used to establish an air cargo security framework consistent with the ICAO standards for security controls described above.

9. Please comment on whether an industry day or other industry specific forum focused on the ICAO standard described above could be useful, and please comment on any specific agenda that should be addressed.

Dated: March 30, 2020.

David P. Pekoske,
Administrator.

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