

Client Bulletin

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TSA Implements Screening Program for Cargo Carried on Passenger Flights

Since 2002, the Transportation Security Administration (TSA) has implemented a multilayered, risk-based system for securing cargo transported on passenger aircraft. Currently, domestic and foreign air carriers must ensure that cargo transported on passenger aircraft is screened or inspected as set forth in their TSA-approved security programs. *See* 49 CFR 1544.205, 1546.205.

In 2007, Congress passed the Implementing Recommendations of the 9/11 Commission Act (9/11 Act). The Act provides that the system used to screen cargo on passenger aircraft shall provide a level of security “commensurate with the level of security for the screening of passenger checked baggage.” In a staged implementation, the Act requires that by February 3, 2009, carriers screen 50% of cargo being transported on passenger aircraft and by August 3, 2010, carriers screen all cargo being transported on passenger aircraft. *See* 49 U.S.C. § 44901(g)(1).

In accordance with the provisions of the 9/11 Act, the TSA published an Interim Final Rule on September 16, 2009 (which will become a Final Rule, effective November 16, 2009) to implement the Certified Cargo Screening Program (CCSP) – the system TSA will use to fulfill the air cargo security requirements mandated by the 9/11 Act. *See* IFR Doc. 2009-21794 (Sept. 15, 2009).

Who is Affected by this New Rule?

Assuming that the Interim Final Rule will become final without significant amendment, the new Rule will govern U.S. and foreign air carriers with scheduled or public charter

operations with an aircraft having a passenger seating configuration of 61 or more seats, and those operating smaller aircraft when passengers are enplaned from or deplaned into a sterile area.

The Rule only applies to cargo loaded in the United States. Domestic and foreign air carriers that load cargo in other countries inbound to the United States must carry out security measures set forth in their TSA-approved security programs.

Finally, this Rule will not apply to U.S. or foreign all-cargo operations and will not cover general aviation operations.

Who Can Screen Cargo Under the CCSP?

TSA recognized that implementing a program that ensures the screening of all cargo carried on passenger aircraft could substantially impact the flow of commerce given that there is approximately 12 million pounds of cargo transported daily on passenger aircraft in the United States. Accordingly, under the CCSP one of three entities may perform the screening of cargo loaded on passenger aircraft: the aircraft operator, a certified cargo screening facility (CCSF) or the TSA.

The Rule permits other entities in the air cargo supply chain, such as shippers, manufacturers, warehousing entities, distributors and third party logistic companies that are located in the United States, to apply to TSA to become CCSFs.

CCSFs will be required to implement a multi-layered security program that includes the vetting of key personnel and undergoing a TSA-conducted security threat assessment. TSA will charge a fee to conduct the security threat assessment – which will be announced in the Final Rule. TSA also will require CCSFs to submit to a recertification assessment of their security programs every three years in order to

maintain good standing in the program. These recertification assessments will be performed by TSA-approved validators.

Conclusion

It is important for air carriers to determine how best to implement these new security requirements so not to impact future operations.

If you have any questions or would like further information concerning cargo security screening, please contact:



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