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#### List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Tolerances.

**Authority:** 21 U.S.C. 346(a).

Dated: June 7, 2002.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 02–15465 Filed 6–18–02; 8:45 am]

**BILLING CODE 6560–50–S**

## DEPARTMENT OF TRANSPORTATION

### Transportation Security Administration

#### 49 CFR Parts 1540 and 1544

[Docket No. TSA–2002–12394; Amendment Nos. 1540–2, 1544–2]

RIN 2110–AA05

#### Private Charter Security Rules

**AGENCY:** Transportation Security Administration (TSA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This rule amends the rules applying to private charter passenger aircraft to increase the level of security required in private charter operations. Aircraft operators using aircraft with a maximum certificated takeoff weight of 95,000 pounds or more, except a government charter, will now be required to ensure that individuals and their accessible property are screened before boarding. Given the current security risks, the potential for damage these larger aircraft can cause, and the need to protect areas that are designated as sterile, TSA believes it is now appropriate to require these operators to ensure that individuals and their accessible property are screened. Individuals are required to submit to screening prior to boarding a private charter aircraft under this rule.

**DATES:** This rule is effective August 19, 2002. Submit comments by July 19, 2002.

**ADDRESSES:** You may submit comments to this final rule to the DOT public docket through the Internet at <http://dms.dot.gov/>, docket number TSA–2002–12394. If you do not have access to the Internet, you may submit your comments by United States mail, to the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify your comments with Docket Number TSA–2002–12394, entitled “Amendment to Aircraft Operator Security Rules,” and provide three copies. You may also obtain a copy of the rule through the Internet, or request a copy through the mail at the addresses above.

You may also review the public docket in person in the Docket Office

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is on the plaza level of the Department of Transportation.

**FOR FURTHER INFORMATION CONTACT:** Lon Siro, Aviation Security Specialist, Transportation Security Administration, ACP-100, Department of Transportation, Washington, DC 20591, [lon.siro@faa.gov](mailto:lon.siro@faa.gov), 202-267-3413.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

This amendment is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; Feb. 26, 1979), however, provides that to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with TSA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

See **ADDRESSES** above for information on how to submit comments.

**Availability of Final Rule**

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last digits of the docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the docket summary information for the docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Government Printing Office's web page at [http://www.access.gpo.gov/su\\_docs/aces/aces140html](http://www.access.gpo.gov/su_docs/aces/aces140html).

In addition, copies are available by writing or calling the Transportation Security Administration's Air Carrier Division, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202-267-3413.

**Small Entity Inquiries**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT** for information. You can get further information regarding SBREFA on the Small Business Administration's web page at [http://www.sba.gov/advo/laws/law\\_lib.html](http://www.sba.gov/advo/laws/law_lib.html).

**Abbreviations and Terms Used In This Document**

ATSA—Aviation and Transportation Security Act.

SIDA—Security identification display areas.

TSA—Transportation Security Administration.

**Background**

The September 11, 2001, terrorist attacks involving four U.S. commercial aircraft that resulted in the tragic loss of life at the World Trade Center, the Pentagon, and southwest Pennsylvania, demonstrate the need for increased air transportation security measures. The terrorists responsible for the attacks retain the capability and willingness to conduct airline bombings, hijackings, and suicide attacks against American targets. The attempted bombing of a U.S. carrier on a flight from Paris on December 22, 2001, confirms the ongoing threat to Americans and American assets.

The events of September 11 led Congress to enact the Aviation and Transportation Security Act (ATSA), Public Law 107-71, November 19, 2001. ATSA required TSA to assume the aviation security responsibilities that the Federal Aviation Administration (FAA) maintained prior to September 11. On February 22, 2002, TSA published a final rule transferring the bulk of FAA's aviation security regulations to TSA and adding new standards required by ATSA. 67 FR 8340. Regulations concerning aircraft operator security, formally codified at 14 CFR part 108, are now codified at 49 CFR part 1544. Also on February 22, 2002, TSA published a rule that, in part, amended the requirement for private charter operators. It requires private charters that enplane from or deplane into a sterile area to conduct fingerprint-based criminal history record checks on their flightcrew members. 67 FR 8205. (The term 'flightcrew member' means a

pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time. See, 49 CFR 1540.5)

Subpart B of part 1544 sets forth the requirements operators must meet concerning the form, content and implementation of a security program. Operator security programs address screening individuals and property, qualifications and training for screeners, aircraft security, and a variety of other significant security-related measures. Section 1544.101 establishes requirements for the adoption and implementation of a security plan, and provides for different plan components depending on the type of aviation operation, volume of passengers, departure and arrival location, and type of aircraft.

Public charter is defined as any charter that is not a private charter. There are two types of private charters. (1) Private charters include any flight in which the charterer engages the total passenger capacity of the aircraft for carrying passengers, the passengers are invited by the charterer, the cost of the flight is borne entirely by the charterer, and the flight is not advertised to the public in any way, to solicit passengers. (2) Private charters include any flight for which the total passenger capacity of the aircraft is used for the purpose of civilian or military air movement, conducted under a contract with the U.S. government or a foreign government.

Since 1978, operators of public charters have been subject to the same security requirements as operators of aircraft in scheduled service. Private charters have operated under different requirements, however. With respect to private charters, the passengers choose to travel together. They may be related to one another in some way, such as being employed by the same company or on the same sports team, and so the risk that one passenger would endanger the others appeared to be low. However, in the current threat environment we must reevaluate whether such relationships among the passengers can be relied on to provide the level of security needed. As was plainly illustrated in the September 11 incidents, terrorists not only have the ability to blend into their environment and interact with others easily, they persistently seek out vulnerabilities in the system, and will travel in groups in order to accomplish their goals more efficiently. Moreover, in the wake of the September 11 terrorist acts, air travel was prohibited initially and resumed incrementally over time. As a result, flights to some locations became more difficult to find on a regular or frequent basis. More travelers began using the

charter industry to reach their destinations.

Therefore, TSA has determined that it is necessary to take additional measures to ensure that the passengers on the larger private charter aircraft do not have weapons, explosives, or incendiaries that would enable them to take over the aircraft and use it to do harm. The aircraft subject to this rule—those with a maximum certificated takeoff weight of 95,000 or more—are a size, and have a quantity of fuel, that could enable them to do great damage to targets on the ground. TSA believes the private charter operators should ensure that individuals and their accessible property are screened to reduce the risk that any individual could have a weapon, explosive, or incendiary device that would enable them to commandeer the aircraft and use it to destroy a target on the ground.

Many of the aircraft subject to this rule are used in scheduled passenger service one day and as a private charter the next. While in scheduled passenger service, the operator and crew conduct business in accordance with a full security program that requires screening individuals and their accessible property. TSA believes it is necessary to require these operators to ensure that all individuals on board and their accessible property are screened, regardless of whether they are in private charter, public charter, or scheduled service. Therefore, the amendment adds language to § 1544.101(f) to require operators of aircraft with a maximum certificated takeoff weight of 95,000 pounds or more to ensure that the individuals on board and their accessible property are screened prior to boarding.

This amendment does not apply to government charters because they can and do carry out procedures on a regular basis to address the security concerns at issue. The U.S. Department of Defense (DoD) and federal agencies use private charter operations to transport persons and property in furtherance of their government missions. The government agencies are responsible for ensuring the security of their personnel and the public on a daily basis, and have developed security measures unique to their needs. TSA sees no reason to apply the screening regime developed for commercial and civilian charter operations to the government. However, under the current rule, government charters must screen passengers when the charter deplanes or enplanes in sterile areas. This will minimize the risk that any weapon or other prohibited item the government personnel may be carrying could inadvertently or

purposefully be used to taint the sterile area.

Paragraph (f) establishes the required security program components for private charter operations. Pursuant to the existing language in § 1544.101(f), private charter operations that enplane or deplane into a sterile area must establish a program that includes acceptance and screening of individuals and accessible property (§§ 1544.201, 1544.207), use of metal detection devices (§ 1544.209), use of X-ray systems (§ 1544.211), security coordinators (§ 1544.215), law enforcement personnel (§ 1544.217), accessible weapons (§ 1544.219), criminal history records checks (§§ 1544.229, 1544.230), training for security coordinators and crewmembers (§ 1544.233), training for individuals with security-related duties (§ 1544.235), bomb or air piracy threats (§ 1544.303), security directives (§ 1544.305), and all of subpart E concerning screener qualifications when the aircraft operator performs screening. This rule amends § 1544.101(f) by now requiring private charter operators (other than government charters) using aircraft with a maximum certificated takeoff weight of 95,000 or more, regardless of whether they enplane or deplane in a sterile area, to comply with all of these sections.

This rule also adds to paragraph (f) the requirement that private charter operators that are subject to part 1544 must comply with § 1544.225, regarding the security of aircraft and facilities. For screening of individuals and accessible property to be effective, it is necessary for operators to ensure that the aircraft is free of weapons, explosives, and incendiaries before the individuals board. Private charter operators must have security measures in place to ensure the integrity of the aircraft.

This rule also requires individuals on private charter flights to submit to screening. For most screening of passengers under part 1544, the passenger is screened before entering a sterile area. The gate at which the passenger boards the aircraft is within the sterile area. Part 1540, which governs general rules for individuals and other persons, also establishes rules for screening. Subpart B contains rules that apply to many persons, including airport operators, airport tenants, aircraft operators, foreign air carriers, indirect carriers, employees of these entities, passengers, individuals at airports, and other individuals.

In order to make clear which individuals in an airport must comply with screening procedures, § 1540.107 requires all individuals who enter

sterile areas to submit to screening. For private charter screening under this amendment, however, there may be no sterile area. The passengers may be screened immediately before they board the aircraft. Accordingly, we are amending § 1540.107 to make clear that individuals on charter must submit to screening before boarding an aircraft. This amendment will also apply to other screening conducted just before individuals board, such as gate screening within sterile areas.

Similar changes are made to § 1540.111(a)(1), which provides that an individual may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property when screening has begun.

#### **Good Cause for Immediate Adoption**

This action is necessary to prevent a possible imminent hazard to aircraft, persons, and property within the United States. The events of September 11 illustrate the fact that terrorists have the will and ability to use large aircraft to destroy landmarks and kill thousands of people. The threat of more violence is apparent. Because the use of private charters has increased since September 11, the opportunity to commit a terrorist act with a large aircraft has increased and more people and ground targets may be at risk. The time needed to complete notice and comment procedures prior to issuing an enforceable standard lengthens the time this situation remains in place and expands the circle of risk. TSA has asked for comment with publication of this rule, and will consider all comments received shortly thereafter. If changes to the rule are necessary to address aviation security more effectively, or in a less burdensome but equally effective manner, TSA will not hesitate to make such changes. The Under Secretary of Transportation for Security believes that the circumstances described herein warrant immediate action, and finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

#### **Paperwork Reduction Act**

This rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). In accordance with the Paperwork Reduction Act, the paperwork burden associated with the rule will be submitted to the Office of Management and Budget (OMB) for review. As protection provided by the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it has been approved by the Office of Management and Budget.

*Need:* This rule requires operators using aircraft in private charter operations with a maximum certificated takeoff weight of 95,000 pounds or more to ensure that individuals and their accessible property are screened prior to boarding.

*Description of Respondents:* All new and existing operators using aircraft in private charter operations with a maximum certificated takeoff weight of 95,000 pounds or more.

*Burden:* TSA does not currently have concise data on which aircraft operators have aircraft in private charter operations with a certificated takeoff weight of 95,000 pounds or more. TSA estimates that there are approximately 25 operators currently operating under 14 CFR part 121 (Domestic, Flag, and Supplemental Operations) that currently have no program in place and so will have a new paperwork burden under this rule. In addition, TSA estimates that there are approximately 45 operators operating under 14 CFR part 121 with some portion of a security program with existing paperwork procedures in place now. Also, there are airlines using aircraft with a certificated takeoff weight of 95,000 pounds or more in charter service and in traditional commercial passenger service. These operators must currently do screening for commercial service, but will have an additional paperwork burden by now completing those screening activities for private charters. It is very difficult for TSA to determine what this new paperwork burden will be for these operators. Accordingly, TSA will calculate the paperwork burden using estimates assuming that 70 aircraft operators will be subject to this rule. Thus, these assumptions will overestimate the overall burden. In addition, TSA assumes no change in the number of aircraft operators over the next 10 years. Without this simplifying assumption, it would be impossible to estimate the total effects of these changes over the ten-year period.

Each air carrier subject to this rule will need to establish a program that provides for: screening individuals and accessible property; training all employees with security-related duties; training all security coordinators and crewmembers; acknowledging receipt of, and distributing Security Directives and Information Circulars; and preparing, maintaining, and

accommodating modifications to a security program. The total ten-year paperwork burden is approximately 6,820 hours at a cost of \$165,900. The annual burden totals approximately 560 hours at a cost of \$11,200.

TSA anticipates that the regulated entities will have to purchase no additional equipment.

#### **Economic Analyses**

This rulemaking has been reviewed by the Office of Management and Budget. It is significant within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. When a rulemaking action does not include publication of a notice of proposed rulemaking, as is the case in this proceeding, economic assessments are not required for the final rule. TSA recognizes that this rule may impose costs on some affected operators. These costs will stem from developing and implementing screening procedures and other security measures. However, given the current security threat, TSA believes it is necessary to require these enhanced security measures. TSA will assess the costs and benefits of the rule as soon as possible and include the analysis in the docket of this matter.

#### **Executive Order 13132, Federalism**

TSA has examined this rule under the principles and criteria of Executive Order 13132, Federalism. TSA has determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, this final rule does not have federalism implications.

#### **Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The TSA has assessed the potential effect of this amendment and has determined that it

will impose the same costs on domestic and international entities and thus has a neutral trade impact.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995 is intended to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement that assesses the effect of any Federal mandate found in a rulemaking action that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local and tribal governments, in the aggregate, or by the private sector. Such a mandate is identified as a "significant regulatory action."

The Act does not apply to a regulatory action in which no notice of proposed rulemaking is published, as is the case in this proceeding. Accordingly, TSA has not prepared a statement under the Act.

#### **Environmental Analysis**

TSA has reviewed this action for purposes of the National Environmental Review Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined that this action will not have a significant effect on the human environment.

#### **Energy Impact**

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

#### **List of Subjects**

*49 CFR Part 1540*

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

*49 CFR Part 1544*

Air carriers, Aircraft, Aviation safety, Freight forwarders, Reporting and recordkeeping requirements, Security measures.

#### **The Amendments**

For the reasons stated in the preamble, the Transportation Security Administration amends 49 CFR chapter XII as follows:

**PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES**

1. The authority citation for part 1540 continues to read as follows:

**Authority:** 49 U.S.C 114, 5102, 40119, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

2. Section 1540.107 is revised to read as follows:

**§ 1540.107 Submission to screening and inspection.**

No individual may enter a sterile area or board an aircraft without submitting to the screening and inspection of his or her person and accessible property in accordance with the procedures being applied to control access to that area or aircraft under this subchapter.

3. In § 1540.111, paragraph (a) introductory text is republished and paragraph (a)(1) is revised to read as follows:

**§ 1540.111 Carriage of weapons, explosives, and incendiaries by individuals.**

(a) *On an individual's person or accessible property—prohibitions.* Except as provided in paragraph (b) of this section, an individual may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter;

\* \* \* \* \*

**PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS**

4. The authority citation for part 1544 continues to read as follows:

**Authority:** 49 U.S.C 114, 5103, 40119, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

5. Section 1544.101(f) is revised to read as follows:

**§ 1544.101 Adoption and implementation.**

\* \* \* \* \*

(f) *Private charter program.* (1) In addition to paragraph (d) of this section, if applicable, each aircraft operator must carry out §§ 1544.201, 1544.207, 1544.209, 1544.211, 1544.215, 1544.217, 1544.219, 1544.225, 1544.229, 1544.230, 1544.233, 1544.235, 1544.303, and 1544.305, and subpart E of this part and must adopt and carry out a security program that meets the applicable requirements of § 1544.103 for each

private charter passenger operation in which—

(i) The passengers are enplaned from or deplaned into a sterile area; or

(ii) The aircraft has a maximum certificated takeoff weight of 95,000 pounds or more, and is not a government charter under paragraph (2) of the definition of private charter in § 1540.5 of this chapter.

(2) The Under Secretary may authorize alternate procedures under paragraph (f)(1) of this section as appropriate.

\* \* \* \* \*

Issued in Washington, DC, on June 12, 2002.

**John W. Magaw,**  
*Under Secretary.*

[FR Doc. 02–15490 Filed 6–18–02; 8:45 am]

**BILLING CODE 4910–62–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 011218304–1304–01; I.D. 061402B]

**Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the yellowfin sole fishery category.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), June 15, 2002, until 1200 hrs, A.l.t., June 30, 2002.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens

Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the 2002 halibut bycatch allowance specified for the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(1), is 49 metric tons (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the third seasonal apportionment of the 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the third seasonal apportionment of the halibut bycatch allowance for yellowfin sole fishery category in the BSAI constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B). These procedures are unnecessary and contrary to the public interest because the need to implement these measures in a timely fashion to avoid exceeding the third seasonal apportionment of the halibut bycatch allowance for yellowfin sole fishery category in the BSAI constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d)(3), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 14, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,*  
*National Marine Fisheries Service.*

[FR Doc. 02–15463 Filed 6–14–02; 3:18 pm]

**BILLING CODE 3510–22–S**