

an exemptions program administered by RSPA.

TSA, FAA, and RSPA regulations govern the safety and security of hazardous materials, including explosives, transported by aircraft. Following creation of TSA, DOT transferred to TSA a series of security regulations that had been issued and enforced by FAA prior to September 11, 2001. In addition, these security regulations were amended to address new statutory requirements in ATSA. See 49 CFR parts 1500, 1520, 1540, 1542, 1544, and 1546. Following this transfer of authority, TSA promulgated a number of additional security regulations concerning background checks on individuals in the aviation industry and procedures to enhance the security of airports and air carrier operations.

TSA requires all operators of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to adhere to a security program that includes a fingerprint-based criminal history record checks (CHRC) for all flight crewmembers. Any person who has been convicted of certain felonies and serious misdemeanors within the last 10 years is not permitted to operate the aircraft. These disqualifying offenses are consistent with those that would disqualify a person from holding a hazardous materials endorsement to a CDL under the USA PATRIOT Act implementing regulations.

In addition, the aircraft operator must develop procedures to restrict access to the cockpit during flights and to secure the aircraft from unauthorized entry while on the ground. As well, the operator must develop procedures to handle bomb and air piracy threats and must train security coordinators to oversee all ground activities.

In addition, certain air cargo entities operate under a Domestic Security Integrated Program (DSIP), which provides that all individuals with unescorted access to secured areas undergo a CHRC. Any individual with a conviction in the preceding 10 years for a disqualifying offense listed in 49 CFR 1544.229 is not permitted access to secured areas. Under the DSIP, the cargo carrier must complete a background check of the previous five years for any individual with access to controlled areas of the airport that have not been deemed security identification display areas. Further, the cargo operator must develop procedures that provide for personnel identification display areas and to address bomb or hijack threat information. The cargo carriers operating under a DSIP must provide security training to all employees and

are subject to Security Directives issued by TSA.

TSA also requires CHRCs for passenger and baggage screeners; employees and contractors with access to secured areas, including baggage and cargo handlers; and supervisors. See 49 CFR 1542.209 and 1544.229–230. In addition, the airport must provide an escort for individuals in secured areas who have not completed a CHRC.

Aviation workers in safety sensitive service are subject to alcohol and drug regulations issued and enforced by FAA. See Appendices I and J to 14 CFR part 121. These regulations require random, probable cause, and post-accident drug and alcohol testing to ensure that employees in safety-sensitive service are not drug users or working under the influence of alcohol. Also, FAA's regulations require medical examinations periodically for all flight crewmembers to ensure that there are no physical or emotional limitations that may cause safety or security threats to aviation operations. See 14 CFR part 67.

There are also a variety of security measures in place affecting the transportation of explosives into the United States by aliens on aircraft. With respect to commercial passenger flights to the United States, TSA regulates foreign commercial passenger carriers under 49 CFR part 1546. Among other requirements, part 1546 requires foreign air carriers to adopt and implement a security program approved by TSA. Foreign air carriers must compare the names of all direct air carrier employees against various watch lists. In certain cases, the carrier is not permitted to allow the employee to have unescorted access to secured areas of the airport. The carrier must immediately notify the nearest field office of the FBI if an employee is an individual known to pose a security threat.

Certain foreign air carriers from countries of particular concern also operate under special security program procedures, which require the carrier to provide TSA advance notice of the identities of cockpit crewmembers. This includes pilots, copilots, flight engineers, and airline management personnel, as well as any relief or deadheading cockpit crew. The carrier must provide a variety of identifying information for each individual. If an individual is known to pose a security threat, the carrier is not permitted to allow the individual to operate on a flight into or out of the United States.

Also, under special security program procedures, foreign air carriers are required to examine the identification of all operational crewmembers and verify their assignment on each flight

departing to the United States. If the foreign air carrier cannot verify the identity and flight assignment of a crewmember, the carrier must deny boarding and notify appropriate authorities.

FAA and TSA also regulate flights to the United States by various other commercial and private aircraft operators pursuant to a complex set of requirements set forth in a Notice to Airmen (NOTAM). Under this NOTAM, the operators must submit identifying information on flight crewmembers and passengers in advance of arrival in the United States, so that TSA can conduct background checks. In addition, TSA has the authority to issue Security Directives (SDs) to air carriers and airport operators, which have the force and effect of a regulation and may require certain actions or procedures immediately. For example, TSA has issued SDs to require background checks on individuals with unescorted access to certain secured areas of airports, special screening procedures to address individuals who may present a security threat at an airport, and a variety of new operational procedures that are triggered when the national security alert system level increases.

In addition to these regulations, NOTAMs, and SDs, TSA requires air carriers and airport operators to comply with a detailed Security Program designed to address the security risks associated with the type of operation. See 49 CFR 1542.103, and 1544.101. There are standard Security Programs for air carriers in scheduled passenger service, public charters, private charters, cargo operations, and small aircraft in commercial service. The Programs are tailored to the security concerns attendant to each type of operation based on the size of aircraft, the number and nature of the passengers, the degree to which aircraft enplane or deplane into secured areas of an airport, and a variety of other factors. Commercial airports that TSA has determined require formal Security Programs are also required to adopt a TSA-approved Security Program that must address background checks and identification for individuals with access to secured areas of the airport and aircraft, access control procedures, measures to control movement within secured areas, and escort procedures for vendors who are not subject to background checks.

Finally, TSA plans to issue strengthened cargo security program requirements for passenger carriers, Indirect Air Carriers (freight forwarders) and all-cargo air carriers by October 2003 that will address additional measures to ensure the security of cargo