BEFORE THE
TRANSPORTATION SECURITY ADMINISTRATION
ARLINGTON, VIRGINIA

Air Cargo Security Options To Mitigate Costs of Compliance With International Security Requirements

Docket No. TSA-2020-0001

COMMENTS OF THE CARGO AIRLINE ASSOCIATION

Introduction:

By publication in the April 10, 2020, edition of the Federal Register (85 Fed. Reg. 20234 et seq.), the Transportation Security Administration (TSA) issued a Request for Information (RFI) asking for public comment on potential options for complying with standards for international security established by the International Civil Aviation Organization (ICAO).[1]

The Cargo Airline Association (the Association) is the nationwide organization representing the interests of all-cargo air carriers, as well as other participants in the air cargo supply chain.[2] The Association and its members strongly support TSA's intention to provide an alternative or alternatives to 100% screening to comply with the applicable ICAO standards. The conceptual program outlined in the RFI is one method of achieving this goal and we pledge to work with TSA to provide the information that will allow TSA to move forward with its

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[1] These Comments were originally due to be filed on or before July 9, 2020. However, by publication in the June 24, 2020, edition of the Federal Register (85 Fed. Reg. 37958 et seq.), TSA scheduled a public meeting for July 29, 2020, to discuss the concepts set forth in the RFI and postponed the due date for Comments until August 27, 2020.

[2] Association members include ABX Air, Amazon, Atlas Air, DHL Express, FedEx Express, Kalitta Air and United Parcel Service. Many of these members will be filing individual comments herein.

concepts. Simply stated, air cargo deemed "secure" because of controls applied in the air cargo supply chain should be exempt from 100% screening by the all-cargo air carriers. In addition, we submit that other risk-based, outcome-focused, security measures can accomplish the same or greater levels of security and should also be part of any alternative frameworks.

The Association submits the following comments in support of these thoughts, as well as answers to the specific questions posed by TSA.

The Security Context:

On September 1, 2016, ICAO notified member states that they should phase out elements of their air cargo security programs that are inconsistent with ICAO Standard 4.6 no later than June 30, 2021.[3] As a practical matter, in the United States this notification means that the existing Account Consignor program for export freight would need to be eliminated for the U.S. to meet the new ICAO standards. At the same time, this new ICAO standard does *not* necessarily mean that 100% of all freight outbound from the United States must be physically screened. On the contrary, ICAO itself sets forth three alternatives to achieve compliance:

- Subject all cargo to 100% screening before loading on a commercial aircraft; *or*
- Establish a Known Consignor program for entities that meet certain security standards; *or*

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[3] On April 22, 2020, the Association, along with Airlines for America (A4A) and the National Air Carrier Association (NACA) filed a request for TSA to delay implementation of this standard in the United States until June 30, 2022. This request was formally denied by letter from John Beckius dated August 5, 2020. ICAO denied a similar request proposed by the Global Express Association (GEA). These requests were based primarily on the time lost due to the chaotic aviation environment caused by the coronavirus pandemic, a situation that continues unabated today. In addition, since the filing of this extension request, TSA has postponed the due date for Comments herein by approximately seven weeks, making it extremely difficult for TSA to finalize, and industry to implement, the required alternative framework in time to meet the June 30, 2021, deadline.

- Establish an alternative framework recognizing an entity other than a Regulated Agent or Known Consignor that applies appropriate security controls sufficient to allow carriage on any commercial aircraft.

The RFI issued by the TSA solicits comments on how to establish a program that is consistent with these ICAO standards.

The Association submits that rigid application of a 100% screening standard in an effort to meet the ICAO standards on the Account Consignor elimination would *not* be in the public interest and indeed runs counter to the risk-based, outcome focused, regime consistently promoted by TSA. At the same time, we recognize and support efforts to enhance the security of cargo outbound from the United States and therefore we are submitting the following thoughts on a way forward that would meet the intent of the ICAO standard without unnecessarily disrupting the movement of export cargo while adding excessive security costs with little to no benefit.

First, it is necessary to remember that ICAO is not a regulatory body, but rather sets international standards. It is up to each individual country, not ICAO, to determine whether the security enhancements expected by ICAO standards have been met by new requirements. TSA has continually maintained that risk-based and threat informed, not merely prescriptive, measures must form the basis of U.S. security requirements. Simply requiring 100% screening of all export freight does not meet these established criteria.

By way of analogy, a related issue is the recently adopted ICAO standard that would require 100% screening of all airport workers when they enter a secure area. TSA's Aviation Security Advisory Committee (ASAC) has repeatedly

recommended that 100% airport worker screening is not only impractical, but it is also less secure than a 100% screening regime. In that case, TSA formally has taken a difference with the ICAO standard noting that "[t]he United States utilizes a flexible, multi-layered approach to non-passenger screening and items carried to achieve, by other means, the same objective of Standard 4.2.5."[4] While the U.S. did not take a difference to the Account Consignor standard, the same thought process should be applicable here. Put somewhat differently, TSA should apply the same risk-based standard to the Account Consignor issue that they are in the process of applying in the employee screening area. That would require an alternate framework, either that envisioned by the current RFI or another program that provides an equivalent level of security.

The reality is that 100% screening of "account consignor" cargo is simply not attainable in some cargo environments nor should it be necessary from a risk-based, outcome focused, security approach. For example, some cargo cannot be screened by any existing methods (technology or canine), and other shipments including some pharmaceuticals, hazardous materials, perishable food goods, live animals or items shipped in steel drums or other configurations with no room for air change are problematic. Similarly, packages below a certain size and/or weight are incapable of containing dangerous explosive devices. Provisions must be made to accommodate such cargo without screening. Significantly, ICAO appears to have recognized issues of this type in Standard 4.6.1 that states:

> Each Contracting State shall ensure that appropriate security controls, including screening, **where practicable**, are applied to cargo and mail, prior

[4] Notification to ICAO dated June 10, 2020, signed by Assistant Administrator Eddie D. Mayenschein.

to their loading onto an aircraft engaged in commercial air transport operations. (Emphasis added).

In addition, even where physical screening may be "practicable", it may not be the best method of providing the required security while, at the same time, supporting the required movement of cargo around the world. An example of this would be single entity charters, where the shipper has contracted all of the capacity of the aircraft, has been vetted, has established a business account with the carrier and has paid substantial fees in advance or established a letter of credit for the cost of the flight.

TSA has recognized these facts by issuing the instant RFI calling for comments on an "alternative framework" consistent with the ICAO standard. While, as noted herein, the Association supports the concept set forth in the RFI and urges TSA to move forward expeditiously with its concepts, we also strongly urge TSA to provide other ways to accomplish the required security goals

The Association Proposal:

In addition to the establishment of a new TSA regulated party that would be exempt from a 100% screening requirement, the Association submits that the following structure should also be adopted as an alternative.[5] This proposed program is risk-based, outcome focused, and contains the necessary government oversight. It would require each regulated party to submit its individual proposed program to TSA for approval before implementation. Program elements would have

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[5] To be clear, the Association is proposing the following program, not as a substitute for the program envisioned by TSA in its RFI, but rather as an alternative that would exist side-by-side with the TSA proposal. As a practical matter, the universe of potential users of these systems is large and diverse, and no one size will fit all.

to include membership in the CBP C-TPAT program plus additional security enhancements.

DHS has long recognized C-TPAT as a premier program for supply chain security. The C-TPAT validation checklist includes nine measures for ensuring the security and integrity of the cargo to include: Risk Assessments, Business Partners, Conveyance Security Inspection, Physical Access Controls, Physical Security, Personnel Security, Procedural Security, Security Awareness Training, and Information Technology. This CBP-sponsored oversight is fully consistent with the ICAO requirement that any alternative framework allows for government supervision.

The nine measures detailed above are directly aligned with ICAO Aviation Security Manual (ASM), Document 8973/9, Chapter 13.5, Pillars of Supply Chain Security". As stated in the ICAO ASM 13.5.1.2, "In establishing a secure supply chain programme, specific security controls should be applied in line with the following six pillars: (a) facility security, (b) personnel security, (c) training, (d) screening, (e) chain of custody, and (f) oversight and compliance".[6]

This CBP-sponsored oversight is fully consistent with the ICAO requirement that any alternative framework contain a measure of government supervision.[7] Compliance by individual companies with the C-TPAT standards can be overseen by

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[6] Further details of the C-TPAT program, especially as it pertains to exporters, can be found on the CBP website.
[7] It is important to point out that *government* oversight does not necessarily mean *TSA* oversight. The C-PAT program established by CBP, a sister agency to TSA, would be sufficient.

CBP, TSA or a combination of both. [8] This existing program can and should form the basis, but not the entirety, of a TSA alternative "alternative framework".   There is no reason to ignore a program already in existence that provides both internal company security and government oversight.

Having said that, we believe that any alternate framework must also contain security protections over and above membership in the C-TPAT program. These additional elements, which would include an auditing function either by independent auditors or by the TSA, should include a detailed description of the business history between the carrier and the exporter as well as a measure of scalable random screening.[9] Because of the diverse nature of the air cargo industry, each carrier and entity adopting a new TSA program may require different methods of addressing these requirements and we propose that each such carrier and entity should have the option of developing their own individual program elements rather than having TSA provide a "one-size-fits-all" prescriptive rule.[10]

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[8] We understand that CBP is also currently in the process of exploring a "Secure Trade Lanes" concept within the context of its Commercial Operations Advisory Committee (COAC). At this point, we believe that this concept is totally distinct from the established C-TPAT program and we are not sure exactly what this program will eventually entail. However, we urge TSA (and CBP) to ensure that all security-related efforts are consistent and do not require industry stakeholders to comply with contradictory mandates. Such cooperation between TSA and CBP, both under the umbrella of the Department of Homeland Security, is essential to provide the most effective security regime.

[9] This proposed alternative framework presumes that the newly regulated entity will directly transfer its cargo to the direct air carrier. If, however, a third party is inserted between the newly regulated entity and the direct air carrier, provisions should be made to ensure that the chain of custody is not broken before the cargo is accepted by the carrier.

[10] The proposals herein are designed as short and medium term responses to the ICAO standard. In the longer term, we believe that a domestic form of the Air Cargo Advance Screening program (ACAS) should be explored.

Responses to the Specific RFI Questions:

As noted above, the Association fully supports the concept set forth in the RFI. Entities that can establish certain security protocols and agree to regulation by TSA should be able to have their cargo exported from the United States without the need to be screened. In order to assist TSA in the establishment of such a program, the Association submits the following responses to the questions asked[11]:

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.**

Both all-cargo carriers and many of their shipper customers already maintain numerous security measures for air cargo before that cargo ever reaches the aircraft. These measures can include employee Criminal History Record Checks (CHRC) and Security Threat Assessments (STA's); security monitoring of physical sites; IT measures; and tracking weights of packages that prevents introduction of explosives. In addition, in some systems whether a particular package will travel by air is unknown for most of the shipping path and not controllable by employees. Existing measures in place for loss prevention can also deter introduction of explosives; and physical security infrastructure and practices that incidentally or deliberately support air cargo security.

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[11] A number of the questions are more appropriately directed to the new proposed class of regulated parties, not the direct air carriers, but the Association will attempt to assist in the process by filing responses where able to do so.

Specifically with respect to the all-cargo carriers, there is an expansive layered approach to security that can be replicated by companies that are recognized and regulated as part of the alternative framework secure supply chain. These layers include:

- Physical and personnel security through strict access control at facilities, a robust and well-documented closed circuit TV (CCTV) apparatus, canine screening programs, and strict "ID or Challenge" protocols. Additionally, our members each have well-developed Insider Threat Programs, many of which are based on best practices developed by the Aviation Security Advisory Committee (ASAC).
- Chain of custody is one of the nine requirements of C-TPAT that are audited by the United States Government. To this end, any movement of cargo presented by C-TPAT members through the supply chain is validated as secure by CBP and more recently TSA.
- Employee training and continual learning is an integral part each of our members Corporate Security Manuals. Initial and recurrent security awareness training is mandatory for all of our employees and authorized representatives in accordance with applicable Security Programs.
- TSA will have the ability to audit security measures required by the alternate framework.

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.**

The all-cargo air carriers and, we believe, many of our customers, already have the procedures enumerated in Question #2 in place and can be adapted to

meet any new TSA alternative framework. Much like the existing third-party canine and Certified Cargo Screening Facility programs, TSA would be able to inspect and audit any approved procedures.

As noted above, the air cargo industry is extremely diverse, with many different operating models both among the all-cargo air carriers and the customers they serve. This diversity requires that TSA *not* impose a prescriptive, one-size-fits-all, solution in adopting an alternative framework but rather adopt a program that permits each regulated entity to file individual programs that meet the standards finally established by TSA.

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.**

Recognizing that a portion of export cargo will *not* be received by all-cargo air carriers from entities qualifying under a TSA alternative framework, the most expensive investments that will be required to comply with the ICAO standard are the various means of physically screening cargo. These necessary investments include security screening equipment and the use of third-party canines.[12] In analyzing the benefits of the rule TSA should bear in mind that scaling up air cargo

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[12] It is important to note the ability to obtain the necessary equipment and canines has been drastically hampered by the coronavirus pandemic. Moreover, even if this equipment were available in the near term, the "real estate" in which to install the equipment cannot be prepared in time to meet the current June 30, 2021, ICAO deadline.

facilities to accommodate 100 percent screening would be costly or impossible at some space-constrained locations.

From the perspective of the e-commerce companies that might avail themselves of any TSA alternative framework, we believe that it will be important for TSA to leave open multiple compliance paths to enable companies to tailor their security enhancements to their individual company operational needs. This method of proceeding will also be less costly than a single required method of securing the cargo that may be overly expensive for some participants.

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.**

Warehouses, e-commerce businesses, third-party logistics providers and others involved in air cargo will have a clear economic incentive to explore whether TSA recognition for their security controls makes sense for their business or facility. Not every company or facility will participate, but each should have a choice of how to meet security standards TSA establishes. While the costs of compliance with any TSA alternative framework mandates may be substantial (depending, of course, on whether existing security measures will be sufficient to meet requirements), we believe any such costs will be offset by not having to pay any increased costs driven by 100% screening and the ability to not have time-sensitive cargo delayed by the screening process. Put somewhat differently, TSA's consideration of the economic

value of recognizing security controls versus physical screening of air cargo by a third party should also consider the critical element of time. Shippers and consumers select air, which is more expensive, because they are time-sensitive. A TSA rule that creates the opportunity for security measures that do not add to transportation time should allow at least some users a way to offer customers faster and more reliable delivery. A new rule should ensure an option for fewer touch points for air cargo; reducing touch points means savings in time and direct costs. Fewer touch points is also safer as we maintain social distancing in the wake of the current pandemic.

While we believe these general principles are clear, it is virtually impossible to provide a precise answer to the question until the actual program provisions are known.[13] Therefore, we would suggest that this question be raised again when any actual program elements are distributed for comment. And, as we noted at the July 29, 2020, Industry Day virtual meeting, it is crucial that all affected members of the stakeholder community to able to comment at that time.

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.**

Please see answer to Question #4, above. Again, it is impossible to assess "how much the costs could be reduced" without knowing the exact parameters of

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[13] In addition, it will be difficult to develop "industry" costs and benefits (or a cost/benefit ratio) since the universe of possible participants is extremely diverse and data will vary wildly.

the program.

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.**

We believe that, from the perspective of the export community, the basic elements of any cost/benefit analysis of a new "alternative framework" should contain information on the expected cost to the shipper (offset by security elements already in place); the expected increase in costs to the shipper if 100% screening of all freight were to be required (or, put differently, the cost savings to shipper over paying for 100% screening); and the cost savings to shippers and their customers by having cargo transported and delivered in a timely manner. These data are best provided by members of the shipping community.

In addition, we urge TSA to look at the cost/benefit issue from a slightly different perspective. We firmly believe that an alternative framework is necessary in part because, the ICAO standard notwithstanding, requiring 100% screening of export cargo moving on all-cargo aircraft would not be justified under any cost/benefit review. For all-cargo air carriers, the costs of implementing a 100% screening regime would be substantial. The use of screening machines and third-party canines will have to be expanded significantly and new facilities will have to be constructed to house the new equipment.

Under this scenario, in assessing the benefit side of the equation it is important to revert to a basic element inherent in all regulatory considerations in the air cargo security sphere – the element of risk. If the risk is relatively small, the benefits gained from applying a draconian measure like 100% screening of all U.S. outbound air cargo transported on all-cargo air carriers will not be great and cannot be justified when compared with the anticipated costs. Given the fact that available data indicate that there have been no attempts by terrorists to introduce explosives in cargo outbound from the United States, the finding that there is relatively low risk mandates the conclusion that TSA should move forward with its program to provide an alternative to a 100% screening regime. This method of using "risk based decision theory" in analyzing costs and benefits is explained in a paper published in the Journal of Air Transport Management entitled "Cost-Benefit Analysis of Airport Security: Are Airports Too Safe"?[14]. While this paper assesses airport security, not air cargo security, the concepts set forth appear applicable here and we urge TSA to adopt this risk-based model.

The metrics involved are, of course, difficult to measure in the abstract. Again, this question should be deferred and explored once an actual program is presented and distributed for comment.

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,**

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[14] Mark G. Stewart and John Mueller (2014).
https://politicalscience.osu.edu/faculty/jmueller/JATMfin.pdf.

account databases, or training requirements that may be required. Please also comment on any potential solutions TSA should consider.

Without knowing the precise parameters of any new security requirements, detailed operational implications for companies choosing to join the program are difficult to ascertain. However, it is clear that newly regulated entities will have to review existing security procedures and compare them with requirements in the TSA program. They will then have to adjust operations (if necessary) to add any required procedures not already in place. Companies should also expect to be inspected and audited by the Government (TSA, CBP or both). In order to provide the necessary communication and interface between the Government and the newly regulated entities, each newly regulated company should be required to name a Security Coordinator to be the first point of contact between that Company and TSA and/or CBP.[15] Shippers should also have the option of being Authorized Representatives for the carriers under the alternate framework, much like they do under the European Union's "Air Cargo or Mail Carrier operating into the Union from a Third Country Airport" (ACC3) model.

With respect to airline participation, TSA should maintain an updated list of those companies authorized to have their cargo transported without the need for physical screening. That list should be made available to all regulated direct air carriers. Operationally, under the "alternative framework(s)" set forth above, all-

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[15] Shippers should also have the option of being Authorized Representatives for the carriers under the alternate framework, much like they do under the European Union's "Air Cargo or Mail Carrier operating into the Union from a Third Country Airport" (ACC3) model.

cargo air carriers would be required to randomly screen a designated percentage of

cargo from the newly regulated entities and maintain a record of all such screenings.

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.**

There are currently no technologies capable of screening to the size, volume,

and content of some of our cargo and we do not believe any will be available at the

commencement of this new program. However, work is continuing on the

development of computed tomography technology that may be useful at some point

in the future. It is also important to point out that the ASAC Air Cargo and Security

Technology Subcommittees have an ongoing project in this area.

GENERAL CONCLUSIONS

To summarize, the Association strongly supports the development of a new

United States "Known Consignor" program that will permit certain entities that can

demonstrate security capabilities consistent with ICAO security standards to

continue to move their cargo without the need to have such cargo physically

screened. This new program should be flexible and should permit entities to

"qualify" under either of the methods described herein. Warehousing and

fulfillment facilities are uniquely situated to participate in TSA's proposed

alternative framework since a potential terrorist would have no idea whether any

particular package will ever move on an aircraft. As long as the entity applies the

required security protocols established by TSA, including chain of custody from the

warehouse/fulfillment center to the aircraft, such items should be deemed secure. In addition, given the cost and complexities of the divergent supply chain business models it is critical that TSA encourages all carriers to submit individual security plans to meet the requirements of the alternative framework.

As noted several times above, in view of the diversity of supply chain members that may want to participate, TSA should set forth the required standards enumerated by ICAO, the CBP C-TPAT program or separately by TSA and then permit applicants to file a program for approval by TSA that demonstrates how each such entity intends to comply with the standards established.

Finally, as this process moves forward, it is essential that all stakeholders that may be affected by any new program be involved in all stages of development. As a practical matter, that means that when TSA comes forward with its proposed new program, all affected entities must have the ability to comment on the proposal.

Respectfully submitted,

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