



One Hundred Eleventh Congress  
U.S. House of Representatives  
Committee on Homeland Security  
Washington, DC 20515

November 16, 2009

Ms. Gale Rossides  
Acting Administrator  
Transportation Security Administration  
601 S. 12<sup>th</sup> Street  
Arlington, VA 20528

Dear Ms. Rossides:

We are writing to submit comments on the Transportation Security Administration's (TSA) Interim Final Rule for air cargo screening, published in the September 16, 2009, *Federal Register* [Docket No. TSA-2009-0018]. As Chairs of the House Committee on Homeland Security and the Subcommittee on Transportation Security and Infrastructure Protection, we have attentively followed TSA's implementation of the mandate to screen 100 percent of cargo transported on passenger aircraft by August 3, 2010, as directed in the *Implementing Recommendations of the 9/11 Commission Act of 2007*, P.L. 110-53.

In establishing a system to screen all cargo on passenger aircraft, the Federal government will be addressing a serious vulnerability in our aviation system and will also be positioning the United States as a leader in the growing worldwide effort to secure cargo onboard passenger aircraft. TSA's implementation of the "Narrow-Body Screening Amendment"<sup>1</sup> in 2008 has reportedly resulted in the screening of 100 percent of all cargo being transported on narrow-body aircraft. Such aircraft represent approximately 96 percent of domestic passenger flights and 80 percent of passengers flying in the United States.<sup>2</sup> The Narrow-Body Amendment greatly increased the security of our aviation system as well as the passengers and crew on these aircraft. It also demonstrates that the screening of cargo on passenger aircraft can be integrated into the day-to-day operations of the aviation industry.

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<sup>1</sup> Section 8.4.3.3, Aircraft Operator Standard Security Program (AOSSP) for domestic carriers, and Section IV.4.3.3, Foreign Air Carrier Model Security Program (MSP), for foreign carriers.

<sup>2</sup> Transportation Security Administration, September, 2009.

In March of 2009, TSA testified before the Transportation Security and Infrastructure Protection Subcommittee that it was confident that the interim 50% cargo screening mandate had been achieved and has since provided the Committee with supporting data that the industry has achieved the 50% mandate in terms of both weight and number of shipments. In continuing to implement the cargo screening provision to reach the 100 percent screening mandate, TSA must focus on cargo aboard wide-body passenger aircraft. Accordingly, it has proposed the Certified Cargo Screening Program (CCSP) that would be codified with this Interim Final Rule. The CCSP has evoked a great deal of dialogue, including at multiple hearings held by the Full Committee and the Subcommittee.<sup>3</sup>

In general, it appears that TSA has established a feasible public – private framework for implementing the 100 percent cargo screening mandate, modeled on the United Kingdom’s “Known Consignor” program. While this type of secure supply chain program has been successful abroad, we anticipate that there will be challenges in implementing the CCSP within the cargo transportation industry of the United States which operates on a far larger scale as compared to the United Kingdom’s. We have heard concerns from many stakeholders about the CCSP, and the Committee has conducted several meetings with TSA and industry stakeholders in order to prepare these comments which are submitted for your review.

#### TSA Needs to Devote Appropriate Resources for CCSP Implementation

Although private sector stakeholders—including shippers, freight forwarders, and indirect air carriers—will bear much of the cost and structural implementation of a successful CCSP implementation, TSA must have the appropriate resources to support its regulatory oversight role. Specifically, TSA will need appropriate staffing levels for inspectors to be able to certify TSA-Approved Validation Firms (TAVF) and process Security Threat Assessments (STA) for workers at TAVFs and Certified Cargo Screening Facilities (CCSF).

Given that the 100 percent cargo-screening mandate is less than nine months away, the Administration should consider multiple means by which to increase necessary resources. First, it should consider using funds remaining from the *American Recovery and Reinvestment Act*. Second, it should also notify Congressional authorizers and appropriators about addressing unfunded resource requirements for the CCSP. Specifically, requests for additional resources should be considered for inclusion in the FY 2010 emergency Supplemental Appropriations legislation that may be considered by Congress in early 2010. Third, industry stakeholders have expressed concern that TSA

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<sup>3</sup> See Full Committee Markup of H.R. 2200, *The Transportation Security Administration Authorization Act* (111<sup>th</sup> Cong.) (May 14, 2009).

March 18, 2009, Transportation Security and Infrastructure Protection Subcommittee Hearing on “100 Percent Air Cargo Screening: Can We Secure America’s Skies?”

July 15, 2008, Transportation Security and Infrastructure Protection Subcommittee Hearing on “The Next Step in Aviation Security – Cargo Security: Is DHS Implementing the Requirements of the 9/11 Law Effectively?”

will not have the resources to certify enough CCSF's by the August 3, 2010, deadline. Accordingly, the Department of Homeland Security (DHS) and TSA must be innovative and flexible and use all of its personnel and financial resources to achieve the appropriate pace of facility certifications in order to avoid disruptions and dislocations to the cargo shipping industry.

The Cost of Validation Assessments are Unknown to Stakeholders Contemplating Applying For Certified Cargo Screening Facility Certification

We are concerned that there is no established fee structure for what the TAVFs will charge firms seeking to be certified as CCSFs. Given that shippers will in most cases need to be evaluated by a third party validator, the lack of specific guidance to validators on what can be charged and what stakeholders may be required to pay creates unnecessary uncertainty among stakeholders already concerned about their bottom lines during the current economic environment. Further, a cost-prohibitive fee for certification assessments would hamper TSA's efforts to certify CCSFs and would ultimately create a significant problem with the implementation of the CCSP. Given the unknown number of TAVFs available in any particular location in the country and the fact that there may not be enough market competition to establish a reasonable fee for assessments performed by a TAVF, we urge TSA to issue fee parameters for the validation assessment.

TSA Should Evaluate How to Reduce the CCSP's Cost to the Private Sector

The Interim Final Rule states that the CCSP will result in an unfunded mandate on the private sector in excess of \$100 million. While we understand and support the CCSP concept, we would like TSA to consider ways to reduce the cost impact to industry stakeholders. We would like to work with TSA in exploring grants, tax incentives, low-interest loans, or innovative financing measures that would fit sensibly into the CCSP framework. We also urge TSA to consider expanding the Screening Technology Pilot locations and on-airport screening options to provide stakeholders, particularly small businesses, with screening options that do not involve the purchase of costly screening equipment. In addition to the equipment costs, the private sector will also be impacted by personnel costs associated with hiring security coordinators and administrative personnel who will be necessary to maintain compliance with the various security protocols and record-keeping mandates laid out in the Interim Final Rule. To this point, we ask TSA to review the record-keeping provisions to ascertain how to streamline these requirements while maintaining the appropriate regulatory oversight.

### Barriers to Developing and Proliferating Cargo Screening Technology May Hinder CCSP Implementation

Industry stakeholders have expressed serious concerns regarding available screening technology. First, it is unclear if TSA has worked closely with the Department's Science and Technology Directorate in accelerating research and deployment of cargo screening technology for large-pallets and any other types of equipment that would make it easier for stakeholders to participate in the CCSP. Second, stakeholders have expressed concern about the lack of a Qualified Product List for cargo screening technology and are hesitant to purchase expensive equipment on the Approved List of Technology without the assurances that this equipment will be certified in future years. Third, stakeholders have complained that the clearance process established to be able to view the technical standards for cargo screening equipment is hindering entrepreneurs and interested firms from developing new technologies or adapting existing technologies for cargo screening purposes. We urge TSA and the DHS Science and Technology Directorate to strengthen their processes in order to give timely attention to the development and certification of technology for cargo screening, particularly technologies for screening large-pallets.

### Off-Airport Air Carrier Facility Certification May be Unnecessary

Air carriers have expressed concerns regarding the certification of carrier-operated off-airport warehouses that are in close proximity to the airport. Air carriers believe that it is unnecessarily duplicative to require these warehouses be certified as CCSFs when air carriers are already regulated under the Air Operator Standard Security Program. In order to best utilize TSA's resources, we urge you to consider that air carrier-operated off-airport warehouses in close proximity to airports be regulated under existing regulations for air carriers as we believe this will reduce costs and burdens on the private sector and allow for greater inclusion and more rapid deployment of the this program.

### TSA Should Examine Screening Cargo at Category I and X Airports

While this Interim Final Rule has been issued to codify the CCSP, we will take this opportunity to comment about TSA screening more cargo at airport facilities. We understand that at smaller Category II, III, and IV airports, TSA conducts over-the-counter screening of passenger aircraft cargo, and we are requesting TSA consider a strategy to also employ this type of fee-based over-the-counter screening at larger category I and X airports, specifically those that are in areas with the largest volumes of cargo loaded onto passenger aircraft. The expansion of TSA cargo screening could provide an option to small businesses that may not otherwise be readily available or accessible. Should TSA screening be available on an expanded basis to businesses in these airports, an effort should be made to communicate the availability of airport screening services to local businesses.

### TSA Must Immediately Increase Outreach to Industry

Based on informal discussions with stakeholders, it appears TSA's outreach to industry must be dramatically increased as the August 3, 2010, deadline for passenger aircraft cargo screening nears. First, TSA should consider ways to conduct industry outreach and training on a larger scale, perhaps by utilizing third-party inspection and validation firms that already have expertise in working in secure supply chain programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT) program. Second, TSA should also work with the Department of Commerce in obtaining statistical data on industry shippers in order to help target its outreach and training efforts. Third, we know that TSA officials have been attending various regional conferences in order to educate stakeholders on the CCSP, but it has been brought to our attention that many stakeholders, particularly small business owners, are unable or unwilling to pay the significant conference fees necessary for attendance. Given the relatively low participation by small businesses at the outreach sessions, TSA should consider ways to make training sessions on the CCSP available on a low-cost or free basis to small businesses and other targeted stakeholders. Finally, we urge TSA to utilize industry trade publications to publicize the CCSP and to continue its efforts at regional conferences to educate industry stakeholders. Immediate and aggressive outreach will be necessary for the successful and timely implementation of the CCSP. We believe that TSA has much more work to do in this area.

We would like to commend TSA for its work in developing a program to implement the cargo screening provision contained in the Implementing Recommendations of the 9/11 Commission Act. TSA's diligent work with industry to develop sensible approaches to cargo screening, including working with the pharmaceutical industry on secure shipping protocols, should be noted. However, we also must caution the agency and private sector stakeholders that this will be a challenging undertaking that will require an ongoing, constructive working relationship between the private sector and the Federal government. Outreach and appropriate resourcing will be essential in making the CCSP a success.

Even though the 100 percent screening deadline is quickly approaching, there is still time to respond to most of these concerns. We look forward to working with you in promptly addressing potential obstacles to CCSP implementation and request that we be kept apprised of the status of the CCSP implementation during 2010 as industry and government work together to reach the important deadline for screening 100 percent of cargo on passenger aircraft.

Should you have any questions or concerns regarding these comments, please contact Rosaline Cohen, Chief Counsel for the Committee on Homeland Security at 202-226-2616.

Sincerely,



BENNIE THOMPSON  
Chairman



SHEILA JACKSON LEE  
Chairwoman, Subcommittee on  
Transportation Security and  
Infrastructure Protection

Cc: Hon. Janet Napolitano, Secretary, Department of Homeland Security  
Mr. Peter R. Orszag, Director, White House Office of Management and Budget