

Dated: December 24, 2002.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 10

[USCG-2002-13213]

RIN 2115-AG43

Great Lakes Maritime Academy— Eligibility of Certain Graduates for Unrestricted Third-Mate Licenses

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On October 18, 2002, we published a direct final rule (67 FR 64313). The direct final rule notified the public of our intent to amend minimum service or training requirements for ocean or near coastal steam or motor vessel third mate licenses so that graduation from the Great Lakes Maritime Academy (GLMA) deck curriculum ocean option will qualify an applicant for licensing on both ocean and near coastal vessels. GLMA graduates who do not complete the ocean option or one of the other approved service or training routes will continue to be eligible for licensing only on near coastal vessels. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as January 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Kerlin, National Maritime Center, U.S. Coast Guard, 202-493-1001.

Dated: December 20, 2002.

Paul J. Pluta,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02-33016 Filed 12-30-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1544

[Docket No. TSA-2002-12394; Amendment No. 1544-3]

RIN 2110-AA05

Aviation Security: Private Charter Security Rules

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Final rule.

SUMMARY: In response to comments received, TSA is amending the aviation security requirements concerning private charter passenger operations. TSA issued the existing standard in June 2002, as an emergency final rule and requested comments on it. The rule requires private charter operators using aircraft with a maximum certificated takeoff weight of 95,000 pounds or more, to ensure that passengers and their carry-on baggage are screened prior to boarding. In response to the comments and after further analysis, TSA has determined that the existing threshold does not adequately capture the appropriate group of aircraft. TSA is now adopting an international security standard, in which private charter operations in aircraft with a maximum certificated takeoff weight greater than 45,500 kg (100,309.3 pounds), or with a passenger seating configuration of 61 or more will be subject to the screening requirement. As a result of this amendment, additional aircraft are now covered by the rule that were not previously subject to it. TSA is establishing a new compliance date for operators of these aircraft, in order to provide them sufficient time to develop procedures required by this rule and the security program. Also, in response to comments received, TSA is permitting the use of non-TSA screeners in certain circumstances.

DATES: Effective Date: The effective date for this rule is February 1, 2003.

Compliance Dates: For all private charter operators that were covered under the rule published June 19, 2002 (67 FR 41635) and continue to be covered under the rule as amended, TSA will issue the final security program no later than January 3, 2003. These operators must be in compliance with the program by February 1, 2003.

The compliance schedule for any private charter operators not covered by the rule published June 19, 2002 (those in aircraft with a maximum certificated takeoff weight less than 95,000 pounds

and with a passenger seating configuration of 61 or more), but covered under this amendment, is as follows: these operators must request a copy of the security program and provide comments to TSA by January 20, 2003; TSA will issue the final security program no later than January 3, 2003; these entities must be in compliance with the final security program by March 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Emily Chodkowski, Aviation Security Specialist, Transportation Security Administration, Room 3522, Washington, DC 20591, 202-385-1838, Emily.Chodkowski@tsa.dot.gov.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by—

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

(2) Accessing the Government Printing Office's Web page at http://www.access.gpo.gov/su_docs/aces/aces140.html; or

(3) Visiting the TSA's Laws and Regulations Web page at http://www.tsa.dot.gov/law_policy/law_policy_index.shtm.

In addition, copies are available by writing or calling the individual in the

FOR FURTHER INFORMATION CONTACT section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question about 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.

Abbreviations and Terms Used in This Document

ATSA—Aviation and Transportation Security Act

CFR—Code of Federal Regulations

FAA—Federal Aviation Administration

FBO—Fixed Base Operator

ICAO—International Civil Aviation Organization

MTOW—Maximum Certificated Takeoff Weight

SIDA—Security Identification Display Areas
 TCDS—Type Certificate Data Sheet
 TSA—Transportation Security Administration
 U.S.C.—United States Code

Background

The terrorist attacks of September 11, 2001, led Congress to enact the Aviation and Transportation Security Act (ATSA), Pub. L. 107–71, November 19, 2001. ATSA created the Transportation Security Administration (TSA) and transferred responsibility for aviation security from the Federal Aviation Administration (FAA) to TSA. On February 22, 2002, TSA published a final rule transferring the bulk of FAA's aviation security regulations to TSA and adding new security standards required by ATSA. 67 FR 8340. Regulations concerning aircraft operator security, including private charter operations, previously codified at 14 CFR part 108, are now codified at 49 CFR part 1544. Section 1544.101 requires aircraft operators to adopt and implement a security program, the components of which vary depending on the type of aviation operation, volume of passengers, departure and arrival location, and type of aircraft. Depending on these operational characteristics, the security program may include procedures for screening individuals and property, training screeners, maintaining perimeter security, protecting aircraft from unauthorized entry, completing background investigations on employees, and other security measures.

There are two types of private charters, which are defined in section 1540.5. First, 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. Second, 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 contract with the U.S. government or a foreign government. A public charter is defined as any charter that is not a private charter.

Section 1544.101(f) sets forth the required security program components for private charter operations that enplane or deplane into a sterile area. Pursuant to § 1544.101(f), these operations 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.

Since 1978, operators of public charters have been subject to the same security requirements as operators of aircraft in scheduled service. Private charters, however, have operated under different requirements. In 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. Therefore, unless the private charter deplaned into or enplaned from a sterile area, the full panoply of security procedures did not apply. In the current threat environment, TSA believes it is necessary to reevaluate these relationships to ensure that an adequate level of security exists for private operations that do not make use of airport sterile areas. As was plainly illustrated in the September 11 attacks, terrorists may blend into their environment, interact with others easily, persistently seek out vulnerabilities in the system, and travel in groups in order to accomplish their goals more efficiently.

Therefore, TSA established additional security measures for private charters that do not use airport sterile areas to prevent the introduction of weapons, explosives, or incendiaries onto the aircraft that could enable an individual to commandeer the aircraft and use it to do harm. On June 19, 2002, TSA published a final rule that amended part 1544 by requiring all private charter operators using aircraft with a maximum certificated takeoff weight of 95,000 pounds or more (95,000 MTOW) to increase security measures. 67 FR 41635, June 19, 2002. TSA selected this class of aircraft because their size could cause great damage to targets on the ground. In addition, many of these aircraft are used in scheduled passenger service one day and in private charter service the next. While in scheduled passenger service, the operator and crew must operate in accordance with a full

security program that requires securing the aircraft and screening individuals and their accessible property. TSA reasoned that these operators should ensure that all individuals and accessible property are screened, regardless of whether they are in private charter or scheduled service. Therefore, TSA added language in § 1544.101(f) to require non-government, private charter operators of aircraft with a 95,000 MTOW, regardless of where they deplane or enplane passengers, to ensure that the individuals on board and their accessible property are screened prior to boarding. Also, TSA added language to paragraph (f) requiring these private charter operators to comply with § 1544.225 regarding the security of aircraft and facilities. In order for individual property screening to be effective, operators must ensure that the aircraft is free of weapons, explosives, and incendiaries before individuals board. Private charter operators must have security measures in place to ensure the integrity of the aircraft.

For most passenger screening under part 1544, the passenger is screened before entering a sterile area. The gate at which the passenger boards the aircraft is typically within the sterile area. Subpart B of part 1540 contains rules that apply to many persons, including airport operators, airport tenants, aircraft operators, foreign air carriers, indirect carriers, employees of these entities, passengers, and individuals at airports. In order to make clear who must comply with screening procedures, § 1540.107 requires all individuals who enter sterile areas to submit to screening. For private charter screening, however, there may be no sterile area. Accordingly, TSA amended § 1540.107 to make clear that individuals on private charters must submit to screening before boarding an aircraft. Similar changes were made to § 1540.111(a)(1), which provides that an individual may not have a weapon, explosive, or incendiary when screening begins.

TSA received more than 100 comments in response to the request for comments issued with the rule in June. After consideration of these comments and additional analysis, TSA believes that the current threshold for determining which aircraft should be subject to the screening requirement does not adequately capture the larger aircraft TSA intended to cover. The weight threshold of 95,000 MTOW, although a reasonable measure of aircraft size, is awkward in practical application. In some cases, this figure divides an aircraft type into two groups:

those certified to takeoff at weights over 95,000 pounds and those certified at weights under 95,000 pounds. Therefore, larger aircraft that TSA intends to cover in this rule fall out of the standard. For instance, early models of the DC-9 aircraft are certified to takeoff with weights less than 95,000 pounds, even though these aircraft can seat 70 passengers and appear to be nearly identical to subsequent models with a MTOW in excess of 95,000 pounds that are subject to the screening requirement.

In addition, as a result of comments, TSA reviewed an international security standard that was established to determine when hardened cockpit doors should be required. This standard applies to aircraft that weigh in excess of 45,500 kg. (100,309.3 pounds), or with 61 or more seats. This standard, by using both weight and seating configuration, captures the anomalies discussed above and in greater detail below that the 95,000 MTOW threshold does not cover. Many commenters suggested a seating configuration threshold and many suggested the international standard. TSA agrees that the international standard is a more complete approach to private charter security and so is amending the rule to incorporate it.

Finally, TSA received many comments from charter operators and small airports concerning the difficulties of scheduling charter service to accommodate the presence of TSA screeners. Most charters depend on flexibility in location and hours of operation to remain economically viable. If TSA requires all private charter operators to use TSA screeners and TSA screening checkpoints, charter operators will lose their flexibility and economic vitality. As a result of these comments, TSA is affirmatively authorizing the use of non-TSA screeners under certain circumstances.

Summary of Comments

When TSA issued the rule in June 2002 establishing a weight threshold to determine which private charter passengers must be screened, the agency requested comments from the industry and interested parties. Approximately 100 entities responded and commented primarily on five areas: confusion about the definition of "private charter," the unique operational difficulties charters may face, small airport concerns, issues specific to Alaskan operators, and the weight threshold. A summary of the comments follows, arranged by subject matter.

Some organizations requested clarification of the definition of "private

charter." The complete definition can be found in 49 CFR 1540.5. To summarize, a non-government, private charter is any aircraft operator flight in which the charterer engages the total passenger capacity of the aircraft, the cost of the flight is borne by the charterer and not directly or indirectly by any passenger, and the flight is not advertised in any way to solicit passengers. Also, government private charters include operations in which the total passenger capacity is used for government civilian or military air travel. The rule exempts government charters from the screening requirement, unless they enplane from or deplane into a sterile area. Government charters, such as a Department of Defense flight, have security procedures in place that adequately address security risks. Also, the passengers on these government charters may be required to carry weapons, which would be prohibited in other passenger operations.

Several commenters expressed concern about the adverse impact the rule will have on private charter operations. *Comment:* Private charters often use small airports in remote locations where there is no terminal or baggage check area. If the final security program requires typical screening checkpoints and magnetometers, charters would be forced to alter their network of operations entirely and use large airports where standard security procedures are in place. Also, charter operators would have to change their hours of operation to depart only when established screening checkpoints were in operation. These changes will undermine the flexibility and economic benefits charters offer to passengers, organizations, and small airports. Some organizations that make use of private charters on a regular basis, such as professional and collegiate sports teams, must travel to and from remote locations frequently and at odd hours. Altering these charter operations dramatically would impose significant barriers to completing normal business activities. Many charter operators use Fixed Base Operators (FBO) to handle administrative and operational issues at small airports. However, there are only two FBOs in the country that have screening facilities available for charter operations. If the final security program required these operators to conduct all screening at established screening checkpoints, additional facilities must be constructed and installed, which would impose significant financial burdens and time delays. *Response:* As is discussed in greater detail below,

TSA will authorize procedures to prevent these difficulties.

The commenters also asserted that private charters possess unique characteristics that diminish the risk of dangerous or unlawful acts. *Comment:* Typically, charter clientele are "known" to the charter operators or to each other. They work together or play on the same sports team, and so the likelihood that someone unknown or with suspect motives would commandeer the aircraft or injure passengers is remote. Also, the charter clientele often are "high profile" individuals who generate crowds and confusion in airport terminals. Consequently, additional security may be necessary and existing security officers are diverted from their standard duties. Further, sports teams travel with medical personnel and equipment that is needed in-flight. Some of this equipment may not be permitted in the aircraft cabin under standard screening procedures. The professional sports teams typically have security procedures in place to ensure that passengers' baggage is placed in a secure area and that only designated passengers are permitted to board the aircraft. All of these unique qualities warrant special procedures for private charter operations. *Response:* As is discussed in greater detail below, TSA will authorize use on non-TSA screeners to prevent these difficulties. We note that TSA does permit some medical equipment that otherwise would be prohibited on scheduled flights, and will work with the sports teams to consider what medical equipment should be permitted in the cabin.

Many commenters expressed concern about the fate of small airports that are unable to meet the level of security required in the charter rule. *Comment:* If these airports cannot facilitate new screening requirements, flights will be diverted to airports serving scheduled operations. This change would have an adverse economic impact on many communities. Also, large airports that become the beneficiaries of this change might not be staffed to handle security procedures adequately. One airport that serves a high number of private charters commented that the rule would not be effective as a stand-alone security mechanism, because screened charter passengers and their accessible property could be co-mingled with unscreened passengers and baggage on common ramp areas. Another regional airport urged TSA to develop a "trusted traveler" program to permit vetted passengers to bypass security prior to boarding. *Response:* The private charter security rule is not a "stand-alone"

mechanism; there are additional security regulations that prevent unscreened passengers from entering airport sterile areas and areas that are designated as security identification display areas in airports. In addition, the final security program TSA issues for private charter operators will include procedures that prevent screened passengers from mingling with non-screened passengers. The "trusted traveler" program will be addressed in another rulemaking proceeding.

Commenters also urged TSA to adopt security procedures for private charters operating in Alaska that can accommodate the special characteristics of the Alaskan environment. *Comment:* Alaska has a limited highway system and vast terrain, so there is a high volume of intrastate air travel. For instance, private zinc and lead mines located north of the Arctic Circle in a remote section of Alaska are served exclusively by private charter service. The only road on the property runs to their port site; none exist to any other community. Alaska Airlines operates two private charters per week to the mines to rotate personnel and supplies. There are many similar situations in Alaska, where the need for accessible flexible air travel is great. *Response:* The procedures TSA will authorize in the final security program, such as permitting the use of non-TSA screeners, will provide adequate flexibility to private charter operators in Alaska to ensure that operations can continue as needed.

Comment: Many commenters asked for clarification on the kind of security procedures required by the rule and the security program.

Response: The process used to develop air carrier and airport security programs involves two distinct phases. The first is issuance of a rule that establishes minimum security standards that the operator or airport must meet. For the charter rule, TSA requires affected private charter operators to adhere to a TSA-approved security program that meets the standards of 49 CFR 1544.101(f) and 1544.103. Also, TSA requires affected private charter operators to ensure that passengers and their accessible property are screened prior to boarding. The second phase of the process involves developing a security program that sets forth the details and procedures used to meet the minimum rule standards. The security program is considered sensitive security information (SSI) and cannot be issued to the public, placed in the docket, or discussed with specificity in this document. TSA developed a standard security program and forwarded it to

affected entities for comment. Each entity had an opportunity to comment on the standard program, which many have done in this proceeding, and requested changes to accommodate unique operations or characteristics. TSA may approve the changes or require the operator to adhere to the standard program. The details of the program that the commenters are seeking most likely exist in the final security program, which TSA cannot discuss in this document. However, they can be addressed privately between the affected operator and TSA staff.

The weight threshold is the factor that determines which private charter operators must screen passengers and accessible property. This issue generated many comments.

Comment: Some operators and manufacturers asked TSA to specify why 95,000 MTOW was selected. Some recommended that TSA redraw the line at 100,000 MTOW, which is part of the standard the International Civil Aviation Organization (ICAO) adopted in February 2002 to distinguish which cockpit doors must be reinforced to enhance security. Actually, the accurate ICAO standard requires reinforcing cockpit doors in aircraft with an MTOW of greater than 45,500 kg, (100,309.3 pounds), or with a seating capacity greater than 60. Some commenters asserted that TSA should include aircraft fuel capacity as part of the threshold, due to the damage fuel can cause on impact. Also, use of "more than 19 seats," or "more than 75 seats" in addition to, or in place of the maximum takeoff weight, would be preferable to the standard established in June 2002.

One manufacturer and its customers claimed that the standard creates an inequity in the treatment of the Canadian-manufactured, Bombardier Aerospace Global Express. There are several MTOWs listed for the Global Express, some less than, some more than 95,000 MTOW. The U.S.-manufactured Gulfstream V is the Global Express' primary competitor, and has a 90,700 MTOW. Therefore, private charter operations in the Gulfstream are not subject to the screening requirement, but certain models of the Global Express are, pursuant to the current rule language. Bombardier asserted that the rule is discriminatory and constitutes an unfair trade practice.

Response: As is discussed in greater detail below, TSA believes that the current international standard, which combines weight and passenger seating capacity, is the standard to adopt for private charter operations.

Rule Amendment and Response to Comments

I. Weight Threshold

TSA again analyzed charter operations, the existing aircraft fleet, and the existing standard, and determined that the threshold for passenger and carry-on baggage screening in private charter operations should be changed. TSA is amending the rule to adopt the ICAO standard, or private charter operations in aircraft with a MTOW greater than 45,500 kg., or with a passenger seating configuration of 61 or more. In pounds, the threshold is a MTOW greater than 100,309.3.

When TSA established 95,000 MTOW as the threshold, TSA sought to cover the larger aircraft that are used often in charter service. The degree to which certain aircraft are selected for charter service often depends on the number of aircraft in service, the number of runways and airports the aircraft is capable of using, and the likelihood that the operator is amenable to leasing the aircraft out to a group. For instance, the DC-9 series aircraft are used in approximately 300 flights per day. (Please note that there is no data available that distinguishes the number of charter flights from scheduled passenger service). These aircraft can operate from short runways because of the wing lift and significant engine thrust, which enables them to make use of nearly all airports. These aircraft have a maximum passenger seating configuration of more than 70 passengers, generally are not privately owned, and have the potential to be used in charter and scheduled service. When used in scheduled or public charter service, they must be operated under a full security program (49 CFR 1544.101(a)), which includes screening passengers and accessible property. TSA believes that the DC-9 series and similar aircraft constitute the class of aircraft that should be covered in this rule.

TSA also selected 95,000 MTOW for the rule published in June 2002, because it had been used previously by FAA and TSA as a benchmark to distinguish larger aircraft. For instance, pursuant to the authority set forth in Special Federal Aviation Regulation (SFAR) 91, TSA issued a notice to certain all-cargo carriers with 95,000 MTOW that required them to adopt additional security measures.

Maximum certificated takeoff weight is the maximum weight at which the FAA has determined an aircraft can take off, and is derived from engineering data, aircraft weight, acceleration, lift, and performance testing. The aircraft

manufacturer must submit design and performance figures to the FAA in order to be certified to fly at certain weights, speeds, seating configurations, fuel capacity, and so on. The MTOW is established during this process, based on a review of the engineering data and actual performance testing, and is listed on the FAA's Type Certificate Data Sheet (TCDS). Over time, manufacturers may conduct additional performance testing to prove to FAA that the aircraft can be operated safely at a higher MTOW or speed, or with more cargo. In order to increase these operational limits, the aircraft must undergo additional performance testing and may be structurally modified. These subsequent MTOW figures are then listed on the TCDS as the authorized takeoff weight.

A review of the aircraft that fall within this standard indicates they are used prevalently, would generate significant impact damage, carry a high number of passengers, and have significant fuel capacity. This threshold captures aircraft in which it is unlikely that all passengers and crew know each other or share an affinity relationship, which is the group TSA intended to cover. It is less likely that a corporate jet with fewer than 20 seats would be chartered by a group of passengers that are strangers or do not know the crew.

II. Seating Capacity

TSA and FAA have also used seating configuration to categorize aircraft by size and use. Section 1544.101 establishes requirements for security programs based on seating configuration, and requires greater security measures for aircraft with a seating configuration of 61 or more in scheduled or public charter service. Seating capacity, like MTOW, is an indicator of aircraft size and the extent of damage the aircraft would cause if used in a terrorist act. It is also reasonable to assume that passengers in an aircraft with a large seating capacity are less likely to know one another and the crew than individuals traveling in a corporate jet. TSA has determined that it is appropriate to use both seating configuration and MTOW to determine which aircraft are subject to the rule, and therefore is adopting the ICAO standard for the threshold in this amendment to the rule and the seating configuration now used for scheduled and public charter service. By using both the seating capacity and MTOW, TSA will cover the target group of aircraft, but will exclude private corporate jets with a small seating capacity.

TSA is adding the seating configuration of 61 seats or more for several reasons. First, TSA believes it is important to cover the DC-9-10 series aircraft, which have a seating configuration of 79 through 109. Some of these aircraft have a MTOW under 95,000 and would not be subject to screening under the previous threshold. These aircraft were designed specifically to operate from short runways due to their high wing lift and powerful engine thrust. Consequently, they can operate at many small airports, which might be serviced by charter operators. There are approximately 47 DC-9-10 series aircraft currently registered with FAA, making their potential for use in charter operations worthy of consideration for enhanced security standards. By adding seating configuration to the security threshold, TSA will capture the larger, but lighter, charter aircraft. Many aircraft, although under 95,000 MTOW, have a seating configuration of more than 100 seats, and these passengers should undergo security screening.

As discussed previously, ICAO recently established a requirement to install reinforced cockpit doors in aircraft with an MTOW of 45,500 kg (100,309.3 pounds) or a passenger seating configuration of 61 or more. Many commenters urged TSA to adopt a standard based on seating configuration, and some commenters suggested that TSA adopt the weight limit used in the ICAO standard. For years, scheduled and public charter aircraft with a passenger seating configuration of more than 61 seats have been required to operate with a full security program, which includes passenger screening. (49 CFR 1544.101(a)).

Due to the addition of seating configuration as a threshold, there are aircraft covered by the rule now that were not covered when the rule was issued in June 2002. The following aircraft are included in the group of new aircraft covered: British Aerospace ATP, 146-100A and 146-200A; Fokker-F.28 Mark 0100, F.28 Mark 4000, F.28 Mark 0070; Bombardier DHC-8-401; McDonnell Douglas DC-9-10 series; and AVRO RJ85A. Any private charter operators that use these aircraft and do not operate aircraft covered by the rule issued June 2002, would not have anticipated the need to develop screening procedures or comment on the TSA standard security program. Therefore, TSA has established a compliance schedule for these operators to ensure that they have adequate time to prepare.

III. Screening

As discussed previously, many private charter operators use small airports that do not have established screening checkpoints or corresponding screening equipment. Also, many private charters operate at odd hours when airport terminals with screening checkpoints are not open. Many of the commenters raised this issue as a significant impediment to their ongoing viability, and urged TSA to permit screening by non-TSA personnel. However, a few commenters questioned TSA's ability to allow screening by non-TSA employees. TSA has determined that in certain cases, screening may be completed by screeners that are not TSA employees. TSA will authorize the use of non-TSA screeners in the security program, under certain circumstances. For instance, if checkpoint screening in an airport terminal is not available due to the time of day or location, non-TSA screeners might be used. Also, if using an established airport screening checkpoint creates logistical difficulties or disrupts ongoing screening activities in the airport, non-TSA screeners might be used by the private charter operators.

ATSA includes a requirement that Federal employees carry out passenger and property screening. However, an examination of other provisions of title 49 of the U.S. Code and the history of the screening requirement demonstrates that Congress did not intend to require screening on all flights. Congress has recognized that passenger and property screening has not been required with respect to all aircraft—in particular, the Under Secretary is specifically authorized to exempt unscheduled operations from 49 U.S.C. 44901. Congress recognized that other specific types of operations were not subject to screening requirements at the time it enacted ATSA, and imposed no such requirements.

TSA will authorize private charter operators to use non-TSA screeners who complete the TSA-approved screener training program. TSA has developed the training in modular format, and the non-TSA screeners who screen these private charter operations must receive training on the type of equipment and procedures they will be responsible for using. For instance, if the screening location is not equipped with a walk-through metal detector (WTMD), the screeners at this location are not required to complete the training module that addresses WTMD. The private charter security program will provide details concerning training for screeners in private charter operations.

TSA will allow some flexibility in determining which individuals may act as screeners for private charter operations that do not use established screening checkpoints. TSA will consider such factors as the degree of independence the screener has in relation to the passengers, and the important duties the flightcrew must complete in preparation for departure. A system in which individuals screen their supervisors, close associates, or friends would not be advisable. This would require the screener to find and report prohibited or illegal items, which could lead to disciplinary action against a colleague or supervisor, or the loss of the charter contract. An arm's-length relationship between screener and passenger creates more effective and thorough screening. Also, the aircraft flightcrew typically have many safety and security responsibilities to complete prior to departure, which could make completion of the screening impossible or ineffective. Many commenters suggested that FBO employees, where present, are good candidates for screeners. Also, commenters suggested that other airport personnel, including local law enforcement personnel, may be appropriate candidates to conduct screening. TSA is aware of the fact that all affected entities must be able to complete the TSA-authorized training for screeners shortly after the final security program is released. The new compliance dates established in this rule amendment should accommodate the time needed to adequately train screening personnel.

Paperwork Reduction Act

This rule contains information collection activities subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3507(d)). In accordance with the PRA, the paperwork burden associated with the rule will be submitted to the Office of Management and Budget (OMB) for review. The PRA provides that 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 OMB.

Need: This rule requires operators using aircraft in private charter operations with a maximum certificated takeoff weight greater than 100,309.3 pounds, or a seating configuration of 61 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 greater than 100,309.3 pounds, or a seating capacity of 61 or more.

Burden: TSA does not currently have precise data on which aircraft operators have aircraft in private charter operations with a certificated takeoff weight greater than 100,309.3 pounds, or a seating configuration of 61 or more. TSA estimates that there are approximately 25 operators currently operating under 14 CFR part 121 (Domestic, Flag, and Supplemental Operations) that 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 an original certificated takeoff weight of 100,309.3 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 effect 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 was originally reviewed by the OMB. 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 is in the process of determining 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. TSA recognizes that this rule may impose costs on some affected operators, which 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 at this time. It is difficult to assess the costs of the rule until the final security program is completed, which TSA plans to finish shortly. TSA will assess the costs and benefits of the rule once the security program is in final form and place an economic analysis of it in the docket on or before January 24, 2003. TSA will make changes to the rule, if necessary, as a result of the economic analysis.

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. 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 Pub. L. 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 (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), Pub. L. 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 in 49 CFR Part 1544

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

The Amendment

For the reasons stated in the preamble, the Transportation Security Administration amends 49 CFR chapter XII part 1544 as follows:

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

1. 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.

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

§ 1544.101 Adoption and implementation.

* * * * *

(f) *Private charter program.* 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—

(1) 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 greater than 45,500 kg (100,309.3 pounds), or a passenger-seating configuration of 61 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 December 26, 2002.

Stephen J. McHale,

Deputy Administrator.

[FR Doc. 02–33032 Filed 12–30–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021017238–2314–02; I.D. 092602I]

RIN 0648–AQ31

Fisheries of the Northeastern United States; 2003 Fishing Quotas for Atlantic Surfclams, Ocean Quahogs, and Maine Mahogany Ocean Quahogs

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

ACTION: Final rule; 2003 fishing quotas for Atlantic surfclams, ocean quahogs, and Maine mahogany ocean quahogs.

SUMMARY: NMFS issues final quotas for the Atlantic surfclam, ocean quahog, and Maine mahogany ocean quahog fisheries for 2003. These regulations specify allowable harvest levels of Atlantic surfclams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany ocean quahogs from the waters north of 43° 50' N. lat. in 2003.

DATES: Effective from January 1, 2003, through December 31, 2003.

ADDRESSES: Copies of supporting documents, including the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA), and the Essential Fish Habitat Assessment, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries (FMP) requires NMFS, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surfclams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow sustainable fishing to continue at that level for at least 10 years for surfclams and 30 years for ocean quahogs. The Council must also consider the economic impacts of the quotas. Regulations implementing Amendment 10 to the FMP, published on May 19, 1998 (63 FR 27481), added Maine mahogany ocean quahogs to the management unit and provide that a small artisanal fishery for ocean quahogs in the waters north of 43°50' N. lat. will have an annual quota within a range of 17,000 to 100,000 Maine bu (5,991 to 35,240 hectoliters (hL)) with an initial amount of 100,000 Maine bu (35,240 hL). As specified in Amendment 10, the Maine mahogany ocean quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas for 2003 was provided in the preamble to the proposed rule published in the **Federal Register** at 67 FR 65938, October 29, 2002, and is not repeated here. The comment period for that rule ended on November 27, 2002. No comments were received during the comment period, and the final quotas for 2003, which are unchanged from those in the proposed rule, are shown in the table below. The 2003 quotas for both ocean quahogs and Maine mahogany quahogs are the same as the 2002 quotas. However, the 2003 surfclam quota is 4 percent higher than the 2002 quotas.