



ACI-NA POSITION ON TSA'S AVIATION WORKER SCREENING NATIONAL AMENDMENT

ACI-NA is not opposed to measures that mitigate insider risk, including inspection of aviation workers. However, ACI-NA, opposes the Transportation Security Administration's ("TSA") Aviation Worker Screening National Amendment ("TSA-NA-23-02"). As drafted, TSA-NA-23-02 imposes a substantial unfunded mandate on, and creates new liability for, airports. ACI-NA urges TSA to withdraw TSA-NA-23-02 and work with airports and Congress to address ACI-NA's concerns.

Background

Airports are committed to ensuring effective security and implementing enhanced measures based on current and emerging threats, and in response to vulnerability assessments. In full compliance with federal requirements, U.S. airports work with their federal government, law enforcement, and airline partners to regularly examine, test, and improve upon a multi-layered, risk-based, outcome-focused security system to provide for the safety and security of travellers and aviation workers. Because of the unpredictable nature of security threats, airports often go above and beyond baseline security requirements, implementing additional processes, procedures, and technologies that are adapted to the airport's unique location and facility design.

Ensuring the safety and security of the travelling public and aviation workers is the top priority for our airport members. In order to mitigate concerns about insider risk, North American airports have conducted vulnerability assessments, developed mitigation plans, and established insider risk programs. Further, airports have implemented various measures to address concerns about suspicious activity and insider risk, including inspections of aviation workers. Airports continue to enhance security measures to protect travellers and aviation workers.

On April 27, 2023, TSA issued TSA-NA-23-02 requiring airports to conduct random physical screening of aviation workers entering certain access points in terminal buildings beginning in late September 2023, and to eventually procure and use explosive detection screening equipment to conduct the screening. TSA-NA-23-02 provides scant guidance on the training and use of technology to conduct of such screening.

TSA Should Conduct Aviation Worker Screening

TSA should withdraw TSA-NA-23-02 and provide for the screening of aviation workers using TSA's own workforce or by contracting with airports or private security service providers. TSA is better positioned to implement a nation-wide aviation worker screening program. The agency

has the ability to assess, hire, train, and oversee large numbers of Transportation Security Officers (TSOs) and contractors. Further, TSA has the capability to promptly disseminate intelligence information, make necessary adjustments to screening technology algorithms, standard operating procedures and ensure TSOs are appropriately trained on the latest screening protocols designed to respond to current and evolving threats, while ensuring consistency and security effectiveness.

If Airports are Going to Voluntarily Participate, the Federal Government Must Address Liability Concerns

Within the proper framework, TSA should consider standing up a program akin to the Congressionally-mandated Screening Partnership Program that would allow airports to elect to conduct aviation worker screening at their facilities. However, TSA must first: (1) provide general guidance on the training and use of screening technology, (2) ensure that there is a funding mechanism in place to reimburse airport costs, and (3) address the significant liability concerns.

TSA-NA-23-02's mandate effectively imposes upon airports significant new liability risks, including potential liability from federal and state constitutional claims arising out of administrative searches, and potentially catastrophic liability arising out of an airport's inability to detect prohibited items that are later used for a criminal or terrorist act. Those liability concerns must be addressed by TSA or Congress before airports can participate in any aviation worker screening program.

TSA Should Work with Airports and Congress to Identify a Funding Mechanism

There are no funding resources readily available to airports to implement TSA-NA-23-02 as drafted. The direct and indirect costs for implementing such an unfunded mandate are considerable. Additional staff or contractors will be necessary to perform screening, and the TSA mandate also requires the acquisition, deployment, operation, and maintenance of sophisticated screening technology. TSA does not have the resources to fund such a program, and airports are already experiencing challenges with hiring staff to perform various airport functions – from bus drivers to law enforcement to cybersecurity professionals. The hiring of additional staff or procuring the services of contractors needed to screen aviation workers, as required by TSA-NA-23-02, will only exacerbate the problem.

The timeframes for implementation compound the funding problem in the short term. Congress does not appear ready to appropriate funds for aviation worker screening (in this context, ACI-NA renews its call to end the diversion of the September 11 Security Fee), and airports have already finalized their 2023-2024 budgets and have limited ability to cover the costs of additional personnel that would be necessary to perform the measures by the effective date.