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ARMING PILOTS AGAINST TERRORISM ACT

JULY 8, 2002.—Ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Transportation and Infrastructure, submitted the following

R E P O R T

[To accompany H.R. 4635]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 4635) to amend title 49, United States Code, to establish a program for Federal flight deck officers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arming Pilots Against Terrorism Act".

SEC. 2. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

"§ 44921. Federal flight deck officer program

"(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a pilot program to deputize volunteer pilots of air carriers providing air transportation or intrastate air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'.

"(b) PROCEDURAL REQUIREMENTS.—

"(1) IN GENERAL.—Not later than 2 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

"(2) COMMENCEMENT OF PROGRAM.—Beginning 2 months after the date of enactment of this section, the Under Secretary shall begin the process of selecting, training, and deputizing pilots as Federal flight deck officers under the program; except that, if the procedures required under paragraph (1) are not established before the last day of such 2-month period, the Under Secretary shall not begin the process of selecting, training, and deputizing pilots until the date on which the procedures are established or the last day of the 4-month period beginning on such date of enactment, whichever occurs first.

"(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

"(A) The type of firearm to be used by a Federal flight deck officer.

"(B) The type of ammunition to be used by a Federal flight deck officer.

"(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

"(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

"(E) Analyze the risk of catastrophic failure of an aircraft as a result of the discharge of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

"(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only one pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

"(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

"(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

"(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program.

"(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms.

"(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

"(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

"(M) Any other issues that the Under Secretary considers necessary.

"(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

"(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

"(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

"(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

"(1) IN GENERAL.—The Under Secretary shall provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

"(2) TRAINING.—

"(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

"(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

"(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

"(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

"(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

"(C) TRAINING IN USE OF FIREARMS.—

"(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

"(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

"(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur quarterly or at an interval required by a rule issued under subsection (i).

"(d) DEPUTIZATION.—

"(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

"(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

"(A) the pilot is employed by an air carrier;

"(B) the Under Secretary determines that the pilot meets the standards established by the Under Secretary for being such an officer; and

"(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

"(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

"(4) MAXIMUM NUMBER.—The maximum number of pilots that may be deputized under the pilot program as Federal flight deck officers may not exceed 2 percent of the total number of pilots that are employed by air carriers engaged in air transportation or intrastate transportation on the date of enactment of this section.

"(5) REVOCATION.—The Under Secretary may revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

"(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

"(f) AUTHORITY TO CARRY FIREARMS.—

"(1) IN GENERAL.—The Under Secretary shall authorize, while the program under this section is in effect, a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

"(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from one State to another State.

"(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

"(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

"(h) LIMITATION ON LIABILITY.—

"(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

"(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

"(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer, the officer shall be treated as an employee of the Federal Government.

"(i) DURATION OF PROGRAM.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the pilot program established under this section shall be in effect for a period of 2 years beginning on the date that the 250th pilot is deputized as a Federal flight deck officer under this section.

"(2) RISK-BENEFIT DETERMINATION DECISION.—Before the last day of such 2-year period, the Under Secretary shall determine whether the security benefits of the Federal flight deck officer pilot program outweigh the risks of the program.

"(3) TERMINATION OF PILOT PROGRAM.—If the Under Secretary determines under paragraph (2) that the risks outweigh the benefits, the Under Secretary shall publish a notice in the Federal Register terminating the pilot program and explaining the reasons for the decision to terminate and shall provide adequate notice of the decision to Federal flight deck officers and other individuals as necessary.

"(4) CONTINUATION OF PROGRAM.—

"(A) IN GENERAL.—If the Under Secretary determines under paragraph (2) that the benefits outweigh the risks, the Under Secretary shall publish a notice in the Federal Register announcing the continuation of the program, shall continue the program in accordance with this section, and may increase the number of Federal flight deck officers participating in the program.

"(B) NOTICE OF PROPOSED RULEMAKING.—Not later than 60 days after the date of publication of a notice continuing the program, the Under Secretary shall issue a notice of proposed rulemaking to provide for continuation of the program. In conducting the proposed rulemaking, the Under Secretary shall readdress each of the issues to be addressed under subsection (b)(3) and, in addition, shall address the following issues:

"(i) The use of various technologies by Federal flight deck officers, including smart gun technologies and nonlethal weapons.

"(ii) The necessity of hardening critical avionics, electrical systems, and other vulnerable equipment on aircraft.

"(iii) The standards and circumstances under which a Federal flight deck officer may use force (including lethal force) against an individual in defense of the flight deck of an aircraft.

"(5) REEVALUATION.—Not later than 3 years after the date of publication of a notice continuing the program, the Under Secretary shall reevaluate the program and shall report to Congress on whether, in light of additional security measures that have been implemented (such as reinforced doors and universal employee biometric identification), the program is still necessary and should be continued or terminated.

"(j) APPLICABILITY.—

"(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

"(2) PILOT DEFINED.—The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.".

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:

"44921. Federal flight deck officer program.".

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

SEC. 3. CREW TRAINING.

Section 44918(e) of title 49, United States Code, is amended—

(1) by striking "The Administrator" and inserting the following:

"(1) IN GENERAL.—The Under Secretary";

(2) by adding at the end the following:

"(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

"(A) require both classroom and hands-on situational training in the following elements of self defense:

"(i) recognizing suspicious activities and determining the seriousness of an occurrence;

"(ii) deterring a passenger who might present a problem;

"(iii) crew communication and coordination;

"(iv) the proper commands to give to passengers and attackers;

"(v) methods to restrain an attacker;

"(vi) use of available items aboard the aircraft for self-defense;

"(vii) appropriate responses to defend oneself, including the use of force against an attacker;

"(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

"(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

"(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

"(B) require training in the proper conduct of a cabin search;

"(C) establish the required number of hours of training and the qualifications for the training instructors;

"(D) establish the intervals, amount, and elements of recurrent training;

"(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

"(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

"(3) RESPONSIBILITY OF UNDER SECRETARY.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, employees of air carriers, and educational institutions offering law enforcement training programs."; and

(3) by aligning the remainder of the text of paragraph (1) (as designated by paragraph (1) of this section) with paragraphs (2) and (3) (as added by paragraph (2) of this section).

SEC. 4. COMMERCIAL AIRLINE SECURITY STUDY.

(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.

SEC. 5. TECHNICAL AMENDMENTS.

Section 44903 of title 49, United States Code, is amended—

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).

PURPOSE OF THE LEGISLATION

The reported bill (H.R. 4635) directs the Transportation Security Administration (TSA) to deputize up to 2% of the airline pilots for a 2-year test period. Deputized pilots would be allowed to carry firearms aboard the aircraft to defend the cockpit from hijackers.

BACKGROUND AND NEED FOR THE LEGISLATION

The United States of America faces a new and changing threat unlike any we have faced before—the threat of global terrorism. This threat will exist for a long time, and every action must be taken to protect America against those that would seek to kill the innocent.

Since September 11, 2001, the Federal government has taken significant actions to improve aviation security. The Nation is stronger and better prepared today than it was on September 11. However, our aviation system is still in a vulnerable stage of transition. More must be done to prepare for the unknown threats of tomorrow from an often-invisible enemy, an enemy that appears to be preparing and training for additional terrorists attacks, and an enemy that seeks to obtain the most dangerous and deadly weapons to use against America.

There is strong evidence to suggest that more terrorist cells have been trained to take over commercial aircraft. In the event of another terrorist hijacking, the Department of Defense will be forced to make the difficult decision to shoot down a plane carrying innocent passengers to prevent that plane from being used as a weapon. Under these circumstances, Congress must act to provide one last layer of defense.

Arming trained and qualified pilots on a voluntary basis to carry firearms to defend the cockpits of their aircraft is a necessary step to ensure the safety and security of the flying public. Nothing else can provide the deterrence or effectiveness of a weapon wielded by a highly trained individual.

Pilots are already entrusted with the lives of every passenger on the plane. A significant number of pilots have a law enforcement or military background and have some experience with firearms. They are nearly unanimous in their support for the ability to defend themselves, their passengers and their plane.

The Committee is aware that some people believe that the additional screening of passengers and other security improvements made since September 11th should be enough. However, the DOT Inspector General continues to find that weapons are getting through security in alarming numbers. Cockpit doors will not be fortified until 2003 and even then will not be impregnable. Air Marshals, while a significant deterrent, cannot be on every aircraft at all times.

Our aviation safety system is based on redundancy. When all else fails, the U.S. needs a last line of defense. Providing pilots with firearms is a significant deterrent and gives additional assurance that the hijackers can no longer succeed.

Concerns have been raised that bullet holes could cause a rapid decompression of the aircraft. However, Boeing has testified and other tragic incidents confirm that an aircraft can sustain significant damage and continue to fly safely. Nonetheless, the reported

bill requires the TSA to conduct tests to assess the risks to an aircraft of firing weapons into sensitive areas.

In addition, while a pilot's first priority should be to fly the aircraft, it will be very difficult for an unarmed pilot to concentrate on flying when an armed hijacker is breaking down the cockpit door. Giving pilots a means to defend themselves in an emergency will allow them to concentrate on flying and ensure the safety of the flight.

H.R. 4635, the Arming Pilots Against Terrorism Act, will create a two-year test program to allow pilots, on a voluntary basis, to carry firearms to defend the cockpits of their aircraft. The program will allow up to 2 percent of active pilots to volunteer to be deputized as Federal law enforcement officers. Participants will undergo extensive firearms training similar to that of the Federal Air Marshals. They will be authorized to use deadly force only as a last option to protect the cockpits of their aircraft against immediate threats of violence or air piracy. Deputized pilots would be allowed to carry firearms in the cockpit regardless of the position of the airline that employs them on this issue.

SUMMARY OF THE LEGISLATION

Section 1 is the short title.

Section 2 adds a new section 44921 to Title 49 of the U.S. Code to create the Federal Flight Deck Officer Program to defend the cockpit of commercial passenger and cargo aircraft providing air transportation. Under the definition in 49 U.S.C. section 40102(a)(5), air transportation includes interstate air transportation and foreign air transportation.

Subsection (a) of section 44921 establishes the program.

Subsection (b) sets forth the procedural requirements for the program.

Paragraph (1) states that the Transportation Security Administration (TSA) shall establish the procedural requirements within 2 months of the date of enactment.

Paragraph (2) requires the TSA to begin the process of selecting, training, and deputizing pilots as Federal flight deck officers within 2 months of the date of enactment unless the procedural requirements have not been established within 2 months. In that case, the TSA must begin the process when the procedures are established but not later than 4 months. While this is a tight deadline, the Committee notes that the TSA has a good record for meeting its deadlines thus far and expects the procedural requirements to be established in time as well, especially since many of the requirements could be the same as those already being used for Federal Air Marshals (FAMs). However, delays in establishing these procedures cannot be used as an excuse to hold up implementation of this program.

Paragraph (3) set forth the issues that TSA must address in establishing the procedural requirements. These are—

(A) The type of firearm to be used;

(B) The type of ammunition to be used;

(C) The standards and training needed to qualify for the program;

(D) Where the firearm should be placed in the aircraft to ensure that it does not fall into the wrong hands but can be easily retrieved in the event of an emergency;

(E) The risks to the aircraft from shooting the firearm into sensitive areas of the aircraft;

(F) The division of responsibility between pilots in the event of a hijacking when only 1 pilot is armed and when both are armed;

(G) Procedures for ensuring that the firearm does not leave the cockpit if the pilot does;

(H) How an armed pilot and a Federal Air Marshal should interact;

(I) The process for determining the fitness of the pilot to participate in the program which may include, if the TSA considers it necessary, psychological testing or background checks in addition to the background checks that a person is already subject to in order to become a pilot (It should be noted that the bill as originally introduced contained a clause stating that the pilot should be "the subject of an employment investigation (including a criminal history record check) under section 44936(a)(1)." However, pilots must submit to an employment investigation under section 44936(a)(1) by virtue of being employed by an air carrier or having access to secured areas of an airport. Therefore, the clause is absent from the reported bill because it would be redundant. Its absence should not be construed as an exemption for Flight Deck Officers from a background check nor would it prevent the TSA from requiring a pilot to undergo an additional check before being deputized.);

(J) How the firearm should be stored and transported between flights, including international flights, to ensure the security of the weapon;

(K) Methods to ensure that security personnel are able to identify a pilot authorized to carry a firearm under this program;

(L) Methods to ensure that pilots will be able to know when a passenger who are law enforcement officers authorized to carry a firearm aboard the aircraft. Pilots have expressed concern that current ID's can be easily forged.

Paragraph (4) directs TSA to give preference to former military and law enforcement personnel in deciding which pilots to select for this program.

Paragraph (5) states that information on the aircraft's vulnerabilities developed under subparagraph (E) above should not be disclosed.

Paragraph (6) states that TSA must notify the Congressional Committees of jurisdiction when it completes the analysis of aircraft vulnerabilities under subparagraph (E).

Subsection (c) establishes the training, supervision, and equipment for the program.

Paragraph (1) requires TSA to provide the training, supervision, and equipment for the program at no cost to the pilot or the pilot's airline. Exceptions are contained in (2)(C)(ii) and (f)(1) below in the event that TSA lacks the resources to provide certain training and firearms.

Paragraph (2) sets forth the training requirements.

Subparagraph (A) states that the training requirements shall be based on the training requirements for Federal Air Marshals but that TSA may modify them in light of the different role and responsibilities of an armed pilot and an armed air marshal.

Subparagraph (B) sets forth the specific elements of the training, as follows:

(i) Training to ensure that the pilot achieves the level of proficiency with a firearm required under subparagraph (C) below;

(ii) Training to ensure that the pilot maintains exclusive control of the firearm, including training in ways to defend against an attacker trying to seize the firearm;

(iii) Training to assist the pilot in determining when it is appropriate to shoot and when it is appropriate to use less than lethal force.

Subparagraph (C) sets forth the training requirements for the use of firearms. Under these requirements—

(i) The pilot must achieve a level of proficiency with a firearm comparable to that required of Federal Air Marshals, as determined by TSA;

(ii) The training may be conducted by TSA or by a firearms training facility approved by TSA. This may be at the pilot's own expense if TSA resources are inadequate.

(iii) The pilot must requalify with the firearm quarterly for the duration of the 2-year pilot program. If the Under Secretary decides to extend or expand the program permanently, TSA may establish a different time interval.

Subsection (d) addresses the deputization of the pilots.

Paragraph (1) allows the TSA to deputize pilots as Federal Flight Deck Officers who volunteer for the program and who are qualified.

Paragraph (2) states that a pilot is qualified if—

(A) the pilot is employed by an airline;

(B) the pilot meets the standards established by TSA;

(C) TSA determines the pilot has completed the required training.

Paragraph (3) allows TSA to request another agency, such as the Justice Department or the U.S. Marshals Service, to actually deputize the pilots that TSA determines are qualified.

Paragraph (4) limits the number of pilots who can be deputized under the program established by this bill to 2% of the pilot workforce.

Paragraph (5) authorizes TSA to revoke a pilot's ability to be armed under this program if TSA finds that the pilot is not qualified.

Subsection (e) makes clear that Federal flight deck officers are not eligible for compensation from the Federal government for being such officers and neither the government nor the pilot's airline are obligated to pay that pilot for the time spent training for the program. However, this subsection does not prevent an airline from compensating its Federal flight deck officers.

Subsection (f) addresses the authority to carry firearms.

Paragraph (1) directs TSA to authorize Federal flight deck officers to carry firearms. It also allows the Federal flight deck officer to purchase and carry his or her own firearm if the firearm is the type allowed under this program.

Paragraph (2) preempts Federal or State laws that would otherwise prevent a Federal flight deck officer from carrying a firearm to participate in this program including the carriage of the firearm outside the airport between duty times.

Paragraph (3) allows the TSA to enter into MOU's or take other action to ensure that Federal flight deck officers can carry firearms on flights into foreign countries and outside the airport between duty times.

Subsection (g) directs TSA to set the standards and circumstances under which a Federal flight deck officer may use lethal force. In prescribing a use of force standard the committee recommends that TSA draw guidance from existing federal use of force protocols.

Subsection (h) sets forth the limitations on liability.

Paragraph (1) exempts airlines from liability for a Federal flight deck officer's use or failure to use a firearm since the airline has no role under the reported bill in deciding whether its pilots will be allowed to carry firearms.

Paragraph (2) exempts Federal flight deck officers from liability for injuries that may result from their use of a firearm in defending the cockpit of their aircraft from a hijacking unless the pilot is guilty of gross negligence or willful misconduct. No special liability protection is afforded flight attendants since they are already covered by section 144 of the Aviation and Transportation Security Act, P.L. 107–71, 115 Stat. 644, 49 U.S.C. 44903.

Paragraph (3) states that in actions against the United States, the Federal flight deck officer shall be treated as a Federal employee.

Subsection (i) addresses the duration of the program.

Paragraph (1) limits the duration of the program to 2 years. To ensure that there are enough pilots in the program to have a valid test, the 2-year period does not begin to run until the 250th pilot has been deputized. However, the first 249 pilots who are deputized could fly armed as long as the required procedures are in place. They would not have to wait until the 250th pilot is deputized before having access to firearms in the cockpit as authorized by TSA.

Paragraph (2) requires TSA to evaluate the program before the end of the 2-year period.

Paragraph (3) authorizes TSA to terminate the program at the end of the 2-year period if it finds that the risks of the program outweigh the benefits. If the program is terminated, TSA must give Federal flight deck officers, and other individuals as necessary, enough notice so that they can return to their bases and remove their firearms from the cockpit.

Paragraph (4) governs the continuation of the program.

Subparagraph (A) states that if TSA decides to continue the program, it shall publish a notice in the Federal Register and may deputize more pilots in addition to any pilots previously deputized.

Subparagraph (B) requires TSA to issue a notice of proposed rulemaking (NPRM) 60 days after publication of the notice continuing the program. The NPRM shall propose rules under which the program will be operated. These rules should address the issues listed in (b)(3) above as well as the following:

(i) The use of other types of weapons such as "smart" firearms and nonlethal weapons;

(ii) Whether the sensitive areas of the aircraft should be hardened to protect them from a stray bullet;

(iii) When and how a Federal flight deck officer can use force (including lethal force) against an individual in defense of the flight deck.

Paragraph (5) directs TSA to reevaluate the program after 3 years, if it has determined to continue the program, and report to Congress on whether it should be continued or terminated. Congress could then decide, based on that report, whether to continue it or terminate it.

Subsection (j) exempts from the coverage of the reported bill those small carriers, and their pilots, governed by part 135 of the FAA's rules to the extent they are already authorized to fly armed under FAA rules. This subsection also defines the term "pilot" and makes clear that it includes both those commonly known as the pilot and the co-pilot.

Subsection (b) of the reported bill repeals the section in existing law that previously governed whether a pilot could be armed.

Subsection (c) is a sense of the Congress that the training of Federal flight deck officers should not prevent the TSA from training its Federal Air Marshals.

Section 3 strengthens the flight attendant training program. It requires that flight attendants receive training in self-defense. It would not be sufficient for this training to merely involve the showing of a video. Rather, the provision contemplates hands-on training. A flight attendant would not have to participate in the physical aspects of the training if that flight attendant believes it would have an adverse impact on his or her health or safety. The section sets forth the elements of the training and requires the TSA to establish, by rule, the qualifications for the training instructors, the required number of hours for that training, and the intervals, amount, and elements of recurrent training. In formulating the rule, TSA should consult with self-defense experts, airlines, flight attendants, and educational institutions, such as community colleges, that offer law enforcement training programs. These may be appropriate resources for TSA to determine the appropriate number of hours for these training programs.

Section 4 requires a study of Federal law enforcement officers, other than Federal air marshals, who are carrying weapons while on board commercial aircraft. The study would determine the number of such officers who are flying and examine the cost and feasibility of establishing programs to utilize them to supplement the air marshals and armed pilots. A report is required in 6 months.

Section (5) makes technical corrections to section 44903 of Title 49 to correct the problem of multiple subsection (h)'s in that section.

LEGISLATIVE HISTORY AND COMMITTEE CONSIDERATION

H.R. 4635 was introduced by Congressman Don Young of Alaska on May 1, 2002 and was referred to the Committee on Transportation and Infrastructure. The Subcommittee on Aviation held hearings on May 2, 2002 and approved the bill by voice vote on June 19, 2002 after approving by voice vote an amendment in the

nature of a substitute offered by Subcommittee Chairman John Mica. The Committee, after adopting several amendments by voice vote, favorably reported the amended bill by voice vote on June 26, 2002.

ROLLCALL VOTES

Clause 3(b) of rule XIII of the House of Representatives requires each committee report to include the total number of votes cast for and against on each rollcall vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. There were no rollcall votes on the reported bill.

COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

COST OF LEGISLATION

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XIII

1. With respect to the requirement of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, and 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objective of this legislation are to arm 2% of the pilots for a 2-year test period.

3. With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4635 from the Director of the Congressional Budget Office.

U.S. CONGRESS
CONGRESSIONAL BUDGET OFFICE
Washington, DC, July 8, 2002.

Hon. DON YOUNG,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4635, the Arming Pilots Against Terrorism Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Rachel Milberg.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 4635—Arming Pilots Against Terrorism Act

Summary: H.R. 4635 would direct the Under Secretary of Transportation for Security to establish a program for training and equipping aviation pilots as federal flight deck officers. The Under Secretary would authorize the officers to carry firearms.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 4635 would cost about $47 million over the 2003–2007 period. Enacting H.R. 3609 would not affect direct spending or receipts, so pay-as-you-go procedures would not apply.

H.R. 4635 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that complying with the mandates would impose no costs on state, local, or tribal governments. Therefore, the threshold established by UMRA ($58 million in 2002, adjusted annually for inflation) would not be exceeded.

H.R. 4635 also contains a private-sector mandate as defined in UMRA. The bill would require air carriers to provide additional training, including self-defense training, to their crews. Because the new training requirements would depend on specific regulations that would be established by the Under Secretary, CBO cannot determine whether the direct cost to the private sector would exceed the annual threshold specified in UMRA ($115 million in 2002, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4635 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By Fiscal Year, in Millions of Dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated authorization level	5	12	13	13	13
Estimated outlays	3	6	12	13	13

Basis of estimate: For this estimate, CBO assumes that H.R. 4635 will be enacted near the end of fiscal year 2002 and that the necessary amounts will be appropriated for each year. The estimated costs are based on information from the Transportation Security Administration and the Air Line Pilots Association.

H.R. 4635 would limit the authorized number of federal flight deck officers to no more than 2 percent of all pilots employed by air carriers. CBO estimates that more than 2 percent of pilots employed by air carriers would volunteer and qualify to be an officer, thus we expect this provision would limit participation in the program to about 1,400 pilots. We estimate that the program would cost $8,000 annually for each federal flight deck officer, including

the cost of weapons, ammunition, training, and travel. CBO estimates that it would cost an additional $500,000 each year to maintain a staff of about six people to manage the new program.

H.R. 4635 would require the Under Secretary to evaluate the benefits and risks associated with the federal flight deck officers, and decide whether or not the program should continue. The Under Secretary would evaluate the program twice: the first time would occur two years after the 250th officer had been deputized, and the second time would occur three years later. The bill would allow the Under Secretary to expand the size of the program at that time. For this estimate, CBO assumes the Under Secretary would decide to continue the program at the same level (of about 1,400 pilots).

Under current law, the Under Secretary collects fees from air carriers and air passengers to partly cover the cost of transportation security programs. However, CBO does not expect that implementing H.R. 4635 would change the amounts of fees collected.

Pay-as-you-go considerations: None.

Estimated impact on state, local, and tribal governments: H.R. 4635 would shield both air carriers and pilots participating in the federal flight deck officer program from liability for damages resulting from the pilot's defense of the aircraft (with the some exceptions). Because the liability provisions would limit the application of state law, the bill contains an intergovernmental mandate as defined in UMRA. However, the liability mandates would impose no duty on states that would result in additional spending.

The bill would allow pilots participating in the federal flight deck program to carry firearms into any state, regardless of state firearm laws. This preemption of state firearm law also is an intergovernmental mandate as defined in UMRA. CBO estimates that this preemption would not affect state budgets because, while it would limit the application of state law towards the participating pilots, it would impose no duty on states that would result in additional spending.

Because neither of these mandates, taken individually or together, would result in additional costs, the threshold established by UMRA ($58 million, in 2002, adjusted annually by inflation) would not be exceeded.

Estimated impact on the private sector: H.R. 4635 contains a private-sector mandate as defined in UMRA. The bill would require air carriers to provide additional training, including self-defense training, to their crews. According to industry sources, 190,000 or more employees would have to be trained. The cost of such training would depend on the length and content of the programs. Because those elements of the new training programs would depend on specific regulations that would be established by the Under Secretary, CBO cannot determine whether the direct cost to the private sector would exceed the annual threshold specified in UMRA ($115 million in 2002, adjusted annually for inflation).

Estimate prepared by: Federal costs: Rachel Milberg; impact on state, local, and tribal governments: Greg Waring; impact on the private sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause (3)(d)(1) of rule XIII of the Rules of the House of Representatives, committee reports on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the measure. The Committee on Transportation and Infrastructure finds that Congress has the authority to enact this measure pursuant to its powers granted under article I, section 8 of the Constitution.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act. (Public Law 104–4).

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1994 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local or tribal law. The Committee states that H.R. 4635 preempts state law to the extent necessary to allow Federal flight deck officers to carry firearms interstate and within a state and to limit their liability for the use of that gun to defend the cockpit of an aircraft.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act. (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CHAPTER 449 OF TITLE 49, UNITED STATES CODE

CHAPTER 449—SECURITY

SUBCHAPTER I—REQUIREMENTS

Sec.
44901. Screening passengers and property.
* * * * * * *
44921. Federal flight deck officer program.
* * * * * * *

SUBCHAPTER I—REQUIREMENTS

* * * * * * *

§ 44903. Air transportation security

(a) * * *

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[(h)**]** *(i)* AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.—

(1) * * *

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[(i)**]** *(j)* SHORT-TERM ASSESSMENT AND DEPLOYMENT OF EMERGING SECURITY TECHNOLOGIES AND PROCEDURES.—

(1) * * *

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[(h)**]** *(k)* LIMITATION ON LIABILITY FOR ACTS TO THWART CRIMINAL VIOLENCE OR AIRCRAFT PIRACY.—An individual shall not be liable for damages in any action brought in a Federal or State court arising out of the acts of the individual in attempting to thwart an act of criminal violence or piracy on an aircraft if that individual reasonably believed that such an act of criminal violence or piracy was occurring or was about to occur.

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§ 44918. Crew training

(a) * * *

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(e) UPDATES.—**[**The Administrator**]**

(1) IN GENERAL.—The Under Secretary shall update the training guidance issued under subsection (a) from time to time to reflect new or different security threats and require air carriers to revise their programs accordingly and provide additional training to their flight and cabin crews.

(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

(A) require both classroom and hands-on situational training in the following elements of self defense:

(i) recognizing suspicious activities and determining the seriousness of an occurrence;

(ii) deterring a passenger who might present a problem;

(iii) crew communication and coordination;

(iv) the proper commands to give to passengers and attackers;

(v) methods to restrain an attacker;

(vi) use of available items aboard the aircraft for self-defense;

(vii) appropriate responses to defend oneself, including the use of force against an attacker;

(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

(B) require training in the proper conduct of a cabin search;

(C) establish the required number of hours of training and the qualifications for the training instructors;

(D) establish the intervals, amount, and elements of recurrent training;

(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

(3) RESPONSIBILITY OF UNDER SECRETARY.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, employees of air carriers, and educational institutions offering law enforcement training programs.

* * * * * * *

§ 44921. Federal flight deck officer program

(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a pilot program to deputize volunteer pilots of air carriers providing air transportation or intrastate air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as "Federal flight deck officers".

(b) PROCEDURAL REQUIREMENTS.—

(1) IN GENERAL.—Not later than 2 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

(2) COMMENCEMENT OF PROGRAM.—Beginning 2 months after the date of enactment of this section, the Under Secretary shall begin the process of selecting, training, and deputizing pilots as Federal flight deck officers under the program; except that, if the procedures required under paragraph (1) are not established before the last day of such 2-month period, the Under Secretary shall not begin the process of selecting, training, and deputizing pilots until the date on which the procedures are established or the last day of the 4-month period beginning on such date of enactment, whichever occurs first.

(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

(A) The type of firearm to be used by a Federal flight deck officer.

(B) The type of ammunition to be used by a Federal flight deck officer.

(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

(E) Analyze the risk of catastrophic failure of an aircraft as a result of the discharge of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only one pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program.

(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms.

(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

(M) Any other issues that the Under Secretary considers necessary.

(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

(1) IN GENERAL.—The Under Secretary shall provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

(2) TRAINING.—

(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers

under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

(C) TRAINING IN USE OF FIREARMS.—

(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur quarterly or at an interval required by a rule issued under subsection (i).

(d) DEPUTIZATION.—

(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

(A) the pilot is employed by an air carrier;

(B) the Under Secretary determines that the pilot meets the standards established by the Under Secretary for being such an officer; and

(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

(4) MAXIMUM NUMBER.—The maximum number of pilots that may be deputized under the pilot program as Federal flight deck officers may not exceed 2 percent of the total number of pilots that are employed by air carriers engaged in air transportation or intrastate transportation on the date of enactment of this section.

(5) REVOCATION.—The Under Secretary may revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

(f) AUTHORITY TO CARRY FIREARMS.—

(1) IN GENERAL.—The Under Secretary shall authorize, while the program under this section is in effect, a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from one State to another State.

(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

(h) LIMITATION ON LIABILITY.—

(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer, the officer shall be treated as an employee of the Federal Government.

(i) DURATION OF PROGRAM.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the pilot program established under this section shall be in effect for a period of 2 years beginning on the date that

the 250th pilot is deputized as a Federal flight deck officer under this section.

(2) RISK-BENEFIT DETERMINATION DECISION.—Before the last day of such 2-year period, the Under Secretary shall determine whether the security benefits of the Federal flight deck officer pilot program outweigh the risks of the program.

(3) TERMINATION OF PILOT PROGRAM.—If the Under Secretary determines under paragraph (2) that the risks outweigh the benefits, the Under Secretary shall publish a notice in the Federal Register terminating the pilot program and explaining the reasons for the decision to terminate and shall provide adequate notice of the decision to Federal flight deck officers and other individuals as necessary.

(4) CONTINUATION OF PROGRAM.—

(A) IN GENERAL.—If the Under Secretary determines under paragraph (2) that the benefits outweigh the risks, the Under Secretary shall publish a notice in the Federal Register announcing the continuation of the program, shall continue the program in accordance with this section, and may increase the number of Federal flight deck officers participating in the program.

(B) NOTICE OF PROPOSED RULEMAKING.—Not later than 60 days after the date of publication of a notice continuing the program, the Under Secretary shall issue a notice of proposed rulemaking to provide for continuation of the program. In conducting the proposed rulemaking, the Under Secretary shall readdress each of the issues to be addressed under subsection (b)(3) and, in addition, shall address the following issues:

(i) The use of various technologies by Federal flight deck officers, including smart gun technologies and nonlethal weapons.

(ii) The necessity of hardening critical avionics, electrical systems, and other vulnerable equipment on aircraft.

(iii) The standards and circumstances under which a Federal flight deck officer may use force (including lethal force) against an individual in defense of the flight deck of an aircraft.

(5) REEVALUATION.—Not later than 3 years after the date of publication of a notice continuing the program, the Under Secretary shall reevaluate the program and shall report to Congress on whether, in light of additional security measures that have been implemented (such as reinforced doors and universal employee biometric identification), the program is still necessary and should be continued or terminated.

(j) APPLICABILITY.—

(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

(2) PILOT DEFINED.—The term "pilot" means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the

operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.

* * * * * * *

SECTION 128 OF THE AVIATION AND TRANSPORTATION SECURITY ACT

[SEC. 128. FLIGHT DECK SECURITY.

[The pilot of a passenger aircraft operated by an air carrier in air transportation or intrastate air transportation is authorized to carry a firearm into the cockpit if—

[(1) the Under Secretary of Transportation for Security approves;

[(2) the air carrier approves;

[(3) the firearm is approved by the Under Secretary; and

[(4) the pilot has received proper training for the use of the firearm, as determined by the Under Secretary.]

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