

Calendar No. 76

108TH CONGRESS }
1st Session

SENATE

{ REPORT
108-38

**AIR CARGO SECURITY IMPROVEMENT
ACT**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

ON

S. 165



APRIL 24, 2003.—Ordered to be printed

Filed, under authority of the order of the Senate of April 11, 2003

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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AIR CARGO SECURITY IMPROVEMENT ACT

APRIL 24, 2003.—Ordered to be printed

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Mr. MCCAIN, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 165]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 165) “A Bill To improve air cargo security”, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Air Cargo Security Improvement Act, S. 165, as reported, is to enhance the security of cargo transported by air, particularly aboard passenger aircraft.

BACKGROUND AND NEEDS

On November 16, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) in response to the terrorist attacks on September 11th of that year. The Act, which was signed into law on November 19, 2001, implemented a new regime for aviation security and created the Transportation Security Administration (TSA) within the Department of Transportation (DOT) to oversee security for all modes of transportation. The TSA has since been transferred to the Department of Homeland Security (DHS). ATSA (P.L. 107-71) contained numerous provisions and deadlines designed to increase aviation security targeted at the safety and security of airline passengers.

With respect to the security of air cargo, ATSA contained two key provisions. The first dealt with passenger aircraft and required

that the TSA provide for the screening of all cargo and mail that will be carried aboard such aircraft (section 110). Almost all passenger flights carry cargo alongside luggage in the belly of the plane. Such cargo can encompass anything from pallets of computer chips to refrigerated cartons of chicken. According to a Federal Aviation Administration (FAA) estimate, approximately 22 percent of all air cargo loaded in the United States in 2000 was carried on passenger flights.

ATSA required that all checked airline bags be screened by explosive detection systems by December 31, 2002, which was later extended to 2003 for a limited number of airports. A similar timetable was not specified for screening cargo.

The second provision required that a system must be in operation as soon as practicable after the date of enactment of ATSA (section 10), to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft.

I. ACTIVITY BEFORE SEPTEMBER 11, 2001

The air cargo system involves numerous participants that all require some level of security oversight. Typically, a shipper takes packages to an indirect air carrier (IAC, also known as a freight forwarder). An IAC is defined as any person or entity, excluding an air carrier, that engages indirectly in the transportation of property by air, and uses the services of a passenger air carrier. This does not include the United States Postal Service. The IAC may consolidate packages from many shippers into single containers. The IAC then uses trucks, either its own or hired, to deliver the bulk freight to air carriers for transport.

Before the attacks of September 11, 2001, the FAA was generally responsible for oversight of civil aviation security. The bombing of Pan Am Flight 103 in 1988 led to the passage of the Aviation Security Improvement Act of 1990, which required the FAA to begin an accelerated 18-month research and development effort to find an effective explosives detection system to screen baggage and cargo. Following the 1996 crashes of ValuJet flight 592 and TWA flight 800, the White House Commission on Aviation Safety and Security was created to assess vulnerabilities of safety and security confronting aviation. The Commission recommended that the FAA implement a comprehensive plan to address the threat of explosives and other threatening objects in cargo and to work with industry to develop new initiatives in this endeavor. The FAA subsequently created Federal and industry partnerships, the Baseline Working Group, and later, the Cargo Working Group, to find ways improve air cargo security.

Under the FAA's program, front-line responsibility for screening air cargo fell on two groups: the carriers and IACs. Both were required to adopt and carry out FAA-approved security programs.

The key element of FAA's cargo security program before September 11, 2001, was the Known Shipper Program. A known shipper is essentially one that has an established reputation and thus is "known" to the industry and to the FAA. This program allowed an air carrier or IAC to transport a package from a known shipper with no more screening than an examination of its exterior. Packages from unknown shippers would be screened by X-ray or physically inspected before being placed aboard a passenger aircraft.

Under the FAA's cargo security program, IACs were not allowed to accept packages from unknown shippers. If the IAC does not have an existing relationship with the business that seeks to ship goods, it must follow established regulations to ensure the company is a trustworthy business. The FAA's security oversight and implementation responsibility of the Known Shipper Program was transferred through ATSA to the TSA.

Before September 11, 2001, the DOT Inspector General (IG) had been conducting tests of cargo security. The IG found that air carriers and indirect air carriers were not always complying with the FAA's Known Shipper Program, and that the FAA had not developed and implemented an adequate policy or oversight system to ensure compliance.

II. ACTIONS SINCE SEPTEMBER 11, 2001

A number of important changes were implemented after September 11, 2001, regarding the shipment of cargo on passenger air carriers. These changes included the requirement that only cargo from known shippers could be accepted on passenger air carriers and all cargo from unknown shippers and mail weighing more than 16 ounces had to be diverted to all-cargo air carriers.

The Known Shipper Program continues to be TSA's primary means of compliance with ATSA screening mandates today. According to the agency, it has strengthened the process through which a shipper becomes "known". The TSA has developed a national database of known shippers and is re-validating every business in the known shipper program.

Many of the other changes implemented by TSA are sensitive or classified information.

III. AIR CARGO ISSUES AND CONCERNS

The IG has expressed some concerns that the TSA's cargo security program is continuing to rely on the Known Shipper Program, which has weaknesses, and that very little cargo is actually screened. The IG believes that TSA must reevaluate its program to determine whether current procedures should be retained, identify new principles and controls that should be added, and develop a strategic plan to screen all cargo. The IG also is recommending that, until screening of all cargo is feasible, TSA develop and implement a plan for random screening of cargo using x-ray, canines, or explosives detection equipment. In addition, the IG advocates a requirement that a provider of cargo transportation lose its certification when TSA inspections and testing have continuously found the provider in noncompliance with cargo security requirements.

The size and nature of air cargo can vary widely. Airlines are financially dependent on cargo, which carries higher profit margins than passenger traffic. One of the key problems with any attempt to screen all cargo on passenger aircraft at this time is that any type of physical inspection or electronic screening would be extremely expensive and time-consuming. Some industry observers believe that any changes causing additional expense or delay to the air cargo system could cause widespread disruption to United States businesses, which have grown dependent on moving goods rapidly, as well as creating further financial difficulties for the troubled United States airline industry.

SUMMARY OF PROVISIONS

S. 165 would provide for several steps to improve the security of air cargo, particularly that which is carried aboard passenger aircraft. The TSA would be required to develop a strategic plan to ensure that all air cargo is screened, inspected, or otherwise made secure. TSA also would be required to develop a system for the regular inspection of air cargo shipping facilities. A database of known shippers would be established in order to bolster the Known Shipper Program. Indirect air carriers could have their certificates revoked if TSA finds that they are not adhering to security laws or regulations. The existing Federal security program for indirect air carriers would be reviewed and assessed for possible improvements. TSA would develop a security training program for persons who handle air cargo. All-cargo carriers would be required to develop security plans that would be subject to approval by the TSA.

S. 165 also would alter a provision in ATSA to expand the requirements of background checks for alien flight school applicants to include all aircraft instead of aircraft weighing 12,500 pounds or more.

S. 165 also would require a number of studies to be undertaken by the Department of Transportation and the Department of Homeland Security.

LEGISLATIVE HISTORY

S. 165 was introduced by Senators Hutchison and Feinstein on January 15, 2003. It is nearly identical to a title that was contained in legislation passed by the Committee last year, S. 2949, the Aviation Security Improvement Act, which was sponsored by then Chairman Hollings and Ranking Member McCain. S. 2949 was passed by unanimous consent in the full Senate on November 18, 2002. The cargo-related provision represented a consensus based on individual bills introduced by Senators Snowe (S. 2656) and Hutchison (S. 2668) during the second session of the 107th Congress.

A number of amendments to S. 165 were adopted during the Committee's Executive Session on March 13, 2003, before it was reported favorably out of the Senate Committee on Commerce, Science, and Transportation. Senator Wyden offered an amendment requiring a report on the proposed Computer Assisted Passenger Pre-Screening System (CAPPS II) and its impact upon privacy and civil liberties. Senator Boxer offered several amendments, including requiring the issuance of guidelines for detecting false identification at airports, evaluating blast-resistant cargo containers, reviewing how to best defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (MANPADS), and allowing cargo pilots to participate in the Federal Flight Deck Officers program. Senator Nelson offered an amendment requiring background checks of alien flight school applicants, without regard to the maximum certificated weight of the aircraft for which they seek training, and to require a report on the effectiveness of this requirement. All of the amendments were agreed to by voice vote. Many of these issues were included in S. 2949.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

APRIL 16, 2003.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed estimate for S. 165, the Air Cargo Security Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Ken Johnson.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 165—Air Cargo Security Improvement Act

Summary: S. 165 would impose new duties on the Transportation Security Administration (TSA) within the Department of Homeland Security. The bill would require the TSA to regularly inspect air shipping facilities, expand the Federal Flight Deck Officer Program by allowing pilots of air cargo aircraft to be armed, establish an industry-wide database of cargo shippers, and create a security training program for air cargo handlers.

Assuming appropriation of the necessary amounts, CBO estimates that implementing S. 165 would cost \$417 million over the 2004–2008 period. Enacting S. 165 would not affect direct spending or revenues.

S. 165 would allow eligible cargo pilots, regardless of state laws, to carry firearms within and across state borders and would protect those pilots and air carriers from liability for certain actions. These provisions would expand existing intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates, however, that these provisions would impose no costs on state, local, or tribal governments. Thus, new mandate costs would not exceed the threshold established by that act (\$59 million in 2003, adjusted annually for inflation). The remaining provisions of the bill contain no intergovernmental mandates.

S. 165 would impose private-sector mandates as defined in UMRA on carriers that transport cargo and facilities that provide flight training to foreign candidates. The cost to comply with those mandates would depend on the standards to be developed after enactment. However, based on information on current industry practices from the TSA and industry representatives, CBO expects that the costs to comply with the mandates would not exceed the annual threshold established by UMRA for private-sector mandates (\$117 million in 2003, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 165 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated authorization level	80	83	86	89	92
Estimated outlays	68	83	85	89	92

Basis of estimate

CBO estimates implementing S. 165 would cost \$417 million over the 2004–2008 period. A description of the costs is provided below. For this estimate, CBO assumes that S. 165 will be enacted by the end of fiscal year 2003 and that the necessary amounts will be appropriated for each year. We also assume that these appropriations would be adjusted to reflect anticipated inflation for each year. The estimated costs are based on information from the Transportation Security Administration and the Air Line Pilots Association.

Inspection of air shipping facilities and training cargo handlers

S. 165 would require the TSA to establish a system for regular inspections of shipping facilities that handle air cargo to ensure that appropriate security protocols are observed. Under current law, the TSA employs about 50 cargo security inspectors. To inspect every air cargo facility once a year, TSA estimates that it would need to hire 500 inspectors. CBO estimates that each inspector would cost about \$120,000 each year, including the cost of training and supervision. Hence, CBO estimates that this provision would cost about \$50 million in 2004 and about \$290 million over the 2004–2008 period. The bill also would require the TSA to create a security training program for air cargo handlers. Based on information from the TSA, CBO estimates that creating such a program would cost about \$250,000.

Arming cargo pilots

CBO estimates that TSA would need about \$16 million in 2004 and \$83 million over the 2004–2008 period to arm and equip pilots of cargo aircraft. Under current law, the TSA trains and equips pilots on passenger aircraft to carry firearms as federal flight deck officers. The bill would expand that program to include pilots of cargo aircraft. Based on information from the Air Line Pilots Association, CBO estimates that about 25 percent of the 8,000 active cargo pilots would apply and qualify for the program. CBO expects that the number of participants in the program would remain relatively steady over time as pilots retire who are replaced by new participants.

We estimate that the program would spend an average of about \$8,000 for each federal flight deck officer, including the cost of weapons, ammunition, training, and travel. Because all pilots would receive updated training and equipment, such costs would continue each year. CBO estimates that it would cost an additional \$500,000 each year to maintain a staff of about six people to manage the expanded program.

Database of cargo shippers

S. 165 would require the TSA to establish an industry-wide database of air cargo shippers that use passenger aircraft. More than 50 air carriers transport air cargo on passenger aircraft. The largest carriers of air cargo conduct business with nearly 2 million shippers per day. Because the population of shippers would change each year, the costs of maintaining a database of known shippers would be ongoing. Based on the number of shippers that would need to be tracked and the cost of private systems to track shippers, CBO estimates that maintaining an industry-wide database of known shippers would cost about \$10 million dollars a year.

Estimated impact on state, local, and tribal governments: S. 165 would amend the Homeland Security Act of 2002 to expand participation in the federal flight deck program. The bill would permit deputized cargo pilots to carry firearms into any state, regardless of state firearm laws, and would extend liability protection to eligible carriers and cargo pilots for damages resulting from the pilot's defense of the aircraft (with some exceptions). The increase in the type of pilots eligible to carry firearms and afforded the liability protection are expansions of existing mandates as defined in UMRA because they expand the scope of preemptions of state firearm and liability laws. CBO estimates, however, that such preemptions would not affect state budgets because, while they would limit the application of state law, they would impose no duties on states that would result in additional spending.

The remaining provisions of S. 165 contain no intergovernmental mandates as defined in UMRA. However, airports could be indirectly affected by provisions that would authorize TSA to install machinery and systems to enhance security. For example, airports might need to give up space to accommodate security improvements. CBO cannot predict exactly how airports would be affected because regulations regarding such enhancements have yet to be implemented. However, any resulting costs likely would not be large.

Estimated impact on the private sector: S. 165 would impose private-sector mandates as defined in UMRA on air carriers that transport cargo and on facilities that provide flight training to foreign candidates. The costs to comply with those mandates would depend on standards to be developed after enactment. However, based on information on current industry practices from the TSA and industry representatives, CBO expects that the costs to comply with the mandates would not exceed the annual threshold established by UMRA for private-sector mandates (\$117 million in 2003, adjusted annually for inflation).

S. 165 would require air carriers that operate all-cargo aircraft to establish and implement a security plan. The requirements in the security plan would be based on standards to be set by the Under Secretary of Transportation for Security. According to industry representatives, many businesses have already undertaken several measures to upgrade security. To the extent that future security regulations mirror those measures, the industry would not bear substantial additional costs associated with the mandate. Based on information on industry practices from the TSA and representatives for air carriers transporting cargo, CBO expects that the costs of compliance would not be great.

Current law requires facilities that provide flight training to submit certain information to the Attorney General on foreign candidates requesting initial training to operate aircraft weighing 12,500 pounds or more. S. 165 would require such training facilities to submit that information on foreign candidates requesting initial training on any aircraft, regardless of size. Based on information from the Department of Justice and representatives of flight training facilities, CBO estimates that the incremental cost to comply with this mandate would be under \$2 million annually.

Estimate prepared by: Federal costs: Mark Hadley and Ken Johnson; 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.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 165 is intended to improve aviation security by making modifications to P.L. 107-71, the Aviation and Transportation Security Act (ATSA). The bill affects TSA and other entities already subject to TSA rules and regulations, and therefore the number of persons covered should be consistent with the current levels of individuals impacted under the provisions that are addressed in the bill.

ECONOMIC IMPACT

S. 165 is not expected to have an adverse impact on the nation's economy. It is anticipated that Sections 2 through 6 would have positive economic impacts to their respective areas, and should provide significant support to the aviation industry. The bill addresses cargo security and would authorize the necessary funding to establish a system that ensures all air cargo is secure by requiring TSA and the air cargo industry to take steps to protect the system.

PRIVACY

S. 165 would have minimal effect on the privacy rights of individuals, but a provision on identification training raises the issue of a person proving their identity, potentially with the aid of technology. The use of biometrics and other identifiers raise a number of questions that need to be addressed by TSA to ensure that the privacy rights of individuals are protected. Senator Wyden's provision is intended to ensure privacy for passenger screening.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens resulting from the passage of this legislation. In those areas where the bill does require additional paperwork, it is aimed at improving the security of the national air transportation system. S.165 would require the establishment of a database to improve the system by which known shippers of cargo are identified,

and would require reports to Congress on several security matters addressed by other provisions.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 states the short title of the bill as the “Air Cargo Security Improvement Act.”.

Section 2. Inspection of cargo aboard passenger aircraft

Section 2 instructs the Under Secretary of Transportation for Security to establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or all-cargo aircraft in air transportation and intrastate air transportation. The Under Secretary is directed to create a strategic plan to accomplish this requirement.

Section 3. Regular inspections of air cargo shipping facilities

Section 3 instructs the Under Secretary of Transportation for Security to establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, while entering into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.

The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49. It also amends chapter 449 of title 49, United States Code, by adding “44922. Regular inspections of air cargo shipping facilities.”

Section 4. Cargo carried aboard passenger aircraft

Section 4 requires an industry-wide “known shipper” database pilot program. Such a program, which is voluntary, is currently in use, and this section is intended to reinforce TSA’s authority to continue and expand such a pilot program and use the results to improve the “known shipper” program. Further, the Under Secretary is directed to conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title. The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title and shall notify the Secretary of Transportation of any indirect air carrier that fails to meet such security standards.

The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this provision may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.

The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program, and report the results of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form. The Senate recommends industry involvement in any assessment of an indirect air carrier program.

The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form. There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

Section 5. Training program for cargo handlers

Section 5 requires the Under Secretary of Transportation for Security to establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safeguarded from security breaches.

Section 6. Cargo carried aboard all-cargo aircraft

Section 6 instructs the Under Secretary of Transportation for Security to establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight. The plan shall include provisions for (1) security of each carrier's air operations areas and cargo acceptance areas at the airports served; (2) background security checks for all employees with access to the air operations area; (3) appropriate training for all employees and contractors with security responsibilities; (4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft; (5) security procedures for cargo placed on all-cargo aircraft; and (6) additional measures deemed necessary and appropriate by the Under Secretary.

The program will be proposed within 90 days after the date of enactment of this Act and the Under Secretary of Transportation for Security shall distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply. Any person to which the proposed program is distributed under paragraph (1) may submit comments on the proposed program to the Under Secretary not more than 60 days after it is received. The Under Secretary of Transportation shall issue a final program not later than 45 days after the last date on which

comments may be submitted. The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

Section 7. Report on passenger prescreening program

Section 7 instructs the Secretary of Homeland Security to submit a report within 90 days to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the potential impacts of the Transportation Security Administration's proposed Computer Assisted Passenger Prescreening System (CAPPS II) on United States citizens' privacy and civil liberties.

Section 8. Modification requirements regarding training to operate aircraft

Section 8 extends background checks of alien flight school applicants to include all aircraft, regardless of the certified weight of the aircraft. The provision does not apply to aliens who are qualified and up-to-date with respective certificates and ratings recognized by the United States for aircraft with a maximum certificated take-off weight of 12,500 pounds or more of classroom training. The bill also requires the TSA and Attorney General to jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the new requirement not later than one year after the date of enactment.

Section 9. Passenger identification

Section 9 instructs the Under Secretary of Transportation for Security, in consultation with appropriate government and private interests, to develop guidelines to provide air carriers direction for detecting false or fraudulent identification. The guidelines are to be created within 180 days after the date of enactment. The guidelines must be provided to the airlines within 60 days of being issued and establish a joint government and industry council to implement guidelines. Within one year, the Under Secretary of Transportation for Security is to issue a report to Congress on these actions.

Section 10. Passenger identification verification

Section 10 allows the Under Secretary of Transportation for Security to establish and carry out a program to require the use of identification verification technologies at airports to assist in the screening of passengers boarding aircraft.

Section 11. Blast resistant cargo container technology

Section 11 instructs the Under Secretary of Transportation for Security and the Administrator of the FAA to jointly submit a report to Congress evaluating blast-resistant cargo container technology that may be used to protect against explosives placed in passenger luggage and cargo. The report is to be submitted within 6 months following the date of enactment of this Act.

Section 12. Arming pilots against terrorism

Section 12 directs the Transportation Security Administration to include all-cargo pilots as eligible applicants for the Federal Flight

Deck Officer program. The Federal Flight Deck Officer program was established in the Homeland Security Act of 2002 (P.L. 107–296).

Section 13. Report on defending aircraft from man-portable air defense systems (shoulder-fired missiles)

Section 13 instructs the Secretary of Homeland Security to submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report within 90 days on how to best defend turbo and jet passenger aircraft from Man-Portable Air Defense Systems (shoulder-fired missiles).

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

SUBTITLE VII—AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

SUBPART III—SAFETY

CHAPTER 449—SECURITY

SUBCHAPTER I—REQUIREMENTS

§ 44901. Screening passengers and property

(a) **IN GENERAL.**—The Under Secretary of Transportation for Security shall provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. In the case of flights and flight segments originating in the United States, the screening shall take place before boarding and shall be carried out by a Federal Government employee (as defined in section 2105 of title 5, United States Code), except as otherwise provided in section 44919 or 44920 and except for identifying passengers and baggage for screening under the CAPPS and known shipper programs and conducting positive bag-match programs.

(b) **SUPERVISION OF SCREENING.**—All screening of passengers and property at airports in the United States where screening is required under this section shall be supervised by uniformed Federal personnel of the Transportation Security Administration who shall have the power to order the dismissal of any individual performing such screening.

(c) **CHECKED BAGGAGE.**—A system must be in operation to screen all checked baggage at all airports in the United States as soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act.

(d) **EXPLOSIVE DETECTION SYSTEMS.**—

(1) *IN GENERAL.*—The Under Secretary of Transportation for Security shall take all necessary action to ensure that—

(A) explosive detection systems are deployed as soon as possible to ensure that all United States airports described in section 44903(c) have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002, and that as soon as such systems are in place at an airport, all checked baggage at the airport is screened by those systems; and

(B) all systems deployed under subparagraph (A) are fully utilized; and

(C) if explosive detection equipment at an airport is unavailable, all checked baggage is screened by an alternative means.

(e) *MANDATORY SCREENING WHERE EDS NOT YET AVAILABLE.*—As soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act and until the requirements of subsection (b)(1)(A) are met, the Under Secretary shall require alternative means for screening any piece of checked baggage that is not screened by an explosive detection system. Such alternative means may include 1 or more of the following:

(1) A bag-match program that ensures that no checked baggage is placed aboard an aircraft unless the passenger who checked the baggage is aboard the aircraft.

(2) Manual search.

(3) Search by canine explosive detection units in combination with other means.

(4) Other means or technology approved by the Under Secretary.

[(f) *CARGO DEADLINE.*—A system must be in operation to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft in air transportation and intrastate air transportation as soon as practicable after the date of enactment of the Aviation and Transportation Security Act.]

(f) *CARGO.*—

(1) *IN GENERAL.*—*The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—*

(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

(B) all-cargo aircraft in air transportation and intrastate air transportation.

(2) *STRATEGIC PLAN.*—*The Under Secretary shall develop a strategic plan to carry out paragraph (1).*

(g) *DEPLOYMENT OF ARMED PERSONNEL.*—

(1) *IN GENERAL.*—The Under Secretary shall order the deployment of law enforcement personnel authorized to carry firearms at each airport security screening location to ensure passenger safety and national security.

(2) *MINIMUM REQUIREMENTS.*—Except at airports required to enter into agreements under subsection (c), the Under Secretary shall order the deployment of at least 1 law enforcement officer at each airport security screening location. At the 100

largest airports in the United States, in terms of annual passenger enplanements for the most recent calendar year for which data are available, the Under Secretary shall order the deployment of additional law enforcement personnel at airport security screening locations if the Under Secretary determines that the additional deployment is necessary to ensure passenger safety and national security.

(h) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Under Secretary—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Under Secretary decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

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§ 44921. Federal flight deck officer program

(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing [passenger] air transportation or intrastate [passenger] 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 3 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 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

(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 re-qualify 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) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an acci-

dental 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 1 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, including whether an additional background check should be required beyond that required by section 44936(a)(1).

(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

(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.

(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

(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).

(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

(1) IN GENERAL.—The Under Secretary shall only be obligated to 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 at an interval required by the Under Secretary.

(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 (in the Under Secretary's discretion) 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) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) 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 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 1 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 in defending the flight deck of an aircraft, the officer shall be treated as an employee of the

Federal Government under chapter 171 of title 28, relating to tort claims procedure.

(i) **PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.**—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

(j) **LIMITATION ON AUTHORITY OF AIR CARRIERS.**—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier; or

(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

(k) **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.] *or any other flight deck crew member.*

(3) **ALL-CARGO AIR TRANSPORTATION.**—*For the purposes of this section, the term air transportation includes all-cargo air transportation.*

§ 44922. Regular inspections of air cargo shipping facilities

The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.

§ 44923. Air cargo security

(a) **DATABASE.**—*The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air trans-*

portation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

(b) *INDIRECT AIR CARRIERS.*—

(1) *RANDOM INSPECTIONS.*—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

(2) *ENSURING COMPLIANCE.*—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

(3) *NOTICE OF FAILURES.*—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

(4) *SUSPENSION OR REVOCATION OF CERTIFICATE.*—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

(5) *INDIRECT AIR CARRIER.*—In this subsection, the term “indirect air carrier” has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

(c) *CONSIDERATION OF COMMUNITY NEEDS.*—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

§ 44939. Training to operate certain aircraft

(a) *WAITING PERIOD.*—

(1) *IN GENERAL.*—A person subject to regulation under this part may provide training in the operation of [any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more] *an aircraft* to an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Under Secretary of Transportation for Security only if—

[(1)] (A) that person has first notified the Attorney General that the individual has requested such training and furnished the Attorney General with that individual’s identification in such form as the Attorney General may require; and

[(2)] (B) the Attorney General has not directed, within 45 days after being notified under [paragraph (1),] *subparagraph (A), that person not to provide the requested training because the Attorney General has determined that the individual presents a risk to aviation or national security.*

(2) *EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—*

(A) has earned a Federal Aviation Administration type rating in an aircraft; or

(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.

(b) **INTERRUPTION OF TRAINING.**—If the Attorney General, more than 45 days after receiving notification under subsection (a) from a person providing training described in subsection (a), determines that the individual presents a risk to aviation or national security, the Attorney General shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

[(c) **COVERED TRAINING.**—For the purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.]

(c) **COVERED TRAINING.**—

(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.

(d) **SECURITY AWARENESS TRAINING FOR EMPLOYEES.**—The Under Secretary shall require flight schools to conduct a security awareness program for flight school employees to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.