

Public Law 107-71 (115 Stat. 597-645) Aviation Security Act. This Public Law seeks to increase aviation security. It includes the "Aviation Security Act" and the "Flight Deck Security Act of 2001." In the bill (proposed law) stage, it was also known as "Federalize Aviation Security bill" and the "Sky Marshals bill." It has two titles (major sections). Title I deals with "Aviation Security"; Title II with "Deployment and Use of Security Technologies."

## **Aviation Security Act**

### **Title I: Aviation Security**

Amends Federal transportation law to establish within the Department of Transportation (DOT) a Deputy Secretary for Transportation Security who shall be responsible for: (1) security for all modes of transportation, including aviation-related security; and (2) domestic transportation during a national emergency, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

(Sec. 102) Makes the Attorney General responsible for Federal security screening operations for passenger air transportation and property or intrastate air transportation.

Requires the Deputy Secretary for Transportation Security to review and, as necessary, develop ways to strengthen air transportation security, including to: (1) enhance the ability to detect nonexplosive weapons, such as biological, chemical, or similar substances; and (2) evaluate additional appropriate measures to enhance physical inspection of passengers, luggage, and cargo.

(Sec. 103) Establishes an Aviation Security Coordination Council, which shall, among other things, work with the intelligence community to coordinate intelligence, security, and criminal enforcement activities affecting the safety and security of aviation at all U.S. airports and air navigation facilities involved in air transportation or intrastate air transportation. Directs the Secretary Transportation (Secretary) to explore the possibility of developing a common database of individuals who may pose a threat to aviation or national security and to implement with other Federal agencies a system for cross-checking data on such individuals identified on Federal agency databases.

(Sec. 104) Directs the Administrator of the Federal Aviation Administration (FAA) to: (1) issue an order that prohibits access to the flight deck (cockpit) of aircraft engaged in passenger air transportation or intrastate air transportation except to authorized personnel, requires the strengthening of cockpit doors and locks on such aircraft so that it has a rigid door in a bulkhead between the cockpit and the passenger area, and requires that such cockpit doors remain locked while the aircraft is in flight; and (2) take such other action, including modification of safety and security procedures, as may be necessary to ensure the safety and security of the aircraft.

(Sec. 105) Directs the Secretary to administer the Federal Air Marshal program under guidelines prescribed by the Attorney General for the training and deployment of air marshals authorized to carry firearms and make arrests. Declares that the Secretary: (1) may place Federal air marshals on every scheduled passenger flight in air

transportation and intrastate air transportation; (2) shall place them on every such flight determined to present high security risks; (3) shall provide appropriate background and fitness checks for candidates for Federal air marshal appointment, including the provision of appropriate training, supervision, and equipment of such marshals; and (4) may use Federal personnel to provide air marshal service on domestic and international flights.

Directs the Attorney General and the Secretary to report to specified congressional committees assessing the Federal Air Marshal program, and the effectiveness of the security screening process for carry-on baggage and checked baggage and safety and security-related training provided to flight and cabin crews. Authorizes the appointment as Federal air marshals (regardless of age) of retired law enforcement officers and retired members of the armed forces, or individuals discharged or furloughed from commercial airline cockpit crew positions, provided they meet certain qualifications.

(Sec. 106) Authorizes the Secretary, through a memorandum of understanding or other agreement with the Attorney General or head of a Federal law enforcement agency, to order the deployment of Federal law enforcement personnel at secure areas of an airport to counter the risk of criminal violence, the risk of aircraft piracy and to air carrier aircraft operations at such airport, or to meet national security concerns.

Directs the Administrator of the FAA to develop a plan to provide technical support to small and medium airports to enhance security operations, including screening operations, and to provide financial assistance to such airports to defray the costs of enhancing security.

Directs the Secretary to require airports to maximize the use of technology and equipment designed to detect potential chemical or biological weapons.

Revises requirements regarding improvement of secured-area access control at airports to require the Administrator of the FAA, among other things, to: (1) assess and test, on an ongoing basis, for compliance with access control requirements, report annually findings of such assessments, and assess the effectiveness of penalties in ensuring compliance with security procedures and take any other appropriate enforcement actions

when noncompliance is found; and (2) work with airport operators to strengthen access control points in secured areas (including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas) to ensure the security of passengers and aircraft and consider the deployment of biometric or similar technologies that identify individuals based on unique personal characteristics.

Directs the Administrator of the FAA to establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology (including biometric

technology) for providing access control and other security protections for closed or secure areas of airports. Directs the Secretary to require air carriers and airports to develop security awareness programs for airport employees, ground crews, and other individuals employed at such airports.

(Sec. 107) Directs the Secretary to develop a mandatory air carrier program of training for flight and cabin crews of aircraft providing air transportation or intrastate air transportation in dealing with attempts to commit aircraft piracy (hijacking).

(Sec. 108) Directs the Attorney General (currently, the Administrator of the FAA) to provide for the screening of all air passengers and property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, carried aboard an aircraft in air transportation or intrastate air transportation. Directs the Attorney General to order the deployment of law enforcement personnel authorized to carry firearms at each airport security screening location to ensure passenger safety and national security. Sets forth certain minimum requirements. Authorizes the Attorney General to require nonhub airports or smaller airports with passenger operations to enter into agreements under which screening of passengers and property will be carried out by qualified, trained State or local law enforcement personnel, provided certain requirements are met.

Directs the Attorney General to require a manual process, at explosive detection system screening locations in airports where explosive detection equipment is underutilized, which will augment the Computer Assisted Passenger Prescreening System by randomly selecting additional checked bags for screening so that a minimum number of bags are examined.

Amends the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century to authorize the Attorney General to establish a program to deputize State and local law enforcement officers for the purpose of screening passengers and property at nonhub airports or smaller airports. Authorizes the U.S. Government to provide training to such officers.

(Sec. 109) Amends Federal aviation law to revise training and employment of security screening personnel standards to shift from the Administrator of the FAA to the Attorney General the mandate to establish a program for the hiring and training of airport security screening personnel. Sets forth screening personnel requirements with regard to hiring, background checks, testing, and training.

(Sec. 110) Directs the Administrator of the FAA periodically to review threats to civil aviation, with particular focus, among other things, on: (1) the potential release of chemical, biological, or similar weapons or devices either within an aircraft or within an airport; and (2) a comprehensive systems analysis (employing vulnerability analysis, threat attribute definition, and technology roadmaps) of the civil aviation system, including the destruction, commandeering, or diversion of civil aircraft or the use of such aircraft as a weapon, and the disruption of civil aviation service (including by cyber attack). Requires the Administrator in carrying out a program to accelerate and expand

the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation to designate an individual to be responsible for engineering, research, and development with respect to security technology under such program. Requires such individual to report annually to the Research, Engineering, and Development Advisory Committee on activities under the program during the preceding year. Directs the Administrator to establish a scientific advisory panel (as a subcommittee of the Research, Engineering, and Development Advisory Committee) to review, advise, and comment on such program, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft, commercial aviation facilities, commercial aviation personnel and passengers, and other components of the commercial aviation system by the next generation of terrorist weapons. Requires the Administrator to conduct all research related to screening technology and procedures in conjunction with the Attorney General.

(Sec. 111) Prohibits a person from providing training in the operation of any jet-propelled aircraft to any alien (or other specified individual) within the United States unless the Attorney General issues to such person a certification of the completion of a background investigation of such alien or other individual. Sets forth specified sanctions against persons who violate the requirements of this prohibition.

(Sec. 112) Directs the Attorney General and the Secretary to report to specified congressional committees on their joint recommendations on additional measures for the Federal Government to address transportation security functions.

(Sec. 113) Directs the Secretary to report to committees on how to improve security with respect to general aviation and air charter operations in the United States.

(Sec. 114) Sets forth both civil and criminal penalties for persons who interfere with airport security screening personnel.

(Sec. 115) Directs the Administrator of the FAA to report to specified congressional committees on certain aviation security-related issues.

(Sec. 116) Authorizes air carriers providing air transportation on flights which both originate and terminate at points within the same State to file with the Secretary, upon a declaration by the Governor that it is necessary to ensure the continuing availability of air transportation within the State, an agreement, request, modification, or cancellation of a cooperative arrangement (except arrangements related to interstate air transportation) between an air carrier or foreign air carrier and another air carrier, foreign air carrier, or another carrier. Authorizes the Secretary to approve such an agreement, request, modification, or cancellation if it is determined that: (1) the State has extraordinary air transportation needs and concerns; and (2) approval is in the public interest.

(Sec. 117) Directs the Secretary to require all air carriers to utilize to the maximum extent practicable the best technology available to secure their computer reservation system against unauthorized access by persons seeking information on reservations, passenger manifests, or other non-public information. Directs the Secretary to report to specified congressional committees on compliance by U.S. carriers with the requirements of this section.

(Sec. 118) Directs the Secretary to collect a user fee from air carriers to offset annual appropriations for the costs of providing aviation security services.

Authorizes appropriations for FY 2002 through 2004 for aviation security activities.

(Sec. 119) Authorizes the Administrator of the FAA to permit an airport operator to use airport improvement program funds to defray additional direct security-related expenses imposed by law after September 11, 2001. Makes eligible for airport development project funds (after September 11, 2001, and before October 1, 2002, for FY 2002) additional operational requirements, improvement of facilities, purchase and deployment of equipment, hiring, training, and providing appropriate personnel, or an airport or any aviation operator at an airport, that the Secretary determines will enhance and ensure the security of passengers and other persons involved in air travel. Declares that the Federal share of costs for such specified congressional projects shall be 100 percent.

(Sec. 120) Authorizes the Secretary to reimburse an airport operator for the direct costs incurred by the airport operator in complying with new, additional, or revised security requirements imposed on such operator by the FAA on or after September 11, 2001.

(Sec. 121) Declares that any air carrier or foreign air carrier (or employee) that reports to the proper authorities on suspicious activities relating to possible violations of law, air piracy, threat to aircraft or passenger safety, or terrorism, shall not be held civilly liable to any person under any U.S. law for such disclosure.

Directs the Attorney General to establish, and report to specified congressional committees on, procedures for notifying the Administrator of the FAA, and airport or airline security officers, of the identity of persons known or suspected by the Attorney General to pose a risk of air piracy or terrorism or a threat to airline or passenger safety.

(Sec. 122) Directs the National Institute of Justice to assess, and report to the Secretary on, the range of less-than-lethal weaponry available for use by a flight deck crew member temporarily to incapacitate an individual who presents a clear and present danger to the safety of an aircraft, its passengers, or individuals on the ground. Declares that the Secretary may authorize members of the flight deck crew of an aircraft providing air transportation or intrastate air transportation to carry a less-than-lethal weapon if it is necessary and would effectively serve the public interest in avoiding air piracy.

(Sec. 123) Authorizes the Secretary, during a national emergency affecting air transportation or intrastate air transportation, to grant a complete or partial waiver of any restrictions on the carriage by aircraft of freight, mail, emergency medical supplies, personnel, or patients on aircraft imposed by the DOT, or other Federal agency, if the Secretary determines that it is in the public interest.

(Sec. 124) Directs the Secretary to establish procedures to ensure the safety and integrity of all supplies, including catering and passenger amenities, placed aboard aircraft providing passenger air transportation or intrastate air transportation.

(Sec. 125) Flight Deck Security Act of 2001 - Authorizes the FAA to permit a pilot, co-pilot, or flight engineer of a commercial aircraft who has successfully completed specified training requirements, or who is not otherwise prohibited by law from possessing a firearm, to carry a firearm for the protection of the aircraft. Directs the FAA to establish a voluntary program to train and supervise commercial airline pilots. Directs the Secretary to periodically report to Congress on the effectiveness of such requirements in facilitating commercial aviation safety and the suppression of terrorism by commercial aircraft.

(Sec. 126) Directs the Administrator of the FAA to make modifications in the system for issuing airman certificates to make it more effective in serving the needs of airmen and officials responsible for enforcing laws, among other things, related to combating acts of terrorism. Authorizes and directs the Administrator to work with State and local authorities, and other Federal agencies, to assist in the identification of individuals applying for or holding airmen certificates.

(Sec. 127) Directs the Deputy Secretary for Transportation Security to: (1) establish acceptable levels of performance for aviation security, including screening operations and access control; and (2) provide Congress with an action plan, containing measurable goals and milestones, that outlines how those levels of performance will be achieved. Directs the Secretary and the Deputy Secretary for Transportation Security to agree annually, consistent with the requirements of the Government Performance and Results Act of 1993 (GPRA), on a performance plan for the succeeding five years that establishes measurable goals and objectives for aviation security. Directs the Deputy Secretary for Transportation Security to report annually to Congress on the extent that such goals and objectives are met.

Directs the Deputy Secretary for Transportation Security to establish a performance management system which strengthens DOT's effectiveness by providing for the establishment of goals and objectives for managers, employees, and organizational performance consistent with the performance plan.

(Sec. 128) Directs the Secretary to establish and maintain an employment register. Authorizes the Secretary to use, where feasible, the existing FAA's training facilities, to design, develop, or conduct training of security screening personnel.

(Sec. 129) Directs the President to report to specified congressional committees on national air space restrictions, if any, that have been put in place as a result of the September 11, 2001, terrorist attacks.

(Sec. 130) Directs the Secretary to carry out a program to permit qualified law enforcement officers, firefighters, and emergency medical technicians to provide emergency services on commercial air flights during emergencies. Sets forth program requirements. Declares that an individual shall not be liable for damages in any action brought in a Federal or State court that arises from an act or omission in providing or attempting to provide assistance in the case of an inflight emergency in an aircraft, if the individual meets such qualifications as the Secretary shall prescribe.

(Sec. 131) Directs the Administrator of the FAA to implement a program to provide security screening for all aircraft operations conducted with respect to any aircraft having a maximum certified takeoff weight of more than 12,500 pounds (including aircraft less than 12,500 pounds) that is not operating as of the date of the implementation of the program under security procedures prescribed by the Administrator. Authorizes a waiver to the applicability of such program to aircraft if it is determined that such aircraft can be operated safely without such program.

Prohibits a person or entity from selling, leasing, or chartering an aircraft to an alien, or any other individual specified by the Secretary, within the United States unless the Attorney General issues a certification of the completion of a background investigation of the alien (or other individual) that meets specified requirements.

(Sec. 132) Directs the Assistant Administrator for Civil Aviation Security to review and make a determination on the feasibility of implementing certain technologies that are: (1) designed to protect passengers, aviation employees, air cargo, airport facilities, and airplanes; and (2) material specific and able to automatically and non-intrusively detect, without human interpretation and without regard to shape or method of concealment, explosives, illegal narcotics, hazardous chemical agents, and nuclear devices.

(Sec. 133) Directs the Attorney General to report to specified congressional committees on the new responsibilities of the Department of Justice for aviation security under this Act.

## **Title II: Deployment and Use of Security Technologies**

### **Subtitle A: Expanded Deployment and Utilization of Current Security Technologies and Procedures**

Directs the Administrator of the FAA to require employment investigations (including criminal history record checks) for all existing employees who have unescorted access, or who may permit other individuals to have unescorted access, to an aircraft of an air carrier or foreign air carrier, or a secured area of a U.S. airport, to be completed within nine months unless such individuals have had such investigations and checks within five years of enactment of this Act.

(Sec. 201) Directs the Administrator to deploy and oversee the usage of existing bulk explosives detection technology already at airports for checked baggage. Authorizes airport operators to use airport improvement program funds to reconfigure airport baggage handling areas to accommodate such equipment, if necessary. Makes eligible for public-use airport development project funds the replacement of baggage conveyor systems, and reconfiguration of terminal luggage areas, that the Secretary determines are necessary to install bulk explosive detection devices. Directs the Administrator of the FAA to require air carriers to improve the Passenger Bag Matching System. Directs the Administrator to establish goals for upgrading the System, including interim measures to match a higher percentage of bags until Explosives Detection Systems are used to scan 100 percent of checked baggage.

Directs the Administrator to require air carriers to expand the application of the current Computer-Assisted Passenger Prescreening System (CAPPS) to all passengers, regardless of baggage. Requires the Administrator to report to specified congressional committees on the implementation of the expanded CAPPS system.

**Subtitle B: Short-Term Assessment and Deployment of Emerging Security Technologies and Procedures** Amends Federal aviation law to direct the Deputy Secretary for Transportation Security to recommend to airport operators commercially available measures to prevent access to secure airport areas by unauthorized persons.

(Sec. 211) Directs the Deputy Secretary for Transportation Security, as part of the Aviation Security Coordination Council, to conduct a 90-day review of: (1) currently available or short-term deployable upgrades to CAPPS; and (2) deployable upgrades to the coordinated distribution of information regarding persons listed on the "watch list" for any Federal law enforcement agencies who could present an aviation security threat. Requires the Deputy Secretary for Transportation Security to deploy recommended short-term upgrades to CAPPS and to the coordinated distribution of "watch list" information within six months after enactment of this Act.

Directs the Deputy Secretary for Transportation Security to study options for improving positive identification of passengers at check-in counters and boarding areas, including the use of biometrics and "smart" cards.

**Subtitle C: Research and Development of Aviation Security Technology** Authorizes additional appropriations to the FAA for FY 2002 through 2006, and necessary sums for each fiscal year thereafter, for research, development (R&D), testing, and evaluation of certain technologies which may enhance aviation security in the future.

(Sec. 221) Authorizes appropriations to the FAA to issue research grants (in conjunction with the Defense Advanced Research Projects Agency) for: (1) R&D of longer-term improvements to airport security, including advanced weapons detection; (2) secure networking and sharing of threat information between Federal agencies, law enforcement entities, and other appropriate parties; (3) advances in biometrics for



identification and threat assessment; and (4) other technologies for preventing acts of terrorism in aviation.