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TITLE 49--TRANSPORTATION

SUBTITLE VII--AVIATION PROGRAMS

PART A--AIR COMMERCE AND SAFETY

subpart iii--safety

CHAPTER 449--SECURITY

SUBCHAPTER I--REQUIREMENTS

Sec. 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.

(2) Deadline.--

(A) In general.--If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination--

(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

(B) Criteria for determination.--In making a determination under subparagraph (A), the Under Secretary shall take into account--

(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

(ii) the need to ensure that such installations and modifications are effective; and

(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

(C) Response.--The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

(D) Airport effort required.--Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall--

(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

(3) Reports.--Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall

submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.

(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.

(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.

(Pub. L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 1204; Pub. L. 107-71, title I, Secs. 101(f)(7), 110(b), Nov. 19, 2001, 115 Stat. 603, 614;

Pub. L. 107-296, title IV, Sec. 425, Nov. 25, 2002, 116 Stat. 2185.)

#### Historical and Revision Notes

| Revised Section  | Source (U.S. Code)                             | Source (Statutes at Large)                                                                                                                                                                                                        |
|------------------|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 44901(a).....    | 49 App.:1356(a) (1st sentence).                | Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, Sec. 315(a) (1st, 2d sentences, 3d sentence 19th-last words); added Aug. 5, 1974, Pub. L. 93-366, Sec. 202, 88 Stat. 415; Aug. 8, 1985, Pub. L. 99-83, Sec. 551(b)(1), 99 Stat. 225. |
| 44901(b).....    | 49 App.:1356(a) (2d sentence).                 |                                                                                                                                                                                                                                   |
| 44901(c)(1)..... | 49 App.:1356(c).                               | Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, Sec. 315(c); added Aug. 5, 1974, Pub. L. 93-366, Sec. 202, 88 Stat. 415; Nov. 16, 1990, Pub. L. 101-604, Sec. 102(a), 104 Stat. 3068.                                                |
| 44901(c)(2)..... | 49 App.:1356(a) (3d sentence 19th-last words). |                                                                                                                                                                                                                                   |

In subsection (a), the words "or continue in effect reasonable", "intended", and "the aircraft for such transportation" are omitted as surplus.

In subsection (b), the words "Notwithstanding subsection (a) of this section" are added for clarity. The words "One year after August 5, 1974, or after the effective date of such regulations, whichever is later" are omitted as executed. The words "alter or", "a continuation of", "the extent deemed necessary to", and "acts of" are omitted as surplus.

In subsection (c)(1), the words "in whole or in part" and "those" are omitted as surplus. The word "providing" is substituted for "engaging in" for consistency in the revised title. The words "interstate, overseas, or foreign" are omitted because of the definition of "air transportation" in section 40102(a) of the revised title. The words "of public convenience and necessity", "by the Civil Aeronautics Board", "foreign air carrier", and "by the Board" are omitted as surplus.

In subsection (c)(2), the words "or amendments thereto" and "or amendments" are omitted as surplus.

#### References in Text

The date of enactment of the Aviation and Transportation Security Act, referred to in subsecs. (c), (e), and (f), is the date of enactment of Pub. L. 107-71, which was approved Nov. 19, 2001.

The date of enactment of this Act, referred to in subsec. (d)(3), probably means the date of enactment of Pub. L. 107-296, which enacted subsec. (d)(2), (3) of this section and was approved Nov. 25, 2002.

#### Amendments

2002--Subsec. (d)(2), (3). Pub. L. 107-296 added pars. (2) and (3).

2001--Subsec. (a). Pub. L. 107-71, Sec. 110(b)(2), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: "The Administrator of the Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier."

Subsec. (b). Pub. L. 107-71, Sec. 110(b)(2), added subsec. (b) and struck out heading and text of former subsec. (b). Text read as follows: "Notwithstanding subsection (a) of this section, the Administrator may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation."

Subsec. (c). Pub. L. 107-71, Sec. 110(b)(2), added subsec. (c). Former subsec. (c) redesignated (h).

Pub. L. 107-71, Sec. 101(f)(7), substituted "Under Secretary" for "Administrator" in introductory provisions and par. (2).

Subsec. (d) to (g). Pub. L. 107-71, Sec. 110(b)(2), added subsecs. (d) to (g).

Subsec. (h). Pub. L. 107-71, Sec. 110(b)(1), redesignated subsec. (c) as (h).

#### Effective Date of 2002 Amendment

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

#### Savings Provision

Pub. L. 107-71, title I, Sec. 141, Nov. 19, 2001, 115 Stat. 643, provided that:

"(a) Transfer of Assets and Personnel.--Except as otherwise provided in this Act [see Tables for classification], those personnel, property, and records employed, used, held, available, or to be made available in connection with a function transferred to the Transportation Security Administration by this Act shall be transferred to the Transportation Security Administration for use in connection with the functions transferred. Unexpended balances of appropriations, allocations, and other funds made available to the Federal Aviation Administration to carry out such functions shall also be transferred to the Transportation Security Administration for use in connection with the functions transferred.

"(b) Legal Documents.--All orders, determinations, rules, regulations, permits, grants, loans, contracts, settlements, agreements, certificates, licenses, and privileges--

"(1) that have been issued, made, granted, or allowed to become effective by the Federal Aviation Administration, any officer or employee thereof, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this Act; and

"(2) that are in effect on the effective date of such transfer

(or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the Under Secretary of Transportation for Security, any other authorized official, a court of competent jurisdiction, or operation of law.

“(c) Proceedings.--

“(1) In general.--The provisions of this Act shall not affect any proceedings or any application for any license pending before the Federal Aviation Administration at the time this Act takes effect [Nov. 19, 2001], insofar as those functions are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law.

“(2) Statutory construction.--Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any proceeding described in paragraph (1) under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

“(3) Orderly transfer.--The Secretary of Transportation is authorized to provide for the orderly transfer of pending proceedings from the Federal Aviation Administration.

“(d) Suits.--

“(1) In general.--This Act shall not affect suits commenced before the date of the enactment of this Act [Nov. 19, 2001], except as provided in paragraphs (2) and (3). In all such suits, proceeding shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

“(2) Suits by or against faa.--Any suit by or against the Federal Aviation Administration begun before the date of the enactment of this Act shall be continued, insofar as it involves a function retained and transferred under this Act, with the Transportation Security Administration (to the extent the suit involves functions transferred to the Transportation Security Administration under this Act) substituted for the Federal Aviation Administration.

“(3) Remanded cases.--If the court in a suit described in paragraph (1) remands a case to the Transportation Security Administration, subsequent proceedings related to such case shall proceed in accordance with applicable law and regulations as in effect at the time of such subsequent proceedings.

“(e) Continuance of Actions Against Officers.--No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of the Federal Aviation Administration shall abate by reason of the enactment of this Act. No cause of action by or against the Federal Aviation Administration, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act.

“(f) Exercise of Authorities.--Except as otherwise provided by law, an officer or employee of the Transportation Security Administration may, for purposes of performing a function transferred by this Act or

the amendments made by this Act, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this Act.

“(g) Act Defined.--In this section, the term ‘Act’ includes the amendments made by this Act.”

#### Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

#### Transition Provisions

Pub. L. 107-71, title I, Sec. 101(g), Nov. 19, 2001, 115 Stat. 603, provided that:

“(1) Schedule for assumption of civil aviation security functions.--Not later than 3 months after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall assume civil aviation security functions and responsibilities under chapter 449 of title 49, United States Code, as amended by this Act, in accordance with a schedule to be developed by the Secretary of Transportation, in consultation with air carriers, foreign air carriers, and the Administrator of the Federal Aviation Administration. The Under Secretary shall publish an appropriate notice of the transfer of such security functions and responsibilities before assuming the functions and responsibilities.

“(2) Assumption of contracts.--As of the date specified in paragraph (1), the Under Secretary may assume the rights and responsibilities of an air carrier or foreign air carrier contract for provision of passenger screening services at airports in the United States described in section 44903(c), subject to payment of adequate compensation to parties to the contract, if any.

“(3) Assignment of contracts.--

“(A) In general.--Upon request of the Under Secretary, an air carrier or foreign air carrier carrying out a screening or security function under chapter 449 of title 49, United States Code, may enter into an agreement with the Under Secretary to transfer any contract the carrier has entered into with respect to carrying out the function, before the Under Secretary assumes responsibility for the function.

“(B) Schedule.--The Under Secretary may enter into an agreement under subparagraph (A) as soon as possible, but not later than 90 days after the date of enactment of this Act [Nov. 19, 2001]. The Under Secretary may enter into such an agreement for one 180-day period and may extend such agreement for one 90-day period if the Under Secretary determines it necessary.

((4) Transfer of ownership.--In recognition of the assumption of the financial costs of security screening of passengers and property at airports, and as soon as practical after the date of enactment of this Act [Nov. 19, 2001], air carriers may enter into agreements with the Under Secretary to transfer the ownership, at no cost to the United States Government, of any personal property, equipment, supplies, or other material associated with such screening, regardless of the source of funds used to acquire the property, that the Secretary determines to be useful for the performance of security screening of passengers and property at airports.

((5) Performance of under secretary's functions during interim period.--Until the Under Secretary takes office, the functions of the Under Secretary that relate to aviation security may be carried out by the Secretary or the Secretary's designee."

#### Deadline for Deployment of Federal Screeners

Pub. L. 107-71, title I, Sec. 110(c), Nov. 19, 2001, 115 Stat. 616, provided that:

((1) In general.--Not later than 1 year after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall deploy at all airports in the United States where screening is required under section 44901 of title 49, United States Code, a sufficient number of Federal screeners, Federal Security Managers, Federal security personnel, and Federal law enforcement officers to conduct the screening of all passengers and property under section 44901 of such title at such airports.

((2) Certification to congress.--Not later than 1 year after the date of enactment of this Act, the Under Secretary shall transmit to Congress a certification that the requirement of paragraph (1) has been met."

#### Reports

Pub. L. 107-71, title I, Sec. 110(d), Nov. 19, 2001, 115 Stat. 616, provided that:

((1) Deployment.--Within 6 months after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall report to the Committee on Commerce, Science, and Transportation of the Senate and to the Committee on Transportation and Infrastructure of the House of Representatives on the deployment of the systems required by section 44901(c) of title 49, United States Code. The Under Secretary shall include in the report--

((A) an installation schedule;

((B) the dates of installation of each system; and

((C) the date on which each system installed is operational.

((2) Screening of small aircraft.--Within 1 year after the date of enactment of this Act [Nov. 19, 2001], the Under Secretary of Transportation for Security shall transmit a report to the Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives on the screening requirements applicable to passengers boarding, and property being carried aboard, aircraft with 60 seats or less used in scheduled passenger service with recommendations for any necessary changes in



those requirements."

#### Installation of Advanced Security Equipment; Agreements

Pub. L. 104-264, title III, Sec. 305(b), Oct. 9, 1996, 110 Stat. 3252, provided that: ``The Administrator is authorized to use noncompetitive or cooperative agreements with air carriers and airport authorities that provide for the Administrator to purchase and assist in installing advanced security equipment for the use of such entities."

#### Passenger Profiling

Pub. L. 104-264, title III, Sec. 307, Oct. 9, 1996, 110 Stat. 3253, provided that: ``The Administrator of the Federal Aviation Administration, the Secretary of Transportation, the intelligence community, and the law enforcement community should continue to assist air carriers in developing computer-assisted passenger profiling programs and other appropriate passenger profiling programs which should be used in conjunction with other security measures and technologies."

#### Authority To Use Certain Funds for Airport Security Programs and Activities

Pub. L. 104-264, title III, Sec. 308, Oct. 9, 1996, 110 Stat. 3253, which provided that funds from project grants made under subchapter I of chapter 471 of this title and passenger facility fees collected under section 40117 of this title could be used for the improvement of facilities and the purchase and deployment of equipment to enhance and ensure safe air travel, was repealed by Pub. L. 108-176, title I, Sec. 143, Dec. 12, 2003, 117 Stat. 2503.

#### Installation and Use of Explosive Detection Equipment

Pub. L. 101-45, title I, June 30, 1989, 103 Stat. 110, provided in part that: ``Not later than thirty days after the date of the enactment of this Act [June 30, 1989], the Federal Aviation Administrator shall initiate action, including such rulemaking or other actions as necessary, to require the use of explosive detection equipment that meets minimum performance standards requiring application of technology equivalent to or better than thermal neutron analysis technology at such airports (whether located within or outside the United States) as the Administrator determines that the installation and use of such equipment is necessary to ensure the safety of air commerce. The Administrator shall complete these actions within sixty days of enactment of this Act".

#### Research and Development of Improved Airport Security Systems

Pub. L. 100-649, Sec. 2(d), Nov. 10, 1988, 102 Stat. 3817, provided that: ``The Administrator of the Federal Aviation Administration shall conduct such research and development as may be necessary to improve the

effectiveness of airport security metal detectors and airport security x-ray systems in detecting firearms that, during the 10-year period beginning on the effective date of this Act [see Effective Date of 1988 Amendment; Sunset Provision note set out under section 922 of Title 18, Crimes and Criminal Procedure], are subject to the prohibitions of section 922(p) of title 18, United States Code."

#### Definitions of Terms in Pub. L. 107-71

For definitions of terms used in sections 101(g) and 110(c), (d), of Pub. L. 107-71, set out above, see section 133 of Pub. L. 107-71, set out as a note under section 40102 of this title.

#### Section Referred to in Other Sections

This section is referred to in sections 106, 114, 40109, 44902, 44915, 44919, 44920, 44935, 44936, 44938, 44940, 46314 of this title; title 6 section 233.