

Calendar No. 76108TH CONGRESS
1ST SESSION**S. 165****[Report No. 108-38]**

To improve air cargo security.

IN THE SENATE OF THE UNITED STATES

JANUARY 15, 2003

Mrs. HUTCHISON (for herself and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

APRIL 24, 2003

Reported under authority of the order of the Senate of April 11, 2003, by
Mr. MCCAIN, with amendments

[Omit the part struck through and insert the part printed in *italie*]

A BILL

To improve air cargo security.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Air Cargo Security
5 Improvement Act”.

1 **SEC. 2. INSPECTION OF CARGO CARRIED ABOARD PAS-**
2 **SENGER AIRCRAFT.**

3 Section 44901(f) of title 49, United States Code, is
4 amended to read as follows:

5 “(f) CARGO.—

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

10 “(A) passenger aircraft operated by an air
11 carrier or foreign air carrier in air transpor-
12 tation or intrastate air transportation; or

13 “(B) all-cargo aircraft in air transpor-
14 tation and intrastate air transportation.

15 “(2) STRATEGIC PLAN.—The Under Secretary
16 shall develop a strategic plan to carry out paragraph
17 (1).”.

18 **SEC. 3. AIR CARGO SHIPPING.**

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

1 **“§ 44922. Regular inspections of air cargo shipping**
 2 **facilities**

“§ 44923. Regular inspections of air cargo shipping
facilities

3 “The Under Secretary of Transportation for Security
 4 shall establish a system for the regular inspection of ship-
 5 ping facilities for shipments of cargo transported in air
 6 transportation or intrastate air transportation to ensure
 7 that appropriate security controls, systems, and protocols
 8 are observed, and shall enter into arrangements with the
 9 civil aviation authorities, or other appropriate officials, of
 10 foreign countries to ensure that inspections are conducted
 11 on a regular basis at shipping facilities for cargo trans-
 12 ported in air transportation to the United States.”.

13 (b) ADDITIONAL INSPECTORS.—The Under Secretary
 14 may increase the number of inspectors as necessary to im-
 15 plement the requirements of title 49, United States Code,
 16 as amended by this subtitle.

17 (c) CONFORMING AMENDMENT.—The chapter anal-
 18 ysis for chapter 449 of title 49, United States Code, is
 19 amended by adding at the end the following:

“~~44922.~~ 44923. Regular inspections of air cargo shipping facilities”.

20 **SEC. 4. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.**

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

1 **“§ 44923. Air cargo security**

2 **“§ 44924. Air cargo security**

3 “(a) DATABASE.—The Under Secretary of Transpor-
4 tation for Security shall establish an industry-wide pilot
5 program database of known shippers of cargo that is to
6 be transported in passenger aircraft operated by an air
7 carrier or foreign air carrier in air transportation or intra-
8 state air transportation. The Under Secretary shall use
9 the results of the pilot program to improve the known
10 shipper program.

11 “(b) INDIRECT AIR CARRIERS.—

12 “(1) RANDOM INSPECTIONS.—The Under Sec-
13 retary shall conduct random audits, investigations,
14 and inspections of indirect air carrier facilities to de-
15 termine if the indirect air carriers are meeting the
16 security requirements of this title.

17 “(2) ENSURING COMPLIANCE.—The Under Sec-
18 retary may take such actions as may be appropriate
19 to promote and ensure compliance with the security
20 standards established under this title.

21 “(3) NOTICE OF FAILURES.—The Under Sec-
22 retary shall notify the Secretary of Transportation
23 of any indirect air carrier that fails to meet security
24 standards established under this title.

25 “(4) SUSPENSION OR REVOCATION OF CERTIFI-
26 CATE.—The Secretary, as appropriate, shall suspend

1 or revoke any certificate or authority issued under
2 chapter 411 to an indirect air carrier immediately
3 upon the recommendation of the Under Secretary.
4 Any indirect air carrier whose certificate is sus-
5 pended or revoked under this subparagraph may ap-
6 peal the suspension or revocation in accordance with
7 procedures established under this title for the appeal
8 of suspensions and revocations.

9 “(5) INDIRECT AIR CARRIER.—In this sub-
10 section, the term ‘indirect air carrier’ has the mean-
11 ing given that term in part 1548 of title 49, Code
12 of Federal Regulations.

13 “(c) CONSIDERATION OF COMMUNITY NEEDS.—In
14 implementing air cargo security requirements under this
15 title, the Under Secretary may take into consideration the
16 extraordinary air transportation needs of small or isolated
17 communities and unique operational characteristics of car-
18 riers that serve those communities.”.

19 (b) ASSESSMENT OF INDIRECT AIR CARRIER PRO-
20 GRAM.—The Under Secretary of Transportation for Secu-
21 rity shall assess the security aspects of the indirect air
22 carrier program under part 1548 of title 49, Code of Fed-
23 eral Regulations, and report the result of the assessment,
24 together with any recommendations for necessary modi-
25 fications of the program to the Senate Committee on Com-

1 merce, Science, and Transportation and the House of Rep-
2 resentatives Committee on Transportation and Infrastruc-
3 ture within 45 days after the date of enactment of this
4 Act. The Under Secretary may submit the report and rec-
5 ommendations in classified form.

6 (c) REPORT TO CONGRESS ON RANDOM AUDITS.—
7 The Under Secretary of Transportation for Security shall
8 report to the Senate Committee on Commerce, Science,
9 and Transportation and the House of Representatives
10 Committee on Transportation and Infrastructure on ran-
11 dom screening, audits, and investigations of air cargo se-
12 curity programs based on threat assessments and other
13 relevant information. The report may be submitted in clas-
14 sified form.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the *Under* Secretary
17 of Transportation *for Security* such sums as may be nec-
18 essary to carry out this section.

19 (e) CONFORMING AMENDMENT.—The chapter anal-
20 ysis for chapter 449 of title 49, United States Code, as
21 amended by section 3, is amended by adding at the end
22 the following:

“~~44923.~~ 44924. Air cargo security”.

23 **SEC. 5. TRAINING PROGRAM FOR CARGO HANDLERS.**

24 The Under Secretary of Transportation for Security
25 shall establish a training program for any persons that

1 handle air cargo to ensure that the cargo is properly han-
2 dled and safe-guarded from security breaches.

3 **SEC. 6. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.**

4 (a) IN GENERAL.—The Under Secretary of Trans-
5 portation for Security shall establish a program requiring
6 that air carriers operating all-cargo aircraft have an ap-
7 proved plan for the security of their air operations area,
8 the cargo placed aboard such aircraft, and persons having
9 access to their aircraft on the ground or in flight.

10 (b) PLAN REQUIREMENTS.—The plan shall include
11 provisions for—

12 (1) security of each carrier’s air operations
13 areas and cargo acceptance areas at the airports
14 served;

15 (2) background security checks for all employ-
16 ees with access to the air operations area;

17 (3) appropriate training for all employees and
18 contractors with security responsibilities;

19 (4) appropriate screening of all flight crews and
20 persons transported aboard all-cargo aircraft;

21 (5) security procedures for cargo placed on all-
22 cargo aircraft as provided in section 44901(f)(1)(B)
23 of title 49, United States Code; and

24 (6) additional measures deemed necessary and
25 appropriate by the Under Secretary.

1 (c) CONFIDENTIAL INDUSTRY REVIEW AND COM-
2 MENT.—

3 (1) CIRCULATION OF PROPOSED PROGRAM.—

4 The Under Secretary shall—

5 (A) propose a program under subsection

6 (a) within 90 days after the date of enactment

7 of this Act; and

8 (B) distribute the proposed program, on a

9 confidential basis, to those air carriers and

10 other employers to which the program will

11 apply.

12 (2) COMMENT PERIOD.—Any person to which

13 the proposed program is distributed under para-

14 graph (1) may provide comments on the proposed

15 program to the Under Secretary not more than 60

16 days after it was received.

17 (3) FINAL PROGRAM.—The Under Secretary of

18 Transportation shall issue a final program under

19 subsection (a) not later than 45 days after the last

20 date on which comments may be provided under

21 paragraph (2). The final program shall contain time

22 frames for the plans to be implemented by each air

23 carrier or employer to which it applies.

24 (4) SUSPENSION OF PROCEDURAL NORMS.—

25 Neither chapter 5 of title 5, United States Code, nor

1 the Federal Advisory Committee Act (5 U.S.C.
2 App.) shall apply to the program required by this
3 section.

4 **SEC. 7. REPORT ON PASSENGER PRESCREENING PROGRAM.**

5 *(a) IN GENERAL.—Within 90 days after the date of*
6 *enactment of this Act, the Secretary of Homeland Security,*
7 *after consultation with the Attorney General, shall submit*
8 *a report in writing to the Senate Committee on Commerce,*
9 *Science, and Transportation and the House of Representa-*
10 *tives Committee on Transportation and Infrastructure on*
11 *the potential impact of the Transportation Security Admin-*
12 *istration’s proposed Computer Assisted Passenger*
13 *Prescreening system, commonly known as CAPPS II, on*
14 *the privacy and civil liberties of United States Citizens.*

15 *(b) SPECIFIC ISSUES TO BE ADDRESSED.—The report*
16 *shall address the following:*

17 *(1) Whether and for what period of time data*
18 *gathered on individual travelers will be retained, who*
19 *will have access to such data, and who will make de-*
20 *isions concerning access to such data.*

21 *(2) How the Transportation Security Adminis-*
22 *tration will treat the scores assigned to individual*
23 *travelers to measure the likelihood they may pose a*
24 *security threat, including how long such scores will be*
25 *retained and whether and under what circumstances*

1 *they may be shared with other governmental, non-gov-*
2 *ernmental, or commercial entities.*

3 *(3) The role airlines and outside vendors or con-*
4 *tractors will have in implementing and operating the*
5 *system, and to what extent will they have access, or*
6 *the means to obtain access, to data, scores, or other*
7 *information generated by the system.*

8 *(4) The safeguards that will be implemented to*
9 *ensure that data, scores, or other information gen-*
10 *erated by the system will be used only as officially in-*
11 *tended.*

12 *(5) The procedures that will be implemented to*
13 *mitigate the effect of any errors, and what procedural*
14 *recourse will be available to passengers who believe*
15 *the system has wrongly barred them from taking*
16 *flights.*

17 *(6) The oversight procedures that will be imple-*
18 *mented to ensure that, on an ongoing basis, privacy*
19 *and civil liberties issues will continue to be considered*
20 *and addressed with high priority as the system is in-*
21 *stalled, operated and updated.*

1 **SEC. 8. MODIFICATION OF REQUIREMENTS REGARDING**
2 **TRAINING TO OPERATE AIRCRAFT.**

3 (a) *ALIENS COVERED BY WAITING PERIOD.*—Sub-
4 section (a) of section 44939 of title 49, United States Code,
5 is amended—

6 (1) by resetting the text of subsection (a) after
7 “(a) *WAITING PERIOD.*—” as a new paragraph 2 ems
8 from the left margin;

9 (2) by striking “A person” in that new para-
10 graph and inserting “(1) *IN GENERAL.*—A person”;

11 (3) by redesignating paragraphs (1) and (2) as
12 subparagraphs (A) and (B), respectively;

13 (4) by striking “any aircraft having a maximum
14 certificated takeoff weight of 12,500 pounds or more”
15 and inserting “an aircraft”;

16 (5) by striking “paragraph (1)” in paragraph
17 (1)(B), as redesignated, and inserting “subparagraph
18 (A)”;

19 (6) by adding at the end the following:

20 “(2) *EXCEPTION.*—The requirements of para-
21 graph (1) shall not apply to an alien who—

22 “(A) has earned a Federal Aviation Admin-
23 istration type rating in an aircraft; or

24 “(B) holds a current pilot’s license or for-
25 eign equivalent commercial pilot’s license that
26 permits the person to fly an aircraft with a

1 *maximum certificated takeoff weight of more*
2 *than 12,500 pounds as defined by the Inter-*
3 *national Civil Aviation Organization in Annex*
4 *1 to the Convention on International Civil Avia-*
5 *tion.”.*

6 **(b) COVERED TRAINING.**—*Section 44936(c) of title 49,*
7 *United States Code, is amended to read as follows:*

8 **“(c) COVERED TRAINING.**—

9 **“(1) IN GENERAL.**—*For purposes of subsection*
10 *(a), training includes in-flight training, training in*
11 *a simulator, and any other form or aspect of train-*
12 *ing.*

13 **“(2) EXCEPTION.**—*For the purposes of subsection*
14 *(a), training does not include classroom instruction*
15 *(also known as ground training), which may be pro-*
16 *vided to an alien during the 45-day period applicable*
17 *to the alien under that subsection.”.*

18 **(c) PROCEDURES.**—

19 **(1) IN GENERAL.**—*Not later than 30 days after*
20 *the date of enactment of this Act, the Attorney Gen-*
21 *eral shall promulgate regulations to implement sec-*
22 *tion 44939 of title 49, United States Code.*

23 **(2) USE OF OVERSEAS FACILITIES.**—*In order to*
24 *implement the amendments made to section 44939 of*
25 *title 49, United States Code, by this section, United*

1 *States Embassies and Consulates that have*
2 *fingerprinting capability shall provide fingerprinting*
3 *services to aliens covered by that section if the Attor-*
4 *ney General requires their fingerprinting in the ad-*
5 *ministration of that section, and transmit the finger-*
6 *prints to the Department of Justice and any other*
7 *appropriate agency. The Attorney General shall co-*
8 *operate with the Secretary of State to carry out this*
9 *paragraph.*

10 *(d) EFFECTIVE DATE.—Not later than 120 days after*
11 *the date of enactment of this Act, the Attorney General shall*
12 *promulgate regulations to implement the amendments made*
13 *by this section. The Attorney General may not interrupt*
14 *or prevent the training of any person described in section*
15 *44939(a)(1) of title 49, United States Code, who commenced*
16 *training on aircraft with a maximum certificated takeoff*
17 *weight of 12,500 pounds or less before, or within 120 days*
18 *after, the date of enactment of this Act unless the Attorney*
19 *General determines that the person represents a risk to*
20 *aviation or national security.*

21 *(e) REPORT.—Not later than 1 year after the date of*
22 *enactment of this Act, the Secretary of Transportation and*
23 *the Attorney General shall jointly submit to the Senate*
24 *Committee on Commerce, Science, and Transportation and*
25 *the House of Representatives Committee on Transportation*

1 *and Infrastructure a report on the effectiveness of the activi-*
2 *ties carried out under section 44939 of title 49, United*
3 *States Code, in reducing risks to aviation and national se-*
4 *curity.*

5 **SEC. 9. PASSENGER IDENTIFICATION.**

6 (a) *IN GENERAL.*—Not later than 180 days after the
7 date of enactment of this Act, the Under Secretary of Trans-
8 portation for Security, in consultation with the Adminis-
9 trator of the Federal Aviation Administration, appropriate
10 law enforcement, security, and terrorism experts, represent-
11 atives of air carriers and labor organizations representing
12 individuals employed in commercial aviation, shall develop
13 guidelines to provide air carriers guidance for detecting
14 false or fraudulent passenger identification. The guidelines
15 may take into account new technology, current identifica-
16 tion measures, training of personnel, and issues related to
17 the types of identification available to the public.

18 (b) *AIR CARRIER PROGRAMS.*—Within 60 days after
19 the Under Secretary issues the guidelines under subsection
20 (a) in final form, the Under Secretary shall provide the
21 guidelines to each air carrier and establish a joint govern-
22 ment and industry council to develop recommendations on
23 how to implement the guidelines.

24 (c) *REPORT.*—The Under Secretary of Transportation
25 for Security shall report to the Senate Committee on Com-

1 *merce, Science, and Transportation and the House of Rep-*
2 *resentatives Committee on Transportation and Infrastruc-*
3 *ture within 1 year after the date of enactment of this Act*
4 *on the actions taken under this section.*

5 **SEC. 10. PASSENGER IDENTIFICATION VERIFICATION.**

6 (a) *PROGRAM REQUIRED.*—*The Under Secretary of*
7 *Transportation for Security may establish and carry out*
8 *a program to require the installation and use at airports*
9 *in the United States of the identification verification tech-*
10 *nologies the Under Secretary considers appropriate to assist*
11 *in the screening of passengers boarding aircraft at such air-*
12 *ports.*

13 (b) *TECHNOLOGIES EMPLOYED.*—*The identification*
14 *verification technologies required as part of the program*
15 *under subsection (a) may include identification scanners,*
16 *biometrics, retinal, iris, or facial scanners, or any other*
17 *technologies that the Under Secretary considers appropriate*
18 *for purposes of the program.*

19 (c) *COMMENCEMENT.*—*If the Under Secretary deter-*
20 *mines that the implementation of such a program is appro-*
21 *priate, the installation and use of identification verification*
22 *technologies under the program shall commence as soon as*
23 *practicable after the date of that determination.*

1 **SEC. 11. BLAST-RESISTANT CARGO CONTAINER TECH-**
2 **NOLOGY.**

3 *Not later than 6 months after the date of enactment*
4 *of this Act, the Under Secretary of Transportation for Secu-*
5 *rity, and the Administrator of the Federal Aviation Admin-*
6 *istration, shall jointly submit a report to Congress that con-*
7 *tains—*

8 *(1) an evaluation of blast-resistant cargo con-*
9 *tainer technology to protect against explosives in pas-*
10 *senger luggage and cargo;*

11 *(2) an examination of the advantages associated*
12 *with the technology in preventing damage and loss of*
13 *aircraft from terrorist action and any operational*
14 *impacts which may result from use of the technology*
15 *(particularly added weight and costs);*

16 *(3) an analysis of whether alternatives exist to*
17 *mitigate the impacts described in paragraph (2) and*
18 *options available to pay for the technology; and*

19 *(4) recommendations on what further action, if*
20 *any, should be taken with respect to the use of blast-*
21 *resistant cargo containers on passenger aircraft.*

22 **SEC. 12. ARMING PILOTS AGAINST TERRORISM.**

23 *(a) FINDINGS AND PURPOSE.—*

24 *(1) FINDINGS.—Congress makes the following*
25 *findings:*

1 (A) *During the 107th Congress, both the*
2 *Senate and the House of Representatives over-*
3 *whelmingly passed measures that would have*
4 *armed pilots of cargo aircraft.*

5 (B) *Cargo aircraft do not have Federal air*
6 *marshals, trained cabin crew, or determined pas-*
7 *sengers to subdue terrorists.*

8 (C) *Cockpit doors on cargo aircraft, if*
9 *present at all, largely do not meet the security*
10 *standards required for commercial passenger air-*
11 *craft.*

12 (D) *Cargo aircraft vary in size and many*
13 *are larger and carry larger amounts of fuel than*
14 *the aircraft hijacked on September 11, 2001.*

15 (E) *Aircraft cargo frequently contains haz-*
16 *ardous material and can contain deadly biologi-*
17 *cal and chemical agents and quantities of agents*
18 *that caused communicable diseases.*

19 (F) *Approximately 12,000 of the Nation's*
20 *90,000 commercial pilots serve as pilots and*
21 *flight engineers on cargo aircraft.*

22 (G) *There are approximately 2,000 cargo*
23 *flights per day in the United States, many of*
24 *which are loaded with fuel for outbound inter-*
25 *national travel or are inbound from foreign air-*

1 ports not secured by the Transportation Security
2 Administration.

3 (H) aircraft transporting cargo pose a seri-
4 ous risk as potential terrorist targets that could
5 be used as weapons of mass destruction.

6 (I) Pilots of cargo aircraft deserve the same
7 ability to protect themselves and the aircraft they
8 pilot as other commercial airline pilots.

9 (J) Permitting pilots of cargo aircraft to
10 carry firearms creates an important last line of
11 defense against a terrorist effort to commandeer
12 a cargo aircraft.

13 (2) *SENSE OF CONGRESS.*—It is the sense of
14 Congress that a member of a flight deck crew of a
15 cargo aircraft should be armed with a firearm to de-
16 fend the cargo aircraft against an attack by terrorists
17 that could result in the use of the aircraft as a weap-
18 on of mass destruction or for other terrorists purposes.

19 (b) *ARMING CARGO PILOTS AGAINST TERRORISM.*—
20 Section 44921 of title 49, United States Code, is amended—

21 (1) by striking “passenger” in subsection (a)
22 each place that it appears;

23 (2) by striking “or,” and all that follows in sub-
24 section (k)(2) and inserting “or any other flight deck
25 crew member.”; and

1 (3) *by adding at the end of subsection (k) the fol-*
2 *lowing:*

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

6 (d) *IMPLEMENTATION.—*

7 (1) *TIME FOR IMPLEMENTATION.—The training*
8 *of pilots as Federal flight deck officers required in the*
9 *amendments made by subsection (b) shall begin as*
10 *soon as practicable and no later than 90 days after*
11 *the date of enactment of this Act.*

12 (2) *EFFECT ON OTHER LAWS.—The requirements*
13 *of subparagraph (1) shall have no effect on the dead-*
14 *lines for implementation contained in section 44921*
15 *of title 49, United States Code, as in effect on the day*
16 *before the date of enactment of this Act.*

17 **SEC. 13. REPORT ON DEFENDING AIRCRAFT FROM MAN-**
18 **PORTABLE AIR DEFENSE SYSTEMS (SHOUL-**
19 **DER-FIRED MISSILES).**

20 *Not later than 90 days after the date of the enactment*
21 *of this Act, the Secretary of Homeland Security shall issue*
22 *a report to the Senate Committee on Commerce, Science,*
23 *and Transportation and the House of Representatives Com-*
24 *mittee on Transportation and Infrastructure on how best*
25 *to defend turbo and jet passenger aircraft from Man-Port-*

1 *able Air Defense Systems (shoulder-fired missiles). The re-*
2 *port shall also include actions taken to date, counter-*
3 *measures, risk mitigation, and other activities. The report*
4 *may be submitted in classified form.*

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S. 165

[Report No. 108-38]

A BILL

To improve air cargo security.

APRIL 24, 2003

Reported with amendments