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Aviation Security: Issues Before Congress Since September 11, 2001

Updated February 6, 2004

Bartholomew Elias
Specialist in Aviation Safety, Security, and Technology
Resources, Science, and Industry Division

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Summary

The events of September 11, 2001 heightened concerns regarding aviation security in the United States. The ensuing debate in Congress focused on the degree of federal involvement needed to improve aviation security and restore public confidence in air travel. The Aviation and Transportation Security Act (ATSA, P.L. 107-71, 115 Stat. 597) established the Transportation Security Administration (TSA) and contained provisions establishing a federal screener workforce and requiring screening of checked baggage using explosive detection systems. ATSA also significantly expanded the federal air marshal program, required that all cockpit doors be strengthened, and provided for various other aviation security measures. The Homeland Security Act of 2002 (P.L. 107-296, 116 Stat. 2135) established the Department of Homeland Security (DHS), and placed the TSA within DHS.

Funding for aviation security programs remains a central issue especially since passenger and air carrier security fees fall well short of fully funding these programs. Funding for airport security improvements also remains a key issue because costly projects to place explosive detection systems in baggage handling facilities are placing a strain on Airport Improvement Program (AIP) funds. A provision in the FAA reauthorization act (Vision 100, P.L. 108-176, 117 Stat. 2490) establishes a capital fund for installing explosive detection equipment in airport baggage handling facilities. Up to \$500 million per year through FY 2007 is authorized for this purpose, and \$250 million was appropriated in FY 2004 (see P.L. 108-90, 117 Stat. 1137, H.Rept. 108-280). Other ongoing issues for Congress include funding for aviation security programs, oversight of aviation security activities, and consideration of legislative measures to enhance aviation security in areas such as air cargo operations. The Air Cargo Security Act (S. 165), passed by the Senate on May 8, 2003, focuses on improvements to security of cargo transported on passenger airplanes as well as all-cargo operations. Similar legislation has been introduced in the House (H.R. 1103; H.R. 2455). Besides air cargo security, other key aviation security issues include: privacy issues regarding the new computer-aided passenger pre-screening system (CAPPS II) being developed, improving access to secure airport areas; protecting airliners from shoulder-fired missiles; and security of general aviation operations.

In November 2004, airports will be eligible to opt out of the federal security screening program and a provision of P.L. 107-296 preserving TSA in its present form will expire allowing DHS to restructure the TSA if it so chooses, although no such plan has been revealed to date. During the second session of the 108th Congress, oversight of TSA's plans for implementing the security screening opt-out program will likely be of considerable interest as will any plans to restructure the TSA.

This report will be updated as warranted by events.

Contents

Introduction	1
Funding for Aviation Security Programs	2
Budget and Appropriations	2
Offsetting the Cost of Aviation Security	5
Transitioning TSA to the Department of Homeland Security	6
Airport Security	7
Passenger Pre-screening	7
Federal Screeners	10
Private Security Screening	12
Baggage Screening	12
Access to Secure Airport Areas and Airport Perimeter Security	14
In-Flight Security Aboard Passenger Airlines	15
Federal Air Marshals	15
Flight Deck Intrusion and Penetration Resistance	17
Armed Pilots	18
Security Training for Flight and Cabin Crews	19
Protecting Aircraft from Shoulder-Fired Missiles	20
Air Cargo Security	21
Security of Cargo Carried in Passenger Aircraft	21
Blast-Resistant Cargo Container Technology	23
All-Cargo Aircraft Security	23
Flight School and General Aviation Security	24
Flight School Security	24
Pilot Background Checks and Certificate Actions	25
Airport Watch Program	26
Security of Charter Operations and Private Aircraft	26
Airspace Restrictions	29

List of Tables

Table 1. Aviation Security Appropriations (\$ Million)	3
Table 2. Funding for Aviation Security Functions, FY2004	3
Table 3. TSA Budget Request for FY2005	4

Aviation Security: Issues Before Congress Since September 11, 2001

Introduction

The September 11, 2001 hijacking of four transport category passenger airplanes from three different airports and the enormous loss of life and destruction of property that resulted from the terrorist attacks using these aircraft as weapons focused concerns on aviation security in the United States. During the aviation security debate in Congress following these attacks, the overarching issue was the degree of federal involvement needed to improve aviation security and restore the public's confidence in air travel.

On November 19, 2001, President Bush signed the Aviation and Transportation Security Act (ATSA, P.L. 107-71). ATSA shifted much of the responsibility for aviation security from the airports and airlines to the federal government. The Act established a new Transportation Security Administration (TSA) headed by an Under Secretary of Transportation for Security. Three months after enactment (February 17, 2002), the responsibilities for aviation security were transferred from the Federal Aviation Administration (FAA) to the TSA.

On November 25, 2002, President Bush signed the Homeland Security Act of 2002 (P.L. 107-296). This Act established the Department of Homeland Security (DHS) and placed the TSA intact as a distinct entity within DHS under the Border Transportation and Security Directorate for the first 2 years following enactment. TSA migrated to the newly formed DHS in March, 2003.

In the 108th Congress, the FAA Reauthorization Act (Vision 100, P.L. 108-176) has served as the principle vehicle for enacting several statutory changes pertaining to aviation security. Most notably, Vision 100 established an aviation security capital fund for integrating explosive detection equipment into airport baggage handling systems. This fund is authorized up to \$500 million per fiscal year through FY2007, of which \$250 million is designated as mandatory spending derived from aviation security fees. \$250 million was appropriated for explosive detection equipment installation in FY2004. Vision 100 also: increases oversight of security at foreign repair stations; requires a thorough review of the proposed CAPPS II program to ensure civil liberties and privacy concerns are adequately addressed; modifies background check requirements for foreign flight students; modifies provisions for flight and cabin crew security training; requires justification for establishing special flight areas around major cities; requires the development and implementation of a security plan for general aviation flight at Washington Reagan National Airport; and allows pilots of all-cargo aircraft and other members of the flight crew, such as flight engineers, to be trained to carry firearms to defend the flight deck.

Ongoing issues for Congress include several new measures designed to enhance aviation security. The Air Cargo Security Act (S. 165), passed by the Senate on May 8, 2003, focuses on improvements to security of cargo transported on passenger airplanes as well as all-cargo operations. Similar legislation has been introduced in the House (H.R. 1103; H.R. 2455). Besides air cargo security, other key aviation security issues include: privacy issues regarding the new computer-aided passenger pre-screening system (CAPPS II) being developed, improving access to secure airport areas; protecting airliners from shoulder-fired missiles; and security of general aviation operations. Additionally, the security screening opt-out provision of ATSA, which allows airports, with TSA approval, to use private security screeners instead of federal screeners starting in November 2004, is likely to receive considerable attention this year as TSA develops its implementation plan for this program and airports weigh the costs and benefits of adopting a system of private security screening.

Funding for Aviation Security Programs

Budget and Appropriations. ATSA authorizes the appropriation of such sums as may be necessary to administer aviation security programs through FY2005. In FY2002, during its first operational year, TSA expenditures, including funds transferred from FAA to TSA and supplemental appropriations, totaled \$5.8 billion, of which an estimated \$5.17 billion were expended on aviation security. For FY2003, TSA was appropriated \$5.18 billion, of which about \$4.52 billion was allocated for aviation security functions. Of the FY2003 aviation security appropriations, about \$3.27 billion was designated for airport screening activities, and about \$1.47 billion was designated for airport support and enforcement presence. In FY2004, the Department of Homeland Security appropriations (P.L. 108-90) designated \$3.73 billion for aviation security plus authorization to use \$95 million in unexpended prior year funds. In addition to these funds, the Federal Air Marshal Service, formerly included in the TSA appropriations, received its own separate appropriation of \$626 million. A summary of TSA appropriations for aviation security functions for FY2002, FY2003, and FY2004 is presented in **Table 1**. A detailed summary of appropriations for aviation security functions in FY2004 is presented in **Table 2**.

Table 1. Aviation Security Appropriations (\$ Million)

Function	FY2002	FY2003	FY2004
Passenger Screening	2,297	1,872	1,806
Baggage Screening	1,930	1,407	1,319
Cargo Screening		20	*
Airport Support and Law Enforcement Presence		1,469	*
Security Direction and Enforcement	944		703
In-Line EDS		235	*
Use of prior year balance			-95
Total (Aviation Security)	5,172	5,002	3,733
Federal Air Marshal Service	**	**	626

* Included in Security Direction and Enforcement.

** Included in Security Direction and Enforcement in FY2002 and Airport Support and Law Enforcement Presence in FY2003

Note: Column totals do not sum exactly due to rounding.

Table 2. Funding for Aviation Security Functions, FY2004

Function	FY2004 (\$)
Passenger screening:	1,805,700,000
Screening pilots	\$119,000,000
Passenger screeners	1,319,600,000
Passenger screeners – training and other	114,100,000
Human resources services	151,000,000
Checkpoint support	62,000,000
CAPPS II	35,000,000
Registered traveler	5,000,000
Baggage screening:	1,318,700,000
Baggage screeners	774,200,000
Baggage screeners – training and other	69,500,000
EDS Purchase	150,000,000
EDS Installation	250,000,000
EDS/ETD maintenance	75,000,000
Security direction and enforcement:	703,300,000
Aviation regulation and other enforcement	275,400,000
Airport management and staff	233,800,000
Airport information technology and other support	139,100,000
Federal flight deck officer program	25,000,000
Air cargo	30,000,000
<i>Subtotal, aviation security</i>	3,827,700,000
<i>Use of prior year balances</i>	-95,000,000
Total, Aviation Security	3,732,700,000

Source: H.Rept. 108-280

The TSA is requesting slightly more than \$5.3 billion for FY2005, an \$891 million increase over FY2004 appropriations. Whereas the appropriations language in prior fiscal years subdivided costs for aviation security and security in other modes, these functions are intermingled in the FY2005 budget request. Historically, aviation security has comprised about 95% of the total TSA budget. Requested funding levels for each transportation security function is provided in **Table 3**.

Table 3. TSA Budget Request for FY2005

Function	Requested
Aviation Screening Operations:	4,843,076,000
Screener Workforce (Passenger and Baggage Screeners)	2,424,000,000
EDS/ETD Purchase and Installation (Discretionary)	150,000,000
EDS/ETD Purchase and Installation (Mandatory)	250,000,000
Checkpoint Support	86,060,000
Screener Technology Maintenance/Utilities	205,000,000
CAPPS II	60,000,000
Applied Research and Development	49,000,000
Next Generation EDS	50,000,000
Information Technology Core	294,770,000
Mission Support Applications	80,700,000
Screeners - Other Operating Requirements ^a	199,274,000
Screener Training	145,000,000
Human Resources	150,000,000
Airport Management and Staff	284,000,000
Airport Rent and Furniture	100,000,000
Airport Parking and Transit Benefits	15,890,000
Headquarters Support	291,382,000
Corporate Training	8,000,000
Aviation Security Regulation and Enforcement:	337,000,000
Aviation Cargo Security	30,000,000
Air Cargo Research and Development	55,000,000
Aviation Regulations, Inspections, and Enforcement	120,000,000
Canine Units	17,000,000
State and Local Law Enforcement Reimbursements	90,000,000
Federal Flight Deck Officer Program	25,000,000
Transportation Security Enterprise:	146,600,000
Enterprise security staffing and operations	38,000,000

Function	Requested
Transportation Security Coordination Center	17,000,000
Registered Traveler Program	15,000,000
Transportation Worker Identification Credential (TWIC)	50,000,000
Alien Pilot Security Assessment Program	4,600,000
HAZMAT Driver License Endorsement Program	17,000,000
Credentialing Enterprise Startup	5,000,000
Total TSA:	5,326,676,000
Federal Air Marshals Service	612,900,000

Sources: TSA, Office of Management and Budget.

a. Includes travel, uniform allowance, hazardous materials disposal, and consumable supplies.

Offsetting the Cost of Aviation Security. Costs for aviation security are partially offset by the collection of aviation security fees from passengers and airlines. ATSA includes provisions for a security service fee imposed on passengers not to exceed the lesser of \$2.50 per trip leg or \$5.00 per one-way trip to fund aviation security programs. In addition, ATSA contains provisions for collection of fees from air carriers for aviation security to supplement funding for aviation security. Through FY2004, the sum of aviation security fees paid by a carrier may not exceed the amount that carrier paid in calendar year 2000 for screening passengers and property. From FY2005 on, the per-carrier limit on fees can be adjusted based on market share or other appropriate measure in lieu of actual screening costs paid in calendar year 2000.

An ongoing challenge for funding aviation security has been the financial difficulties faced by the aviation industry. Financial troubles for the airlines have had a significant impact on aviation security fee collections and has also resulted in the passage of legislation providing large financial bailouts to the airlines. Immediately after September 11, 2001, Congress passed the Air Transportation Safety and System Stabilization Act (P.L. 107-42, 115 Stat. 230) on September 22, 2001, which provided \$5 billion in emergency assistance to compensate air carriers for direct and incremental losses stemming from the terrorist attacks.¹ The Emergency Wartime Supplemental Appropriations Act (P.L. 108-11, 117 Stat. 559), enacted on April 16, 2003, provided almost \$2.3 billion dollars in additional assistance to air carriers, paid in proportion to the share of the air carrier and passenger security fees each air carrier had remitted to TSA. Additionally, P. L. 108-11 also contained a provision that temporarily halted the collection of air carrier and passenger security fees from June 1 through September 20, 2003. Passenger security fee collections resumed at the beginning of FY2004, and although there appears to now be some modest recovery in airline travel, funding for aviation security programs remains an ongoing challenge for Congress. Slightly more than \$2 billion is expected to be received

¹ U.S. General Accounting Office. *Aviation Assistance: Information on Payments Made Under the Disaster Relief and Insurance Reimbursement Programs*. GAO-03-1156R.

through aviation security fee collections this fiscal year, which offsets only about 54% of the current federal cost for aviation security. The administration expects revenue from aviation security fees to increase to \$2.58 billion in FY2005, however the TSA budget request for FY2005 would increase total TSA spending by \$891 million as compared to FY2004 appropriations. In FY2005, the TSA also expects fee collections for the TWIC program and background checks of foreign flight students to fully support the costs of these programs. The TSA obtained fee authority for conducting background checks of foreign flight students in Vision 100 (P.L. 108-176), and is seeking fee authority for credentialing transportation workers under the TWIC program.

Besides the fiscal challenge of funding aviation security operations, the impact of funding aviation security improvements at airports with Airport Improvement Program (AIP) funds is a significant issue. Several airports, especially many of the large hub airports, have been utilizing AIP funds to pay for installing explosive detection systems (EDS) in baggage handling areas and retrofitting baggage conveyers to accommodate EDS equipment in addition to other security-related projects. The use of AIP funds for security projects has a direct impact on many airport projects to improve capacity and safety. The Consolidated Appropriations Resolution (P.L. 108-7, 117 Stat. 11) contained a provision allowing the TSA to issue letters of intent to commit future funding for such aviation security projects. The federal share of costs for airport security projects defined with regard to these letters of intent was set at 75% for large and medium hub airports, and at 90% for all other airports. Vision 100 (P.L. 108-176) established a separate Aviation Security Capital Fund to finance projects to integrate explosive detection equipment into airport baggage handling systems. The law authorizes up to \$500 million per year over the next 4 years for the fund. The first \$250 million per year is to be collected from aviation security fees and comprises a mandatory funding level for the fund. Vision 100 (P.L. 108-176) also increased the federal share of costs for these projects to 90% at large and medium hubs, and 95% at other airports. While Vision 100 authorizes up to \$500 million per year through FY2007, FY2004 appropriations for EDS installation totaled only half of that, \$250 million. It has been estimated that the total system-wide cost to integrate EDS equipment at airports could exceed \$2.3 billion depending on the nature and type of structural changes needed.²

Transitioning TSA to the Department of Homeland Security

The Homeland Security Act of 2002 specifies the structure of the newly formed Department of Homeland Security (DHS) and places TSA within DHS under the Directorate of Border and Transportation Security along with the U.S. Customs Service; the Federal Protective Service; the Federal Law Enforcement Training Center; and the Office for Domestic Preparedness (formerly part of the Office of Justice Programs). One key challenge for the DHS and TSA as a component of

² Statement of the Honorable Kenneth M. Mead, Inspector General, U.S. Department of Transportation. *Key Issues Concerning Implementation of the Aviation and Transportation Security Act*. Before the Committee on Commerce, Science, and Transportation, United States Senate. February 5, 2002

DHS, will be the ability of the organization to establish policies, procedures, and tools for effectively sharing critical information regarding national security threats and coordinating resources to rapidly respond to threats to aviation security.

While DHS officially went into full operational status and TSA migrated its operations to the Department of Homeland Security in March 2003, the next few years will be a critical phase for fully defining the organization, mission, and culture of DHS as a whole and TSA as a functional entity within DHS. This transitional period will likely spur continued congressional oversight to ensure that TSA is able to fully establish and maintain its capability to effectively carry out the civil aviation security programs established under ATSA and the Homeland Security Act of 2002. Although TSA will remain intact in its current organizational structure as an element of DHS for the first two years, under provisions of the Homeland Security Act of 2002, TSA may be restructured after that period. November 2004 will be a critical time for TSA because not only will restructuring be an option, but also, under a provision in ATSA, airports will be able to opt out of the federal security screener program and adopt a security screening program comprised of private screeners.

While TSA has remained as a distinct entity, the Federal Air Marshal Service (FAMS) was moved out of the TSA by DHS and placed in the Bureau of Immigration and Customs Enforcement (ICE) in December 2003. This move allows DHS to train additional law enforcement officers serving as immigration and customs officers as federal air marshals, thus increasing their ability to deploy additional air marshals during periods of heightened security concerns for civil aviation. This is also expected to increase career opportunities for air marshals as well as immigration and customs officers who are expected to have a wider array of training and assignment opportunities within the bureau.

The Aviation Security Technical Corrections and Improvements Act of 2003 (H.R. 2144), introduced on May 19, 2003, proposes technical corrections to Title 49 of the U.S. Code to align aviation security functions carried out by TSA with the operations of the DHS and officially designates the head of TSA, formerly known as the Undersecretary of Transportation for Security, as the Administrator of the Transportation Security Administration. Within DHS, the TSA Administrator reports to the Undersecretary for Border and Transportation Security.

Airport Security

A primary focus of the TSA in its first two years of operation was the deployment of federal passenger and baggage screeners and equipment to meet the mandates for a federal airport security screeners and screening of all checked baggage using explosive detection equipment. These elements, along with risk-based assessments of passengers, are considered the first layer of security in a multi-layered system intended to protect passenger airlines from explosives, hijackings, sabotage, and other acts of terrorism.

Passenger Pre-screening. Since 1996, the Computer Aided Passenger Pre-screening (CAPPS) system has analyzed ticket purchasing behavior to identify air travelers who may pose a threat. However, the TSA maintains that the methods

of identifying suspicious passengers under the existing CAPPS program has largely been compromised by information publicly discussed following the terrorist attacks of September 11, 2001.³ Therefore, the TSA contracted with Lockheed Martin to develop the next-generation passenger risk assessment and pre-screening system (CAPPS II). A key issue is what information this system will collect and analyze and how this system will balance the requirement for security through intelligence gathering with travelers' civil liberties and right to privacy.

As described in an August 1, 2003 *Federal Register* notice⁴, the proposed CAPPS II system will compare basic passenger information, such as full name, home address and telephone number, and date of birth, to information available from commercial data providers to authenticate a passenger's identity. Once a passenger's identity is verified, the passenger identification data will be compared against government databases of terrorists and individuals who are thought to pose a threat to civil aviation. Each passenger will be assigned a risk score that will place them into one of three color-coded risk categories. Most passengers (about 95%) would be color-coded green meaning that they are thought to pose a low or minimal risk and, consequently, they will only undergo standard levels of physical screening at airport security checkpoints. A small percentage of passengers (estimated to be about 5%) will be coded as either yellow, meaning that they are thought to pose a potential risk to aviation security and will be required to undergo additional secondary physical screening at the airport checkpoint, or red, meaning that they are thought to pose a significant threat to aviation security and will be prohibited from boarding. According to the TSA, the estimated 5% of passengers that will be flagged as either yellow or red under CAPPS II is expected to be a significant reduction from the 15% of passengers that are currently identified for additional scrutiny under the existing CAPPS passenger pre-screening system.⁵

Several questions remain regarding the implementation of the CAPPS II program. These focus on the protection of privacy and civil liberties and include: what specific data will be collected?; how will the data be used?; who will have access to the data?; how long will data be retained in the system?; what access will members of the public have to their personal data retained in the system?; will the system have an acceptable error rate?; how will inaccuracies in data be resolved?; and so on. Language in both the Homeland Security appropriations for FY2004 (P.L. 108-90) and Vision 100 (P.L. 108-176) directs the GAO to study these issues and provide recommendations for methods to eliminate or minimize the adverse affect of CAPPS II on privacy, discrimination, and other civil liberties. The initial GAO report, required under P.L. 108-90, is due by February 15, 2004. As specified in the Vision 100 (P.L. 108-176), the TSA cannot implement CAPPS II in other than a test

³ Joan M. Feldman. "Mission Creep: CAPPS II May End Up Costing Taxpayers a Lot of Money While Only Partially Achieving its Goal of Improving Aviation Security." *Air Transport World*. May 1, 2003, p. 48-50.

⁴ Department of Homeland Security, Transportation Security Administration. "Privacy Act of 1974: System of Records." *Federal Register*, 68(148), pp 45265-45269. August 1, 2003. Washington, DC: National Archives and Records Administration.

⁵ Sara Kehaulani Goo. "U.S. to Push Airlines for Passenger Records." *The Washington Post*, January 12, 2004, p. A1.

phase, until the GAO reports that these issues are adequately addressed, and during the test phase, TSA may not use CAPPs II to delay or deny boarding of any passenger.

The TSA's efforts to launch the test phase of CAPPs II have been delayed by the airlines' reluctance to voluntarily provide passenger records for testing the system. The airlines' reluctance stems from recent incidents in which public criticism and legal actions resulted from airlines voluntarily providing passenger data to government agencies. In the first instance, JetBlue Airways supplied passenger data to an Army contractor that used the data to test a data-mining system for security at Army bases.⁶ Delta Airlines was originally slated to participate in the initial test phase for CAPPs II, but declined to provide the data after a privacy advocacy group launched a web site urging a boycott of Delta Airlines for their role in the program.⁷ More recently, it was disclosed that Northwest Airlines provided passenger records in the months following September 11, 2001, to NASA researchers who were reportedly unsuccessful in using that data to develop a data-mining tool for security analysis. A class-action suit has been filed against Northwest Airlines on behalf of all passengers whose information was allegedly divulged.⁸ As a result of these concerns, the implementation of CAPPs II may depend on legislative or regulatory mechanisms to resolve the airlines legal concerns as well as the concerns raised regarding privacy protections. Despite these setbacks, the TSA anticipates testing CAPPs II in the spring of 2004 and implementing the system by summer 2004.⁹

ATSA also gives the TSA the authority to develop a known or trusted traveler program. This program would allow passengers who voluntarily submit to background checks and receive a unique identification card to be streamlined through the security screening process and subjected to only a minimum amount of physical screening. Proponents of such a plan argue that this program could help TSA focus limited security resources on conducting more thorough checks of those passengers who are more likely to pose a security threat, while opponents argue that terrorists may exploit such a system to bypass more stringent security checks at airports.¹⁰ While TSA is studying the feasibility of such a plan, no specific details regarding implementation of a known-traveler program have been released. One significant hurdle in implementing such a program is the need for effective technologies and procedures to positively establish the identity of known travelers. The Air Cargo Security Act (S. 165) contains a provision that would require TSA to lead an effort to establish guidelines for detecting false or fraudulent passenger identification.

⁶ Philip Shenon. "JetBlue Gave Defense Firm Files on Passengers." *The New York Times*, September 20, 2003.

⁷ Sara Kehaulani Goo. "TSA May Try to Force Airlines to Share Data." *The Washington Post*, September 27, 2003, p. A11.

⁸ Associated Press. "NASA administrator says nothing gleaned from airline passenger data", January 28, 2004.

⁹ Leslie Miller. "U.S. to Start Airline Background Checks" Associated Press Newswires, January 27, 2004.

¹⁰ U.S. General Accounting Office. *Aviation Security: Registered Traveler Program Policy and Implementation Issues*. GAO-03-253, November, 2002.

Another challenge that TSA will face in developing such a program is to establish a protocol that can sufficiently scrutinize passenger backgrounds without being overly burdensome or intrusive. H.R. 2144 would require the TSA to implement a trusted traveler, registered traveler, or similar program within 1 year. TSA received \$5 million in FY2004 and has requested \$15 million in FY2005 to develop and implement a registered traveler program.

Federal Screeners. ATSA provided for federal oversight of airport security and required that security screening personnel be federal employees. Although these screeners are entitled to most standard federal employee benefits, such as health benefits and participation in retirement plans, the TSA Administrator has much greater flexibility over pay and retention of screeners as compared to federal employees in general. A requirement under ATSA that airport screeners be U.S. citizens was amended under the Homeland Security Act of 2002 to allow U.S. nationals¹¹, that is, non-citizens who have a permanent allegiance to the United States, to also be employed as airport screeners.

ATSA provided for a one-year transition to a security force staffed by federal employees. The TSA met the November 19, 2002 deadline for deploying federal airport screeners at all commercial airports where passenger screening is required. On that date, there were 429 such airports, and at present, there are 432.

Under an agency order issued by the TSA in January of 2002, screeners may not form collective bargaining units.¹² However, several TSA screeners and federal union representatives are challenging this order asserting that, as federal employees, screeners have the right to form or join a labor organization if they so choose. It has also been reported that the large volume of discrimination complaints received by TSA, over 1,800 in 2003, may be indicative of inadequacies in TSA's internal grievance process. Several current and former screeners have alleged that the agency has failed to adequately address allegations of discrimination against minorities and veterans, and claims of unfair hiring and firing practices, nepotism, and management violations.¹³

In deploying federal screeners to meet the mandate established under ATSA, the TSA screener workforce grew to 54,600 employees despite congressional appropriations limits that imposed a cap of 45,000 full-time screeners (see P.L. 108-7; P.L. 108-90). TSA has recognized that in its efforts to meet the November 19, 2002 deployment deadline for passenger screeners and the original December 31,

¹¹ The term U.S. nationals, as defined in Title 8, Chapter 12, Section 1101(a)(22) of the U.S. Code, refers to either a citizen of the United States, or a person who, though not a citizen of the United States, owes permanent allegiance to the United States. For example, most individuals born in American Samoa are U.S. nationals by birth. U.S. nationals may serve in the U.S. armed forces.

¹² Transportation Security Administration. "TSA's Loy Determines Collective Bargaining Conflicts with National Security Needs." Press Release, January 9, 2003.

¹³ Chris Strohm. "Airport screener discrimination complaints overwhelm TSA." *Government Executive Daily Briefing*, January 23, 2004.

2002 deadline for checked baggage screening, its hiring and deployment of federal screeners was less than optimal.¹⁴ TSA is initiated a workforce realignment that resulted in a reduction of 6,000 screeners at the end of FY 2003. The number of screeners at each airport is being reapportioned to better reflect passenger volume at checkpoints, and TSA offered screeners relocation bonuses of up to \$5,000 to improve staffing levels at chronically understaffed airports. Some in Congress and many airport operators voiced concerned that the methods being used by the TSA to realign the screener workforce may not accurately reflect the numbers of origination passengers that pass through checkpoints at a given airport and may not address future expansion plans and increased demand for screeners as passenger volume increases with economic recovery. Concern has also been voiced that scheduling practices for screeners, who primarily work straight shifts, is not well suited for meeting daily fluctuations in passenger volume which typically experiences significant daily and weekly peaks and lulls.

It has been the Department of Transportation's stated goal that passengers should not wait more than 10 minutes to pass through an airport security checkpoint.¹⁵ An August 2003 survey by the Bureau of Transportation Statistics found that passenger wait times averaged about 18 minutes.¹⁶ As demand for air travel increases, maintaining reasonable queue times at security checkpoints may pose a significant challenge to TSA, especially at larger airports with centralized checkpoints. While the details of security inspections processes at airport checkpoints consist of sensitive information, it has been reported that TSA screeners are undergoing more stringent tests at security checkpoints that have revealed screeners sometimes fail to detect hidden threat objects.¹⁷ Following September 11, 2001, more stringent criteria were established for screening checked items and more items have been included in the list of prohibited objects that cannot be carried by passengers or in their carry on items.

A key criterion in continuing oversight of TSA's staffing levels, training, and performance of its screener workforce will likely be the ability to continually provide an expected level of service without compromising the high security standards and threat detection objectives needed to ensure security of the aviation system and maintain the confidence of airline passengers. Toward this goal, the TSA has recently reinstated the use of a technology called threat image projection (TIP) to monitor screener performance and take corrective action when screening problems are identified. TIP, a technology originally deployed on a test basis by the FAA in 1999, overlays computer generated images of threat objects, such as guns and knives, on x-ray images of passenger bags. Use of the TIP technology was suspended

¹⁴ Testimony by Admiral James M. Loy, Administrator, Transportation Security Administration before the Senate Committee on Appropriations, Subcommittee on Homeland Security, May 13, 2003.

¹⁵ Remarks of Norman Y. Mineta, Secretary of Transportation, Travel and Tourism Industry Unity Dinner, March 6, 2002, Washington, DC.

¹⁶ Department of Transportation, Bureau of Transportation Statistics. +++

¹⁷ Ricardo Alonso-Zaldivar. New airport screeners failing tougher tests, officials say. *Los Angeles Times*, May 11, 2003.

immediately after September 11, 2001, but has been significantly improved upon and recently redeployed at airport checkpoints. TIP along with covert testing of security checkpoints are considered by TSA as primary tools in identifying and correcting vulnerabilities at airport checkpoints including needs for training, staffing, equipment and other resources. H.R. 2144 would require that the TSA provide Congress with a report describing its methodology and planning for future allocations of passenger and baggage screeners and screening equipment.

Private Security Screening. On November 19, 2004, two years after compliance with the requirement to use federal screeners, each airport with federal screeners can choose to leave the federal screening system and implement a system utilizing private security screeners contingent on TSA's approval. Several airports, mostly small to medium sized airports, have indicated interest in the opportunity to opt out of the federal screening program, citing four principle reasons why they may choose to do so: 1) to increase the quality of airport screening; 2) to increase flexibility to address local factors affecting security requirements; 3) to increase the uniformity and consistency of security operations at the airport level; and 4) to improve customer service.¹⁸ The TSA is currently working on developing the implementation plan for the opt-out program and plans to reveal this plan to airports and other stakeholders in the summer of 2004.

ATSA also provided that, beginning November 19, 2002, five airports, one from each category of airport security risk, could volunteer for a two-year pilot program using private screening companies whose security personnel meet the same training requirements as the federal screeners. This pilot program was to serve as a test for the opt-out program to examine whether private airport screening practices may be able to offer cost savings and other benefits as compared to the federal screening force under TSA. This pilot program has been implemented at:

- San Francisco International Airport, CA (SFO) – Category X
- Kansas City Airport, MO (MCI) – Category I
- Greater Rochester International Airport, NY (ROC) – Category II
- Tupelo Airport, MS (TUP) – Category III
- Jackson Hole Airport, WY (JAC) – Category IV

The TSA recently initiated a study of these 5 sites examining the impact of private screening on: customer and stakeholder factors such as passenger wait times, property claims, and complaints; comparative costs; and security effectiveness. The results of the study will be used in the development of guidelines for the opt out program, and preliminary study results are expected in March 2004.¹⁹

Baggage Screening. In addition to screening of passengers and their carry-on articles, ATSA required the deployment of a sufficient number of explosive detection systems (EDS) to screen all checked baggage placed on passenger aircraft

¹⁸ Robert W. Poole, Jr. *Improving Airport Passenger Screening*, Policy Study 298. September 2002. Reason Public Policy Institute, Reason Foundation, Los Angeles CA.

¹⁹ Transportation Security Administration. *Briefing on the Evaluation of Private Contractor Screening Operations*, January 2004.

by December 31, 2002. The Homeland Security Act of 2002 provides a temporary extension of up to one year for airports unable to meet this deadline, so long as acceptable alternate means of screening all checked baggage are implemented until sufficient numbers of EDS machines can be installed. It has been reported that as many as seven airports, mostly large airports such as Newark Liberty Airport (EWR), were unable to meet the extended deadline for full EDS screening of passenger baggage by December 31, 2003.²⁰

One significant concern raised by experts prior to the implementation of EDS screening of all checked baggage was the relatively high false alarm rate of current EDS equipment and the potential impact that this may have on baggage throughput. TSA's procedures call for additional screening of all bags that generate EDS alarms using means such as hand searches, canine inspections, or inspections using trace element detection equipment. To date, the ability to efficiently screen baggage has not been identified as a particular operational difficulty, however passenger volume has been down due to economic conditions, the war with Iraq, and the recent SARS outbreak. Increases in passenger volume may significantly strain the capabilities of TSA to expediently screen checked baggage. S. 1927, introduced by Senator Clinton, would authorize a \$20 million grant program to provide awards to entities that can develop explosive detection equipment capable of achieving false positive rates of less than 10% and false negative rates of less than 2%. The actual performance criteria for and performance of current generation explosive detection equipment is considered security sensitive information.

While TSA was able to meet the original December 31, 2002 deadline for EDS screening and the extended deadline of December 31, 2003 at all but a few airports, many of the existing installations of EDS equipment to meet that deadline were considered temporary and often consisted of placing EDS machines in passenger ticketing areas and other public access areas of airport terminals. Many airport operators need to redesign airport baggage handling systems to accommodate and install inline EDS machines. In addition to the logistic complexities of implementing inline EDS systems, funding for these projects remains a key issue. While ATSA authorized the use of Airport Improvement Program (AIP) funds for airport security related projects, tapping into these funds can have a significant impact on other airport capital improvement projects. The FAA reauthorization legislation (Vision 100, P.L. 108-176) contains a provision establishing a separate Aviation Security Capital Fund that is authorized appropriations levels of up to \$500 million per year through FY2007 and sets the federal share for EDS installation at 90% for large and medium hubs, and 95% for other airports. The Homeland Security Appropriations for FY2004 provided \$250 million for EDS installation, and to date the TSA has signed letters of intent totaling about \$670 million in federal funds over the next four fiscal years to reimburse or fund EDS installation projects at seven airports: 1) Dallas-Fort Worth International Airport; 2) Boston-Logan International Airport; 3) Seattle-Tacoma International Airport; 4) McCarran International Airport in Las

²⁰ "Report: Newark airport not meeting baggage screening deadline." Associated Press Newswires, January 1, 2004.

Vegas; 5) Denver International Airport; 6) Los Angeles International Airport; and 7) Ontario International Airport, Ontario, CA.²¹

Access to Secure Airport Areas and Airport Perimeter Security.

Under ATSA, all individuals, goods, property, vehicles and other equipment seeking access to secure areas at an airport must be screened and inspected in a manner that assures at least the same level of protection as screening passengers and their baggage. Additionally, ATSA requires employment investigations and background checks of individuals having access to aircraft and secured areas of an airport. ATSA also requires that all vendors with direct access to the airfield and aircraft have a security program in place. Presently, background checks serve as the principal means of security for workers with access to air-side operations areas, airport terminal concessions, and so on. Workers who pass these background checks are issued identification badges that they must wear inside any security identification display area (SIDA) to which they are authorized unescorted access.

Since the integrity of worker identification badges is a critical element of the security procedures in place, the TSA currently has ongoing contracts to conduct field-tests of various technologies for transportation worker identification, including biometric markers, in an effort to develop a common and universally recognized Transportation Workers Identification Credential (TWIC). The TSA conducted a technology evaluation review of the TWIC concept at 12 transportation facilities in the Los Angeles and Philadelphia areas, and TSA is preparing to initiate a larger scale prototype phase which is anticipated to run for a seven month period during FY2004. The goal of these efforts is to be poised to initiate full implementation of the TWIC program in FY2005 if a determination is made that the program is to be continued. The TSA envisions that the TWIC program will be capable of providing a means for validating worker identification thereby establishing better access controls for SIDAs and other access-controlled areas of the transportation system. TSA received \$50 million for the TWIC program in FY2004 and has submitted a budget request for an additional \$50 million in FY2005. In FY2005, TSA is seeking the authority to collect fees for credentialing transportation workers in order to offset the costs of the TWIC program.

Despite these efforts to develop a universal identification and process for credentialing transportation workers, there has been growing concern regarding the adequacy of procedures in place at airports to assure that threat items cannot pass into secured areas of airports and passenger airliners. Identification checks are sometimes used in lieu of physical screening for about 600,000 airport workers who access secured areas of airports each day. Rep. DeFazio has expressed concern over this practice, noting that this lack of checkpoint screening of airport workers creates vulnerabilities in which workers, or individuals with counterfeit or stolen worker identification, could pass threat objects into secured airport areas or travel on aircraft

²¹ Statement of Admiral James M. Loy, Administrator, Transportation Security Administration. On Transportation Security Before the Committee on Transportation and Infrastructure Subcommittee on Aviation, United States House of Representatives. October 16, 2003.

without security screening by using electronic tickets.²² TSA and airport operators have voiced concerns that full checkpoint screening of airport workers would be very time consuming and would significantly impact limited security screening resources and TSA's ability to process airline passengers through screening checkpoints.²³ Congress may examine whether current procedures for checking the background and identification of airport workers meets the intent of ATSA with regard to providing at least the same level of protection of secured airport areas and passenger aircraft as screening passengers and their baggage.

In-Flight Security Aboard Passenger Airliners

In-flight security measures are viewed as additional layers in protecting against hijackings and other potential security threats posed by unruly and disruptive passengers and individuals who board aircraft with terrorist or criminal intentions. The principal element of in-flight security is the federal air marshal program that was significantly expanded under the provisions of ATSA. Other in-flight measures include the hardening of cockpits doors, the training and arming of pilots who volunteer to be Federal Flight Deck Officers, and the training of flight attendants to handle security threats in the aircraft cabin. Experts have cautioned that with improved airport and in-flight security to prevent hijackings and bombings of passenger aircraft, terrorists may resort to other means of attacking aviation assets. One particular threat addressed in proposed legislation and discussed later in this section is the threat posed by of shoulder-fired missiles that could be used to attack passenger aircraft.

Federal Air Marshals. The Federal Air Marshal Service (FAMS) was greatly expanded under ATSA and organizationally placed in the new TSA. The TSA was given broad powers to deploy appropriately trained and equipped federal air marshals on every scheduled passenger flight. Marshals must be deployed on every "high risk" flight, which may include non-stop, long-distance flights, such as those targeted on September 11, 2001, even if the flight is fully booked.

In order to quickly expand the air marshal program after September 11, 2001, the FAA and, subsequently, the TSA abbreviated the training for air marshals, reducing the initial training course from a 14 week course to a 5 week course for candidates without law enforcement experience and a 1 week course for those with law enforcement experience. Air marshals hired under this abbreviated training program must complete an additional 4 week advanced training program that includes emergency evacuation and flight simulator training. Additionally, the advanced marksmanship requirement was dropped, but air marshal candidates were still required to pass the pistol range test at the highest level required for any federal law enforcement agency. Also, air marshals were provisionally hired with expedited secret clearances until full investigations for their required top secret clearances could be conducted. While a backlog of security investigations delayed issuance of top

²² National Public Radio. "Some Members of Congress Raising Concerns about Potential Security Lapses at Airports.", *Morning Edition*, May 22, 2003.

²³ Technical corrections bill passes out of subcommittee. *Aviation Daily*, Vol 352, No. 35, p. 3, May 19, 2003.

secret clearances for many air marshals, as of November 2003, the GAO reported that only about 3 percent of all air marshals were still awaiting their top secret clearances.²⁴ By July 2002, the administration's deadline for fully deploying federal air marshals, thousands of air marshals had been trained and deployed. Information on the exact number of federal air marshals is classified, as is specific information on air marshal training programs and operational aspects of FAMS. In the two year period following September 11, 2001, air marshals responded to over 2,000 aviation security incidents, used non-lethal force 16 times, discharged their weapons on three occasions²⁵, and were involved in 28 arrests or detainments of individuals.²⁶

In FY2003, \$545 million was appropriated for FAMS. In FY2004, FAMS received \$626 million, including \$10 million for scheduling and information technology, and \$10 million for development and deployment of an air-to-ground communications system. The effectiveness of the scheduling system is seen as an important issue, because even though FAMS has migrated to an automated scheduling system, that system lacks the tools to adequately monitor and control scheduling to prevent fatigue among air marshals.²⁷ Similarly, air-to-ground communication capabilities are seen as a vital tool for air marshals to coordinate with ground-based law enforcement, and other homeland security and defense assets during in-flight situations.

Under provisions in ATSA, airlines are required to provide seating for on-duty air marshals at no cost to the U.S. government or to the marshal. Additionally, airlines must provide transportation on a space available basis to off-duty air marshals traveling to an airport nearest the marshal's home upon completing his or her security duties at no cost to the marshal or to the U.S. government. Air marshals receive law enforcement availability pay (LEAP) equal to 25% of their base pay as entitled to under ATSA, and in return are expected to work, on average, 50 hour workweeks. Federal air marshals, like most other federal law enforcement officers, face mandatory retirement at age 57 or upon completion of 20 years of service.²⁸ Consequently, DHS policy specifies that individuals over the age of 37 cannot be hired as federal air marshals, unless they have previously served in a qualifying federal law enforcement position. Attrition rates among air marshals has been relatively high, about 10 percent. The GAO reported that while the service is working to correct issues identified as reasons why former air marshals left the

²⁴ U.S. General Accounting Office. *Federal Air Marshal Service is Addressing Challenges of Its Expanded Mission and Workforce, but Additional Actions Needed*. GAO-04-242. November, 2003.

²⁵ The report does not specify the details of these events or indicate whether any of these events were accidental discharges.

²⁶ U.S. General Accounting Office. *Federal Air Marshal Service is Addressing Challenges*.

²⁷ *Ibid.*

²⁸ See Title 5, U.S. Code, §8335.

program, separation records don't provide sufficient detail regarding potential problems.²⁹

In December 2003, FAMS was moved by DHS into the U.S. Immigration and Customs Enforcement (ICE). According to the DHS, this repositioning of FAMS provides air marshals with access to broader training opportunities, additional access to intelligence, and improved law enforcement coordination. In addition to providing air marshals with opportunities to rotate into land-based assignment, the DHS also intends to train additional law enforcement officers serving as immigration and customs officers as federal air marshals, thus increasing their ability to deploy additional air marshals during periods of heightened security concerns for civil aviation.

In December 2003, the DHS also announced that it would require foreign air carriers to carry armed air marshals on flights to and from the United States. Typically, foreign countries would provide their own armed air marshals, however DHS has indicated that it would assign U.S. air marshals on foreign flights if requested to do so by the foreign country and airline. Many foreign airlines have objected indicating that they would rather cancel flights to the U.S. when significant threats were identified in lieu of carrying armed air marshals. Objections by foreign countries reflect their policy concerns over introducing weapons in the aviation environment as well as concerns over costs. Some countries, such as Israel and Germany, were reported to already be using air marshals, while other countries such as Great Britain and the Netherlands have agreed to place air marshals on their aircraft despite opposition from groups representing airline pilots in those nations.

Flight Deck Intrusion and Penetration Resistance. Provisions in ATSA prohibit access to the flight deck of passenger aircraft except by authorized persons. ATSA also requires that flight deck doors and locks be strengthened, and that doors remain locked while the aircraft is in flight, except when necessary to permit access and egress by authorized persons. The FAA required interim modifications to flight deck doors and provided temporary regulatory relief from certain airworthiness standards to quickly improve the intrusion resistance of the flight deck. These measures principally consisted of door modifications for internal locking devices that can only be unlocked from inside the flight deck.

On January 15, 2002, the FAA published a final rule³⁰ establishing new standards for the design of flight deck doors and access doors for crew rest areas to protect airline flight crews from intrusion and penetration by small arms fire or fragmentation devices, such as grenades. The FAA reported that full deployment of hardened cockpit doors meeting these specifications on about 10,000 U.S. passenger airliners and foreign aircraft flying to and from the United States has been implemented, and in all but a few special instances, the doors were in place by the

²⁹ *Ibid.*

³⁰ Federal Aviation Administration. Security Considerations in the Design of the Flightdeck on Transport Category Airplanes; Final Rule. *Federal Register*, 67(10), 2118-2128. January 15, 2002.

April 9, 2003 deadline. However, a significant concern raised by air carriers was the cost of fitting the passenger air carrier fleet with hardened cockpit doors. While FAA's original estimate placed the cost of installing the doors at about \$13,000 per aircraft, the airlines have reported that door installations typically have cost between \$30,000 and \$50,000 per aircraft depending on the size and composition of their fleet.³¹ Congress initially appropriated \$100 million dollars to the FAA to be disbursed to air carriers as reimbursement for cockpit door installations in P.L. 108-7 and recently appropriated an additional \$100 million for this purpose in the Emergency Wartime Supplemental Appropriations Act (P. L. 108-11) as part of the larger package to compensate airlines for security related costs.

Language in the Consolidated Appropriations Resolution for FY2003 (P. L. 108-7, Title I, Sec. 355), limited FY2003 funds for hardening cockpit doors to passenger aircraft. While the FAA's implementation plan originally called for hardening cockpit doors on all-cargo aircraft equipped with cockpit doors as well, FAA has since rescinded this requirement for all-cargo aircraft and limited the requirement to passenger aircraft with 20 or more seats. Although no efforts have been made to further pursue this issue specifically, general concern over security of all-cargo aircraft has been expressed. While three bills (S. 165; H.R. 1103; and H.R. 2455) seek to expand the provisions of ATSA regarding air-cargo security, none contain a provision for the installation or strengthening of flight deck doors on all-cargo aircraft.

ATSA also permits the FAA Administrator to develop and implement use of video monitors or other devices to alert pilots to cabin activity; directs the FAA to revise procedures used by cabin crew to notify the flight deck of security breaches and other emergencies using switches or other devices or methods; and directs the FAA to ensure that aircraft transponders that report aircraft position and altitude information cannot be turned off in-flight. Additionally, the Homeland Security Act of 2002 (P.L. 107-296) requires air carriers to provide flight attendants with methods for discreet, hands-free, wireless communications with the pilots. While the FAA continues to examine feasible technologies and operational procedures for monitoring and communications between the cockpit and cabin, FAA's progress on these initiatives is a potential oversight issue for Congress.

Armed Pilots. The Homeland Security Act of 2002 (P.L. 107-296) contains provisions to arm pilots of passenger aircraft and gives deputized pilots the authority to use force, including lethal force, to defend the flight deck against criminal and terrorist threats. The Act specifies that by February 2003, TSA was to begin administering the training and deputizing of qualified pilots volunteering to participate in the Federal Flight Deck Officer (FFDO) Program. In response to this requirement, TSA developed a prototype program that trained and deputized an initial class of 44 pilots in mid-April, 2003 at a cost of \$500,000. The TSA was appropriated \$8 million (see P.L. 108-7) for the program in fiscal year 2003, and received \$25 million (see P.L. 108-90) to continue the training and deputizing of pilots in fiscal year 2004.

³¹ U.S. and Foreign Airlines Have Met the U.S. Government's Apr. 9 Deadline for Installing Reinforced Cockpit Doors. *Aviation Week & Space Technology*, 158(15), p. 18.

TSA began full implementation of the program in July, 2003, and has been conducting weekly classes consisting of 48 pilots each. In January, 2004, the TSA doubled the class-size for training Federal Flight Deck Officer candidates. TSA expects that in fiscal years 2003-2004, it will be able to complete initial training of a few thousand pilots. While training was initially being conducted at Federal Law Enforcement Training Center (FLETC) facilities in Glynco, GA and Artesia, NM, all training operations under the FFDO program have now moved to the Artesia, NM facility. Pilots can apply for the program online, but must undergo extensive background checks before being selected to participate. Pilot groups estimate that, in total, about 30,000 pilots may sign up, although interest to date has been reported to be much lower. Pilot organizations have accused the TSA of establishing an overly burdensome application and evaluation process and locating the initial training facility in a hard to reach location, which, they argue, has discouraged some pilots from participating. TSA has countered that the background checks are necessary and are equivalent to what federal law enforcement officers must undergo. The TSA has also defended their selection of the single training site based on the availability of specialized facilities such as aircraft cabin mock-ups at the Artesia, NM site, and heavy demand for facilities at the Glynco site by other agencies.

Under TSA's implementation plan, pilots must complete recurrent training and requalification every six months to stay in the program. TSA is pursuing the option of using private contract training sites for this recurrent training. P. L. 107-296 specifies that all training, supervision, and equipment needed for the program will be provided at no expense to the pilots or the air carriers, however, pilots will not be entitled to any compensation for participating in the program. ATSA also provides liability protection to pilots and the air carriers for use of or failure to use a firearm.

ATSA initially limited participation in the program to pilots of passenger aircraft. However, a provision in the FAA reauthorization legislation (Vision 100, P.L. 108-176) has expanded the program to include pilots of all-cargo aircraft as well as other flight crew members, such as flight engineers, in the program (see CRS Report RL31674).

ATSA also directed the National Institute of Justice to assess the suitability of arming pilots with less-than-lethal weapons, such as stun guns. Based on the findings of this study, the TSA may authorize the use of such weapons for flight deck crew. The Homeland Security Act of 2002 (P.L. 107-296) specified that the TSA must respond within 90 days of receiving a request from an air carrier to arm flight crew with less than lethal weapons. While several airlines have submitted proposals to arm flight crew with tasers and stun guns, TSA has not yet made a final determination regarding the utility and legal ramifications of arming pilots with less than lethal weapons.³²

Security Training for Flight and Cabin Crews. Under ATSA, the TSA was directed to develop a mandatory air carrier training program to assist flight crews and flight attendants in dealing with hijack situations. The Homeland Security Act

³² Sara Kehaulani Goo. "U.S. Nears Decision on Guns in Cockpits: Agency Still Studying Stun Weapons", *The Washington Post*, May 29, 2003, p. E4.

of 2002 expanded these training requirements to include classroom and hands-on situational training for flight and cabin crews covering various aspects of in-flight security including: recognition of suspicious activity; deterring, subduing and restraining individuals; self-defense; crew communication and coordination; and the psychology of terrorists. Additionally, the Homeland Security Act of 2002 directs the TSA to conduct a study assessing the benefits and risks of arming flight attendants with nonlethal weapons. Language in the FAA reauthorization legislation (Vision 100, P.L. 108-176) establishes a mandatory TSA-approved basic security course for flight and cabin crew as well as a voluntary advanced course in self-defense training for flight and cabin crew. While flight and cabin crew would not have to pay a fee for the optional advanced self-defense training program, they would not be entitled to compensation for participating.

Protecting Aircraft from Shoulder-Fired Missiles. Recent events have increased attention on the threat that shoulder-launched missiles may pose to commercial airliners. On November 6, 2002, three men with links to Al Qaeda reportedly tried to buy shoulder-launched missiles from FBI agents in Hong Kong, and on November 28, 2002, terrorists fired two shoulder-launched missiles at an Israeli airliner departing Mombasa, Kenya.³³ In August 2003, a sting operation carried out by the FBI with cooperation from British and Russian authorities nabbed an alleged arms dealer in New Jersey for attempting to orchestrate a deal to smuggle shoulder-fired missiles into the United States. On November 22, 2003, an all-cargo Airbus A300 operated by DHL was hit by a shoulder-fired missile while departing Baghdad International Airport in Iraq, but was able to return to the airport and make an emergency landing despite substantial damage.

Most experts believe that no single technology or mitigation strategy can completely eliminate the threat of shoulder-fired missiles, however, a variety of options may be considered. These options include both aircraft-based and ground-based missile defense systems, either of which would be costly to implement on a large scale and could take several years to adequately deploy. Other options that may be considered, both in the short term and as part of a longer term strategy to mitigate the risk of shoulder-fired missiles, include: changes in air traffic control procedures; specific flight crew training; and improved security and surveillance near airports and heavily used flight paths (See CRS Report RL31741).

On February 5, 2003, Rep. Steve Israel and Sen. Barbara Boxer introduced legislation (H.R. 580, S. 311) calling for the installation of missile defense systems in all turbojet aircraft used in scheduled air carrier service and, in the interim, deploying National Guard and Coast Guard units to patrol areas surrounding airports. On March 20, 2003, the House Aviation Subcommittee held a closed hearing on the threat of shoulder-launched missiles to civilian aircraft, after which Chairman John Mica indicated that based on testimony presented at the hearing, options for

³³ Kelly Thornton. "Bail Is Denied 3 Accused of Terror Plot; Plan Said to Involve Drugs, Missile Deal." *The San Diego Union-Tribune*, March 13, 2003; Robin Hughes. "SAM Attack on Jet Reignites Old Fears." *Jane's Defence Weekly*, December 2, 2002.

protecting airliners against this threat would be pursued.³⁴ The conference report (Conf. Rpt. 108-76) accompanying the Emergency Wartime Supplemental Appropriations Act (P.L. 108-11) directed the DHS Under Secretary for Science and Technology to prepare a program plan, including cost and schedule, for developing an anti-missile device for commercial aircraft. In response the DHS released plans for a 2-year, \$120 million program to install, test, and certify two prototype aircraft-mounted missile countermeasure systems that will leverage existing military countermeasure technology.³⁵ The Homeland Security Appropriations for FY2004 (P.L. 108-90) provided \$60 million for the DHS anti-missile prototype development and testing program. The DHS recently awarded three initial contracts of \$2 million each under this funding to develop a detail concept and test plan for a prototype system for further evaluation. The award recipients are Northrop Grumman, BAE Systems, and United Airlines. The DHS has requested an additional \$61 million to continue the prototype development and testing program in FY2005.

Air Cargo Security

ATSA contains general provisions for the screening of cargo on passenger aircraft, but does not specify how this objective is to be achieved. At present, security of cargo carried aboard passenger aircraft primarily relies on so-called known shipper programs to detect and prevent the shipment of cargo from unknown sources aboard passenger aircraft. On January 15, 2003, Senators Hutchison and Feinstein introduced legislation (S. 165) that would mandate random inspections at air cargo and shipping facilities to ensure compliance with security requirements; improve the known shipper program and database; conduct background checks of workers with access to all-cargo aircraft; implement security training programs for cargo handlers; and establish security measures for all-cargo operations and inspections areas including screening of flight crews and persons transported aboard all-cargo aircraft. S. 165 was passed by the Senate on May 8, 2003. Similar legislation (H.R. 1103) was introduced in the House by Rep. Adam Schiff on March 6, 2003.

Expansion of the known shipper program and risk-based assessments and screening of cargo shipments is consistent with the TSA's approach to air cargo security. TSA's objectives are to fully deploy a system-wide known shipper database, increase oversight and enforcement of the ban on placing shipments from unknown sources aboard passenger aircraft, and ensuring 100% inspection of all high risk cargo.

Security of Cargo Carried in Passenger Aircraft. ATSA contains general provisions requiring the screening of all mail and cargo carried aboard

³⁴ Federal News Service. "News Conference with Senator Barbara Boxer (D-CA); Senator Charles Schumer (D-NY); Representative Steve Israel (D-NY); Representative John Mica (R-FL), Topic: Funding for Anti-missile Technology on All American Airliners." April 2, 2003, Washington, DC.

³⁵ Undersecretary for Science and Technology, Department of Homeland Security. "Program Plan for the Development of an Antimissile Device for Commercial Aircraft." May 22, 2003. Washington, DC: U.S. Department of Homeland Security.

passenger aircraft. The TSA has determined that currently available technologies do not offer a viable means for physically screening all cargo carried aboard passenger aircraft in a manner that would be economically feasible and would meet airline schedule demands.³⁶ Therefore, at present, the principal means of screening cargo placed aboard passenger aircraft is through reliance on known shipper programs. Developed by the FAA in the mid-1990s, known shipper programs consist of established procedures identified in air carrier and freight forwarder security programs to ensure that shipments placed aboard passenger aircraft are received from known sources who have an established business history of shipping with a given air carrier or freight forwarder and have adequate security measures in place to protect the integrity of their shipments. Under existing regulations, air carriers and freight forwarders must refuse to ship cargo from unknown sources on passenger airplanes, and shippers must consent to inspections of cargo. S. 165 and H.R. 1103 seek to expand the known shipper program through a voluntary industry-wide pilot program that would establish a common database of known shippers. The TSA received \$30 million in FY2004 and has requested an additional \$30 million in FY2005 to develop and deploy a system-wide known shipper database and field canine teams to inspect high risk cargo for explosives. At these funding levels, TSA will be able to field 100 air cargo inspectors to oversee compliance with air cargo security regulations. TSA will also provide security training to air carriers and indirect air carriers. In addition to the \$30 million for air cargo security operations, TSA received an additional \$55 million for air cargo security research and development in FY 2004, and has asked for the same funding levels in FY 2005. Research and development efforts are focused on developing reliable cargo screening systems that are capable of screening large volume objects, meeting specified detection criteria, and increasing throughput.

Shipments of mail by air present additional security challenges. Express and first class mail is protected from search, consequently the postal service's principal technique for screening mail is through postal clerk screening of customers sending packages weighing more than one pound. Concerns over the adequacy of these procedures led to a ban on shipping postal packages weighing more than 16 ounces on passenger aircraft since September 11, 2001. The 1997 White House Commission on Aviation Safety and Security, commonly referred to as the Gore Commission, had recommended that the Postal Service should obtain authorization from customers allowing examination of packages by EDS, and if necessary, seek appropriate legislation to accomplish this.³⁷ However, to date, mail is not screened by EDS and the 16 ounce mail limit for passenger aircraft remains in effect. The TSA has indicated that it is exploring the use of canine teams to inspect mail and allow carriage of heavier mail packages on passenger aircraft to resume. It was recently reported that the TSA and the Postal Service are satisfied with the ongoing canine team pilot program at 11 U.S. airports and are training more dogs and handlers to expand the program nationwide.³⁸ The airline industry has been urging action that

³⁶ Statement of Admiral James M. Loy before the Aviation Subcommittee of the Senate Commerce, Science and Transportation Committee. February 5, 2003.

³⁷ White House Commission on Aviation Safety and Security. *Final Report to President Clinton*. February 12, 1997.

³⁸ World News Roundup. *Aviation Week and Space Technology*, 158(22), June 2, 2003.

would allow these mail shipments on passenger aircraft to resume, because the ban has resulted in significant revenue losses for the airlines.

Blast-Resistant Cargo Container Technology. Despite existing policies and procedures to profile cargo to be carried aboard passenger aircraft, primarily using known shipper programs, concerns have arisen that explosives and incendiary devices could be inserted into cargo at multiple points along the supply chain. These concerns have focused on the fact that at present, only a small amount of cargo is physically screened thus leading to the possibility that an explosive or incendiary device inserted into a cargo shipment could go undetected. Experts offer differing opinions regarding the probability of such a threat. While some point out that, without the aid of a cohort with access to aircraft, specific flights would be difficult to target, others caution that with increased screening of passengers and their baggage, terrorists may view air cargo as an opportunity that provides less chance of detection. Based on this potential threat of explosives and incendiaries in air cargo as well as in checked baggage, ongoing research efforts are examining the feasibility and effectiveness of equipping the passenger air carrier fleet with blast-resistant cargo containers. FAA has had a active research program in blast resistant containers for more than 10 years examining the airworthiness, ground handling, and blast resistance of hardened containers which is now under the auspices of the TSA's Transportation Security Laboratory (TSL).³⁹ These containers are seen as a potential means for mitigating the threat of explosives placed aboard passenger aircraft that are not detected through baggage screening or cargo profiling. However, the increased weight of these containers would have long term operational impacts on airlines who may experience a resulting increase in fuel costs and decreased payload capacity for carrying revenue passengers and cargo. S. 165 contains a provision that would direct the TSA and the FAA to submit a joint report to Congress evaluating the use of blast-resistant cargo container technology. While H.R. 1103 does not contain such a provision, a similar provision is offered in H.R. 2144.

All-Cargo Aircraft Security. ATSA specifies that as soon as practical 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. All-cargo operations are potentially vulnerable to a variety of criminal and terrorist activities including: bombs and incendiary devices; hazardous materials; crimes such as theft and smuggling; and aircraft hijackings and sabotage. While most all-cargo operators have physical security and surveillance measures in place, there is little standardization or federal oversight of all-cargo security programs. All-cargo carriers operating aircraft weighing more than 12,500 pounds and all-cargo airports where these aircraft operate are required to have basic security programs in place that are vetted by the TSA. However, TSA only has a small unit of compliance inspectors overseeing these security programs. S. 165 and H.R. 1103 seek to enhance the security of all-cargo operations by establishing a system for TSA to regularly inspect shipping facilities to ensure the use of appropriate controls, systems, and procedures to ensure the security of cargo operations. The measures would also require all-cargo operators to

³⁹ National Research Council. *Assessment of Technologies Deployed to Improve Aviation Security, First Report*. Publication NMAB-482-5. Washington, DC: National Academy Press, 1999.

develop and implement security plans that would address: the physical security of cargo acceptance and operations areas; background checks for employees with access to air operations areas; training for individuals with security-related functions; and screening of flight crews and individuals transported by all-cargo aircraft. S. 165 and H.R. 1103 would also require security-related training for cargo handlers.

ATSA had initially excluded cargo pilots from participating in the Federal Flight Deck Officer Program. Cargo pilots and organizations representing these pilots voiced significant concern over their exclusion from participation in the Federal Flight Deck Officers Program.⁴⁰ These groups cautioned that large transport category all-cargo aircraft could be vulnerable to terrorist hijackings. Since all-cargo aircraft do not have hardened cockpit doors, federal air marshals do not travel aboard all-cargo aircraft, and there is no screening process for individuals with access to all-cargo aircraft comparable to that for passenger aircraft, these groups contend that arming cargo pilots is necessary to mitigate this risk. Cargo airlines opposed this approach, presumably because of liability concerns even though the statute pertaining to the Federal Flight Deck Officer program extends specific liability protections to airlines and pilot participants. A provision in Vision 100 (P.L. 108-176) expanded the Federal Flight Deck Officer Program to include all-cargo pilots (see CRS Report RL32022)

Flight School and General Aviation Security

Flight School Security. ATSA originally required that flight schools or individuals giving flight training in an aircraft having a maximum takeoff weight of 12,500 pounds or greater to foreign aliens or other individuals specified by the TSA must notify the Attorney General that such an individual has requested such training. The procedures and applicability for background checks of certain flight school applicants has changed significantly under new language included in the FAA reauthorization act (Vision 100, P.L. 108-176). Under the new provisions, the DHS is responsible for conducting the background checks of foreign flight school applicants. The required waiting period before beginning training is set at 30 days for foreign applicants seeking training in aircraft weighing more than 12,500 pounds. Flight schools must furnish the DHS with names and aliases of foreign applicants, passport and visa information, date of birth and country of citizenship, and dates of training, so that background checks of these individuals can be conducted. However, certain applicants, such as holders of foreign civil or military pilot licenses with authorizations to pilot multi-engine aircraft weighing more than 12,500 pounds, are eligible for expedited processing that will permit them to begin training in the United States in 5 days or less. Flight schools must notify the DHS of foreign applicants seeking training in aircraft weighing less than 12,500 pounds, and provide DHS with information on that individual as required by DHS, but no waiting period is required for such training. The legislation authorizes the DHS to collect a fee, not to exceed \$100 per foreign flight school applicant in FY2004, for the cost of

⁴⁰ “Cargo Pilots Slam Cockpit Guns Change.” *Airwise News*, November 18, 2002; Air Line Pilots Association, International. “ALPA President Blasts Industry for Watering Down Cargo Security.” Air Line Pilots Association, International Press Release Number 02.101, November 14, 2001.

conducting the background investigation. In FY2005 and thereafter, the DHS may increase the fee to reflect the actual costs of conducting the background investigation.

In addition to background checks, the Aviation Security Advisory Committee (ASAC) Working Group on General Aviation Airports Security, a TSA working group made up of industry stakeholders, recently recommended that flight schools and fixed-based operators (FBOs) implement identification checks of flight school applicants and aircraft renters, and establish procedures to restrict access to aircraft keys.⁴¹ Many of these organizations have already implemented such procedures, although there are no regulatory requirements to do so.

Pilot Background Checks and Certificate Actions. In addition to specific background checks for foreign flight school applicants, TSA may conduct threat assessments of U.S. citizens and foreign nationals who hold or apply for FAA pilot certificates. Citing its authority under ATSA to assess threats to transportation security and coordinate countermeasures with other federal agencies, the TSA and the FAA issued final rules in January 2003 that detail the procedures for notification that a pilot or pilot applicant poses a threat to national security and denying or revoking FAA pilot certificates based on such a determination.⁴²

Pilot groups including the Airline Pilots Association (ALPA) and the Aircraft Owners and Pilots Association (AOPA) initially expressed strong opposition to these regulations citing concerns that they offer no viable avenue for appeal of certificate action and allow TSA to deny pilots access to the information used in taking action against them on grounds that this information could compromise national security. Some in Congress have also voiced concerns over these regulations. On February 20, 2003, House Transportation and Infrastructure Committee Chairman Don Young of Alaska wrote to TSA head Admiral James Loy questioning TSA's authority to impose these regulations and voicing concern over the lack of a formal appeals process similar to that established for pilot certificate actions on safety grounds that allows pilots to have their cases heard before the NTSB.⁴³

In response to these concerns, language was included in Vision 100 (P.L. 108-176) that entitles any individual adversely affected by a certificate action because they are believed to pose a threat to aviation security to a hearing before an administrative law judge. The individual may appeal the ruling of the administrative law judge to the Transportation Security Oversight Board which, in turn, will establish a panel to review and either affirm, modify, or reverse the decision. The law also provides that administrative law judges responsible for such cases will undergo investigations to obtain clearances so that they may review classified information relevant to such cases. The law also provides that, upon request, the individual adversely affected, as well as the reviewing administrative law judge, can

⁴¹ Report of the Aviation Security Advisory Committee Working Group on General Aviation Airports Security. October 1, 2003. Transportation Security Administration.

⁴² *Federal Register*, 68(16), January 24, 2003.

⁴³ Aircraft Owners and Pilots Association. "Powerful Congressman Blasts 'Pilot Insecurity' Rules." *AOPA Online*, February 21, 2003.

obtain an unclassified summary of any classified information used in making a determination regarding certificate action.

The FAA began issuing new pilot certificates in July 2003 that contain several security features making them more difficult to counterfeit. The credit card style certificates contains a hologram and graphics, but do not include a photograph of the certificate holder. Instead, the FAA requires pilots to also carry a government-issued photo identification such as a driver's licence when operating an aircraft. The new certificates are sent to newly certified pilots, pilots that upgrade their qualifications, and pilots needing replacement certificates. However, the older style paper licences are still valid and are still being used by a large numbers of pilots. While developing a photo identification for pilots, mechanics, and other FAA certificate holders is still under consideration, no formal program to do so has been announced to date.

Airport Watch Program. An ongoing concern has been the relative ease of access to aircraft at almost 19,000 public use and private general aviation airports throughout the country. These airports vary greatly in terms of their security risk, and their proximity to major metropolitan areas that might be targeted in terrorist plots involving the use of general aviation aircraft. Security measures at these airports also vary greatly as some do not have perimeter fences, and most are not staffed continuously. To address these concerns, the Aircraft Owners and Pilots Association (AOPA) in cooperation with TSA, has launched an "Airport Watch" program for pilots to report suspicious activities to law enforcement authorities. Similar to a community neighborhood watch program, the Airport Watch program provides training materials including a brochure and video and a toll free hotline (1-866-GA-SECURE) for pilots and airport operators.

One specific group that has been instructed to be particularly watchful for suspicious activities are operators of agricultural aircraft (e.g., "crop dusters"). There is particular concern among some law enforcement and terrorism experts that terrorist groups may seek to use agricultural aircraft to disperse chemical or biological agents. The National Agricultural Aircraft Association (NAAA) has produced an educational program addressing security in aerial application operations, and has cooperated in several industry-wide FBI background investigations since September 11, 2001.⁴⁴

In addition to the airport watch program, several operators of general aviation airports have enhanced security over the past two years by taking steps such as installing perimeter fences and surveillance equipment, hiring security personnel, and establishing access controls to aircraft parking and operations areas. These efforts have been carried out primarily without federal oversight or funding.

Security of Charter Operations and Private Aircraft. For non-scheduled passenger charter operations, the level of security required under TSA regulations is dependent on two principle factors: 1) aircraft size; and 2) whether the aircraft enplanes or deplanes into a sterile or secured area of a commercial passenger airport.

⁴⁴ Report of the Aviation Security Advisory Committee Working Group on General Aviation Airports Security. October 1, 2003. Transportation Security Administration.

Charter flights, as well as all-cargo operations, using aircraft weighing more than 12,500 pounds maximum gross weight must adopt a TSA-approved *twelve-five* security program. The *twelve-five* security program, so named because of the applicable aircraft weight criterion, consists of passenger identification checks, fingerprint-based criminal history records checks for flight crews, and specific bomb and hijacking notification and inspection requirements as well as additional details specified in each operators security program. Each operator must designate a security coordinator within their organization, provide training and information to employees performing security-related duties, and have procedures in place to coordinate with law enforcement agencies to provide officers to handle security situations. *Twelve-five* operators must have a TSA-approved contingency plan in place and implement that plan when directed to do so by the TSA. While flight deck doors are not a requirement for *twelve-five* operations, if an aircraft is so equipped with a cockpit door, procedures must be in place to restrict access to the flight deck.

Passenger charter operations using either an aircraft weighing more than 100,300 pounds maximum gross weight or an aircraft with 61 or more passenger seats must implement additional security measures laid out in the TSA's private charter security program. Also, regardless of aircraft weight, if a passenger-carrying charter flight enplanes from or deplanes into a sterile area (that is, beyond the security screening checkpoints of a passenger airport), that operation must also adopt the private charter security program. In addition to the measures required in the *twelve-five* security program, the private charter security program requires that operators screen passengers and their carry-on items and prohibits passengers from carrying any weapons, explosives, or incendiary devices. Metal detectors and x-ray systems used in the screening of charter passengers must meet the standards established by the TSA. Private charter operators must establish procedures to prevent unauthorized access to the aircraft and other access controlled areas as specified in the operators security program, and carry out a security inspection before conducting passenger operations any time access controls are not maintained. In addition to flight crew members, other employees of private charter operators with unescorted access to aircraft and secured areas must submit to fingerprint-based criminal history background checks, and security coordinators and crew members must complete security training on an annual basis.

While the *twelve-five* and private charter regulations specify security requirements for charter and all-cargo operations, several recommendations have been made to improve the security of general aviation operations. These operations include corporate aircraft, fractional ownerships, privately owned aircraft and rental aircraft, as well as certain aviation businesses such as flight schools, banner towing operations, crop dusting, aerial traffic reporting, and so on. Various government and industry initiatives are being developed to improve the security of such aircraft and operations. The TSA's ASAC Working Group on General Aviation Airports Security has proposed several recommendations to enhance the security of general aviation aircraft, including:

- Verifying the identity of all aircraft occupants and verifying that all baggage and cargo is known to the occupants;
- Briefing first-time rental pilots on airport and facility security procedures and local operations

- Establishing sign-in and sign-out procedures for all transient aircraft;
- Secure aircraft and hangars with locking mechanisms and anti-theft devices to prevent unauthorized access to aircraft;
- Establishing reasonable vehicle access controls to airport facilities
- Using lighting to improve the security of aircraft parking areas and hangars, fuel storage areas, and airport access point
- Developing procedures for security patrols of airport areas, and coordinating with local law enforcement on airport security procedures; and
- Establishing a security plan including plans for handling bomb threats and suspect aircraft, and coordinating the security plan with local fire and law enforcement.⁴⁵

Also, the General Aviation Manufacturers Association (GAMA) has teamed with the Treasury Department to develop guidelines to help aircraft sellers identify unusual financial transactions and other suspicious customer behavior.⁴⁶ The ASAC Working Group on General Aviation Airports Security recommendations as well as efforts such as the GAMA guidelines for aircraft sales transactions have been viewed as proactive steps by industry stakeholders to establish what they regard as reasonable levels of security for general aviation.⁴⁷ A variety of these measures have been implemented by general aviation airports and general aviation operators throughout the United States, however, no uniform guidelines have been established by TSA to date.

The TSA has, however, implemented a pilot program for implementing security protocols for business aviation. The program, dubbed TSAAC for TSA Access Certificate, is currently being implemented at select airports on the east coast. Corporate aircraft operators that implement TSA-approved security programs under TSAAC are currently granted unimpeded access to international airspace, whereas other operators must currently enter and depart U.S. airspace through one of eight designated “portal” countries.⁴⁸ The TSAAC program was initially offered as a pilot program to operators based at Teterboro Airport (TEB) in New Jersey. The program has been expanded to include operators at Westchester County Airport (HPN) in New York, and Morristown Airport (MMU) in New Jersey. While the specifics of the TSAAC program are considered security sensitive information, the program requires operators to implement security procedures similar to the operational security measures required under the *twelve-five* program for charter aircraft. The TSAAC is regarded by many in the industry as being a means for business aircraft operators to gain “...equal access to airspace and airports as currently given to scheduled air carriers.”⁴⁹ TSAAC, or a program modeled after TSAAC, is likely to form the basis

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ Robert P. Olislagers. “Advancing GA Security.” *Airport Magazine*, November/December 2003, pp. 26-31.

⁴⁸ David Esler. “TSAAC: Business Aviation’s New Ticket to Enter?” *Business & Commercial Aviation*, May 2003, pp. 200-210.

⁴⁹ National Business Aircraft Association. *TSA Access Certificate (TSAAC)*. Updated (continued...)

for the security program mandated under Vision 100 (P.L. 108-176) that requires the DHS to develop and implement a security plan that will allow general aviation aircraft to resume operations at Ronald Reagan Washington National Airport which have been suspended since September 11, 2001. Congress may increase its oversight of TSA's initiatives to enhance general aviation security to ensure that security measures are adequate and do not impose an undue burden on general aviation operators.

Airspace Restrictions. Since September 11, 2001, the FAA, in consultation with federal, state, and local law enforcement agencies, has implemented various temporary flight restrictions to prohibit or limit flights over security sensitive locations and events. While these restrictions typically apply to all aircraft, they more specifically target general aviation operators who do not typically adhere to regular and predictable flight schedules and routes.

The FAA has also implemented specific security procedures for the airspace around Washington, DC. The Washington, D.C. airspace security measures consist of an Air Defense Identification Zone (ADIZ) that requires special flight procedures within this 30 mile radius of the city. Pilots in this area must be on an active flight plan, use a discrete transponder code, and be in constant 2-way radio communications with air traffic controllers who monitor flights and report deviations from assigned flight routes to law enforcement agencies. Within 15-miles of Washington DC, flight operations are further restricted and only those aircraft with specific permission may enter this airspace. Currently, general aviation operations are prohibited at Washington Reagan National Airport, while limited general aviation operations are permitted at the three small airports located within 15-miles of Washington, D.C. These airports, dubbed the *DC-three*, include: College Park Airport, Potomac Airfield, and Hyde Field. Operations at these airfields are generally limited to locally based aircraft that primarily consist of small single-engine airplanes. These aircraft and their crews must undergo security checks and must adhere to specific operational procedures in order to operate to and from these facilities. Pilot groups and some Members of Congress have expressed concern that restrictions on general aviation operations at Reagan National Airport and the *DC-three* airports have had a significant economic impact on the operators of these facilities and have questioned the continuing need for these security measures. The FAA and the TSA have indicated that these measures have remained in place largely at the request of the U.S. Secret Service and are necessary to ensure the protection of the President and national security assets in the Washington, DC area.

Vision 100 (P.L. 108-176) requires the DHS to develop and implement a program to resume general aviation operations at Reagan National Airport. However, the legislation does not address the flight restrictions affecting the *DC-three* airports. Vision 100 (P.L. 108-176) does, however authorize the appropriation of \$100 million to provide direct reimbursements to general aviation entities financially impacted by restrictions imposed at Washington Reagan National Airport and the *DC-three* airports, as well as other general aviation entities elsewhere directly

⁴⁹ (...continued)

December 23, 2003. [<http://web.nbaa.org/public/ops/security/tsaac/>]

impacted by other security-related restrictions after September 11, 2001. While the Consolidated Appropriations Resolution for FY2004 (P.L. 108-199) did not provide specific funding for reimbursement of general aviation entities, it did include sense of Congress language that urges the Department of Transportation to consider programs to reimburse general aviation entities at Washington Reagan National Airport and the *DC-three* airports.

At various times since September 11, 2001 when the national security threat level has been elevated, various flight restrictions have been imposed to protect airspace around major U.S. cities and other potential terrorist targets. For example, during the war with Iraq in March-April, 2003, additional airspace restrictions and security procedures were put into effect over New York City, Chicago, and Disney theme parks. While specific security procedures around major cities have since been rescinded, or reinstated only for brief periods at times when the national security threat level has been elevated, the flight restrictions around Disney theme parks have continuously remained in effect. Also, The FY2003 Consolidated Appropriations Resolution (P.L. 108-7) contained a provision to keep existing restrictions of stadium overflights during major sports events in full force and in effect for one year. This provision rescinds existing waivers and exemptions to the stadium overflight rule and permits waivers only for air traffic operational and safety reasons, direct support of the event, broadcast coverage, event safety and security, and when necessary to fly through restricted airspace using standard air traffic procedures to arrive or depart an airport. The FY2004 Consolidated Appropriations Resolution (P.L. 108-199) contains language keeping the stadium overflight restrictions in full force.

Some have raised questions about the effectiveness of airspace restrictions and special operating procedures, noting that enforcing airspace restrictions is difficult and defending ground based assets from aircraft penetrating restricted airspace is even a greater challenge. Congress may continue to monitor DHS, FAA, and Department of Defense policies and procedures regarding airspace restrictions and enforcement of those restrictions to ascertain whether homeland security requirements are adequately addressed though these measures, users of the national airspace system are not unduly burdened, and flight safety is not compromised .

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