

OCT 30 2008



**Transportation
Security
Administration**

The Honorable Edward Markey
Member of Congress
Subcommittee on Transportation
Security and Infrastructure Protection
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Markey:

Thank you for your July 31, 2008, letter, cosigned by your colleagues, and for the opportunity to clarify the Transportation Security Administration's position on the applicability to inbound cargo of the enhanced air cargo screening requirement enacted under Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53 (the 9/11 Act).

A technical reading of Section 1602 leads one to conclude that the definition of cargo includes cargo inbound to the United States from foreign countries. As you point out in your letter, the operative terms include within their scope "air transportation," which is defined in 49 U.S.C. 40102(a)(5) and (23) to include "foreign air transportation" and, in turn, "the transportation of passengers or property by aircraft . . . between a place in the United States and a place outside the United States . . ."

However, while Section 1602(g)(1) requires the government to develop a system to screen all cargo transported on passenger aircraft, Section 1602(g)(2) requires that the system provide a level of security commensurate with the level of security for the screening of passenger checked baggage. "Commensurate" is not a statutorily defined term and so it must be understood to have its ordinary meaning; in ordinary parlance, "commensurate" means "corresponding," "similar" or "analogous." Thus, the level of security to be provided for screening cargo must correspond or be similar to the level of security for screened checked baggage.

The security regimen for checked baggage originating in the United States differs markedly from the security regimen for flights originating in foreign countries. The distinction between domestic and inbound screening is longstanding, was explicitly recognized in the Aviation and Transportation Security Act (P.L. 107-71), and is one which Congress was undoubtedly aware of when it adopted Section 1602(g). Nothing in the statute suggests that Congress intended its cargo screening legislation to erode this distinction. As a result, the security regimen for inbound cargo on passenger aircraft from a foreign country may vary from the security regimen for cargo on

passenger aircraft within or from the United States. We are working with our international partners to adopt a common security program for air cargo carried on passenger aircraft, which would, of course, be the preferred outcome.

Congress has provided TSA with discretion in determining how the requisite level of security for cargo can and should be achieved. Congress permits the government to determine the optimal means of achieving 100 percent screening, calling for the establishment of a "system" for screening air cargo comprised of equipment, technology, procedures, personnel, or other methods approved by TSA. Furthermore, Congress defines "screening" broadly as "a physical examination or non-intrusive means of assessing whether cargo poses a threat to transportation security," and permits the Administrator to "approve additional methods to ensure that the cargo does not pose a threat to transportation security and to assist in meeting the requirements of this subsection."

In conclusion, Section 1602 applies to the screening of cargo that enters the United States from points outside the United States. Although inbound air cargo falls within this definition, the longstanding distinction between screening domestic and inbound items permits the government to make operational distinctions between domestic and inbound cargo for screening purposes which could result in different security regimens for inbound and outbound cargo. It remains our intention to meet the February 2009 requirement, including international inbound, of screening 50 percent of air cargo carried on passenger aircraft.

I look forward to working collaboratively with Congress and security partners to implement a security regimen for screening air cargo transported on passenger aircraft in the United States, including air cargo inbound to the United States from foreign countries.

I hope this information is helpful. An identical letter has been sent to your colleagues as well. If I can be of further assistance, please feel free to contact me or Jason M. Conley, Assistant Administrator for Legislative Affairs, at (571) 227-2117.

Sincerely yours,

A handwritten signature in black ink that reads "Kip Hawley". The signature is written in a cursive, flowing style.

Kip Hawley
Assistant Secretary