



**One Hundred Tenth Congress**  
**U.S. House of Representatives**  
**Committee on Homeland Security**  
**Washington, DC 20515**  
July 31, 2008

The Honorable Kip Hawley  
Assistant Secretary  
Transportation Security Administration  
U.S. Department of Homeland Security  
Arlington, VA 22202

Dear Assistant Secretary Hawley:

As you know, Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires the Transportation Security Administration (TSA) to establish a system to screen 100 percent of cargo transported on passenger planes within three years of the date of enactment of the Act (August 2010), with half of all cargo transported on passenger planes screened within 18 months of the date of enactment (February 2009). To assess TSA's progress towards meeting this statutory mandate, the Committee on Homeland Security's Subcommittee on Transportation Security and Infrastructure Protection held an oversight hearing on July 15, 2008 regarding "The Next Step in Aviation Security – Cargo Security: Is DHS Implementing the Requirements of the 9/11 Law Effectively?" During this hearing, TSA's Assistant Administrator, Mr. John Sammon, presented a narrow interpretation of Section 1602 that we believe is inconsistent with both the letter and intent of this key provision. Accordingly, we are writing to provide additional information to respond to Mr. Sammon's assertions and request TSA's written legal analysis of Section 1602 relating to the scope of this provision.

In response to questions during the July 15<sup>th</sup> hearing, Mr. Sammon asserted that Section 1602 does not apply to air cargo transported on passenger planes originating from outside the borders of the United States. Mr. Sammon apparently based his assertion on the reference in Section 1602 to the minimum security standards that must be met by TSA's cargo screening system – i.e., screening of cargo must provide a level of security commensurate with the level of security for passengers' checked baggage. According to Mr. Sammon's comments at the hearing, this reference to the level of security that TSA's system must establish for air cargo screening limits the scope of this system, such that only shipments originating inside the United States are covered. Specifically, Mr. Sammon stated that:

[It is] our interpretation of the law and its reference to the baggage screening requirements, referring to [Aviation Transportation Security Act of 2002], that we are talking about shipments originating in the United States. . . . What we're talking about with this program applies not only to domestic carriers, but foreign carriers. But it's the shipments that originate in the United States that we can screen.<sup>1</sup>

We strongly disagree with this assertion. It directly conflicts with Section 1602, which states that:

Not later than 3 years after the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary of Homeland Security shall establish a system to screen 100 percent of cargo transported on passenger aircraft operated by an air carrier or foreign air carrier<sup>2</sup> in air transportation<sup>3</sup> or intrastate air transportation to ensure the security of all such passenger aircraft carrying cargo. (emphasis added)

As such, Mr. Sammon's comments are inconsistent with the plain language of the law and are contrary to congressional intent.

As you know, the Government Accountability Office (GAO) has reported on the serious security vulnerabilities posed by air cargo transported by foreign air carriers in air transportation.<sup>4</sup> We share the concerns raised by GAO in the course of its work on this issue. According to the GAO report, TSA estimates that approximately 200 U.S. and foreign air carriers currently transport cargo into the United States from foreign countries, bringing in approximately 4 billion pounds of cargo annually from overseas aboard passenger planes.

According to GAO, TSA's progress in developing a screening process for inbound air cargo has lagged. In its April 2007 report, GAO noted that "TSA completed

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<sup>1</sup> "House Homeland Security Subcommittee on Transportation Security and Infrastructure Protection Holds Hearing on Air Cargo Security," July 15, 2008. Congressional Transcripts, Congressional Hearings. <http://www.cq.com/display.do?dockey=/cqonline/prod/data/docs/html/transcripts/congressional/110/congressionaltranscripts110-000002918803.html@committees&metapub=CQ-ONGTRANSCRIPTS&searchIndex=0&seqNum=56>

<sup>2</sup> The term "*foreign air carrier*" means "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation," title 49, Section 40102 (a)(21).

<sup>3</sup> The term "*air transportation*" includes "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft." title 49, Section 40102 (a)(5). The term "*foreign air transportation*" means "the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft." Title 49, Section 40102 (a)(23).

<sup>4</sup> "Federal Efforts to Secure U.S.-Bound Air Cargo Are in the Early Stages and Could be Strengthened", GAO-07-660, April 2007.

a risk-based strategic plan to address domestic air cargo security, but has not developed a similar strategy for addressing inbound air cargo security, including how best to partner with CBP and international air cargo stakeholders.”<sup>5</sup> Additionally, in testimony submitted to the Subcommittee for the July 15<sup>th</sup> hearing, GAO’s Director of Homeland Security and Justice Issues, Ms. Cathy Berrick, stated that TSA has not yet finalized its strategy for securing cargo originating from overseas or determined if and how such inbound cargo will be screened.


We remain concerned about TSA’s implementation of the 100 percent screening requirement contained in Section 1602, including Mr. Sammon’s assertions at the July 15<sup>th</sup> hearing regarding its scope and the possibility that TSA may not meet the August 2010 statutory deadline for establishment of a system to screen all cargo on passenger planes. We believe there is no question that P.L. 110-53 requires TSA to screen all air cargo transported on passenger aircraft in the United States, regardless of whether such cargo originates from, or is bound for, the United States.

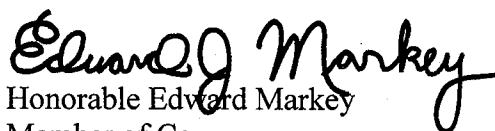
Therefore, pursuant to Rule 10 of the Rules of the House of Representatives, this letter serves as a formal request for a written legal analysis prepared by TSA on the agency’s interpretation of Section 1602 of P.L. 110-53.

If you have questions, please contact Mike Beland, Staff Director and Counsel of the Subcommittee on Transportation Security and Infrastructure Protection, at (202) 226-2616.

Sincerely,


  
Bennie G. Thompson  
Chairman

  
Honorable Sheila Jackson-Lee  
Chairwoman  
Subcommittee on Transportation  
Security and Infrastructure  
Protection  
Committee on Homeland Security

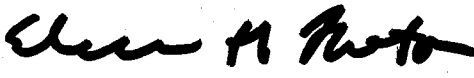
  
Honorable Edward Markey  
Member of Congress  
Subcommittee on Transportation  
Security and Infrastructure  
Protection  
Committee on Homeland Security

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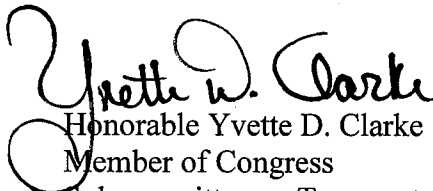
<sup>5</sup> Id at 6.




Honorable Peter DeFazio  
Member of Congress  
Subcommittee on Transportation  
Security and Infrastructure  
Protection  
Committee on Homeland Security



Honorable Eleanor Holmes Norton  
Member of Congress  
Subcommittee on Transportation  
Security and Infrastructure  
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Honorable Yvette D. Clarke  
Member of Congress  
Subcommittee on Transportation  
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Honorable Ed Perlmutter  
Member of Congress  
Subcommittee on Transportation  
Security and Infrastructure  
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