

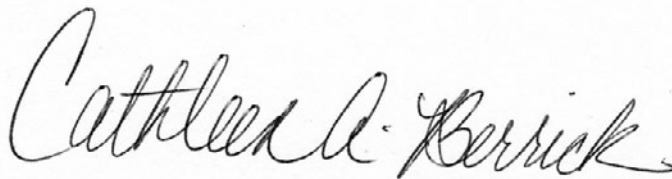
August 15, 2008

Congressional Committees

Subject: Review of the Transportation Security Administration's Air Cargo Screening Exemptions Report

This report formally transmits the attached briefing in response to section 1602(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007. The act requires the Comptroller General to provide an assessment of the methodology used by the Secretary of Homeland Security for maintaining, changing or eliminating an exemption under 49 U.S.C. § 44901(i)(1). We provided the mandated reporting committees with a restricted version of this briefing in July 2008. Based on the results of our review, we are not making any recommendations for congressional consideration or agency action. All information considered Sensitive Security Information by the Transportation Security Administration has been removed from this product.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, and other interested parties. This report will also be available at no charge on our Web site at <http://www.gao.gov>. Should you or your staff have any questions concerning this report, please contact me at (202) 512-3404 or berrickc@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Steve Morris, Assistant Director; Lara Kaskie; Thomas Lombardi; Meg Ullengren; and Margaret Vo.



Cathleen A. Berrick
Director, Homeland Security and Justice Issues

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Enclosure: Briefing Slides



Review of the Transportation Security Administration's (TSA) Air Cargo Screening Exemptions Report

Briefing to Congressional Committees

July 8, 2008

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Overview

- Introduction
- Objectives, Scope, and Methodology
- Summary
- Background
- Results
- Agency Comments and Our Evaluation



Introduction

- Section 1602(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53) requires TSA to submit to the appropriate committees of Congress and GAO a report containing an assessment of each exemption granted under 49 U.S.C. § 44901(i)(1) for the screening of cargo transported on passenger aircraft and an analysis of the risk of maintaining each exemption. The report is required to include (1) the rationale for each exemption; (2) the percentage of cargo not screened in accordance with 49 U.S.C. § 44901(g) (which defines “screening” in this context to mean a physical examination or nonintrusive method of assessing whether cargo poses a threat to transportation security); (3) the impact of each exemption on aviation security; (4) the projected impact on the flow of commerce of eliminating an exemption; and (5) plans and rationale for maintaining, changing, or eliminating each exemption.
 - Section 1602(b) of the act also requires GAO to provide an assessment of the methodology of determinations made by TSA for maintaining, changing, or eliminating an exemption under section 44901(i)(1).
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Objectives, Scope, and Methodology

- In conducting our study, we reviewed TSA's methodology for determining which air cargo screening exemptions to maintain, revise, or eliminate. Specifically, our objectives were to determine:
 - 1) the extent to which TSA's methodology for determining whether to maintain, revise, or eliminate an exemption addresses the requirements set forth in the act was risk-based and was consistent with the mission of TSA's air cargo program to balance security with the flow of commerce; and
 - 2) any challenges TSA may face in implementing its plans to maintain, revise or eliminate air cargo screening exemptions, and potential vulnerabilities that may continue to exist as a result of cargo being exempt from physical screening.
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Objectives, Scope, and Methodology (cont'd)

- This review is focused on TSA's air cargo screening exemptions report.¹ In conducting our study, we:
 - Reviewed TSA's Air Cargo Strategic Plan, security directives, and other documents that provide details on existing air cargo screening exemptions to obtain an understanding of TSA's current air cargo screening requirements.
 - Compared the results from TSA's report to our previous findings² on air cargo screening exemptions to determine whether the continued use of alternative means to secure air cargo exempt from physical screening³ may result in any vulnerabilities, as identified by TSA and other stakeholders.

¹ Transportation Security Administration, *Report to Congress on Air Cargo Subject to Alternate Screening*, February 2008.

² See GAO, *Aviation Security: Federal Action Needed to Strengthen Domestic Air Cargo Security*, GAO-06-76 (Washington, D.C.: October 17, 2005) and GAO, *Aviation Security: Federal Efforts to Secure U.S.-Bound Air Cargo Are in the Early Stages and Could Be Strengthened*, GAO-07-660 (Washington, D.C.: April 30, 2007).

³ For certain types of cargo, TSA has authorized the use of TSA-approved alternative methods for screening cargo carried on passenger aircraft. Alternative methods can include verifying shipper and cargo information and conducting a visual inspection of the cargo shipment. For the purposes of this briefing and to remain consistent with our prior work on air cargo security, the term screening exemption refers to cargo screened in accordance with such alternative methods; to the extent such cargo is no longer "exempt," TSA has determined that such cargo must be screened in accordance with current TSA requirements for the physical screening of cargo carried on board passenger aircraft.

Objectives, Scope, and Methodology (cont'd)

- Assessed the extent to which TSA sought to balance security with the flow of commerce when analyzing the exemptions, consistent with the mission of the agency's air cargo program.
 - Met with TSA officials to:
 - determine the extent to which TSA addressed the reporting requirements set forth in the act and to determine the agency's methodology for completing its assessment;
 - discuss the extent to which the agency used risk assessments when conducting its review of air cargo screening exemptions (GAO did not conduct an independent review of TSA's risk assessments); and
 - discuss the extent to which the agency may face challenges as it proceeds with its plans to maintain, revise, or eliminate air cargo screening exemptions.
 - Contacted air cargo associations to determine their input, if any, to TSA's assessment.
-



Objectives, Scope, and Methodology (cont'd)

- We provided the mandated reporting committees with a restricted version of this briefing in July 2008. All information considered Sensitive Security Information⁴ by TSA has been removed from this product.
- We conducted this performance audit from April 2008 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

⁴ See 49 C.F.R. pt. 1520

Summary

- TSA's report addresses the five key areas required by section 1602(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007,⁵ and its methodology was consistent with TSA's mission for the air cargo program to balance security with the flow of commerce. As part of their assessment, TSA officials stated that they considered and determined the threat to and vulnerability of the exempted cargo types, and relied primarily on professional judgment for determining which screening exemptions to revise, maintain, or eliminate.⁶ However, TSA has yet to complete its air cargo vulnerability assessments, which could help to identify potential security vulnerabilities associated with the exemptions. Without such information, TSA is limited in its ability to make risk-based decisions regarding the security of air cargo. TSA acknowledges the importance of completing air cargo vulnerability assessments and has plans to complete additional assessments by the end of calendar year 2009.

⁵ Pub. L. No. 110-53, § 1602(b), 121 Stat. 266, 479-80 (2007).

⁶ TSA does not take any exemptions under 49 U.S.C. § 44901(i), as contemplated by the mandate. According to TSA, no cargo transported on passenger aircraft is truly exempt from screening.

Summary (cont'd)

- TSA may face potential resource challenges as the agency moves forward with its plans to maintain, revise or eliminate domestic and outbound screening exemptions. In addition, TSA has not yet assessed the potential vulnerabilities posed by inbound air cargo screening exemptions, which are similar to those posed to domestic and outbound air cargo.⁷

⁷ Air cargo bound for the United States from a foreign country is referred to as inbound air cargo. Cargo transported by air within the United States is referred to as domestic air cargo, and cargo transported by air from the United States to a foreign location is referred to as outbound air cargo.



Background

- According to TSA's Air Cargo Strategic Plan, issued in November 2003, the agency's mission for the air cargo program is to secure the air cargo transportation system while not unduly impeding the flow of commerce.
- Participants in the air cargo transportation system include individuals and businesses that ship their cargo on all-cargo and passenger aircraft, freight forwarders that consolidate shipments and deliver them to air carriers, and passenger and all-cargo air carriers that use their cargo facilities to store cargo until it is placed onboard an aircraft for transport.
- Assessing risk, a critical component of a risk-management approach in a homeland security setting, typically involves three key elements—threats, vulnerabilities, and consequences—that provide input into the decision-making process for homeland security.⁸

⁸ A threat assessment identifies and evaluates potential threats on the basis of factors such as capabilities, intentions, and past activities. A vulnerability assessment identifies weaknesses that may be exploited by identified threats and suggests options to address those weaknesses. An assessment of consequences evaluates the personal, physical, and economic consequences to an area of a successful attack.

Background (cont'd)

- In October 2005 and April 2007, we reported that TSA had established requirements for air carriers to randomly screen air cargo, but had exempted some domestic, outbound, and inbound cargo from screening.⁹ Among other things, we identified potential vulnerabilities resulting from these exemptions and recommended that TSA examine the rationale for existing screening exemptions and determine whether such exemptions left the air cargo system unacceptably vulnerable. Since we have issued these reports, TSA has revised some of its screening exemptions for domestic and outbound air cargo carried on passenger aircraft. TSA has not revised its screening exemptions for inbound air cargo.
- In accordance with section 1602(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007, TSA is developing a system to physically screen 50 percent of air cargo originating in the United States carried on passenger aircraft by February 2009 and 100 percent of such cargo by August 2010.¹⁰

⁹ See GAO-06-76 and GAO-07-660. TSA does not presently plan for this system to address inbound cargo.

¹⁰ See 49 U.S.C. § 44901(g).

Background (cont'd)

- To meet this requirement, TSA has begun development of a Certified Cargo Screening Program (CCSP), which is to allow Certified Cargo Screening Facilities (CCSFs) to screen cargo prior to acceptance by a freight forwarder or air carrier. Manufacturing facilities and freight forwarders, among others, can apply to become a CCSF. In January 2008, TSA initiated its pilot test of the CCSP in three cities, which includes identifying participants for the voluntary program. TSA plans to expand the pilot to up to six additional cities during the first half of 2008.

Results - Finding 1



TSA's Report Addresses the Requirements Set Forth in the Implementing Recommendations of the 9/11 Commission Act

- TSA's report addresses the five key areas required by the act:
 1. the rationale for each exemption;
 2. the percentage of cargo not screened in accordance with 49 U.S.C. § 44901(g);
 3. the impact of each exemption on aviation security;
 4. the projected impact on the flow of commerce of eliminating an exemption; and
 5. the plans and rationale for maintaining, changing, or eliminating each exemption.
- TSA's report focuses on domestic and outbound air cargo screening exemptions and does not include an assessment of inbound air cargo screening exemptions.

Results - Finding 1



TSA's Report Addresses the Requirements Set Forth in the Implementing Recommendations of the 9/11 Commission Act (cont'd)

- According to TSA's report and subsequent discussions with agency officials, TSA plans to maintain six screening exemption categories, make revisions to two categories, and eliminate another two categories. TSA officials stated that the changes to the screening exemptions will be effective as of January 2009.
- Although TSA's report does not specifically provide a percentage of cargo not screened in accordance with 49 U.S.C. § 44901(g), it does provide details on the types of such cargo not screened. In addition, TSA officials told us that they believe that approximately 5 percent of cargo carried on passenger aircraft will not be physically screened in accordance with 49 U.S.C. § 44901(g) after the changes to the exemptions are implemented in January 2009.

Results – Finding 1



TSA Incorporated Elements of a Risk-Based Approach When Determining Whether to Maintain, Revise, or Eliminate Each Screening Exemption, But Has Not Completed Air Cargo Vulnerability Assessments

- According to TSA officials, the agency used the results of select air cargo vulnerability assessments as well as compliance inspection results when determining which screening exemptions to maintain, revise, or eliminate; and also considered the introduction of an explosive device on a passenger aircraft, which the agency has identified as the primary threat to such cargo.
- In October 2005 and in April 2007,¹¹ we reported that TSA had not conducted an assessment to identify the range of security weaknesses that could be exploited by terrorists related to air cargo operations, and recommended that TSA develop a methodology and schedule for completing vulnerability assessments. Partly in response to our recommendation, and consistent with direction specified in law,¹² TSA implemented an Air Cargo Vulnerability Assessment Program in November 2006. TSA officials reported that as of May 2008, the agency has completed air cargo vulnerability assessments at six domestic airports and plans to complete air cargo vulnerability assessments at all 27 domestic Category X airports¹³ by the end of calendar year 2009.

¹¹ See GAO-06-76 and GAO-07-660.

¹² See Pub. L. No. 110-28, 121 Stat. 112, 140-41 (2007) (providing that the \$80 million appropriated for air cargo shall be used to complete air cargo vulnerability assessments for all Category X airports, among other purposes).

¹³ TSA classifies the commercial airports in the United States into one of five security risk categories (X, I, II, III, and IV). In general, Category X airports have the largest number of passenger boardings, and category IV airports have the smallest. Categories X, I, II, and III airports account for more than 90 percent of the nation's air traffic.

Results – Finding 1



TSA Incorporated Elements of a Risk-Based Approach When Determining Whether to Maintain, Revise, or Eliminate Each Screening Exemption, But Has Not Completed Air Cargo Vulnerability Assessments (cont'd)

- Absent the results of these assessments, which could help to identify potential security vulnerabilities associated with the exemptions, TSA is limited in its ability to make risk-based decisions regarding the security of air cargo. TSA officials acknowledge the importance of completing air cargo vulnerability assessments. Officials noted that as the agency conducts additional air cargo vulnerability assessments, officials will assess these results to determine whether existing screening exemptions should be revised or eliminated.

Results - Finding 1



TSA's Methodology Was Consistent with its Goal to Balance Security with the Flow of Commerce

- Consistent with the mission of TSA's air cargo program, TSA considered, among other things, the balance between security and the flow of commerce in determining which air cargo screening exemptions to maintain, revise, or eliminate. In follow-up discussions with TSA officials, they stated that they relied primarily on professional judgment to determine which screening exemptions to revise, maintain, or eliminate. In addition, TSA officials told us that they took the following actions to assist in their determinations:
 - Reviewed recommendations related to revising screening exemptions made by TSA's internal cargo policy working group in March 2006.
 - Held discussions with select air cargo industry stakeholders to discuss the potential impact on industry of revising or eliminating screening exemptions. However, according to TSA officials, there was no formal process by which they solicited industry input as a part of TSA's assessment of each exemption.
-

Results – Finding 2



TSA’s Plans to Maintain, Revise, or Eliminate Screening Exemptions May Pose Potential Resource Challenges to the Agency

As TSA moves forward with its plans to maintain, revise, or eliminate domestic and outbound air cargo screening exemptions, the agency may face resource challenges, including the following:

- Screening Resources:** Although TSA plans to expand the use of TSA-certified explosives detection canine teams to screen air cargo before it is placed on passenger planes, TSA has not assessed how the agency’s plans to maintain, revise, or eliminate screening exemptions may impact canine team needs. TSA is in the process of adding 170 canine teams, of which 85 will be primarily used to screen air cargo.¹⁴ These teams are to be primarily located at the 20 airports that, according to TSA officials, receive approximately 65 percent of all air cargo transported within the United States. TSA officials could not tell us whether the additional 85 canine teams will be sufficient to meet the agency’s increasing screening needs.

¹⁴ There are currently 370 TSA-certified explosives detection canine teams that are cross-trained to work in multiple aviation environments, including air cargo.

Results – Finding 2



TSA's Plans to Maintain, Revise, or Eliminate Screening Exemptions May Pose Potential Resource Challenges to the Agency (cont'd)

•Compliance Resources: TSA officials stated that although they believe the revisions and eliminations of domestic and outbound air cargo screening exemptions should not severely impact the workload of Transportation Security Inspectors (TSIs), TSA has not conducted an assessment to determine how the changes to air cargo screening exemptions may impact TSI resources. According to TSA officials, there may not be enough TSIs to conduct compliance inspections of all the entities that could be a part of the CCSP once the program is fully implemented in August 2010.

Results – Finding 2



TSA Has Not Assessed the Vulnerabilities Posed by Inbound Air Cargo Security Exemptions

- Although TSA plans to conduct vulnerability assessments as part of its risk-based approach to securing inbound air cargo, the agency has not established a time frame for doing so. Such assessments could provide information on the potential vulnerabilities posed by inbound air cargo screening exemptions. We reported in April 2007 that TSA officials told us that they would conduct vulnerability assessments of inbound air cargo after they had assessed the vulnerability of domestic air cargo.¹⁵ Nevertheless, TSA officials acknowledged that vulnerabilities to inbound air cargo exist and that these vulnerabilities are in some cases similar to those facing the domestic air cargo supply chain.
- In April 2007, we reported on the potential vulnerabilities associated with inbound air cargo screening exemptions.¹⁶ Specifically, we reported that screening exemptions could pose a risk to the inbound air cargo supply chain because TSA has limited information on the background of and security risks posed by foreign freight forwarders and shippers whose cargo may fall into one of the exemption categories. We recommended that TSA assess whether existing inbound air cargo screening exemptions pose an unacceptable vulnerability to the air cargo supply chain and if necessary, address these vulnerabilities. TSA agreed with this recommendation and noted that the agency had recently revised and eliminated domestic and outbound air cargo screening exemptions. TSA, however, has yet to fully address our recommendation for assessing inbound air cargo screening exemptions.

¹⁵ See GAO-07-660.

¹⁶ See GAO-07-660.

Results – Finding 2



TSA Has Not Assessed the Vulnerabilities Posed by Inbound Air Cargo Security Exemptions (cont'd)

- TSA acknowledges that some categories of exempted cargo pose a potential vulnerability to the domestic air cargo supply chain and will be eliminated. TSA officials stated that the agency will evaluate these exemptions for inbound cargo in the future. TSA officials also noted that they do plan to increase the percentage of inbound air cargo required to be screened, but the screening exemptions for such cargo would be maintained. According to TSA officials, the requirement to screen an increased percentage of inbound air cargo will be implemented in early 2009.
- In response to a request by the Chairman of the House Homeland Security Committee and Congressman Edward Markey, GAO will initiate a review of TSA's efforts to meet the requirement to screen 100 percent of air cargo carried on passenger aircraft.¹⁷ As part of this review, GAO will likely examine TSA's plans to screen inbound air cargo.

¹⁷ See 49 U.S.C. § 44901(g).



Agency Comments and Our Evaluation

- We provided a draft of the information included in this briefing to TSA for review and comment. On June 25, 2008, TSA officials provided oral comments to the briefing slides. The Air Cargo Division General Manager noted that he generally agreed with the information presented and our findings. TSA also provided us with technical written comments to the slides, which we incorporated as appropriate.

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