

brought into the U.S. aboard an aircraft which has failed to comply with the requirements prescribed by this section, the pilot of the aircraft shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee.

**§ 122.167 Aviation smuggling.**

(a) *Civil penalties.* Any aircraft pilot who transports, or any person on board any aircraft who possesses prohibited or restricted merchandise knowing, or intending, that the merchandise will be introduced into the U.S. contrary to law shall be subject to a civil penalty of twice the value of the merchandise involved, but not less than \$10,000, as prescribed in section 590, Tariff Act of 1930, as amended (19 U.S.C. 1590). Any aircraft used in connection with, or in aiding or facilitating, any violation of 19 U.S.C. 1590, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with Customs laws.

(b) *Criminal penalties.* Any aircraft pilot or person who intentionally violates 19 U.S.C. 1590 is, upon conviction, subject to the criminal penalties of a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved is a controlled substance. More severe penalties are provided in 19 U.S.C. 1590 if the smuggled merchandise is a controlled substance. In such case, a violator is liable for a fine of not more than \$250,000 or imprisonment for not more than 20 years, or both.

(c) For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be evidence that the transportation or possession of merchandise was unlawful and shall indicate that the purpose of the transfer was to make it possible for such merchandise, or any part of it, to be introduced into the U.S. unlawfully. For purposes of seizure and forfeiture, the following acts shall be evidence that an aircraft was used in connection with, or to aid or facilitate, a violation of this section;

(1) The operation of an aircraft without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to correctly identify the aircraft by registration number and country of registration, when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers or false country of registration.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

**Subpart R—Air Carrier Smuggling Prevention Program**

SOURCE: T.D. 91-25, 56 FR 12347, Mar. 25, 1991, unless otherwise noted.

**§ 122.171 Description of program.**

The Air Carrier Smuggling Prevention Program (ACSPP) is designed to enlist the cooperation of the air carriers, as defined in 19 U.S.C. 1584 note, in Customs efforts to prevent the smuggling of controlled substances. If carriers develop and implement thorough and complete internal security procedures at ACSPP designated terminals and foreign departure and intermediate points, the opportunity for their conveyances being used for transportation of controlled substances will be greatly reduced. Participation in the program is voluntary, and may be limited to specific routes. Should a controlled substance be introduced into the United States on a conveyance owned or operated by a participating carrier however, the carrier will be exempt from seizure and penalties should it satisfy the provisions of § 122.175 of

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this part. The program will be operational for a period of 2 years from December 18, 1989, pursuant to 19 U.S.C. 1584 note.

### § 122.172 Eligibility.

Any air carrier whose international flights arrive at, or depart from, any of the designated test airports, Miami International Airport, Dallas-Fort Worth International Airport, or Los Angeles International Airport, is eligible for participation in the ACSPP.

### § 122.173 Application procedures.

(a) *Application.* An air carrier which wishes to participate in the ACSPP shall submit an application to the Assistant Commissioner, Office of Field Operations, in which it:

(1) Identifies specific routes and designated departure points and ACSPP airports for which application is made;

(2) Certifies that it has developed and will continue to maintain standard operating procedures (SOP) which are designed to safeguard the integrity of its employees, cargo and conveyances. The application shall be accompanied by three (3) copies of the SOP developed by the air carrier.

(b) *Approval criteria.* Upon receipt, each application will be reviewed to determine whether the procedures contained therein meet the requirements of the ACSPP. In determining whether a SOP submitted by an applicant carrier contains sufficient detail to assure the proper level of care and diligence required under the provisions of the ACSPP, the Assistant Commissioner, Office of Field Operations, will apply uniform standards and verify that, at a minimum, procedures are in place which:

(1) Assure positive security background checks are performed on all carrier employees, both those employed within the United States and without, who have access to baggage, cargo or secure areas on participating routes, to the extent permitted by law;

(2) Assure a system of positive baggage and cargo identification is employed at all terminals used by the carrier;

(3) Assure the carrier employs a system to assure that no unmanifested cargo is placed on board the convey-

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ance or brought into the United States on any of their conveyances;

(4) Assure the carrier has specific procedures through which it will notify Customs should it discover any unmanifested or improperly manifested cargo on any of its conveyances or in any area subject to its control;

(5) Assure the carrier has an effective and practical employee awareness training program in place; and

(6) Assure thorough security measures are implemented at all foreign departure points on ACSPP participating routes which will assure that the carrier has control and knowledge of the baggage, cargo, passenger and other materials placed on board its aircraft.

(c) *Acceptance and notification.* Upon verification by Customs that a carrier's SOP meets all the criteria outlined in § 122.173(b) of this part, the carrier will be notified that its application to the ACSPP has been accepted. Acceptance into the ACSPP is made with the understanding and expectation that the carrier will continue to act with the highest degree of care and diligence required under law and that it will abide by and perform all elements of its approved SOP.

[T.D. 91-25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

### § 122.174 Operational procedures.

(a) *Participating carriers.* Participating carriers are required to develop and adhere to procedures whereby they will:

(1) Provide security personnel for every international arrival participating in the ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the arriving aircraft;

(ii) Maintain total control of all passengers and cargo being discharged from the aircraft to either the Customs passenger hall or to the carrier's cargo facility;

(iii) Verify that all cargo on aircraft is properly manifested, marked and weighed and that piece counts are properly performed; and

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being offloaded.