

(d) Under section 332 of Pub. L. 107-314, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—

(1) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(2) The agency has determined that—

(i) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(ii) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(iii) Performance of such functions will not result in a reduction in the security of the installation or facility; and

(3) Contract performance will not extend beyond December 1, 2005.

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DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR Part 1540

Prohibited Items

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interpretive rule.

SUMMARY: This interpretive rule provides guidance to the public on the types of property Transportation Security Administration (TSA) considers to be weapons, explosives, and incendiaries prohibited in airport sterile areas and in the cabins of aircraft under the TSA regulations. This interpretation also provides guidance on the types of items permitted in sterile areas, the cabins of passenger aircraft, and in passengers' checked baggage.

EFFECTIVE DATE: February 14, 2003.

FOR FURTHER INFORMATION CONTACT: For technical questions contact Vicky Skelly, Aviation Security Specialist, Air Carrier Division, Office of Aviation Security Policy, TSA-9, Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (571) 227-2641, e-mail Vicky.skelly@tsa.dot.gov. Legal questions may be directed to Ellen

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SUPPLEMENTARY INFORMATION:

Availability of Documents

You can obtain an electronic copy of this interpretive rule and other TSA rulemaking documents using the Internet by:

(1) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html; or

(3) Visiting the TSA's Laws and Regulations web page at <http://www.tsa.dot.gov/public/index.jsp>.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section.

Statutory and Regulatory Background

Following the terrorist attacks on the United States on September 11, 2001, Congress passed the Aviation and Transportation Security Act (ATSA) on November 19, 2001 (49 U.S.C. 40101 *et seq.*), establishing TSA. TSA is an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. TSA is responsible for security in all modes of transportation regulated by DOT, including civil aviation. See 49 U.S.C. 114(d). Accordingly, ATSA transferred the responsibility for civil aviation security from the Federal Aviation Administration (FAA) to the TSA.

On February 22, 2002, TSA published a final rule transferring the bulk of FAA's aviation security regulations to TSA. See 67 FR 8340. Among these was FAA's regulation governing the carriage of weapons, explosives, and incendiaries by individuals into sterile areas and into the cabins of passenger aircraft for which screening is conducted. This regulation now is codified at § 1540.111 of Title 49 of the Code of Federal Regulations (CFR). See 67 FR 8340 at 8354. See also 67 FR 41635 at 41639 (June 19, 2002).

Section 1540.111 Carriage of Weapons, Explosives, and Incendiaries by Individuals. The rule provides, in part, that an individual (other than a law enforcement or other authorized individual) "may not have a weapon, explosive, or incendiary, on or about the individual's person or accessible property—

(1) When performance has begun of the inspection of the individual's person or accessible property before entering a sterile area, or before boarding an aircraft for which screening is conducted under § 1544.201 or

§ 1546.201 of this chapter (TSA's regulations on acceptance and screening of individuals and accessible property);

(2) When the individual is entering or in a sterile area; or

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under § 1544.201 or § 1546.201 of this chapter."

Section 1540.111(b) establishes certain exceptions to this rule for law enforcement officers and other persons authorized to carry weapons. These exceptions, however, do not apply to the general public.

For purposes of § 1540.111(a), "accessible property" is property that is accessible to the individual at the screening checkpoint, in the sterile area, or in the cabin of the aircraft. It includes carry-on baggage and property an individual carries on his or her person. A "sterile area" is a portion of an airport that provides passengers access to boarding aircraft and to which the access is generally controlled through the screening of persons and property. See 49 CFR 1540.5.

Penalties for Prohibited Items.

Individuals who carry weapons, explosives, or incendiaries into a sterile area or the cabin of a passenger aircraft are subject to civil and criminal penalties. See, for instance, 49 U.S.C. 46301 and 46314. These penalties also apply to individuals who place loaded firearms in checked baggage. See also 49 U.S.C. 46505.

Today's Interpretative Rule. This interpretation provides guidance to the public as to the types of property TSA considers to be "weapons, explosives, and incendiaries" that, if carried by an individual not authorized to carry such items, are prohibited in sterile areas and in the cabins of aircraft under 49 CFR 1540.111(a). TSA refers to these items collectively as prohibited items because they are prohibited from these areas. There are many items that are not created for use as weapons, explosives, or incendiaries, but may be used as such items. Today's regulatory interpretation includes examples of these so-called "dual use items," which also are prohibited. Congress specifically directed TSA to identify dual use items for purposes of passenger screening. See 49 U.S.C. 44935(h)(3).

This interpretation also provides guidance on items that are permitted in a sterile area and in the cabin of a passenger aircraft even though they may appear to fall into the broad categories of items on the prohibited items list. These items generally are personal care, medical, and assistive items, examples of which are set forth below. In