

AIRLINE TRAVEL WITH A FIREARM



Last year, over 2,200 guns were confiscated in airports across the country by the Transportation Security Administration (TSA), the majority of them loaded and in travelers' carry-on luggage. Despite many of these cases being accidental, there are potentially devastating consequences that accompany being found with a handgun in your carry-on luggage, or a firearm that has not been properly processed in accordance with TSA policies and federal, state, and local law. We hope that this article will give you the knowledge necessary to avoid the unnecessary hardship of being caught at the airport with a prohibited weapon.

The TSA has a number of rules which must be followed in order to carry a firearm and/or ammunition aboard a commercial airliner or in the "sterile area" of an airport (the portion of an airport that provides passengers access to boarding aircraft and is controlled with metal detectors and x-ray machines by the TSA). These rules follow federal statutory law, and complying with them will prevent you from violating federal laws which carry harsh penalties.

The TSA uses a fairly broad characterization, taken from federal law, of what constitutes a firearm. 18 U.S.C. § 921(a)(3) states that a firearm is "any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler or firearm silencer, or any destructive device." Thus, if you want to travel with a starter gun, any pistol/rifle/shotgun, suppressor, or flare gun, you will need to follow all TSA policies regarding firearms. Other weapons similar to, but not classified as firearms, such as BB guns, compressed air guns, and pellet guns, may be included in checked baggage in accordance with rules governing their transportation.

Any and all firearms must be unloaded, stored in a locked, hard-sided container, and in checked baggage. The TSA uses the definition of "loaded firearm" from federal regulation 49 C.F.R. 1540.5: "a firearm that has a live round of ammunition, or any component thereof, in the chamber or cylinder or in a magazine inserted in the firearm." It should be mentioned, however, that it is wise to check the laws of your destination state, as that state may use a different definition of "loaded firearm" than your home state. For example, under New York Penal Law §



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265.00, a “loaded firearm” is a firearm that is possessed by a person who, at the same time, possesses a quantity of ammunition which may be used to discharge a firearm. Therefore, if you travel to a state with more restrictive laws on firearms possession, be sure that beforehand, you have packed so that you will not be violating that state’s laws when you arrive.

The TSA allows plastic or metal hard-sided cases, as long as the case completely secures the firearm from being accessed (e.g. it cannot be easily pulled apart), and you are the only person who has the key or combination to the lock. TSA-approved locks are NOT acceptable on checked firearms and ammunition. No tag is required on the outside of the case(s), and in fact, federal statute 18 U.S.C. 922(e) prohibits an airline from requiring any label or tag on your checked luggage indicating that a firearm is inside. Any magazines or speedloaders, whether loaded or empty, must be securely boxed or included within the hard-sided case.

No firearms, firearms parts (e.g. frames, receivers, etc.), or ammunition are allowed in carry-on baggage; these must be declared and checked with the airline. Different airlines and airports have varying policies on how they want you to declare your firearms and/or ammunition, but generally, these must be declared orally or in writing according to the airline carrier’s instructions when you check-in with the ticket counter. Some airlines might have you fill out an “unloaded firearms declaration” tag to be included with the locked, hard-sided case containing the firearm(s) or ammunition. Additionally, it is a good idea to ask about any limitations or fees that might apply. If your firearm(s) are not properly declared (or packaged), the TSA will give the checked bag to law enforcement for resolution with the airline. This may lead to a delay that could prevent you from making your flight, so it is very important to properly declare all firearm(s) and ammunition with the airline.

The TSA requires that all small arms ammunition be checked-in in addition to firearms. All ammunition must be securely packed in fiber (e.g. cardboard), wood, plastic or metal boxes, or in other packaging specifically designed to carry small amounts of ammunition. It can also be loaded into magazines that are securely boxed or placed in the hard-sided, locked container holding the firearm. Additionally, airlines may have their own preferences as to how they want ammunition packaged and the amount you may have in checked baggage. For example, American Airlines prefers that all ammunition be in its original packaging from the manufacturer, and will accept no more than 11 pounds of ammunition per person. Ammunition containing explosive or incendiary projectiles may not be accepted by a particular airline, as well as loose ammunition, magazines, or clips. Gunpowder and black powder are prohibited from commercial flights by the TSA. Before bringing ammunition to the airport, check with the airline for guidance on how it should be packed.

Even for concealed handgun license or permit holders, carrying a concealed handgun onto an aircraft or in a sterile area is a very serious crime! Several federal statutes make it illegal to carry a handgun, either concealed or unconcealed onto an aircraft or in a sterile area (14 C.F.R. § 135.119, 49 C.F.R. § 1544.201(d), 49 C.F.R. § 1540.111). Being on, or attempting to get on an aircraft while carrying a concealed handgun carries with it a possible prison sentence of up to 10



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years and/or a fine of up to \$250,000! Also, attempting to place or having placed a loaded firearm in property that is inaccessible to passengers in flight (e.g. having a loaded handgun in your checked baggage), carries with it a potential ten (10) year prison sentence and \$250,000 fine. In addition to potential criminal penalties, 49 U.S.C. § 46303 provides that anyone who is on or attempts to board an aircraft intended for air transportation that has a concealed handgun or other firearm that would be accessible in flight, is liable to the U.S. Government for a civil penalty of up to \$10,000 for each violation. This civil penalty is usually imposed regardless of whether or not any criminal prosecution is pursued.

All states have enacted laws that criminalize carrying an unsecured firearm into the sterile area of an airport. Some states prohibit bringing an unsecured firearm into any part of the airport terminal. **In Missouri, persons licensed to carry a concealed firearm may carry into the unsecured area of the airport. However, a carry permit does not allow a person to carry their concealed firearm through any area where access is controlled by inspection of persons and property. If a person with a concealed carry permit enters the secure portion of the airport with a firearm, it is not a criminal offense pursuant to state law; rather, such an act will subject the person to removal from the premises or denial of return. A penalty for the TSA violation will still occur. Multiple offenses may subject the actor to fines and/or revocation of his concealed carry permit. It is legal for license holders and non-license holders to possess a concealed firearm in a vehicle on the premises of the airport so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. A licensed or non-licensed person who wishes to check a firearm with their luggage may do so as long as the firearm is transported in a non-functioning state (or an unloaded state), with the ammunition separate from the firearm and not readily accessible.**

Generally, if a person is found to be at the airport screening area with a firearm on their person or in their carry-on, the TSA will turn them over to local law enforcement for arrest and prosecution under state law. Be aware of your destination state's laws; even if you comply with all TSA declaration and packing policies, you may still be prosecuted for an offense in another state that has more restrictive firearms and/or ammunition policies than your home state. For example recently a North Dakota resident was arrested at La Guardia International Airport while trying to return home on a flight, because she had ammunition in a separate box, but in the same container as her handgun in checked baggage. While this was in compliance with North Dakota law, she was charged with a serious felony under New York law, which holds a much more strict definition of what constitutes a "loaded firearm."

The two most important things to do before traveling with your firearm(s) and/or ammunition is: 1) to check with every airport you will be flying through to verify what their firearms policies are, and 2) to learn about the laws of the state you will be flying into, and ultimately out of.



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We wish you safe travels and will update you on any changes in these laws that may impact your Second Amendment rights.



49CFR 1544.203

- You, the passenger, declares to the aircraft operator that the firearm is unloaded
- The firearm is carried in a hard-sided container
- The container is locked, and only the individual checking the bag (that's you) retains the key or combination. (DO NOT use a TSA Approved Lock – the TSA approved locks may be unlocked with a master key. There is no reason for TSA to have access to your firearm – and in fact, they are prohibited from handling firearms)

Ammunition: Buried in regulation **49CFR Part 175**, you may carry small arms ammunition in checked baggage only, and that it must be securely packaged in boxes or other packaging specifically designed to carry ammunition. Magazines can be loaded, as long as they are securely boxed. Additionally, there is no provision that they cannot be stored with your firearm in the same case.