

SEC. 525. (a) Within 30 days after enactment of this Act, the Secretary of Homeland Security shall revise Department of Homeland Security (DHS) Management Directive (MD) 11056 to provide for the following:

(1) That when a lawful request is made to publicly release a document containing information designated as sensitive security information (SSI), the document shall be reviewed in a timely manner to determine whether any information contained in the document meets the criteria for continued SSI protection under applicable law and regulation and shall further provide that all portions that no longer require SSI designation be released, subject to applicable law, including sections 552 and 552a of title 5, United States Code;

(2) That sensitive security information that is three years old and not incorporated in a current transportation security directive, security plan, contingency plan, or information circular; or does not contain current information in one of the following SSI categories: equipment or personnel performance specifications, vulnerability assessments, security inspection or investigative information, threat information, security measures, security screening information, security training materials, identifying information of designated transportation security personnel, critical aviation or maritime infrastructure asset information, systems security information, confidential business information, or research and development information shall be subject to release upon request unless:

(A) the Secretary or his designee makes a written determination that identifies a rational reason why the information must remain SSI; or

(B) such information is otherwise exempt from disclosure under applicable law:

Provided, That any determination made by the Secretary under clause (a)(2)(A) shall be provided to the party making a request to release such information and to the Committees on Appropriations of the Senate and the House of Representatives as part of the annual reporting requirement pursuant to section 537 of the Department of Homeland Security Appropriations Act, 2006 (Public Law 109-90; 119 Stat. 2088); and

(3) Common and extensive examples of the individual categories of SSI information cited under 49 CFR 1520(b)(1) through (16) in order to minimize and standardize judgment by covered persons in the application of SSI marking.

(b) Not later than 120 days after the date of enactment of this Act, the Secretary of Homeland Security shall report to the Committees on Appropriations of the Senate and the House of Representatives on the progress that the Department has made in implementing the requirements of this section and of section 537 of the Department of Homeland Security Appropriations Act, 2006 (Public Law 109-90; 119 Stat. 2088).

(c) Not later than one year from the date of enactment of this Act, the Government Accountability Office shall report to the Committees on Appropriations of the Senate and the House of Representatives on DHS progress and procedures in implementing the requirements of this section.

(d) That in civil proceedings in the United States District Courts, where a party seeking access to SSI demonstrates that the party has substantial need of relevant SSI in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the information by other means, the party or party's counsel shall be designated as a covered person under 49 CFR Part 1520.7 in order to have access to the SSI at issue in the case, provided that the overseeing judge enters an order that protects the SSI from unauthorized or unnecessary disclosure and specifies the terms and conditions of access, unless upon completion of a criminal history check and terrorist assessment like that done for aviation workers on the persons seeking access to SSI, or based on the sensitivity of the information, the Transportation Security Administration or DHS demonstrates that such access to the information for the proceeding presents a risk of harm to the nation: *Provided*, That notwithstanding any other provision of law, an order granting access to SSI under this section shall be immediately appealable to the United States Courts of Appeals, which shall have plenary review over both the evidentiary finding and the sufficiency of the order specifying the terms and conditions of access to the SSI in question: *Provided further*, That notwithstanding any other provision of law, the Secretary may assess a civil penalty of up to \$50,000 for each violation of 49 CFR Part 1520 by persons provided access to SSI under this provision.

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TITLE 49--TRANSPORTATION

SUBTITLE I--DEPARTMENT OF TRANSPORTATION

CHAPTER 1--ORGANIZATION

Sec. 114. Transportation Security Administration

(a) In General.--The Transportation Security Administration shall be an administration of the Department of Transportation.

(b) Under Secretary.--

(1) Appointment.--The head of the Administration shall be the Under Secretary of Transportation for Security. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Qualifications.--The Under Secretary must--

(A) be a citizen of the United States; and

(B) have experience in a field directly related to transportation or security.

(3) Term.--The term of office of an individual appointed as the Under Secretary shall be 5 years.

(c) Limitation on Ownership of Stocks and Bonds.--The Under Secretary may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.

(d) Functions.--The Under Secretary shall be responsible for security in all modes of transportation, including--

(1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and

(2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(e) Screening Operations.--The Under Secretary shall--

(1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;

(2) develop standards for the hiring and retention of security screening personnel;

(3) train and test security screening personnel; and

(4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the Secretary of Transportation and the heads of other appropriate Federal agencies and departments.

(f) Additional Duties and Powers.--In addition to carrying out the functions specified in subsections (d) and (e), the Under Secretary shall--

(1) receive, assess, and distribute intelligence information related to transportation security;

head has to provide services, supplies, equipment, personnel, and facilities to the Administrator of the Federal Aviation Administration under section 106(m).

(n) Personnel Management System.--The personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the personnel management system with respect to such employees as the Under Secretary considers appropriate, such as adopting aspects of other personnel systems of the Department of Transportation.

(o) Acquisition Management System.--The acquisition management system established by the Administrator of the Federal Aviation Administration under section 40110 shall apply to acquisitions of equipment, supplies, and materials by the Transportation Security Administration, or, subject to the requirements of such section, the Under Secretary may make such modifications to the acquisition management system with respect to such acquisitions of equipment, supplies, and materials as the Under Secretary considers appropriate, such as adopting aspects of other acquisition management systems of the Department of Transportation.

(p) Authority of Inspector General.--The Transportation Security Administration shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.) and other laws relating to the authority of the Inspector General of the Department of Transportation.

(q) Law Enforcement Powers.--

(1) In general.--The Under Secretary may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) Powers.--While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph (1) may--

(A) carry a firearm;

(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any felony cognizable under the laws of the United States if the officer has probable cause to believe that the person to be arrested has committed or is committing the felony; and

(C) seek and execute warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

(3) Guidelines on exercise of authority.--The authority provided by this subsection shall be exercised in accordance with guidelines prescribed by the Under Secretary, in consultation with the Attorney General of the United States, and shall include adherence to the Attorney General's policy on use of deadly force.

(4) Revocation or suspension of authority.--The powers authorized by this subsection may be rescinded or suspended should the Attorney General determine that the Under Secretary has not complied with the guidelines prescribed in paragraph (3) and conveys the determination in writing to the Secretary of Transportation and the Under Secretary.

(r) Authority To Exempt.--The Under Secretary may grant an exemption from a regulation prescribed in carrying out this section if the Under Secretary determines that the exemption is in the public interest.

(s) Nondisclosure of Security Activities.--

(1) In general.--Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107-71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would--

- (A) be an unwarranted invasion of personal privacy;
- (B) reveal a trade secret or privileged or confidential commercial or financial information; or
- (C) be detrimental to the security of transportation.

(2) Availability of information to congress.--Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) Limitation on transferability of duties.--Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.

(Added Pub. L. 107-71, title I, Sec. 101(a), Nov. 19, 2001, 115 Stat. 597; amended Pub. L. 107-296, title XVI, Sec. 1601(b), title XVII, Sec. 1707, Nov. 25, 2002, 116 Stat. 2312, 2318; Pub. L. 108-7, div. I, title III, Sec. 351(d), Feb. 20, 2003, 117 Stat. 420.)

References in Text

The date of enactment of the Aviation and Transportation Security Act, referred to in subsec. (k), is the date of enactment of Pub. L. 107-71, which was approved Nov. 19, 2001.

The Inspector General Act of 1978, referred to in subsec. (p), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Aviation and Transportation Security Act, referred to in subsec. (s)(1), is Pub. L. 107-71, Nov. 19, 2001, 115 Stat. 597, as amended. For complete classification of this Act to the Code, see Short Title of 2001 Amendment note set out under section 40101 of this title and Tables.

Amendments

2003--Subsec. (q)(1). Pub. L. 108-7 inserted ``or other Federal agency'' after ``Transportation Security Administration''.

2002--Subsec. (l)(2)(B). Pub. L. 107-296, Sec. 1707, inserted ``for a period not to exceed 90 days'' after ``effective'' and ``ratified or'' before ``disapproved''.

Subsec. (s). Pub. L. 107-296, Sec. 1601(b), added subsec. (s).

Effective Date of 2002 Amendment

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for

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TITLE 49--TRANSPORTATION
SUBTITLE VII--AVIATION PROGRAMS
PART A--AIR COMMERCE AND SAFETY
subpart i--general
CHAPTER 401--GENERAL PROVISIONS

Sec. 40119. Security and research and development activities

(a) General Requirements.--The Under Secretary of Transportation for Security and the Administrator of the Federal Aviation Administration each shall conduct research (including behavioral research) and development activities appropriate to develop, modify, test, and evaluate a system, procedure, facility, or device to protect passengers and property against acts of criminal violence, aircraft piracy, and terrorism and to ensure security.

(b) Disclosure.--(1) Notwithstanding section 552 of title 5 and the establishment of a Department of Homeland Security, the Secretary of Transportation shall prescribe regulations prohibiting disclosure of information obtained or developed in ensuring security under this title if the Secretary of Transportation decides disclosing the information would--

- (A) be an unwarranted invasion of personal privacy;
- (B) reveal a trade secret or privileged or confidential commercial or financial information; or
- (C) be detrimental to transportation safety.

(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(c) Transfers of Duties and Powers Prohibited.--Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.

(Pub. L. 103-272, Sec. 1(e), July 5, 1994, 108 Stat. 1117; Pub. L. 107-71, title I, Sec. 101(e), Nov. 19, 2001, 115 Stat. 603; Pub. L. 107-296, title XVI, Sec. 1601(a), Nov. 25, 2002, 116 Stat. 2312.)

Historical and Revision Notes

Revised Section	Source (U.S. Code)	Source (Statutes)
40119(a)	49 App.:1357(d)(1).	Aug. 23, 1958, Pub. L. 85-731, Sec. 316(d)(1), Aug. 5, 1974, Pub. L. 93-202, 88 Stat. 417.
40119(b)	49 App.:1357(d)(2).	Aug. 23, 1958, Pub. L. 85-731, Sec. 316(d)(2);

1974, Pub. L. 93-366, §
Stat. 417; Nov. 5, 1990
508, Sec. 9121, 104 Stat.

40119(c)..... 49 App.:1357(e)(1).

In this section, the word "Administrator" in section 316(d) and (e) of the Federal Aviation Act of 1958 (Public Law 85-726, 72 Stat. 731) is retained on authority of 49:106(g).

In subsection (a), the words "as he may deem" and "aboard aircraft in air transportation or intrastate air transportation" are omitted as surplus.

In subsection (b)(1), before clause (A), the words "relating to freedom of information", "as he may deem necessary", and "in the conduct of research and development activities" are omitted as surplus. In clause (A), the words "(including, but not limited to, information contained in any personnel, medical, or similar file)" are omitted as surplus. In clause (B), the words "obtained from any person" are omitted as surplus. In clause (C), the word "traveling" is omitted as surplus.

In subsection (b)(2), the word "duly" is omitted as surplus. The words "to have the information" are added for clarity.

Amendments

2002--Subsec. (a). Pub. L. 107-296, Sec. 1601(a)(1), inserted "and the Administrator of the Federal Aviation Administration each" after "for Security" and substituted "criminal violence, aircraft piracy, and terrorism and to ensure security" for "criminal violence and aircraft piracy".

Subsec. (b)(1). Pub. L. 107-296, Sec. 1601(a)(2)(A), (B), in introductory provisions, substituted "and the establishment of a Department of Homeland Security, the Secretary of Transportation" for "the Under Secretary" and "ensuring security under this title if the Secretary of Transportation" for "carrying out security or research and development activities under section 44501(a) or (c), 44502(a)(1) or (3), (b), or (c), 44504, 44505, 44507, 44508, 44511, 44512, 44513, 44901, 44903(a), (b), (c), or (e), 44905, 44912, 44935, 44936, or 44938(a) or (b) of this title if the Under Secretary".

Subsec. (b)(1)(C). Pub. L. 107-296, Sec. 1601(a)(2)(C), substituted "transportation safety" for "the safety of passengers in transportation".

2001--Subsec. (a). Pub. L. 107-71, Sec. 101(e)(1), substituted "Under Secretary of Transportation for Security" for "Administrator of the Federal Aviation Administration".

Subsec. (b). Pub. L. 107-71, Sec. 101(e)(2), substituted "Under Secretary" for "Administrator" in two places in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 107-71, Sec. 101(e)(3), struck out "air" before "transportation".

Subsec. (c). Pub. L. 107-71, Sec. 101(e)(2), substituted "Under Secretary" for "Administrator".

Effective Date of 2002 Amendment

Amendment by Pub. L. 107-296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107-296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Transfer of Functions

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Section Referred to in Other Sections

This section is referred to in sections 106, 115, 40109, 44501, 44508, 44921 of this title.