

the performance of the function immediately before the effective date of the transfer of the function under this Act or the amendments made by this Act.

“(g) REFERENCES.—Any reference to the Office in any Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Office or an officer or employee of the Office is deemed to refer to the Administration or a member or employee of the Administration, as appropriate.”

§ 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;
- (2) assess threats to transportation;
- (3) develop policies, strategies, and plans for dealing with threats to transportation security;

(4) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;

(6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933;

(7) enforce security-related regulations and requirements;

(8) identify and undertake research and development activities necessary to enhance transportation security;

(9) inspect, maintain, and test security facilities, equipment, and systems;

(10) ensure the adequacy of security measures for the transportation of cargo;

(11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;

(13) work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

(14) work with the International Civil Aviation Organization and appropriate aeronautic authorities of foreign governments under section 44907 to address security concerns on passenger flights by foreign air carriers in foreign air transportation; and

(15) carry out such other duties, and exercise such other powers, relating to transportation security as the Under Secretary considers appropriate, to the extent authorized by law.

(g) NATIONAL EMERGENCY RESPONSIBILITIES.—

(1) IN GENERAL.—Subject to the direction and control of the Secretary, the Under Secretary, during a national emergency, shall have the following responsibilities:

(A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

(B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.

(C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

(D) To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as the Secretary shall prescribe.

(2) AUTHORITY OF OTHER DEPARTMENTS AND AGENCIES.—The authority of the Under Sec-

retary under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

(3) CIRCUMSTANCES.—The Secretary shall prescribe the circumstances constituting a national emergency for purposes of this subsection.

(h) MANAGEMENT OF SECURITY INFORMATION.—In consultation with the Transportation Security Oversight Board, the Under Secretary shall—

(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers—

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety or national security.

(i) VIEW OF NTSB.—In taking any action under this section that could affect safety, the Under Secretary shall give great weight to the timely views of the National Transportation Safety Board.

(j) ACQUISITIONS.—

(1) IN GENERAL.—The Under Secretary is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise) such real property, or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;

(B) to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain such personal property (including office space and patents), or any interest therein, within and outside the continental United States, as the Under Secretary considers necessary;

(C) to lease to others such real and personal property and to provide by contract or otherwise for necessary facilities for the welfare of its employees and to acquire, maintain, and operate equipment for these facilities;

(D) to acquire services, including such personal services as the Secretary determines necessary, and to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain research and testing sites and facilities; and

(E) in cooperation with the Administrator of the Federal Aviation Administration, to utilize the research and development facilities of the Federal Aviation Administration.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(k) TRANSFERS OF FUNDS.—The Under Secretary is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred, on or after the date of enactment of the Aviation and Transportation Security Act, by law to the Under Secretary.

(l) REGULATIONS.—

(1) IN GENERAL.—The Under Secretary is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.

(2) EMERGENCY PROCEDURES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the Under Secretary determines that a regulation or security directive must be issued immediately in order to protect transportation security, the Under Secretary shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Under Secretary.

(3) FACTORS TO CONSIDER.—In determining whether to issue, rescind, or revise a regulation under this section, the Under Secretary shall consider, as a factor in the final determination, whether the costs of the regulation are excessive in relation to the enhancement of security the regulation will provide. The Under Secretary may waive requirements for an analysis that estimates the number of lives that will be saved by the regulation and the monetary value of such lives if the Under Secretary determines that it is not feasible to make such an estimate.

(4) AIRWORTHINESS OBJECTIONS BY FAA.—

(A) IN GENERAL.—The Under Secretary shall not take an aviation security action under this title if the Administrator of the Federal Aviation Administration notifies the Under Secretary that the action could adversely affect the airworthiness of an aircraft.

(B) REVIEW BY SECRETARY.—Notwithstanding subparagraph (A), the Under Secretary may take such an action, after receiving a notification concerning the action from the Administrator under subparagraph (A), if the Secretary of Transportation subsequently approves the action.

(m) PERSONNEL AND SERVICES; COOPERATION BY UNDER SECRETARY.—

(1) AUTHORITY OF UNDER SECRETARY.—In carrying out the functions of the Administration, the Under Secretary shall have the same authority as is provided to the Administrator of the Federal Aviation Administration under subsections (l) and (m) of section 106.

(2) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall have the same authority to provide services, supplies, equipment, personnel, and facilities to the Under Secretary as the 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) 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.

(p) 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.

(q) 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.

(r) 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.

(4) LIMITATIONS.—Nothing in this subsection, or any other provision of law, shall be construed to authorize the designation of information as sensitive security information (as defined in section 1520.5 of title 49, Code of Federal Regulations)—

(A) to conceal a violation of law, inefficiency, or administrative error;

(B) to prevent embarrassment to a person, organization, or agency;

(C) to restrain competition; or

(D) to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.

(s) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

(1) IN GENERAL.—The Secretary of Homeland Security shall develop, prepare, implement, and update, as needed—

(A) a National Strategy for Transportation Security; and

(B) transportation modal security plans addressing security risks, including threats, vulnerabilities, and consequences, for aviation, railroad, ferry, highway, maritime,

pipeline, public transportation, over-the-road bus, and other transportation infrastructure assets.

(2) **ROLE OF SECRETARY OF TRANSPORTATION.**—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in developing, revising, and updating the documents required by paragraph (1).

(3) **CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.**—The National Strategy for Transportation Security shall include the following:

(A) An identification and evaluation of the transportation assets in the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

(B) The development of risk-based priorities, based on risk assessments conducted or received by the Secretary of Homeland Security (including assessments conducted under the Implementing Recommendations of the 9/11 Commission Act of 2007¹ across all transportation modes and realistic deadlines for addressing security needs associated with those assets referred to in subparagraph (A).

(C) The most appropriate, practical, and cost-effective means of defending those assets against threats to their security.

(D) A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, local, and tribal authorities and establishes mechanisms for encouraging cooperation and participation by private sector entities, including non-profit employee labor organizations, in the implementation of such plan.

(E) A comprehensive delineation of prevention, response, and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States and threatened and executed acts of terrorism outside the United States to the extent such acts affect United States transportation systems.

(F) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets. Transportation security research and development projects shall be based, to the extent practicable, on such prioritization. Nothing in the preceding sentence shall be construed to require the termination of any research or development project initiated by the Secretary of Homeland Security or the Secretary of Transportation before the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(G) A 3- and 10-year budget for Federal transportation security programs that will achieve the priorities of the National Strategy for Transportation Security.

(H) Methods for linking the individual transportation modal security plans and the programs contained therein, and a plan for addressing the security needs of intermodal transportation.

(I) Transportation modal security plans described in paragraph (1)(B), including operational recovery plans to expedite, to the maximum extent practicable, the return to operation of an adversely affected transportation system following a major terrorist attack on that system or other incident. These plans shall be coordinated with the resumption of trade protocols required under section 202 of the SAFE Port Act (6 U.S.C. 942) and the National Maritime Transportation Security Plan required under section 70103(a) of title 46.

(4) **SUBMISSIONS OF PLANS TO CONGRESS.**—

(A) **INITIAL STRATEGY.**—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appropriate congressional committees not later than April 1, 2005.

(B) **SUBSEQUENT VERSIONS.**—After December 31, 2005, the Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

(C) **PERIODIC PROGRESS REPORT.**—

(i) **REQUIREMENT FOR REPORT.**—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security, including the transportation modal security plans.

(ii) **CONTENT.**—Each progress report submitted under this subparagraph shall include, at a minimum, the following:

(I) Recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal and intermodal security plans that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, considers appropriate.

(II) An accounting of all grants for transportation security, including grants and contracts for research and development, awarded by the Secretary of Homeland Security in the most recent fiscal year and a description of how such grants accomplished the goals of the National Strategy for Transportation Security.

¹ So in original. Probably should be followed by a closing parenthesis.

(III) An accounting of all—

(aa) funds requested in the President's budget submitted pursuant to section 1105 of title 31 for the most recent fiscal year for transportation security, by mode;

(bb) personnel working on transportation security by mode, including the number of contractors; and

(cc) information on the turnover in the previous year among senior staff of the Department of Homeland Security, including component agencies, working on transportation security issues. Such information shall include the number of employees who have permanently left the office, agency, or area in which they worked, and the amount of time that they worked for the Department.

(iii) WRITTEN EXPLANATION OF TRANSPORTATION SECURITY ACTIVITIES NOT DELINEATED IN THE NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—At the end of each fiscal year, the Secretary of Homeland Security shall submit to the appropriate congressional committees a written explanation of any Federal transportation security activity that is inconsistent with the National Strategy for Transportation Security, including the amount of funds to be expended for the activity and the number of personnel involved.

(D) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

(E) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Homeland Security and Governmental Affairs, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(5) PRIORITY STATUS.—

(A) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

(B) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;

(ii) the report required by section 44938 of this title;

(iii) transportation modal security plans required under this section;

(iv) the transportation sector specific plan required under Homeland Security Presidential Directive-7; and

(v) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

(6) COORDINATION.—In carrying out the responsibilities under this section, the Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall consult, as appropriate, with Federal, State, and local agencies, tribal governments, private sector entities (including nonprofit employee labor organizations), institutions of higher learning, and other entities.

(7) PLAN DISTRIBUTION.—The Secretary of Homeland Security shall make available and appropriately publicize an unclassified version of the National Strategy for Transportation Security, including its component transportation modal security plans, to Federal, State, regional, local and tribal authorities, transportation system owners or operators, private sector stakeholders, including nonprofit employee labor organizations representing transportation employees, institutions of higher learning, and other appropriate entities.

(u)² TRANSPORTATION SECURITY INFORMATION SHARING PLAN.—

(1) DEFINITIONS.—In this subsection:

(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” has the meaning given that term in subsection (t).³

(B) PLAN.—The term “Plan” means the Transportation Security Information Sharing Plan established under paragraph (2).

(C) PUBLIC AND PRIVATE STAKEHOLDERS.—The term “public and private stakeholders” means Federal, State, and local agencies, tribal governments, and appropriate private entities, including nonprofit employee labor organizations representing transportation employees.

(D) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(E) TRANSPORTATION SECURITY INFORMATION.—The term “transportation security information” means information relating to the risks to transportation modes, including aviation, public transportation, railroad, ferry, highway, maritime, pipeline, and over-the-road bus transportation, and may include specific and general intelligence products, as appropriate.

(2) ESTABLISHMENT OF PLAN.—The Secretary of Homeland Security, in consultation with the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), the Secretary of Transportation, and public and private stakeholders, shall establish a Transportation Security Information Sharing Plan. In establishing the Plan, the Secretary shall gather input on the development of the Plan

² So in original. There is no subsec. (t).

³ So in original. Probably should be “subsection (s).”

from private and public stakeholders and the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

(3) PURPOSE OF PLAN.—The Plan shall promote sharing of transportation security information between the Department of Homeland Security and public and private stakeholders.

(4) CONTENT OF PLAN.—The Plan shall include—

(A) a description of how intelligence analysts within the Department of Homeland Security will coordinate their activities within the Department and with other Federal, State, and local agencies, and tribal governments, including coordination with existing modal information sharing centers and the center described in section 1410 of the Implementing Recommendations of the 9/11 Commission Act of 2007;

(B) the establishment of a point of contact, which may be a single point of contact within the Department of Homeland Security, for each mode of transportation for the sharing of transportation security information with public and private stakeholders, including an explanation and justification to the appropriate congressional committees if the point of contact established pursuant to this subparagraph differs from the agency within the Department that has the primary authority, or has been delegated such authority by the Secretary, to regulate the security of that transportation mode;

(C) a reasonable deadline by which the Plan will be implemented; and

(D) a description of resource needs for fulfilling the Plan.

(5) COORDINATION WITH INFORMATION SHARING.—The Plan shall be—

(A) implemented in coordination, as appropriate, with the program manager for the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485); and

(B) consistent with the establishment of the information sharing environment and any policies, guidelines, procedures, instructions, or standards established by the President or the program manager for the implementation and management of the information sharing environment.

(6) REPORTS TO CONGRESS.—

(A) IN GENERAL.—Not later than 150 days after the date of enactment of this subsection, and annually thereafter, the Secretary shall submit to the appropriate congressional committees, a report containing the Plan.

(B) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall submit to the appropriate congressional committees a report on updates to and the implementation of the Plan.

(7) SURVEY AND REPORT.—

(A) IN GENERAL.—The Comptroller General of the United States shall conduct a biennial

survey of the satisfaction of recipients of transportation intelligence reports disseminated under the Plan.

(B) INFORMATION SOUGHT.—The survey conducted under subparagraph (A) shall seek information about the quality, speed, regularity, and classification of the transportation security information products disseminated by the Department of Homeland Security to public and private stakeholders.

(C) REPORT.—Not later than 1 year after the date of the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, and every even numbered year thereafter, the Comptroller General shall submit to the appropriate congressional committees, a report on the results of the survey conducted under subparagraph (A). The Comptroller General shall also provide a copy of the report to the Secretary.

(8) SECURITY CLEARANCES.—The Secretary shall, to the greatest extent practicable, take steps to expedite the security clearances needed for designated public and private stakeholders to receive and obtain access to classified information distributed under this section, as appropriate.

(9) CLASSIFICATION OF MATERIAL.—The Secretary, to the greatest extent practicable, shall provide designated public and private stakeholders with transportation security information in an unclassified format.

(v) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY.—

(1) APPLICATION OF SUBSECTION.—

(A) IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 701 of title 46 and under a provision of this title other than a provision of chapter 449 (in this subsection referred to as an “applicable provision of this title”).

(B) VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed and orders issued by the Secretary of Homeland Security under chapter 449 of this title are provided under chapter 463 of this title.

(C) NONAPPLICATION TO CERTAIN VIOLATIONS.—

(i) Paragraphs (2) through (5) do not apply to violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title—

(I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

(II) by a member of the armed forces of the United States when performing official duties; or

(III) by a civilian employee of the Department of Defense when performing official duties.

(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary’s designee.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under an applicable provision of this title.

(B) REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under an applicable provision of this title. The Secretary shall give written notice of the finding of a violation and the penalty.

(B) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary under this subsection, a court may not re-examine issues of liability or the amount of the penalty.

(C) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary under this subsection if—

(i) the amount in controversy is more than—

(I) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(II) \$50,000 if the violation was committed by an individual or small business concern;

(ii) the action is in rem or another action in rem based on the same violation has been brought; or

(iii) another action has been brought for an injunction based on the same violation.

(D) MAXIMUM PENALTY.—The maximum civil penalty the Secretary administratively may impose under this paragraph is—

(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) \$50,000, if the violation was committed by an individual or small business concern.

(E) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under this section the Secretary shall provide to the person against whom the penalty is to be imposed—

(i) written notice of the proposed penalty; and

(ii) the opportunity to request a hearing on the proposed penalty, if the Secretary receives the request not later than 30 days after the date on which the person receives notice.

(4) COMPROMISE AND SETOFF.—

(A) The Secretary may compromise the amount of a civil penalty imposed under this subsection.

(B) The Government may deduct the amount of a civil penalty imposed or com-

promised under this subsection from amounts it owes the person liable for the penalty.

(5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

(6) DEFINITIONS.—In this subsection:

(A) PERSON.—The term “person” does not include—

- (i) the United States Postal Service; or
- (ii) the Department of Defense.

(B) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

(7) ENFORCEMENT TRANSPARENCY.—

(A) IN GENERAL.—Not later than December 31, 2008, and annually thereafter, the Secretary shall—

(i) provide an annual summary to the public of all enforcement actions taken by the Secretary under this subsection; and

(ii) include in each such summary the docket number of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty.

(B) ELECTRONIC AVAILABILITY.—Each summary under this paragraph shall be made available to the public by electronic means.

(C) RELATIONSHIP TO THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT.—Nothing in this subsection shall be construed to require disclosure of information or records that are exempt from disclosure under sections 552 or 552a of title 5.

(D) ENFORCEMENT GUIDANCE.—Not later than 180 days after the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary shall provide a report to the public describing the enforcement process established under this subsection.

(w) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for—

(1) railroad security—

- (A) \$488,000,000 for fiscal year 2008;
- (B) \$483,000,000 for fiscal year 2009;
- (C) \$508,000,000 for fiscal year 2010; and
- (D) \$508,000,000 for fiscal year 2011;

(2) over-the-road bus and trucking security—

- (A) \$14,000,000 for fiscal year 2008;
- (B) \$27,000,000 for fiscal year 2009;
- (C) \$27,000,000 for fiscal year 2010; and
- (D) \$27,000,000 for fiscal year 2011; and

(3) hazardous material and pipeline security—

- (A) \$12,000,000 for fiscal year 2008;
- (B) \$12,000,000 for fiscal year 2009; and
- (C) \$12,000,000 for fiscal year 2010.

(Added Pub. L. 107–71, title I, §101(a), Nov. 19, 2001, 115 Stat. 597; amended Pub. L. 107–296, title

XVI, §1601(b), title XVII, §1707, Nov. 25, 2002, 116 Stat. 2312, 2318; Pub. L. 108-7, div. I, title III, §351(d), Feb. 20, 2003, 117 Stat. 420; Pub. L. 108-458, title IV, §4001(a), Dec. 17, 2004, 118 Stat. 3710; Pub. L. 110-53, title XII, §§1202, 1203(a), title XIII, §1302(a), title XV, §1503(a), Aug. 3, 2007, 121 Stat. 381, 383, 390, 425; Pub. L. 110-161, div. E, title V, §568(a), Dec. 26, 2007, 121 Stat. 2092; Pub. L. 111-83, title V, §561(c)(1), Oct. 28, 2009, 123 Stat. 2182.)

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. (o), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

The Aviation and Transportation Security Act, referred to in subsec. (r)(1), is Pub. L. 107-71, Nov. 19, 2001, 115 Stat. 597. 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.

The Implementing Recommendations of the 9/11 Commission Act of 2007, referred to in subsec. (s)(3)(B), is Pub. L. 110-53, Aug. 3, 2007, 121 Stat. 266. Section 1410 of the Act is classified to section 1139 of Title 6, Domestic Security. For complete classification of this Act to the Code, see Short Title of 2007 Amendment note set out under section 101 of Title 6 and Tables.

The date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007 and the date of enactment of this subsection, referred to in subsecs. (s)(3)(F), (u)(6), (7)(C), and (v)(7)(D), is the date of enactment of Pub. L. 110-53, which was approved Aug. 3, 2007.

AMENDMENTS

2009—Subsec. (r)(4). Pub. L. 111-83 added par. (4).

2007—Subsecs. (o) to (s). Pub. L. 110-161 redesignated subsecs. (p) to (s) as (o) to (r), respectively, and struck out former subsec. (o). Text of former subsec. (o) read as follows: “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.”

Subsec. (t). Pub. L. 110-161 redesignated subsec. (t) as (s).

Subsec. (t)(1)(B). Pub. L. 110-53, §1202(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “transportation modal security plans.”

Subsec. (t)(3)(B). Pub. L. 110-53, §1202(b)(1), inserted “, based on risk assessments conducted or received by the Secretary of Homeland Security (including assessments conducted under the Implementing Recommendations of the 9/11 Commission Act of 2007” after “risk-based priorities”.

Subsec. (t)(3)(D). Pub. L. 110-53, §1202(b)(2), substituted “local, and tribal” for “and local” and “cooperation and participation by private sector entities, including nonprofit employee labor organizations,” for “private sector cooperation and participation”.

Subsec. (t)(3)(E). Pub. L. 110-53, §1202(b)(3), substituted “prevention, response, and recovery” for “response and recovery” and inserted “and threatened and executed acts of terrorism outside the United States to the extent such acts affect United States transportation systems” before period at end.

Subsec. (t)(3)(F). Pub. L. 110-53, §1202(b)(4), inserted at end “Transportation security research and development projects shall be based, to the extent practicable, on such prioritization. Nothing in the preceding sentence shall be construed to require the termination of any research or development project initiated by the Secretary of Homeland Security or the Secretary of Transportation before the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.”

Subsec. (t)(3)(G) to (I). Pub. L. 110-53, §1202(b)(5), added subpars. (G) to (I).

Subsec. (t)(4)(C)(i). Pub. L. 110-53, §1202(c)(1)(A), inserted “, including the transportation modal security plans” before period at end.

Subsec. (t)(4)(C)(ii), (iii). Pub. L. 110-53, §1202(c)(1)(B), added cls. (ii) and (iii) and struck out former cl. (ii). Text of former cl. (ii) read as follows: “Each progress report under this subparagraph shall include, at a minimum, recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal security plans that the Secretary, in consultation with the Secretary of Transportation, considers appropriate.”

Subsec. (t)(4)(E). Pub. L. 110-53, §1202(c)(2), added subpar. (E) and struck out former subpar. (E). Text of former subpar. (E) read as follows: “In this subsection, the term ‘appropriate congressional committees’ means the Committee on Transportation and Infrastructure and the Select Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Homeland Security and Governmental Affairs of the Senate.”

Subsec. (t)(5)(B)(iv), (v). Pub. L. 110-53, §1202(d), added cl. (iv) and redesignated former cl. (iv) as (v).

Subsec. (t)(6), (7). Pub. L. 110-53, §1202(e), added pars. (6) and (7).

Subsec. (u). Pub. L. 110-53, §1203(a), added subsec. (u). Subsec. (v). Pub. L. 110-53, §1302(a), added subsec. (v). Subsec. (w). Pub. L. 110-53, §1503(a), added subsec. (w). 2004—Subsec. (t). Pub. L. 108-458 added subsec. (t).

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, §1707, inserted “for a period not to exceed 90 days” after “effective” and “ratified or” before “disapproved”.

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

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110-161, div. E, title V, §568(b), Dec. 26, 2007, 121 Stat. 2092, provided that: “The amendment made by subsection (a) [amending this section] shall take effect 180 days after the date of enactment of this Act [Dec. 26, 2007].”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-458, title IV, §4082, Dec. 17, 2004, 118 Stat. 3732, provided that: “This title [enacting section 44925 of this title, amending this section, sections 44903, 44904, 44909, 44917, 44923, 46301 to 46303, and 48301 of this title, and sections 70102 and 70103 of Title 46, Shipping, and enacting provisions set out as notes under sections 44703, 44901, 44913, 44917, 44923, 44925, and 44935 of this title, section 2751 of Title 22, Foreign Relations and Intercourse, and section 70101 of Title 46] shall take effect on the date of enactment of this Act [Dec. 17, 2004].”

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 Administra-

tion 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.

DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF
TITLE 51

General references to “this title” deemed to refer also to chapters 509 and 511 of Title 51, National and Commercial Space Programs, see section 4(d)(8) of Pub. L. 111-314, set out as a note under section 101 of this title.

SAFEGUARDING AND DISPOSAL OF PERSONAL INFORMATION OF REGISTERED TRAVELER PROGRAM PARTICIPANTS

Pub. L. 114-4, title V, §536, Mar. 4, 2015, 129 Stat. 67, provided that:

“(a) Any company that collects or retains personal information directly from any individual who participates in the Registered Traveler or successor program of the Transportation Security Administration shall hereafter safeguard and dispose of such information in accordance with the requirements in—

“(1) the National Institute for Standards and Technology Special Publication 800-30, entitled ‘Risk Management Guide for Information Technology Systems’;

“(2) the National Institute for Standards and Technology Special Publication 800-53, Revision 3, entitled ‘Recommended Security Controls for Federal Information Systems and Organizations’; and

“(3) any supplemental standards established by the Administrator of the Transportation Security Administration (referred to in this section as the ‘Administrator’).

“(b) The airport authority or air carrier operator that sponsors the company under the Registered Traveler program shall hereafter be known as the ‘Sponsoring Entity’.

“(c) The Administrator shall hereafter require any company covered by subsection (a) to provide, not later than 30 days after the date of enactment of this Act [Mar. 4, 2015], to the Sponsoring Entity written certification that the procedures used by the company to safeguard and dispose of information are in compliance with the requirements under subsection (a). Such certification shall include a description of the procedures used by the company to comply with such requirements.”

REGISTERED TRAVELER PROGRAMS AND BIOMETRICALLY-SECURE CARDS

Pub. L. 110-161, div. E, title V, §571, Dec. 26, 2007, 121 Stat. 2093, provided that: “Effective no later than ninety days after the date of enactment of this Act [Dec. 26, 2007], the Transportation Security Administration shall permit approved members of Registered Traveler programs to satisfy fully the required identity verification procedures at security screening checkpoints by presenting a biometrically-secure Registered Traveler card in lieu of the government-issued photo identification document required of non-participants: *Provided*, That if their identity is not confirmed biometrically, the standard identity and screening procedures will apply: *Provided further*, That if the Assistant Secretary (Transportation Security Administration) determines this is a threat to civil aviation, then the Assistant Secretary (Transportation Security Administration) shall notify the Committees on Appropriations of the Senate and House of Representatives five days in advance of such determination and require Registered Travelers to present government-issued photo identification documents in conjunction with a biometrically-secure Registered Traveler card.”

CONGRESSIONAL OVERSIGHT OF SECURITY ASSURANCE FOR PUBLIC AND PRIVATE STAKEHOLDERS

Pub. L. 110-53, title XII, §1203(b), Aug. 3, 2007, 121 Stat. 385, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary [of Homeland Security] shall provide a semiannual report to the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Homeland Security and the Committee on Transportation and Infrastructure of the House of Representatives that includes—

“(A) the number of public and private stakeholders who were provided with each report;

“(B) a description of the measures the Secretary has taken, under section 114(u)(7) of title 49, United States Code, as added by this section, or otherwise, to ensure proper treatment and security for any classified information to be shared with the public and private stakeholders under the Plan; and

“(C) an explanation of the reason for the denial of transportation security information to any stakeholder who had previously received such information.

“(2) NO REPORT REQUIRED IF NO CHANGES IN STAKEHOLDERS.—The Secretary is not required to provide a semiannual report under paragraph (1) if no stakeholders have been added to or removed from the group of persons with whom transportation security information is shared under the plan since the end of the period covered by the last preceding semiannual report.”

SPECIALIZED TRAINING

Pub. L. 110-53, title XVI, §1611, Aug. 3, 2007, 121 Stat. 485, provided that: “The Administrator of the Transportation Security Administration shall provide advanced training to transportation security officers for the development of specialized security skills, including behavior observation and analysis, explosives detection, and document examination, in order to enhance the effectiveness of layered transportation security measures.”

INAPPLICABILITY OF PERSONNEL LIMITATIONS AFTER FISCAL YEAR 2007

Pub. L. 110-53, title XVI, §1612, Aug. 3, 2007, 121 Stat. 485, provided that:

“(a) IN GENERAL.—Notwithstanding any provision of law, any statutory limitation on the number of employees in the Transportation Security Administration, before or after its transfer to the Department of Homeland Security from the Department of Transportation, does not apply after fiscal year 2007.

“(b) AVIATION SECURITY.—Notwithstanding any provision of law imposing a limitation on the recruiting or hiring of personnel into the Transportation Security Administration to a maximum number of permanent positions, the Secretary of Homeland Security shall recruit and hire such personnel into the Administration as may be necessary—

“(1) to provide appropriate levels of aviation security; and

“(2) to accomplish that goal in such a manner that the average aviation security-related delay experienced by airline passengers is reduced to a level of less than 10 minutes.”

LEASE OF PROPERTY TO TRANSPORTATION SECURITY ADMINISTRATION EMPLOYEES

Pub. L. 109-90, title V, §514, Oct. 18, 2005, 119 Stat. 2084, provided that: “Notwithstanding section 3302 of title 31, United States Code, for fiscal year 2006 and thereafter, the Administrator of the Transportation Security Administration may impose a reasonable charge for the lease of real and personal property to Transportation Security Administration employees and for use by Transportation Security Administration employees and may credit amounts received to the appropriation or fund initially charged for operating and maintaining

the property, which amounts shall be available, without fiscal year limitation, for expenditure for property management, operation, protection, construction, repair, alteration, and related activities.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108-334, title V, §516, Oct. 18, 2004, 118 Stat. 1318.

ACQUISITION MANAGEMENT SYSTEM OF THE
TRANSPORTATION SECURITY ADMINISTRATION

Pub. L. 109-90, title V, §515, Oct. 18, 2005, 119 Stat. 2084, provided that: “For fiscal year 2006 and thereafter, the acquisition management system of the Transportation Security Administration shall apply to the acquisition of services, as well as equipment, supplies, and materials.”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 108-334, title V, §517, Oct. 18, 2004, 118 Stat. 1318.

REGISTERED TRAVELER PROGRAM FEE

Pub. L. 109-90, title V, §540, Oct. 18, 2005, 119 Stat. 2088, provided that: “For fiscal year 2006 and thereafter, notwithstanding section 553 of title 5, United States Code, the Secretary of Homeland Security shall impose a fee for any registered traveler program undertaken by the Department of Homeland Security by notice in the Federal Register, and may modify the fee from time to time by notice in the Federal Register: *Provided*, That such fees shall not exceed the aggregate costs associated with the program and shall be credited to the Transportation Security Administration registered traveler fee account, to be available until expended.”

ENHANCED SECURITY MEASURES

Pub. L. 107-71, title I, §109, Nov. 19, 2001, 115 Stat. 613, as amended by Pub. L. 107-296, title XIV, §1403(b), Nov. 25, 2002, 116 Stat. 2306, provided that:

“(a) IN GENERAL.—The Under Secretary of Transportation for Security may take the following actions:

“(1) Require effective 911 emergency call capability for telephones serving passenger aircraft and passenger trains.

“(2) Establish a uniform system of identification for all State and local law enforcement personnel for use in obtaining permission to carry weapons in aircraft cabins and in obtaining access to a secured area of an airport, if otherwise authorized to carry such weapons.

“(3) Establish requirements to implement trusted passenger programs and use available technologies to expedite the security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.

“(4) In consultation with the Commissioner of the Food and Drug Administration, develop alternative security procedures under which a medical product to be transported on a flight of an air carrier would not be subject to an inspection that would irreversibly damage the product.

“(5) Provide for the use of technologies, including wireless and wire line data technologies, to enable the private and secure communication of threats to aid in the screening of passengers and other individuals on airport property who are identified on any State or Federal security-related data base for the purpose of having an integrated response coordination of various authorized airport security forces.

“(6) In consultation with the Administrator of the Federal Aviation Administration, consider whether to require all pilot licenses to incorporate a photograph of the license holder and appropriate biometric imprints.

“(7) Provide for the use of voice stress analysis, biometric, or other technologies to prevent a person who

might pose a danger to air safety or security from boarding the aircraft of an air carrier or foreign air carrier in air transportation or intrastate air transportation.

“(8) Provide for the use of technology that will permit enhanced instant communications and information between airborne passenger aircraft and appropriate individuals or facilities on the ground.

“(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.

“(b) REPORT.—Not later than 6 months after the date of enactment of this Act [Nov. 19, 2001], and annually thereafter until the Under Secretary has implemented or decided not to take each of the actions specified in subsection (a), the Under Secretary shall transmit to Congress a report on the progress of the Under Secretary in evaluating and taking such actions, including any legislative recommendations that the Under Secretary may have for enhancing transportation security.”

[For definitions of terms used in section 109 of Pub. L. 107-71, set out above, see section 133 of Pub. L. 107-71, set out as a note under section 40102 of this title.]

§ 115. Transportation Security Oversight Board

(a) IN GENERAL.—There is established in the Department of Homeland Security a board to be known as the “Transportation Security Oversight Board”.

(b) MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Board shall be composed of 7 members as follows:

(A) The Secretary of Homeland Security, or the Secretary’s designee.

(B) The Secretary of Transportation, or the Secretary’s designee.

(C) The Attorney General, or the Attorney General’s designee.

(D) The Secretary of Defense, or the Secretary’s designee.

(E) The Secretary of the Treasury, or the Secretary’s designee.

(F) The Director of National Intelligence, or the Director’s designee.

(G) One member appointed by the President to represent the National Security Council.

(2) CHAIRPERSON.—The Chairperson of the Board shall be the Secretary of Homeland Security.

(c) DUTIES.—The Board shall—

(1) review and ratify or disapprove any regulation or security directive issued by the Under Secretary of Transportation for security¹ under section 114(l)(2) within 30 days after the date of issuance of such regulation or directive;

(2) facilitate the coordination of intelligence, security, and law enforcement activities affecting transportation;

(3) facilitate the sharing of intelligence, security, and law enforcement information affecting transportation among Federal agencies and with carriers and other transportation providers as appropriate;

(4) explore the technical feasibility of developing a common database of individuals who may pose a threat to transportation or national security;

¹ So in original. Probably should be capitalized.