

§ 114. Transportation Security Administration

How Current is This?

(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 Secretary 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) 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.

(t) 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.

(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 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, and local authorities and establishes mechanisms for encouraging private sector cooperation and participation in the implementation of such plan.

(E) A comprehensive delineation of response and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States.

(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.

(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.

(ii) Content.— 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.

(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 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.

(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; and

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