AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Calendar No. 623

107th Congress
2d Session

SENATE

REPORT
107–293

AVIATION SECURITY IMPROVEMENT ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2949

SEPTEMBER 30, 2002.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
99–010 WASHINGTON : 2002

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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(II)

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

R E P O R T

[To accompany S. 2949]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2949) to provide for enhanced aviation security, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

On September 11, 2001, terrorists used United States commercial aircraft as guided missiles, killing thousands of innocent victims in New York, Washington, D.C., and Pennsylvania. The unprecedented attacks led to passage of the Aviation and Transportation Security Act (ATSA, P.L. 107-71, November 19, 2001). President Bush signed the legislation after two months of debate between the Senate and the House of Representatives over the issue of the responsibilities of the Federal government to provide security for the Nation's aviation system. Ultimately, Congress placed primary responsibility for aviation security with the Federal government.

S. 2949 is intended to address a number of issues that have arisen since the passage of ATSA, including the ability of the Transportation Security Administration (TSA) to complete its formidable task of installing explosive detection systems (EDS) at airports and ensuring that carriers have available, for the short term, war risk insurance coverage. The bill also makes technical corrections to ATSA.

Since enactment of ATSA, the newly created TSA has struggled to meet aggressive Congressional deadlines to hire, train, and deploy more than 30,000 Federal security screeners (by November 18,

2002), and thousands of air marshals, and to install new EDS by December 31, 2002. Admiral Loy (Ret.), the Acting Under Secretary of Transportation for Security, testified before the Senate Committee on Commerce, Science, and Transportation (the Committee) on September 10, 2002, that TSA would hire 32,000 screeners by mid-September and anticipated meeting the November 18 deadline. With respect to the December 31, 2002, EDS deadline, Admiral Loy noted that more than 90 percent of the airports would be ready although a few airports would need additional time.

BACKGROUND AND NEEDS

The bill contains elements of several introduced bills referred to the Committee, including the following: S. 1794, the Airport Checkpoint Enhancement Act (Senator Cleland); S. 1980, regarding detection of false identification (Senator Boxer); S. 2656, regarding air cargo security (Senator Snowe); S. 2668, regarding cargo security (Senator Hutchison); S. 2735, the Aviation Security Enhancement Act of 2002 (Senator Ensign); and S. 2642, regarding flight school training (Senator Nelson of Florida).

I. BACKGROUND

On November 16, 2001, Congress passed ATSA in response to the terrorist attacks on September 11. The Act, which was signed into law on November 19, implemented a new regime for aviation security and created the TSA within the Department of Transportation (DOT) to oversee security for all modes of transportation. ATSA includes numerous provisions and deadlines intended or designed to increase aviation security.

II. SCREENING OF CHECKED BAGS

ATSA sets forth numerous deadlines for DOT and TSA to meet in an effort to continually improve aviation security. One of the first significant deadlines involved the screening of all checked bags by January 18, 2002, which was 60 days after enactment of the new law.

To meet this deadline, TSA required continuous use of certified bulk EDS [1] to screen checked bags at those airports where EDS are located, and ensured the use of positive passenger bag match [2] for checked baggage screening at those airports where EDS is currently unavailable. Also, as before September 11, the bags of passengers selected by CAPPS [3] will continue to be screened by EDS. ATSA provided other security improvements as well, including

[1] The term EDS commonly refers to Federal Aviation Administration-certified EDSs, which are essentially complex X-ray machines. The most widely deployed EDS machine uses computer tomography technology, much like a medical CAT scan, to take numerous cross-sectional images of a bag. Unlike normal X-ray machines that are used to examine carry-on bags, EDSs are designed to detect threats automatically, without human analysis or intervention. EDS machines are about the size and weight of a sport utility vehicle.

[2] To protect against bombings by terrorists unwilling to commit suicide, the positive passenger-bag matching procedure matches passengers with their checked bags, and bags whose owners do not actually board the aircraft are removed before takeoff. Before this year, this procedure was used primarily on international flights.

[3] Airlines use a computer program, known as the Computer Assisted Passenger Prescreening System (CAPPS), to select those passengers who pose the greatest risk and whose baggage should be subject to a more rigorous inspection. Because most passengers do not fit the computer profile, most checked baggage is not subject to examination by an EDS.

greater use of explosive trace detection systems (ETD)[4] on checked baggage, more use of explosive detection canine teams, and physical inspection of some checked bags.

When bag-match is the method used to screen checked bags under guidelines issued by DOT, it is only being done on originating flights, not on connecting flights. This has raised the concerns of some that bag-match must be done on each segment of a trip if it is to be an effective deterrent. DOT estimates that about 70 percent of all bags fly directly to their destination, while 30 percent make a connection. It is this 30 percent of baggage that appears to potentially pose a risk under the DOT's guidelines. The airlines contend that if bag matching requirements are extended to connecting bags, the system will slow down significantly each time an airline employee has to climb inside a cargo hold and remove a bag because the passenger did not board the connecting flight. TSA is currently using a pilot program to test the feasibility of requiring bag match on connecting flights. Information provided by Professor Barrett, of the Massachusetts Institute of Technology, suggests that passenger bag match can be improved.

In addition to the January 18 deadline, ATSA established another firm deadline regarding the screening of all checked baggage. By December 31, 2002, the Under Secretary of Transportation for Security is required to take all necessary action to ensure that EDS are deployed at 429 United States airports in sufficient numbers to screen all checked baggage. On May 18, 2002, TSA issued a statutorily-mandated report to the congressional authorizing committees on the deployment of systems to detect explosives pursuant to ATSA.

The May 18 report included a general installation schedule. In order to meet the end-of-the-year deadline, DOT has decided to use a mix of the EDS machines and ETD equipment. At some airports, ETD devices will be the only ones used, while a combination of EDS and ETD will be used at other airports. About three-quarters of airports would use ETDs exclusively.

On June 7, TSA entered into a contract with Boeing to conduct site surveys and to install the EDS/ETD equipment at all of the 429 airports.

As of the end of September 2002, 140 EDS machines and 789 ETD devices were deployed at airports throughout the country. For fiscal year (FY) 2002, DOT has requested additional funds to purchase a significant amount of additional equipment: 1,100 EDS units and 5,373 ETD units (1,100 of which will be used in conjunction with the EDS units). Many, if not most, of the EDS machines will be installed in airport lobbies because it is not possible to integrate them into the hundreds of different baggage handling systems by the end of the year. Ultimately, TSA plans to have such equipment integrated into baggage handling systems, but it may take many years and cost a significant amount of money. Given the large size and weight of EDSs, even airport lobby installations at some airports can be problematic.

[4] ETD devices can detect the presence of explosive materials in a passenger's checked or carry-on bags. Using ETD equipment, a screener swabs baggage and puts the results through a machine that looks for the residue of certain chemicals that remain on a bag for an extended period of time. ETD machines are much smaller and lighter than EDSs.

According to DOT Secretary Mineta, the decision to use ETD equipment was based on balancing limited financial resources to meet the statutory mandate. That decision was the result of negotiations between DOT and the Office of Management and Budget and hinged, in part, on the fact that each EDS machine costs approximately $1.1 million (including installation) and thousands would be needed to cover all 429 airports. Some are concerned that smaller, rural airports, which are not as likely to get EDS machines, will be affected significantly as people decide to forgo the new security-related hassles involved with flying and choose to drive unless there is a dignified, secure way to have bags opened for ETD swabbing. The decision to use ETD's also drives the number of employees needed higher, as the baggage throughput rate for EDS is higher than for ETD's-it takes approximately three ETDs to equal the throughput of the automated EDS machines.

At the September 10 hearing, Admiral Loy acknowledged that TSA would not be able to meet the deadline at a small number of airports-fewer than 10 percent of the 429 airports covered by the law. In many of those cases, it would not be physically possible in the time remaining to install EDS equipment without severe disruptions of airport operations. He did note that those airports that may miss the deadline serve a significant majority of airline passengers. In other words, the relatively small number of airports where the deadline cannot be met account for most of the passenger traffic. Admiral Loy stated that he did not support a wholesale delay in the December 31 deadline. Instead, he said that TSA would work with those airports that needed a modest amount of additional time to meet the requirements of the law. In the interim, bags will be screened by one of the alternate means already provided for in the law.[5]

B. AIR CARGO SECURITY

With respect to cargo that is transported by air, ATSA contained two key provisions. The first dealt with passenger aircraft and required that TSA provide for the screening of all cargo and mail that will be carried aboard such aircraft. Although ATSA requires all checked bags to be screened by EDS by December 31, 2002, no timetable was specified for screening cargo, nor was there a definition of screening provided. The second provision required that a system must be in operation to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft as soon as practicable after the date of enactment of ATSA.

Almost all passenger flights carry cargo alongside luggage in the belly of the plane. It can be anything from pallets of computer chips to refrigerated cartons of chicken. According to Federal Aviation Administration (FAA) estimates, approximately 22 percent of all air cargo loaded in the United States in 2000 was carried on passenger flights.

[5] ATSA requires that "if explosive detection equipment at an airport is unavailable, all checked baggage is screened by an alternative means." The law listed the following four possible alternative means for the screening of checked baggage: (1) a positive passenger bag match program; (2) manual search, which involves opening the bag and searching through it by hand; (3) search by canine explosive detection units (i.e., bomb sniffing dogs) in combination with other means; or (4) other means or technology approved by the Under Secretary for Transportation Security.

1. ACTIVITY BEFORE SEPTEMBER 11

The air-cargo system involves numerous participants and all require some level of security oversight. Typically, a shipper takes packages to an indirect air carrier (IAC, also known as a freight forwarder), who consolidates packages from many shippers into containers. The IAC then uses trucks, either its own or hired, to deliver the bulk freight to air carriers for transport.

Before last year's attack, the FAA was generally responsible for oversight of civil aviation security. Much of the focus of regulation and oversight was on cargo carried aboard passenger aircraft. There were few security measures applicable to items carried on all-cargo aircraft.

Front-line responsibility for screening cargo fell on two groups: air carriers and IACs. (An IAC is defined as any person or entity, excluding an air carrier, that engages indirectly in the transportation of property by air, and uses the services of a passenger air carrier. This does not include the United States Postal Service.) Both were required to adopt and carry out FAA-approved security programs.

The key element of cargo security before last year was the Known Shipper Program. A known shipper is essentially one that has an established reputation. This program allowed an air carrier or IAC to transport a package with no more screening than an examination of its exterior. Packages from unknown shippers would be screened by X-ray or physically inspected before being placed aboard a passenger aircraft.

Before September 11, the DOT Inspector General (IG) had been conducting tests of cargo security. The IG found that air carriers and IACs were not always complying with the FAA's known shipper program, and the FAA had not developed and implemented an adequate policy or oversight system to ensure compliance.

2. ACTIONS SINCE SEPTEMBER 11

ATSA placed responsibility for virtually all aviation security matters, including air cargo, under the jurisdiction of TSA. But prior to the enactment of ATSA, a number of important changes were implemented after September 11 regarding the shipment of cargo on passenger air carriers. One of the main changes is that only cargo from known shippers is accepted on passenger air carriers. All cargo from unknown shippers and mail weighing more than 16 ounces is being diverted to all-cargo air carriers until further notice.

The continuation of the Known Shipper Program is TSA's primary means of compliance with ATSA screening mandates. According to the agency, it has strengthened the process through which a shipper becomes "known."

Many of the other changes implemented by TSA are sensitive or classified information.

3. AIR CARGO ISSUES AND CONCERNS

One of the key problems with any attempt to examine all cargo on passenger aircraft at this time is that any type of physical inspection or electronic screening would be extremely difficult to carry out-technology limitations, cost, and time factors all are prob-

lematic because the size and nature of air cargo can vary widely. According to one media report, TSA computer models have determined that breaking down all cargo containers, inspecting, and reassembling them would allow airports to process only 4 percent of the freight they receive daily.

The IG has expressed some concerns that TSA's cargo security program continues to rely on the Known Shipper Program, which has weaknesses, and that little cargo is actually screened. The IG believes that TSA must reevaluate its program to determine whether current procedures should be retained, identify new principles and controls that should be added, and develop a strategic plan to screen all cargo. In addition, the IG advocates a requirement that a provider of cargo transportation lose its certification when TSA inspections and testing have continuously found the provider in noncompliance with cargo security requirements.

LEGISLATIVE HISTORY

S. 2949 was introduced on September 17 by Senator Hollings. It was co-sponsored by Senators McCain, Rockefeller, Hutchison, Boxer, Kerry, and Reid. Since the beginning of the year, the Committee has held 6 hearings on aviation security issues. The 2 most recent hearings focused on the issues of (1) TSA's ability to meet the year-end deadline for deployment of EDS (held September 10), and (2) air cargo security (held September 17). Both of these topics are addressed in the legislation. The bill also includes a technical amendment (Senators Hollings and McCain), as well as amendments regarding flight restrictions (Senator Breaux), flight schools (Senator Nelson of Florida), and reports (Senator Hutchison).

ESTIMATED COSTS

In compliance with subsection (a)(3) of paragraph 11 of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion, it is necessary to dispense with the requirements of paragraphs (1) and (2) of that subsection in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

The requirements of S. 2949 involve actions that the Federal government and aviation entities currently participate in on a routine basis, and should produce limited additional regulatory impact on related industries or burden on the government. The legislation would have minimal effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and businesses.

NUMBER OF PERSONS COVERED

S. 2949 is intended to improve aviation security by making technical corrections and other modifications to P.L. 107-71, the Aviation and Transportation Security Act (ATSA). The bill affects TSA and other entities already subject to FAA rules and regulations,

and therefore the number of persons covered should be consistent with the current levels of individuals impacted under the provisions that are addressed in the bill.

ECONOMIC IMPACT

S. 2949 is not expected to have an adverse impact on the nation's economy. A few provisions in the bill are expected to have a more substantial economic effect than the rest of the legislation. Title I of the legislation would provide some flexibility for TSA regarding the deployment of EDSs at all commercial airports in the United States, and, rather than requiring potentially expensive interim solutions, would allow for techniques that maintain customer service while the process of implementing more efficient security systems continues. Title V would improve the availability and coverage of war risk insurance for aviation entities, a matter that is very significant to air carriers as their insurance rates have risen by hundreds of millions of dollars since September 11, 2001. It is anticipated that both Title I and Title V would have positive economic impacts to their respective areas, and should provide significant support to the aviation industry. Title II addresses cargo security and would authorize the necessary funding to establish a system that ensures all air cargo is secure by requiring TSA and the air cargo industry to take steps to protect the system. Title II requires a review and comment period for air carriers to assess proposed security plans which should limit the negative economic impact of this provision to the industry. S. 2949 also has a number of additional requirements that are designed to strengthen existing security measures, but should have a limited impact in regard to cost.

PRIVACY

S. 2949 would have minimal effect on the privacy rights of individuals, but a provision on identification training raises the issue of a person proving their identity, potentially with the aid of technology. The use of biometrics and other identifiers raise a number of questions that need to be addressed by TSA to ensure that the privacy rights of individuals are protected. Additionally, air cargo and facilities may be subject to random searches to ensure the security of the operations.

Technical corrections that address the eligibility of non-citizens to be screeners would increase the number of persons who must undergo voluntary background checks, but also would provide the individuals a benefit by expanding employment opportunities. The bill also seeks to protect the privacy rights of persons needing background checks for unescorted access to secure areas of an airport by requiring TSA to formulate and implement procedures to prevent the transmission of non-relevant information about an applicant or employee to the existing or potential employer.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens resulting from the passage of this legislation. In those areas where the bill does require additional paperwork, it is aimed at improving the security of the national air transportation system. S. 2949 would require plans from TSA for addressing EDS

deployment at those airports that do not have the system properly in place by the December 31, 2002, deadline, and approved security plans for every shipper of cargo and their organization. The bill also would require the establishment of a database to improve the system by which known shippers of cargo are identified, and would require reports to Congress on several security matters addressed by other provisions.

SECTION-BY-SECTION ANALYSIS

TITLE I—EXPLOSIVE DETECTION SYSTEMS

This title is based, in part, on S. 2735 introduced by Senator Ensign. This title would allow TSA to determine whether the agency will not be able to meet the December 31 deadline for the deployment of EDS equipment at particular airports. If such a determination is made, TSA would be required to (1) report to the congressional authorizing committees on a detailed plan to deploy EDS equipment at each airport where the deadline will be missed and (2) take all necessary action to ensure that alternate means of screening checked bags are used in the meantime. TSA's decision to extend the installation schedule requires a plan to install the equipment based on engineering, design, and construction issues and take into account the effectiveness of the modifications, and the feasibility and value of placing EDS in areas other than the airport lobby. Further, TSA could make such determinations at no more than 40 airports. Affected airports would be required to cooperate fully with TSA in its efforts to deploy equipment. Such airports also would be required to use their Airport Improvement Program (AIP) and Passenger Facility Charges (PFCs) on security projects, to the extent such funds are available and not committed for other projects. TSA would provide the congressional authorizing committees with progress reports for each affected airport every 30 days. No more than 12 reports could be submitted for each airport. Although up to 12 reports my be submitted, the Committee reiterates its expectation that TSA and the affected airports work as quickly as possible to meet the statutory deadline. This bill does not grant an extension to the congressionally mandated deadline; it gives TSA the flexibility to work beyond that time frame in certain situations. It is important to the security of the traveling public that 100 percent baggabe screening be implemented as soon as possible.

TITLE II—AIR CARGO SECURITY

This title is based, in part, on air cargo security bills introduced by Senators Snowe (S. 2656) and Hutchison (S. 2668). This title would take several steps to improve the security of air cargo, particularly that which is carried aboard passenger aircraft. TSA would be required to develop a strategic plan to ensure that all air cargo is screened, inspected, or otherwise made secure. TSA would be required to develop a system for the regular inspection of air cargo shipping facilities. A pilot program database would be established of known shippers in order to bolster the Known Shipper Program. IACs could have their certificates revoked if TSA finds that they are not adhering to security laws or regulations. The existing Federal security program for IACs would be reviewed and as-

sessed for possible improvements. TSA would develop a security training program for persons who handle air cargo. All-cargo carriers would be required to develop security plans that would be subject to approval by TSA. The Committee is taking these actions in response to recommendations by the DOT Inspector General, General Accounting Office and TSA.

TITLE III—IDENTIFICATION TRAINING

This title is based on S. 1980, a bill introduced by Senator Boxer. This title would require TSA to develop protocols to provide guidance for the detection of false or fraudulent passenger identification (ID). TSA would establish a joint government and industry council to develop recommendations on the implementation of the protocols. TSA would be allowed to implement a program requiring the use of identification verification technologies at commercial airports. The Committee is concerned about recent reports that false IDs are being used at airports and believes TSA should study this issue carefully to consider alternative ways to ensure the accuracy of passenger ID.

TITLE IV—CIRCUMVENTION OF AIRPORT SECURITY

This title contains the text of a bill introduced by Senator Cleland, S. 1794, the Airport Checkpoint Enhancement Act. This title would establish criminal penalties for individuals who intentionally circumvent security checkpoints at commercial airports. The penalties would include imprisonment for up to 10 years or a fine as prescribed by Title 18 of the United States Code, or both. In Georgia, for example, an individual who willfully violates the secure area of an airport, prior to this bill, is only subject to a misdemeanor, which carries a maximum penalty involving a civil fine up to $1,100 and a year in jail.

TITLE V—WAR RISK INSURANCE

This title would provide for a nine-month extension of the FAA's current war risk policies. In addition, this title would expand existing coverage and allow the FAA to provide passenger and hull insurance for the next nine months. This would provide temporary relief to the airlines as they continue to work toward a risk sharing, self-insurance solution. DOT would report to Congress on issues associated with war risk insurance.

Existing law establishes a "war risk" insurance program within the FAA. The program has been invoked several times since it was established in 1951 (e.g., Gulf War) and is currently in use today. Under the program, the carriers are able to purchase insurance for war risk coverage through the FAA.

War risk coverage is required by loan and lease covenants from aircraft lessors, and the financial institutions. Prior to September 11, such coverage was very inexpensive, and in cases where aircraft were put in harms way, the FAA was able to provide coverage. After September 11, insurance carriers canceled such coverage. Some claim the coverage is commercially available today, but it should be pointed out that, according to some estimates, $1 billion of coverage costs $1.4 billion.

One low-fare carrier has stated that its costs have gone up about 13,000 percent from about $737,000 per year to $107 million per year ($7 million for third party liability, $4 million for hull, and $96 million for passenger and crew coverage insurance). Aviation insurance generally includes hull, passenger, crew, and third party coverage (persons/property on the ground, for example). The FAA today is offering only third party coverage, and for only 60 days at a time. The FAA has authority, however, to extend coverage for up to 1 year (under ATSA, the extension period was changed from 60 days to 1 year, but DOT/FAA has only extended it for 60 days at a time).

Currently, carriers obtain third party coverage for the first $50 million from the private sector, and the FAA provides coverage at two times the amount the carrier had on September 10, 2001. Carriers pay a fee per passenger to the FAA.

The Committee is cognizant of the financial difficulties facing the airline industry. This section is intended to relieve, in the short, but finite, term, a financial burden the industry now faces. The provision provides coverage for 270 days to provide short-term assistance. Ultimately, the Committee expects that the industry will develop their own alternative plans or be able to return to the private markets. The title thus requires DOT to submit a report on such alternatives.

TITLE VI—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

This title provides that, within 9 months of enactment, TSA would report to Congress on an evaluation of the use of blast-resistant cargo containers to protect against explosives in passenger luggage and cargo. If TSA determines that further actions are needed, the report would provide appropriate recommendations. The Committee is aware that a number of manufacturers of blast resistant technology have been reviewed by TSA and the FAA, but a number of issues remain to be addressed.

TITLE VII—FLIGHT SCHOOLS

This title would amend section 44939 of title 49 (section 113 of ATSA) regarding background checks of persons seeking training at United States flight schools. Under ATSA, aliens seeking such training for aircraft over 12,500 pounds are subject to background checks under procedures proposed by the Department of Justice (DOJ). The Committee is aware that DOJ has not yet issued procedures to implement section 113; as a result, this section requires DOJ to issue such procedures within 30 days of enactment.

This title would extend the original provisions of section 113 to all aliens seeking flight school training. As a result, aliens seeking training on small aircraft would be subject to such screening. The screening requirements do not apply to an alien who already has earned an FAA-type rating, or who already holds a commercial pilot's license. The provision also limits any training prior to a background check to only ground training.

The use of overseas Embassies and Consulates to transmit fingerprints, where capable, is also required.

The title would also require DOJ to implement the new requirements within 120 days for aliens seeking flight training on small aircraft.

TITLE VIII—MISCELLANEOUS

Section 801 would require TSA to act expeditiously on applications pending that seek approval for authority to use less-than-lethal weapons by flight crews. The Committee is aware that the Administration has expressed substantial reservations about the use of lethal weapons by pilots, and under ATSA, TSA was given authority to determine if the use of lethal, non-lethal, or other actions, would enhance security. One carrier has filed an application for approval of less-than-lethal force, and it has been pending for over nine months at TSA. The Committee provision does not seek approval or disapproval, but rather seeks a decision from TSA on the issue.

Section 802 would require DOT to maintain the flight restrictions imposed under FAA Notices to Airman (FDC1/3353 and 2/9583, including any local notices to Airmen of similar effect or import) for 6 months. The current ban includes stadiums and large open air venues. During the 6 month time period, DOT is directed to establish waiver/exemption procedures. During the 6 month ban the FAA is allowed to grant waivers and restrictions necessary for air traffic control operational purposes. The Committee expects that such authority includes emergency flights and flights necessary for law enforcement purposes.

TITLE IX—TECHNICAL CORRECTIONS

Section 901 includes technical corrections that range from typographical corrections to changes needed to clarify or effectuate the intention of particular provisions in ATSA. Unless otherwise indicated, all references are to title 49, United States Code.

Subsection (a).—49 U.S.C. 114(j) sets forth acquisition authorities of the Under Secretary of Transportation for Security (Under Secretary) but in paragraph (1)(D), incorrectly refers to the Secretary of Transportation rather than the Under Secretary. This subsection would correct the reference.

Subsection (b).—49 U.S.C. 115 establishes the Transportation Security Oversight Board (TSOB) and assigns it duties, including the duty to review "emergency regulations and security directives" issued by TSA without notice and comment by the public. However, the scope of review specified by section 115(c)(1) ("review and ratify or disapprove") burdens the TSOB with taking an action in each case. It is also inconsistent with the underlying emergency authority at 49 U.S.C. 114(l)(2), which provides "[a]ny regulation or security directive issued under this paragraph shall remain effective unless disapproved by the Board or rescinded by the Under Secretary." This subsection would provide the TSOB with review authority that only necessitates action in the case of a disapproval.

Subsection (c).—This subsectin would delete a superseded reference to chapter 449 from a listing of FAA authorities because every section of the chapter except 44918 has been transferred to TSA.

Subsection (d).—Under 44901(a) (Screening of passengers and property carried aboard passenger aircraft), all screening must be carried out by Federal government employees starting on November 19, 2002, except for identifying passengers and baggage for screening under the CAPPS and known shipper programs. Under

this provision, the term "Federal government employee" is defined by reference to 5 U.S.C. 2105, which excludes employees of the United States Postal Service. The exclusion of Postal Service employees as potential Federal screeners precludes TSA and the Postal Service from pursuing the possibility of having United States mail carried aboard passenger flights screened by postal employees (in accordance with standards and procedures established by TSA). As TSA considers options for ensuring that such mail is screened, the involvement of the Postal Service may be part of the solution. Moreover, Postal Service employees are already Federal employees for a number of purposes and they perform a Federal function. Therefore, the inclusion of Postal Service employees as eligible screeners for United States mail aligns with the intent of Congress in assigning the screening function to Federal employees. Therefore, this subsection would specify that, for purposes of section 44901(a), United States mail carried aboard passenger aircraft may be screened by employees and officers of the Postal Service.

Subsections (e) and (f).—These subsections would correct in one case, and delete in another, incorrect cross-references in 49 U.S.C. 44901(e) and (g).

Subsection (g).—Among other things, section 44903 mandates establishment of 20 or more pilot programs for testing and evaluation of airport secure-area access-control technologies but, in subsection (c)(3), incorrectly refers to the FAA Administrator rather than the Under Secretary. This subsection corrects the reference. Also, the ATSA added 3 provisions to 49 U.S.C. 44903 as "subsection (h)." Items (2) and (3) of this subsection would redesignate 2 of the 3 subsections.

Subsection (h).—This subsection would clarify that the "Under Secretary" reference in 49 U.S.C. 44909(c)(2)(F) is a reference to the Under Secretary of Transportation for Security. Also, an obsolete deadline (March 1991) would be deleted from the text of 49 U.S.C. 44909(a)(1).

Subsection (i).—49 U.S.C. 44935(e)(2)(A)(ii) requires that every security screening employee hired by TSA be "a citizen of the United States." This excludes a "national of the United States," as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) and other persons eligible to serve in the United States armed forces. Section 1101(a)(22) defines a "national of the United States" as either a United States citizen or a noncitizen who "owes permanent allegiance to the United States." The citizens of American Samoa, a United States territory, are the principal remaining population that enjoy "United States national" status under our laws (along with residents of Swains Island).

The purpose of this subsection is to permit lawful permanent resident aliens currently employed as airport baggage screeners to retain their jobs provided they meet all of the new qualifications and successfully pass the background checks mandated by ATSA.

It would also permit United States nationals and lawful permanent residents who were honorably discharged from the armed forces of the United States to remain eligible for airport security screener positions, provided they meet all the other requirements other than United States citizenship.

The subsection would amend the Aviation and Transportation Security Act by permitting several exceptions to the prohibition on

the hiring of non-citizens to be airport security screeners. The exceptions include:

- Nationals of the United States;
- Persons born in a territory of the United States;
- Veterans honorably discharged from the armed forces of the United States; and
- Aliens lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)), and employed to perform security screening services at an airport in the United States on the date of enactment of P.L.107-71.

Also, the designation of the last subsection of section 44935 would be changed from (i) to (k) to eliminate a conflict with another subsection (i) earlier in the section.

Subsection (j).—This subsection corrects an incorrect reference.

Subsection (k).—Paragraph (1) would ensure that security fees may be based on costs incurred by TSA to deploy not only Federal law enforcement personnel, but also State or local law enforcement personnel. Paragraph (2) would make a technical correction. Paragraph (3) would ensure the continuity of the collection of passenger fees. The wording of section 44940(d)(4) suggests a possibility that passenger security fee collections must stop if they exceed the appropriated funding level. Stopping and restarting the collections process is administratively difficult. This change would enable DOT to continue collections of passenger fees, while still reserving spending authority for appropriations legislation.

Subsection (l).—Although section 140(d) of the Aviation and Transportation Security Act amended the Penalties chapter of Subtitle VII of title 49 to cover violations of law enforced by TSA as well as the FAA, the chapter was not updated with a penalty-level structure that would reflect the enormity of consequences that can follow from a terrorist act and therefore the importance of penalizing violations of TSA security regulations and orders. This subsection would raise the basic $1,000-per-violation level of the Federal aviation statute (in place since the 1950's and only adjusted upward for inflation since 1997 to about $1,100 per violation) to $10,000 for aviation security violations by persons and $25,000 for air carriers. The modification would make no change to (1) the penalty structure for safety violations or (2) the current-law maximum penalty of $25,000 for individuals that interfere with a cabin or flight crew.

Subsection (m).—The modifications in subsection (m) would also build on section 140 of ATSA by transferring from the FAA to TSA administrative-civil-penalty responsibility for 2 violations in current law that are directed to aircraft security and should be enforced by TSA. They prohibit an individual from (1) providing false information about hijackings and other matters (section 46302), and (2) carrying a weapon when on or attempting to board an aircraft (section 46303). In addition, subsection (v) would also authorize TSA to impose civil penalties against persons who interfere with a cabin or flight crew (section 46318).

Subsection (n).—This subsection would correct a typographical error.

Subsection (o).—This subsection would delete the qualifier "screening" from the section heading of 49 U.S.C. 46503 because

the coverage of the section is broader than screening personnel, and extends to any Federal, airport, or air carrier employee with security duties within an airport.

Subsection (p).—This subsection would correct two typographical errors.

Subsections (q) through (aa), other than (s).—These subsections woudl correct a number of typographical errors in chapter 449 and in the Aviation and Transportation Security Act.

Subsection (s).—This subsection would seek to protect the privacy of applicants and employees from the transmission of non-relevant information to a potential or current employer. The Committee wants to ensure that inappropriate information is not divulged.

Subsection (bb).—The terminology in ATSA differs by 1 pound from the standard terminology used by the FAA to distinguish between aircraft weight categories, thus bringing under regulation (in section 132(a) of ATSA (security regulation of charter aircraft operations)) a large population of aircraft that were not intended to be covered by Congress. This subsection would modify the terminology in section 132(a) to align with the standard distinction.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

SUBTITLE I—DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 106. Federal Aviation Administration

(a) The Federal Aviation Administration is an administration in the Department of Transportation.

(b) The head of the Administration is the Administrator. The Administration has a Deputy Administrator. They are appointed by the President, by and with the advice and consent of the Senate. When making an appointment, the President shall consider the fitness of the individual to carry out efficiently the duties and powers of the office. Except as provided in subsection (f) or in other provisions of law, the Administrator reports directly to the Secretary of Transportation. The term of office for any individual appointed as Administrator after August 23, 1994, shall be 5 years.

(c) The Administrator must—

(1) be a citizen of the United States;

(2) be a civilian; and

(3) have experience in a field directly related to aviation.

(d)(1) The Deputy Administrator must be a citizen of the United States and have experience in a field directly related to aviation. An officer on active duty in an armed force may be appointed as Deputy Administrator. However, if the Administrator is a former regular officer of an armed force, the Deputy Administrator may not be an officer on active duty in an armed force, a retired regular

officer of an armed force, or a former regular officer of an armed force.

(2) An officer on active duty or a retired officer serving as Deputy Administrator is entitled to hold a rank and grade not lower than that held when appointed as Deputy Administrator. The Deputy Administrator may elect to receive (A) the pay provided by law for the Deputy Administrator, or (B) the pay and allowances or the retired pay of the military grade held. If the Deputy Administrator elects to receive the military pay and allowances or retired pay, the Administration shall reimburse the appropriate military department from funds available for the expenses of the Administration.

(3) The appointment and service of a member of the armed forces as a Deputy Administrator does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from the status, office, rank, or grade. The Secretary of a military department does not control the member when the member is carrying out duties and powers of the Deputy Administrator.

(e) The Administrator and the Deputy Administrator may not have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise, or engage in another business, vocation, or employment.

(f) AUTHORITY OF THE SECRETARY AND THE ADMINISTRATOR.—

(1) AUTHORITY OF THE SECRETARY.—Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activities, of the Administration. Neither the Secretary nor the Administrator may submit decisions for the approval of, or be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

(2) AUTHORITY OF THE ADMINISTRATOR.—The Administrator—

(A) is the final authority for carrying out all functions, powers, and duties of the Administration relating to—

(i) the appointment and employment of all officers and employees of the Administration (other than Presidential and political appointees);

(ii) the acquisition and maintenance of property and equipment of the Administration;

(iii) except as otherwise provided in paragraph (3), the promulgation of regulations, rules, orders, circulars, bulletins, and other official publications of the Administration; and

(iv) any obligation imposed on the Administrator, or power conferred on the Administrator, by the Air Traffic Management System Performance Improvement Act of 1996 (or any amendment made by that Act);

(B) shall offer advice and counsel to the President with respect to the appointment and qualifications of any officer or employee of the Administration to be appointed by the President or as a political appointee;

(C) may delegate, and authorize successive redelegations of, to an officer or employee of the Administration any function, power, or duty conferred upon the Administrator, unless such delegation is prohibited by law; and

(D) except as otherwise provided for in this title, and notwithstanding any other provision of law, shall not be required to coordinate, submit for approval or concurrence, or seek the advice or views of the Secretary or any other officer or employee of the Department of Transportation on any matter with respect to which the Administrator is the final authority.

(3) REGULATIONS.—

(A) IN GENERAL.—In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out those functions. The issuance of such regulations shall be governed by the provisions of chapter 5 of title 5. The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the Federal Register of notice of the proposed rulemaking. On February 1 and August 1 of each year the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a letter listing each deadline the Administrator missed under this subparagraph during the 6-month period ending on such date, including an explanation for missing the deadline and a projected date on which the action that was subject to the deadline will be taken.

(B) APPROVAL OF SECRETARY OF TRANSPORTATION.—

(i) The Administrator may not issue a proposed regulation or final regulation that is likely to result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $ 250,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century) in any year, or any regulation which is significant, unless the Secretary of Transportation approves the issuance of the regulation in advance. For purposes of this paragraph, a regulation is significant if the Administrator, in consultation with the Secretary (as appropriate), determines that the regulation is likely to—

(I) have an annual effect on the economy of $ 250,000,000 or more or adversely affect in a substantial material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or

(II) raise novel or significant legal or policy issues arising out of legal mandates that may substantially and materially affect other transportation modes.

(ii) In an emergency, the Administrator may issue a regulation described in clause (i) without prior approval by the Secretary, but any such emergency regulation is subject to ratification by the Secretary after it is issued and shall be rescinded by the Administrator within 5 days (excluding Saturdays, Sundays, and legal public holidays) after issuance if the Secretary fails to ratify its issuance.

(iii) Any regulation that does not meet the criteria of clause (i), and any regulation or other action that is a routine or frequent action or a procedural action, may be issued by the Administrator without review or approval by the Secretary.

(iv) The Administrator shall submit a copy of any regulation requiring approval by the Secretary under clause (i) to the Secretary, who shall either approve it or return it to the Administrator with comments within 45 days after receiving it.

(C) PERIODIC REVIEW.—

(i) Beginning on the date which is 3 years after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall review any unusually burdensome regulation issued by the Administrator after such date of enactment beginning not later than 3 years after the effective date of the regulation to determine if the cost assumptions were accurate, the benefit of the regulations, and the need to continue such regulations in force in their present form.

(ii) The Administrator may identify for review under the criteria set forth in clause (i) unusually burdensome regulations that were issued before the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996 and that have been in force for more than 3 years.

(iii) For purposes of this subparagraph, the term "unusually burdensome regulation" means any regulation that results in the annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $25,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Air Traffic Management System Performance Act of 1996) in any year.

(iv) The periodic review of regulations may be performed by advisory committees and the Management Advisory Council established under subsection (p).

(4) Definition of political appointee. For purposes of this subsection, the term "political appointee" means any individual who—

(A) is employed in a position listed in sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

(B) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5; or

(C) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(g) DUTIES AND POWERS OF ADMINISTRATOR.—

(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d), 40113(e), 40114(a), and 40119, chapter 445 (except sections 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506, 44509, 44510, 44514, and 44515), chapter 447 (except sections 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and 44723), chapter 449 (except sections 44903(d), 44904, 44905, 44907-44911, 44913, 44915, and 44931-44934), chapter 451, chapter 453, sections 46104, 46301(d) and (h)(2), 46303(c), 46304-46308, 46310, 46311, and 46313-46316, chapter 465, and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

(B) additional duties and powers prescribed by the Secretary of Transportation.

(2) In carrying out sections 40119, 44901, 44903(a)-(c) and (e), 44906, 44912, 44935-44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.

(h) Section 40101(d) of this title applies to duties and powers specified in subsection (g)(1) of this section. Any of those duties and powers may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5. A decision of the Administrator in carrying out those duties or powers is administratively final.

(i) The Deputy Administrator shall carry out duties and powers prescribed by the Administrator. The Deputy Administrator acts for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.

(j) There is established within the Federal Aviation Administration an institute to conduct civil aeromedical research under section 44507 of this title. Such institute shall be known as the "Civil Aeromedical Institute". Research conducted by the institute should take appropriate advantage of capabilities of other government agencies, universities, or the private sector.

(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to the Secretary of Transportation for operations of the Administration—

(A) such sums as may be necessary for fiscal year 2000;

(B) $6,592,235,000 for fiscal year 2001;

(C) $6,886,000,000 for fiscal year 2002; and

(D) $7,357,000,000 for fiscal year 2003.

Such sums shall remain available until expended.

(2) AUTHORIZED EXPENDITURES.—Out of amounts appropriated under paragraph (1), the following expenditures are authorized:

(A) $450,000 for each of fiscal years 2000 through 2003 for wildlife hazard mitigation measures and management of the wildlife strike database of the Federal Aviation Administration.

(B) $9,100,000 for the 3-fiscal-year period beginning with fiscal year 2001 to support a university consortium established to provide an air safety and security management certificate program, working cooperatively with the Federal Aviation Administration and United States air carriers, except that funds under this subparagraph—

(i) may not be used for the construction of a building or other facility; and

(ii) may only be awarded on the basis of open competition.

(C) Such sums as may be necessary for fiscal years 2000 through 2003 to support infrastructure systems development for both general aviation and the vertical flight industry.

(D) Such sums as may be necessary for fiscal years 2000 through 2003 to establish helicopter approach procedures using current technologies (such as the Global Positioning System) to support all-weather, emergency medical service for trauma patients.

(E) Such sums as may be necessary for fiscal years 2000 through 2003 to revise existing terminal and en route procedures and instrument flight rules to facilitate the takeoff, flight, and landing of tiltrotor aircraft and to improve the national airspace system by separating such aircraft from congested flight paths of fixed-wing aircraft.

(F) $3,300,000 for fiscal year 2000 and $3,000,000 for each of fiscal years 2001 through 2003 to implement the 1998 airport surface operations safety action plan of the Federal Aviation Administration.

(G) $9,100,000 for fiscal year 2001 to support air safety efforts through payment of United States membership obligations in the International Civil Aviation Organization, to be paid as soon as practicable.

(H) Such sums as may be necessary for fiscal years 2000 through 2003 for the Secretary to hire additional inspectors in order to enhance air cargo security programs.

(I) Such sums as may be necessary for fiscal years 2000 through 2003 to develop and improve training programs (including model training programs and curriculum) for security screening personnel at airports that will be used by

airlines to meet regulatory requirements relating to the training and testing of such personnel.

(l) Personnel and Services.—

(1) OFFICERS AND EMPLOYEES.—Except as provided in subsections (a) and (g) of section 40122, the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40122(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

(2) EXPERTS AND CONSULTANTS.—The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5.

(3) TRANSPORTATION AND PER DIEM EXPENSES.—The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5.

(4) USE OF PERSONNEL FROM OTHER AGENCIES.—The Administrator is authorized to utilize the services of personnel of any other Federal agency (as such term is defined under section 551(1) of title 5).

(5) VOLUNTARY SERVICES.—

(A) GENERAL RULE.—In exercising the authority to accept gifts and voluntary services under section 326 of this title, and without regard to section 1342 of title 31, the Administrator may not accept voluntary and uncompensated services if such services are used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(B) INCIDENTAL EXPENSES.—The Administrator is authorized to provide for incidental expenses, including transportation, lodging, and subsistence, for volunteers who provide voluntary services under this subsection.

(C) LIMITED TREATMENT AS FEDERAL EMPLOYEES.—An individual who provides voluntary services under this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, relating to compensation for work injuries, and chapter 171 of title 28, relating to tort claims.

(6) CONTRACTS.—The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551(1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation,

or educational institution, on such terms and conditions as the Administrator may consider appropriate.

(m) COOPERATION BY ADMINISTRATOR.—With the consent of appropriate officials, the Administrator may, with or without reimbursement, use or accept the services, equipment, personnel, and facilities of any other Federal agency (as such term is defined in section 551(1) of title 5) and any other public or private entity. The Administrator may also cooperate with appropriate officials of other public and private agencies and instrumentalities concerning the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies, personnel, services, and equipment other than administrative supplies or equipment.

(n) ACQUISITION.—

(1) In general. The Administrator is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

(i) air traffic control facilities and equipment;

(ii) research and testing sites and facilities; and

(iii) such other real and personal property (including office space and patents), or any interest therein, within and outside the continental United States as the Administrator considers necessary;

(B) to lease to others such real and personal property; and

(C) to provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at the installations of the Administration, and to acquire, operate, and maintain equipment for these facilities.

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

(o) TRANSFERS OF FUNDS.—The Administrator 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 by law to the Administrator or functions transferred pursuant to law to the Administrator on or after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996.

(p) MANAGEMENT ADVISORY COUNCIL.—

(1) ESTABLISHMENT.—Within 3 months after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall establish an advisory council which shall be known as the Federal Aviation Management Advisory Council (in this subsection referred to as the "Council"). With respect to Administration management, policy, spending, funding, and regulatory matters affecting the aviation industry, the Council may submit comments, rec-

ommended modifications, and dissenting views to the Administrator. The Administrator shall include in any submission to Congress, the Secretary, or the general public, and in any submission for publication in the Federal Register, a description of the comments, recommended modifications, and dissenting views received from the Council, together with the reasons for any differences between the views of the Council and the views or actions of the Administrator.

(2) MEMBERSHIP.—The Council shall consist of 18 members, who shall consist of—

(A) a designee of the Secretary of Transportation;

(B) a designee of the Secretary of Defense;

(C) 10 members representing aviation interests, appointed by—

(i) in the case of initial appointments to the Council, the President by and with the advice and consent of the Senate; and

(ii) in the case of subsequent appointments to the Council, the Secretary of Transportation;

(D) 1 member appointed, from among individuals who are the leaders of their respective unions of air traffic control system employees, by—

(i) in the case of initial appointments to the Council, the President by and with the advice and consent of the Senate; and

(ii) in the case of subsequent appointments to the Council, the Secretary of Transportation; and

(E) 5 members appointed by the Secretary after consultation with the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) QUALIFICATIONS.—

(A) No Federal officer or employee. No member appointed under paragraph (2)(C) or 2(E) may serve as an officer or employee of the United States Government while serving as a member of the Council.

(B) Air Traffic Services Subcommittee. Members appointed under paragraph (2)(E) shall—

(i) have a fiduciary responsibility to represent the public interest;

(ii) be citizens of the United States; and

(iii) be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following areas:

(I) Management of large service organizations.

(II) Customer service.

(III) Management of large procurements.

(IV) Information and communications technology.

(V) Organizational development.

(VI) Labor relations.

At least one of such members should have a background in managing large organizations successfully.

In the aggregate, such members should collectively bring to bear expertise in all of the areas described in subclauses (I) through (VI).

(C) PROHIBITIONS ON MEMBERS OF SUBCOMMITTEE.—No member appointed under paragraph (2)(E) may—

(i) have a pecuniary interest in, or own stock in or bonds of, an aviation or aeronautical enterprise, except an interest in a diversified mutual fund or an interest that is exempt from the application of section 208 of title 18;

(ii) engage in another business related to aviation or aeronautics; or

(iii) be a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.

(4) FUNCTIONS.—

(A) IN GENERAL.—

(i) The Council shall provide advice and counsel to the Administrator on issues which affect or are affected by the operations of the Administrator. The Council shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

(ii) The Council shall review the rulemaking cost-benefit analysis process and develop recommendations to improve the analysis and ensure that the public interest is fully protected.

(iii) The Council shall review the process through which the Administration determines to use advisory circulars and service bulletins.

(B) MEETINGS.—The Council shall meet on a regular and periodic basis or at the call of the chairman or of the Administrator.

(C) ACCESS TO DOCUMENTS AND STAFF.—The Administration may give the Council appropriate access to relevant documents and personnel of the Administration, and the Administrator shall make available, consistent with the authority to withhold commercial and other proprietary information under section 552 of title 5 (commonly known as the "Freedom of Information Act"), cost data associated with the acquisition and operation of air traffic service systems. Any member of the Council who receives commercial or other proprietary data from the Administrator shall be subject to the provisions of section 1905 of title 18, pertaining to unauthorized disclosure of such information.

(5) FEDERAL ADVISORY COMMITTEE ACT NOT TO APPLY.—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Council or such aviation rulemaking committees as the Administrator shall designate.

(6) ADMINISTRATIVE MATTERS.—

(A) TERMS OF MEMBERS APPOINTED UNDER PARAGRAPH (2)(C).—Members of the Council appointed under paragraph (2)(C) shall be appointed for a term of 3 years. Of the members first appointed by the President under paragraph (2)(C)—

(i) 3 shall be appointed for terms of 1 year;

(ii) 4 shall be appointed for terms of 2 years; and

(iii) 3 shall be appointed for terms of 3 years.

(B) TERM FOR AIR TRAFFIC CONTROL REPRESENTATIVE.—The member appointed under paragraph (2)(D) shall be appointed for a term of 3 years, except that the term of such individual shall end whenever the individual no longer meets the requirements of paragraph (2)(D).

(C) TERMS FOR AIR TRAFFIC SERVICES SUBCOMMITTEE MEMBERS.—The member appointed under paragraph (2)(E) shall be appointed for a term of 5 years, except that of the members first appointed under paragraph (2)(E)—

(i) 2 members shall be appointed for a term of 3 years;

(ii) 2 members shall be appointed for a term of 4 years; and

(iii) 1 member shall be appointed for a term of 5 years.

(D) REAPPOINTMENT.—An individual may not be appointed under paragraph (2)(E) to more than two 5-year terms.

(E) VACANCY.—Any vacancy on the Council shall be filled in the same manner as the original appointment, except that any vacancy caused by a member appointed by the President under paragraph (2)(C)(i) shall be filled by the Secretary in accordance with paragraph (2)(C)(ii). Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(F) CONTINUATION IN OFFICE.—A member whose term expires shall continue to serve until the date on which the member's successor takes office.

(G) REMOVAL.—Any member of the Council appointed under paragraph (2)(D) may be removed for cause by the President or Secretary whoever makes the appointment. Any member of the Council appointed under paragraph (2)(E) may be removed for cause by the Secretary.

(H) CLAIMS AGAINST MEMBERS OF SUBCOMMITTEE.—

(i) IN GENERAL.—A member appointed under paragraph (2)(E) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member of the Air Traffic Services Subcommittee.

(ii) EFFECT ON OTHER LAW.—This subparagraph shall not be construed—

(I) to affect any other immunity or protection that may be available to a member of the Subcommittee under applicable law with respect to such transactions;

(II) to affect any other right or remedy against the United States under applicable law; or

(III) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

(I) ETHICAL CONSIDERATIONS.—

(i) FINANCIAL DISCLOSURE.—During the entire period that an individual appointed under paragraph (2)(E) is a member of the Subcommittee, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act; except that section 101(d) of such Act shall apply without regard to the number of days of service in the position.

(ii) RESTRICTIONS ON POST-EMPLOYMENT.—For purposes of section 207(c) of title 18, an individual appointed under paragraph (2)(E) shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Subcommittee; except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

(J) CHAIRMAN; VICE CHAIRMAN.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (2)(C), each of whom shall serve for a term of 1 year. The vice chair shall perform the duties of the chairman in the absence of the chairman.

(K) TRAVEL AND PER DIEM.—Each member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his or her usual place of residence, in accordance with section 5703 of title 5.

(L) DETAIL OF PERSONNEL FROM THE ADMINISTRATION.—The Administrator shall make available to the Council such staff, information, and administrative services and assistance as may reasonably be required to enable the Council to carry out its responsibilities under this subsection.

(7) AIR TRAFFIC SERVICES SUBCOMMITTEE.—

(A) IN GENERAL.—The Management Advisory Council shall have an air traffic services subcommittee (in this paragraph referred to as the "Subcommittee") composed of the five members appointed under paragraph (2)(E).

(B) GENERAL RESPONSIBILITIES.

(i) OVERSIGHT.—The Subcommittee shall oversee the administration, management, conduct, direction, and supervision of the air traffic control system.

(ii) CONFIDENTIALITY.—The Subcommittee shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

(C) SPECIFIC RESPONSIBILITIES.—The Subcommittee shall have the following specific responsibilities:

(i) STRATEGIC PLANS.—To review, approve, and monitor the strategic plan for the air traffic control system, including the establishment of—

(I) a mission and objectives;

(II) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity; and

(III) annual and long-range strategic plans.

(ii) Modernization and improvement. To review and approve—

(I) methods to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control; and

(II) procurements of air traffic control equipment in excess of $100,000,000.

(iii) OPERATIONAL PLANS.—To review the operational functions of the air traffic control system, including—

(I) plans for modernization of the air traffic control system;

(II) plans for increasing productivity or implementing cost-saving measures; and

(III) plans for training and education.

(iv) MANAGEMENT.—To—

(I) review and approve the Administrator's appointment of a Chief Operating Officer under section 106(r);

(II) review the Administrator's selection, evaluation, and compensation of senior executives of the Administration who have program management responsibility over significant functions of the air traffic control system;

(III) review and approve the Administrator's plans for any major reorganization of the Administration that would impact on the management of the air traffic control system;

(IV) review and approve the Administrator's cost accounting and financial management structure and technologies to help ensure efficient and cost-effective air traffic control operation; and

(V) review the performance and compensation of managers responsible for major acquisition projects, including the ability of the managers to meet schedule and budget targets.

(v) BUDGET.—To—

(I) review and approve the budget request of the Administration related to the air traffic control system prepared by the Administrator;

(II) submit such budget request to the Secretary; and

(III) ensure that the budget request supports the annual and long-range strategic plans.

The Secretary shall submit the budget request referred to in clause (v)(II) for any fiscal year to the President who shall transmit such request, without revision, to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, together with the President's

annual budget request for the Federal Aviation Administration for such fiscal year.

(D) SUBCOMMITTEE PERSONNEL MATTERS.—

(i) COMPENSATION OF MEMBERS.—Each member of the Subcommittee shall be compensated at a rate of $25,000 per year.

(ii) COMPENSATION OF CHAIRPERSON.—Notwithstanding clause (i), the chairperson of the Subcommittee shall be compensated at a rate of $40,000 per year.

(iii) STAFF.—The chairperson of the Subcommittee may appoint and terminate any personnel that may be necessary to enable the Subcommittee to perform its duties.

(iv) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson of the Subcommittee may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(E) ADMINISTRATIVE MATTERS.—

(i) TERM OF CHAIR.—The members of the Subcommittee shall elect for a 2-year term a chairperson from among the members of the Subcommittee.

(ii) POWERS OF CHAIR.—Except as otherwise provided by a majority vote of the Subcommittee, the powers of the chairperson shall include—

(I) establishing committees;

(II) setting meeting places and times;

(III) establishing meeting agendas; and

(IV) developing rules for the conduct of business.

(iii) MEETINGS.—The Subcommittee shall meet at least quarterly and at such other times as the chairperson determines appropriate.

(iv) QUORUM.—Three members of the Subcommittee shall constitute a quorum. A majority of members present and voting shall be required for the Subcommittee to take action.

(F) REPORTS.—

(i) ANNUAL.—The Subcommittee shall each year report with respect to the conduct of its responsibilities under this title to the Administrator, the Council, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(ii) ADDITIONAL REPORT.—If a determination by the Subcommittee under subparagraph (B)(i) that the organization and operation of the air traffic control system are not allowing the Administration to carry out its mission, the Subcommittee shall report such determination to the Administrator, the Council, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(iii) ACTION OF ADMINISTRATOR ON REPORT.—Not later than 60 days after the date of a report of the

Subcommittee under this subparagraph, the Administrator shall take action with respect to such report. If the Administrator overturns a recommendation of the Subcommittee, the Administrator shall report such action to the President, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

(iv) COMPTROLLER GENERAL'S REPORT.—Not later than April 30, 2003, the Comptroller General of the United States shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the success of the Subcommittee in improving the performance of the air traffic control system.

(8) AIR TRAFFIC CONTROL SYSTEM DEFINED.—In this section, the term "air traffic control system" has the meaning such term has under section 40102(a).

(q) AIRCRAFT NOISE OMBUDSMAN.—

(1) ESTABLISHMENT.—There shall be in the Administration an Aircraft Noise Ombudsman.

(2) GENERAL DUTIES AND RESPONSIBILITIES.—The Ombudsman shall—

(A) be appointed by the Administrator;

(B) serve as a liaison with the public on issues regarding aircraft noise; and

(C) be consulted when the Administration proposes changes in aircraft routes so as to minimize any increases in aircraft noise over populated areas.

(3) NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES.—The appointment of an Ombudsman under this subsection shall not result in an increase in the number of full-time equivalent employees in the Administration.

(r) CHIEF OPERATING OFFICER.—

(1) IN GENERAL.—

(A) APPOINTMENT.—There shall be a Chief Operating Officer for the air traffic control system to be appointed by the Administrator, with the approval of the Air Traffic Services Subcommittee of the Aviation Management Advisory Council. The Chief Operating Officer shall report directly to the Administrator and shall be subject to the authority of the Administrator.

(B) QUALIFICATIONS.—The Chief Operating Officer shall have a demonstrated ability in management and knowledge of or experience in aviation.

(C) TERM.—The Chief Operating Officer shall be appointed for a term of 5 years.

(D) REMOVAL.—The Chief Operating Officer shall serve at the pleasure of the Administrator, except that the Administrator shall make every effort to ensure stability and continuity in the leadership of the air traffic control system.

(E) VACANCY.—Any individual appointed to fill a vacancy in the position of Chief Operating Officer occurring

before the expiration of the term for which the individual's predecessor was appointed shall be appointed for the remainder of that term.

(2) COMPENSATION.—

(A) IN GENERAL.—The Chief Operating Officer shall be paid at an annual rate of basic pay to be determined by the Administrator, with the approval of the Air Traffic Services Subcommittee of the Aviation Management Advisory Council. The annual rate may not exceed the annual compensation paid under section 102 of title 3. The Chief Operating Officer shall be subject to the post-employment provisions of section 207 of title 18 as if the position of Chief Operating Officer were described in section 207(c)(2)(A)(i) of that title.

(B) BONUS.—In addition to the annual rate of basic pay authorized by subparagraph (A), the Chief Operating Officer may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator's evaluation of the Chief Operating Officer's performance in relation to the performance goals set forth in the performance agreement described paragraph (3).

(3) ANNUAL PERFORMANCE AGREEMENT.—The Administrator and the Chief Operating Officer, in consultation with the Air Traffic Control Subcommittee of the Aviation Management Advisory Committee, shall enter into an annual performance agreement that sets forth measurable organization and individual goals for the Chief Operating Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis.

(4) ANNUAL PERFORMANCE REPORT.—The Chief Operating Officer shall prepare and transmit to the Secretary of Transportation and Congress an annual management report containing such information as may be prescribed by the Secretary.

(5) RESPONSIBILITIES.—The Administrator may delegate to the Chief Operating Officer, or any other authority within the Administration responsibilities, including the following:

(A) STRATEGIC PLANS.—To develop a strategic plan of the Administration for the air traffic control system, including the establishment of—

(i) a mission and objectives;

(ii) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity;

(iii) annual and long-range strategic plans; and

(iv) methods of the Administration to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control.

(B) OPERATIONS.—To review the operational functions of the Administration, including—

(i) modernization of the air traffic control system;

(ii) increasing productivity or implementing cost-saving measures; and

(iii) training and education.

(C) BUDGET.—To—

(i) develop a budget request of the Administration related to the air traffic control system prepared by the Administrator;

(ii) submit such budget request to the Administrator and the Secretary of Transportation; and

(iii) ensure that the budget request supports the annual and long-range strategic plans developed under subparagraph (A) of this subsection.

* * * * * * *

§ 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 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 facili-

ties 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 *Under* 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 unless 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 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.

§ 115. Transportation Security Oversight Board

(a) IN GENERAL.—There is established in the Department of Transportation 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 Transportation, or the Secretary's designee.

(B) The Attorney General, or the Attorney General's designee.

(C) The Secretary of Defense, or the Secretary's designee.

(D) The Secretary of the Treasury, or the Secretary's designee.

(E) The Director of the Central Intelligence Agency, or the Director's designee.

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

(G) One member appointed by the President to represent the Office of Homeland Security.

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

(c) DUTIES.—The Board shall—

(1) review and [ratify or disapprove] any regulation or security directive issued by the Under Secretary of Transportation for [security] *Security* 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;

(5) review plans for transportation security;

(6) make recommendations to the Under Secretary regarding matters reviewed under paragraph (5).

(d) QUARTERLY MEETINGS.—The Board shall meet at least quarterly.

(e) CONSIDERATION OF SECURITY INFORMATION.—A majority of the Board may vote to close a meeting of the Board to the public, except that meetings shall be closed to the public whenever classified, sensitive security information, or information protected in accordance with section 40119(b), will be discussed.

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SUBTITLE VII—AVIATION PROGRAMS

PART A—AIR COMMERCE AND SAFETY

SUBPART I—GENERAL

CHAPTER 401. GENERAL PROVISIONS

§ 40109. Authority to exempt

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS NOT ENGAGED DIRECTLY IN OPERATING AIRCRAFT.—(1) The Secretary of Transportation may exempt from subpart II of this part—

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(b) SAFETY REGULATION.—The Administrator of the Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections **[**40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935–44937**]** *40103(b)(1) and (2) and 40119* of this title when the Administrator decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, and sections 44909 and 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) LABOR REQUIREMENTS.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary may exempt from section 42112(b)(1) and (2) an air carrier not providing scheduled air transportation, and the operations conducted

during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b)(1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) MAXIMUM FLYING HOURS.—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) SMALLER AIRCRAFT.—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

(C) review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.

(3) The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.

(h) NOTICE AND OPPORTUNITY FOR HEARING.—The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.

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SUBPART III—SAFETY

CHAPTER 443. INSURANCE

§ 44301. Definitions

In this chapter—

(1) "American aircraft" means—

(A) a civil aircraft of the United States; and

(B) an aircraft owned or chartered by, or made available to—

(i) the United States Government; or

(ii) a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of the State, territory, or possession.

(2) "insurance carrier" means a person authorized to do aviation insurance business in a State, including a mutual or stock insurance company and a reciprocal insurance association.

§ 44302. General authority

(a) INSURANCE AND REINSURANCE.—(1) Subject to subsection (c) of this section and section 44305(a) of this title, the Secretary of Transportation may provide insurance and reinsurance against loss

or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft.

(2) An aircraft may be insured or reinsured for not more than its reasonable value as determined by the Secretary in accordance with reasonable business practices in the commercial aviation insurance industry. Insurance or reinsurance may be provided only when the Secretary decides that the insurance cannot be obtained on reasonable terms from an insurance carrier.

(b) REIMBURSEMENT OF INSURANCE COST INCREASES.—

(1) IN GENERAL.—The Secretary may reimburse an air carrier for the increase in the cost of insurance, with respect to a premium for coverage ending before October 1, 2002, against loss or damage arising out of any risk from the operation of an American aircraft over the insurance premium that was in effect for a comparable operation during the period beginning September 4, 2001, and ending September 10, 2001, as the Secretary may determine. Such reimbursement is subject to subsections (a)(2), (c), and (d) of this section and to section 44303.

(2) PAYMENT FROM REVOLVING FUND.—A reimbursement under this subsection shall be paid from the revolving fund established by section 44307.

(3) FURTHER CONDITIONS.—The Secretary may impose such further conditions on insurance for which the increase in premium is subject to reimbursement under this subsection as the Secretary may deem appropriate in the interest of air commerce.

(4) TERMINATION OF AUTHORITY.—The authority to reimburse air carriers under this subsection shall expire 180 days after the date of enactment of this paragraph.

(c) PRESIDENTIAL APPROVAL.—The Secretary may provide insurance or reinsurance under subsection (a) of this section, or reimburse an air carrier under subsection (b) of this section, only with the approval of the President. The President may approve the insurance or reinsurance or the reimbursement only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary in the interest of air commerce or national security or to carry out the foreign policy of the United States Government.

(d) CONSULTATION.—The President may require the Secretary to consult with interested departments, agencies, and instrumentalities of the Government before providing insurance or reinsurance or reimbursing an air carrier under this chapter.

(e) ADDITIONAL INSURANCE.—With the approval of the Secretary, a person having an insurable interest in an aircraft may insure with other underwriters in an amount that is more than the amount insured with the Secretary. However, the Secretary may not benefit from the additional insurance. This subsec tion does not prevent the Secretary from making contracts of coinsurance.

(f) WAR RISK INSURANCE.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of the Aviation Security Improvement Act, the Secretary shall—

(A) extend for 270 days from such date of enactment the termination date of any aviation war risk insurance poli-

cies the Department issued that were in effect on such date of enactment on terms that are no less favorable than the terms of those policies as the policies were in effect on June 19, 2002; and

(B) offer to amend each policy the term of which is extended to provide coverage for losses or injuries to hull, passengers, and crew, in addition to coverage for injury to third parties (with respect to both persons and property), on such terms and conditions as the Secretary may prescribe, at an additional premium comparable to the premium charged for the third-party casualty coverage under existing Federal Aviation Administration policies.

(2) REPORT.—Not later than 90 days after the date of enactment of the Aviation Security Improvement Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) evaluates the availability of war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

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CHAPTER 445. FACILITIES, PERSONNEL, AND RESEARCH

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§ 44503. Reducing nonessential expenditures

The Secretary of Transportation shall attempt to reduce the capital, operating, maintenance, and administrative costs of the national airport and airway system to the maximum extent practicable consistent with the highest degree of aviation safety. At least annually, the Secretary shall consult with and consider the recommendations of users of the system on ways to reduce nonessential expenditures of the United States Government for aviation. The Secretary shall give particular attention to a recommendation that may reduce, with no adverse effect on safety, future personnel requirements and costs to the Government required to be recovered from user charges.

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CHAPTER 449. SECURITY

§ 44901. Screening passengers and property

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall provide for the screening of all passengers and property, including United States mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. In the case of flights and flight segments originating in the United States, the screening shall take place before boarding and shall be carried out by a Federal Government employee (as defined in section 2105 of title 5, United States Code), *or, in the case of United States mail, by an officer or employee of the United States Postal Service under standards and procedures established by the Under Secretary,* except as otherwise provided in section 44919 or 44920 and except for identifying passengers and baggage for screening under the CAPPS and known shipper programs and conducting positive bag-match programs.

(b) SUPERVISION OF SCREENING.—All screening of passengers and property at airports in the United States where screening is required under this section shall be supervised by uniformed Federal personnel of the Transportation Security Administration who shall have the power to order the dismissal of any individual performing such screening.

(c) CHECKED BAGGAGE.—A system must be in operation to screen all checked baggage at all airports in the United States as soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act.

(d) EXPLOSIVE DETECTION SYSTEMS.—

(1)[1] IN GENERAL.—The Under Secretary of Transportation for Security shall take all necessary action to ensure that—

(A) explosive detection systems are deployed as soon as possible to ensure that all United States airports described in section 44903(c) have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002, and that as soon as such systems are in place at an airport, all checked baggage at the airport is screened by those systems; and

(B) all systems deployed under subparagraph (A) are fully utilized; and

(C) if explosive detection equipment at an airport is unavailable, all checked baggage is screened by an alternative means.

(2) DEADLINE.—

(A) IN GENERAL.—If the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each air-

[1] Subsection (d) was enacted without including a paragraph (2).

port for which the Under Secretary makes that determination—

(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requiremens of paragraph (1) as soon as practicable at that airport; and

(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

(ii) the need to ensure that such installations and modifications are effective; and

(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

(C) LIMITATION.—The Under Secretary may not make a determination under subparagraph (A) in the case of more than 40 airports.

(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

(3) REPORTS.—

(A) IN GENERAL.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of the Aviation Security Improvement Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.

(B) LIMIT ON NUMBER OF REPORTS.—The Under Secretary shall submit reports for each airport until the requirements of paragraph (1) have been met, but may not submit more than 12 reports for any airport.

(e) MANDATORY SCREENING WHERE EDS NOT YET AVAILABLE.—As soon as practicable but not later than the 60th day following the date of enactment of the Aviation and Transportation Security Act and until the requirements of [subsection (b)(1)(A)] subsection (d)(1)(A) are met, the Under Secretary shall require alternative means for screening any piece of checked baggage that is not screened by an explosive detection system. Such alternative means may include 1 or more of the following:

(1) A bag-match program that ensures that no checked baggage is placed aboard an aircraft unless the passenger who checked the baggage is aboard the aircraft.

(2) Manual search.

(3) Search by canine explosive detection units in combination with other means.

(4) Other means or technology approved by the Under Secretary.

[(f) CARGO DEADLINE.—A system must be in operation to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft in air transportation and intrastate air transportation as soon as practicable after the date of enactment of the Aviation and Transportation Security Act.]

(f) CARGO.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish ~~a system~~ systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

(B) all-cargo aircraft in air transportation and intrastate air transportation.

(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).

(g) DEPLOYMENT OF ARMED PERSONNEL.—

(1) IN GENERAL.—The Under Secretary shall order the deployment of law enforcement personnel authorized to carry firearms at each airport security screening location to ensure passenger safety and national security.

(2) MINIMUM REQUIREMENTS.—[Except at airports required to enter into agreements under subsection (c), the] *The* Under Secretary shall order the deployment of at least 1 law enforcement officer at each airport security screening location. At the 100 largest airports in the United States, in terms of annual passenger enplanements for the most recent calendar year for which data are available, the Under Secretary shall order the deployment of additional law enforcement personnel at airport security screening locations if the Under Secretary determines that the additional deployment is necessary to ensure passenger safety and national security.

(h) EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.—The Under Secretary—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under

section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the Under Secretary decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

* * * * * * *

§ 44903. Air transportation security

(a) DEFINITION.—In this section, "law enforcement personnel" means individuals—

(1) authorized to carry and use firearms;

(2) vested with the degree of the police power of arrest the Under Secretary of Transportation for Security considers necessary to carry out this section; and

(3) identifiable by appropriate indicia of authority.

(b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Under Secretary shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air transportation against an act of criminal violence or aircraft piracy. When prescribing a regulation under this subsection, the Under Secretary shall—

(1) consult with the Secretary of Transportation, the Attorney General, the heads of other departments, agencies, and instrumentalities of the United States Government, and State and local authorities;

(2) consider whether a proposed regulation is consistent with—

(A) protecting passengers; and

(B) the public interest in promoting air transportation and intrastate air transportation;

(3) to the maximum extent practicable, require a uniform procedure for searching and detaining passengers and property to ensure—

(A) their safety; and

(B) courteous and efficient treatment by an air carrier, an agent or employee of an air carrier, and Government, State, and local law enforcement personnel carrying out this section; and

(4) consider the extent to which a proposed regulation will carry out this section.

(c) SECURITY PROGRAMS.—(1) The Under Secretary shall prescribe regulations under subsection (b) of this section that require each operator of an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers. The regulations shall authorize the operator to use the services of qualified State, local, and private law enforcement personnel. When the Under Secretary decides, after being notified by an operator in the form the Under Secretary prescribes, that not enough qualified State, local, and

private law enforcement personnel are available to carry out subsection (b), the Under Secretary may authorize the operator to use, on a reimbursable basis, personnel employed by the Under Secretary, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel. When deciding whether additional personnel are needed, the Under Secretary shall consider the number of passengers boarded at the airport, the extent of anticipated risk of criminal violence or aircraft piracy at the airport or to the air carrier aircraft operations at the airport, and the availability of qualified State or local law enforcement personnel at the airport.

(2)(A) The Under Secretary may approve a security program of an airport operator, or an amendment in an existing program, that incorporates a security program of an airport tenant (except an air carrier separately complying with part 108 or 129 of title 14, Code of Federal Regulations) having access to a secured area of the airport, if the program or amendment incorporates—

(i) the measures the tenant will use, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, to carry out the security requirements imposed by the Under Secretary on the airport operator under the access control system requirements of section 107.14 of title 14, Code of Federal Regulations, or under other requirements of part 107 of title 14; and

(ii) the methods the airport operator will use to monitor and audit the tenant's compliance with the security requirements and provides that the tenant will be required to pay monetary penalties to the airport operator if the tenant fails to carry out a security requirement under a contractual provision or requirement imposed by the airport operator.

(B) If the Under Secretary approves a program or amendment described in subparagraph (A) of this paragraph, the airport operator may not be found to be in violation of a requirement of this subsection or subsection (b) of this section when the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for the violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(C) MAXIMUM USE OF CHEMICAL AND BIOLOGICAL WEAPON DETECTION EQUIPMENT.—The Secretary of Transportation may require airports to maximize the use of technology and equipment that is designed to detect or neutralize potential chemical or biological weapons.

(3) PILOT PROGRAMS.—The [Administrator] *Under Secretary* shall establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control and other security protections for closed or secure areas of the airports. Such technology may include biometric or other technology that ensures only authorized access to secure areas.

(d) AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE ARRESTS.—With the approval of the Attorney General and the Sec-

retary of State, the Secretary of Transportation may authorize an individual who carries out air transportation security duties—

(1) to carry firearms; and

(2) to make arrests without warrant for an offense against the United States committed in the presence of the individual or for a felony under the laws of the United States, if the individual reasonably believes the individual to be arrested has committed or is committing a felony.

(e) EXCLUSIVE RESPONSIBILITY OVER PASSENGER SAFETY.—The Under Secretary has the exclusive responsibility to direct law enforcement activity related to the safety of passengers on an aircraft involved in an offense under section 46502 of this title from the moment all external doors of the aircraft are closed following boarding until those doors are opened to allow passengers to leave the aircraft. When requested by the Under Secretary, other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection.

(f) GOVERNMENT AND INDUSTRY CONSORTIA.—The Under Secretary may establish at airports such consortia of government and aviation industry representatives as the Under Secretary may designate to provide advice on matters related to aviation security and safety. Such consortia shall not be considered Federal advisory committees for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

(g) IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.—

(1) ENFORCEMENT.—

(A) UNDER SECRETARY TO PUBLISH SANCTIONS.—The Under Secretary shall publish in the Federal Register a list of sanctions for use as guidelines in the discipline of employees for infractions of airport access control requirements. The guidelines shall incorporate a progressive disciplinary approach that relates proposed sanctions to the severity or recurring nature of the infraction and shall include measures such as remedial training, suspension from security-related duties, suspension from all duties without pay, and termination of employment.

(B) USE OF SANCTIONS.—Each airport operator, air carrier, and security screening company shall include the list of sanctions published by the Under Secretary in its security program. The security program shall include a process for taking prompt disciplinary action against an employee who commits an infraction of airport access control requirements.

(2) IMPROVEMENTS.—The Under Secretary shall—

(A) work with airport operators and air carriers to implement and strengthen existing controls to eliminate airport access control weaknesses;

(B) require airport operators and air carriers to develop and implement comprehensive and recurring training programs that teach employees their roles in airport security, the importance of their participation, how their performance will be evaluated, and what action will be taken if they fail to perform;

(C) require airport operators and air carriers to develop and implement programs that foster and reward compli-

ance with airport access control requirements and discourage and penalize noncompliance in accordance with guidelines issued by the Under Secretary to measure employee compliance;

(D) on an ongoing basis, assess and test for compliance with access control requirements, report annually findings of the assessments, and assess the effectiveness of penalties in ensuring compliance with security procedures and take any other appropriate enforcement actions when noncompliance is found;

(E) improve and better administer the Under Secretary's security database to ensure its efficiency, reliability, and usefulness for identification of systemic problems and allocation of resources;

(F) improve the execution of the Under Secretary's quality control program; and

(G) work with airport operators to strengthen access control points in secured areas (including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas) to ensure the security of passengers and aircraft and consider the deployment of biometric or similar technologies that identify individuals based on unique personal characteristics.

(h) IMPROVED AIRPORT PERIMETER ACCESS SECURITY.—

(1) IN GENERAL.—The Under Secretary, in consultation with the airport operator and law enforcement authorities, may order the deployment of such personnel at any secure area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier aircraft operations at the airport, or to meet national security concerns.

(2) SECURITY OF AIRCRAFT AND GROUND ACCESS TO SECURE AREAS.—In determining where to deploy such personnel, the Under Secretary shall consider the physical security needs of air traffic control facilities, parked aircraft, aircraft servicing equipment, aircraft supplies (including fuel), automobile parking facilities within airport perimeters or adjacent to secured facilities, and access and transition areas at airports served by other means of ground or water transportation.

(3) DEPLOYMENT OF FEDERAL LAW ENFORCEMENT PERSONNEL.—The Secretary may enter into a memorandum of understanding or other agreement with the Attorney General or the head of any other appropriate Federal law enforcement agency to deploy Federal law enforcement personnel at an airport in order to meet aviation safety and security concerns.

(4) AIRPORT PERIMETER SCREENING.—The Under Secretary—

(A) shall require, as soon as practicable after the date of enactment of this subsection, screening or inspection of all individuals, goods, property, vehicles, and other equipment before entry into a secured area of an airport in the United States described in section 44903(c);

(B) shall prescribe specific requirements for such screening and inspection that will assure at least the same level

of protection as will result from screening of passengers and their baggage;

(C) shall establish procedures to ensure the safety and integrity of—

(i) all persons providing services with respect to aircraft providing passenger air transportation or intrastate air transportation and facilities of such persons at an airport in the United States described in section 44903(c);

(ii) all supplies, including catering and passenger amenities, placed aboard such aircraft, including the sealing of supplies to ensure easy visual detection of tampering; and

(iii) all persons providing such supplies and facilities of such persons;

(D) shall require vendors having direct access to the airfield and aircraft to develop security programs; and

(E) may provide for the use of biometric or other technology that positively verifies the identity of each employee and law enforcement officer who enters a secure area of an airport.

[(h)] *(i)* AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.—

(1) IN GENERAL.—If the Secretary, after receiving the recommendations of the National Institute of Justice, determines, with the approval of the Attorney General and the Secretary of State, that it is appropriate and necessary and would effectively serve the public interest in avoiding air piracy, the Secretary may authorize members of the flight deck crew on any aircraft providing air transportation or intrastate air transportation to carry a less-than-lethal weapon while the aircraft is engaged in providing such transportation.

(2) USAGE.—If the Secretary grants authority under paragraph (1) for flight deck crew members to carry a less-than-lethal weapon while engaged in providing air transportation or intrastate air transportation, the Secretary shall—

(A) prescribe rules requiring that any such crew member be trained in the proper use of the weapon; and

(B) prescribe guidelines setting forth the circumstances under which such weapons may be used.

[(i)] *(j)* SHORT-TERM ASSESSMENT AND DEPLOYMENT OF EMERGING SECURITY TECHNOLOGIES AND PROCEDURES.—

(1) IN GENERAL.—The Under Secretary of Transportation for Security shall recommend to airport operators, within 6 months after the date of enactment of the Aviation and Transportation Security Act, commercially available measures or procedures to prevent access to secure airport areas by unauthorized persons. As part of the 6-month assessment, the [Under Secretary for Transportation Security] *Under Secretary* shall—

(A) review the effectiveness of biometrics systems currently in use at several United States airports, including San Francisco International;

(B) review the effectiveness of increased surveillance at access points;

(C) review the effectiveness of card- or keypad-based access systems;

(D) review the effectiveness of airport emergency exit systems and determine whether those that lead to secure areas of the airport should be monitored or how breaches can be swiftly responded to; and

(E) specifically target the elimination of the "piggy-backing" phenomenon, where another person follows an authorized person through the access point.

The 6-month assessment shall include a 12-month deployment strategy for currently available technology at all category X airports, as defined in the Federal Aviation Administration approved air carrier security programs required under part 108 of title 14, Code of Federal Regulations. Not later than 18 months after the date of enactment of this Act, the Secretary of Transportation shall conduct a review of reductions in unauthorized access at these airports.

(2) COMPUTER-ASSISTED PASSENGER PRESCREENING SYSTEM.—

(A) IN GENERAL.—The Secretary of Transportation shall ensure that the Computer-Assisted Passenger Prescreening System, or any successor system—

(i) is used to evaluate all passengers before they board an aircraft; and

(ii) includes procedures to ensure that individuals selected by the system and their carry-on and checked baggage are adequately screened.

(B) MODIFICATIONS.—The Secretary of Transportation may modify any requirement under the Computer-Assisted Passenger Prescreening System for flights that originate and terminate within the same State, if the Secretary determines that—

(i) the State has extraordinary air transportation needs or concerns due to its isolation and dependence on air transportation; and

(ii) the routine characteristics of passengers, given the nature of the market, regularly triggers primary selectee status.

[(h)**]** *(k)* LIMITATION ON LIABILITY FOR ACTS TO THWART CRIMINAL VIOLENCE OR AIRCRAFT PIRACY.—An individual shall not be liable for damages in any action brought in a Federal or State court arising out of the acts of the individual in attempting to thwart an act of criminal violence or piracy on an aircraft if that individual reasonably believed that such an act of criminal violence or piracy was occurring or was about to occur.

§ 44909. Passenger manifests

(a) AIR CARRIER REQUIREMENTS.—(1) **[**Not later than March 16, 1991, the**]** *The* Secretary of Transportation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as

possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest should include the following information:

(A) the full name of each passenger.

(B) the passport number of each passenger, if required for travel.

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a)(1) and (2) of this section.

(c) FLIGHTS IN FOREIGN AIR TRANSPORTATION TO THE UNITED STATES.—

(1) IN GENERAL.—Not later than 60 days after the date of enactment of the Aviation and Transportation Security Act, each air carrier and foreign air carrier operating a passenger flight in foreign air transportation to the United States shall provide to the Commissioner of Customs by electronic transmission a passenger and crew manifest containing the information specified in paragraph (2). Carriers may use the advanced passenger information system established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) to provide the information required by the preceding sentence.

(2) INFORMATION.—A passenger and crew manifest for a flight required under paragraph (1) shall contain the following information:

(A) The full name of each passenger and crew member.

(B) The date of birth and citizenship of each passenger and crew member.

(C) The sex of each passenger and crew member.

(D) The passport number and country of issuance of each passenger and crew member if required for travel.

(E) The United States visa number or resident alien card number of each passenger and crew member, as applicable.

(F) Such other information as the Under Secretary *of Transportation for Security,* in consultation with the Commissioner of Customs, determines is reasonably necessary to ensure aviation safety.

(3) PASSENGER NAME RECORDS.—The carriers shall make passenger name record information available to the Customs Service upon request.

(4) TRANSMISSION OF MANIFEST.—Subject to paragraph (5), a passenger and crew manifest required for a flight under paragraph (1) shall be transmitted to the Customs Service in advance of the aircraft landing in the United States in such manner, time, and form as the Customs Service prescribes.

(5) TRANSMISSION OF MANIFESTS TO OTHER FEDERAL AGENCIES.—Upon request, information provided to the Under Sec-

retary or the Customs Service under this subsection may be shared with other Federal agencies for the purpose of protecting national security.

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§ 44921. Regular inspections of air cargo shipping facilities

The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.

§ 44922. Air cargo security

(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

(b) INDIRECT AIR CARRIERS.—

(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

(4) SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

(5) INDIRECT AIR CARRIER.—In this subsection, the term "indirect air carrier" has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

§ 44923. Passenger identification

(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Aviation Security Improvement Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air car-

riers and labor organizations representing individuals employed in commercial aviation, shall develop protocols to provide guidance for detection of false or fraudulent passenger identification. The protocols may consider new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public.

(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the protocols under subsection (a) in final form, the Under Secretary shall provide them to each air carrier. The Under Secretary shall establish a joint government and industry council to develop recommendations on how to implement the protocols. The Under Secretary shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of the Aviation Security Improvement Act on the actions taken under this section.

§ 44924. Passenger identification verification

(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of such identification verification technologies as the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.

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§ 44935. Employment standards and training

(a) EMPLOYMENT STANDARDS.—The Under Secretary of Transportation for Security shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and

(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the Under Secretary shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the Under Secretary shall recommend guide-

lines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—(1) The Under Secretary—

(A) may train individuals employed to carry out a security program under section 44903(c) of this title; and

(B) shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.

(2) The Under Secretary may authorize reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs. To the extent practicable, air travel reimbursed under this paragraph shall be on air carriers.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) The Under Secretary shall prescribe standards for educating and training—

(A) ground security coordinators;

(B) security supervisory personnel; and

(C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

(e) SECURITY SCREENERS.—

(1) TRAINING PROGRAM.—The Under Secretary of Transportation for Security shall establish a program for the hiring and training of security screening personnel.

(2) HIRING.—

(A) QUALIFICATIONS.—Within 30 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall establish qualification standards for individuals to be hired by the United States as security screening personnel. Notwithstanding any provision of law, those standards shall require, at a minimum, an individual—

(i) to have a satisfactory or better score on a Federal security screening personnel selection examination;

(ii) to be a citizen of the United [States;] *States or described in subparagraph (C);*

(iii) to meet, at a minimum, the requirements set forth in subsection (f);

(iv) to meet such other qualifications as the Under Secretary may establish; and

(v) to have the ability to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol.

(B) BACKGROUND CHECKS.—The Under Secretary shall require that an individual to be hired as a security screener undergo an employment investigation (including a criminal history record check) under section 44936(a)(1).

(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

(ii) was born in a territory of the United States;

(iii) was honorably discharged from service in the Armed Forces of the United States; or

(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107–71).

[(C)] *(D)* DISQUALIFICATION OF INDIVIDUALS WHO PRESENT NATIONAL SECURITY RISKS.—The Under Secretary, in consultation with the heads of other appropriate Federal agencies, shall establish procedures, in addition to any background check conducted under section 44936, to ensure that no individual who presents a threat to national security is employed as a security screener.

(3) EXAMINATION; REVIEW OF EXISTING RULES.—The Under Secretary shall develop a security screening personnel examination for use in determining the qualification of individuals seeking employment as security screening personnel. The Under Secretary shall also review, and revise as necessary, any standard, rule, or regulation governing the employment of individuals as security screening personnel.

(f) EMPLOYMENT STANDARDS FOR SCREENING PERSONNEL.—

(1) SCREENER REQUIREMENTS.—Notwithstanding any provision of law, an individual may not be deployed as a security screener unless that individual meets the following requirements:

(A) The individual shall possess a high school diploma, a general equivalency diploma, or experience that the Under Secretary has determined to be sufficient for the individual to perform the duties of the position.

(B) The individual shall possess basic aptitudes and physical abilities, including color perception, visual and aural acuity, physical coordination, and motor skills, to the following standards:

(i) Screeners operating screening equipment shall be able to distinguish on the screening equipment monitor the appropriate imaging standard specified by the Under Secretary.

(ii) Screeners operating any screening equipment shall be able to distinguish each color displayed on every type of screening equipment and explain what each color signifies.

(iii) Screeners shall be able to hear and respond to the spoken voice and to audible alarms generated by screening equipment in an active checkpoint environment.

(iv) Screeners performing physical searches or other related operations shall be able to efficiently and thoroughly manipulate and handle such baggage, con-

tainers, and other objects subject to security processing.

(v) Screeners who perform pat-downs or hand-held metal detector searches of individuals shall have sufficient dexterity and capability to thoroughly conduct those procedures over an individual's entire body.

(C) The individual shall be able to read, speak, and write English well enough to—

(i) carry out written and oral instructions regarding the proper performance of screening duties;

(ii) read English language identification media, credentials, airline tickets, and labels on items normally encountered in the screening process;

(iii) provide direction to and understand and answer questions from English-speaking individuals undergoing screening; and

(iv) write incident reports and statements and log entries into security records in the English language.

(D) The individual shall have satisfactorily completed all initial, recurrent, and appropriate specialized training required by the security program, except as provided in paragraph (3).

(2) VETERANS PREFERENCE.—The Under Secretary shall provide a preference for the hiring of an individual as a security screener if the individual is a member or former member of the armed forces and if the individual is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member of the armed forces.

(3) EXCEPTIONS.—An individual who has not completed the training required by this section may be deployed during the on-the-job portion of training to perform functions if that individual—

(A) is closely supervised; and

(B) does not make independent judgments as to whether individuals or property may enter a sterile area or aircraft without further inspection.

(4) REMEDIAL TRAINING.—No individual employed as a security screener may perform a screening function after that individual has failed an operational test related to that function until that individual has successfully completed the remedial training specified in the security program.

(5) ANNUAL PROFICIENCY REVIEW.—The Under Secretary shall provide that an annual evaluation of each individual assigned screening duties is conducted and documented. An individual employed as a security screener may not continue to be employed in that capacity unless the evaluation demonstrates that the individual—

(A) continues to meet all qualifications and standards required to perform a screening function;

(B) has a satisfactory record of performance and attention to duty based on the standards and requirements in the security program; and

(C) demonstrates the current knowledge and skills necessary to courteously, vigilantly, and effectively perform screening functions.

(6) OPERATIONAL TESTING.—In addition to the annual proficiency review conducted under paragraph (5), the Under Secretary shall provide for the operational testing of such personnel.

(g) TRAINING.—

(1) USE OF OTHER AGENCIES.—The Under Secretary may enter into a memorandum of understanding or other arrangement with any other Federal agency or department with appropriate law enforcement responsibilities, to provide personnel, resources, or other forms of assistance in the training of security screening personnel.

(2) TRAINING PLAN.—Within 60 days after the date of enactment of the Aviation and Transportation Security Act, the Under Secretary shall develop a plan for the training of security screening personnel. The plan shall require, at a minimum, that a security screener—

(A) has completed 40 hours of classroom instruction or successfully completed a program that the Under Secretary determines will train individuals to a level of proficiency equivalent to the level that would be achieved by such classroom instruction;

(B) has completed 60 hours of on-the-job instructions; and

(C) has successfully completed an on-the-job training examination prescribed by the Under Secretary.

(3) EQUIPMENT-SPECIFIC TRAINING.—An individual employed as a security screener may not use any security screening device or equipment in the scope of that individual's employment unless the individual has been trained on that device or equipment and has successfully completed a test on the use of the device or equipment.

(h) TECHNOLOGICAL TRAINING.—

(1) IN GENERAL.—The Under Secretary shall require training to ensure that screeners are proficient in using the most up-to-date new technology and to ensure their proficiency in recognizing new threats and weapons.

(2) PERIODIC ASSESSMENTS.—The Under Secretary shall make periodic assessments to determine if there are dual use items and inform security screening personnel of the existence of such items.

(3) CURRENT LISTS OF DUAL USE ITEMS.—Current lists of dual use items shall be part of the ongoing training for screeners.

(4) DUAL USE DEFINED.—For purposes of this subsection, the term "dual use" item means an item that may seem harmless but that may be used as a weapon.

(i) LIMITATION ON RIGHT TO STRIKE.—An individual that screens passengers or property, or both, at an airport under this section may not participate in a strike, or assert the right to strike, against the person (including a governmental entity) employing such individual to perform such screening.

(j) UNIFORMS.—The Under Secretary shall require any individual who screens passengers and property pursuant to section 44901 to be attired while on duty in a uniform approved by the Under Secretary.

[(i)] *(k)* ACCESSIBILITY OF COMPUTER-BASED TRAINING FACILITIES.—The Under Secretary shall work with air carriers and airports to ensure that computer-based training facilities intended for use by security screeners at an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation are conveniently located for that airport and easily accessible.

§ 44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1)(A) The Under Secretary of Transportation for Security shall require by regulation that an employment investigation, including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the Under Secretary of Transportation for [Transportation Security,,] *Security,* shall be conducted of each individual employed in, or applying for, a position as a security screener under section 44935(e) or a position in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

(i) aircraft of an air carrier or foreign air carrier; or

(ii) a secured area of an airport in the United States the Under Secretary designates that serves an air carrier or foreign air carrier.

(B) The Under Secretary shall require by regulation that an employment investigation (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the [Under Secretary of Transportation for Transportation Security] *Under Secretary*) be conducted for—

(i) individuals who are responsible for screening passengers or property under section 44901 of this title;

(ii) supervisors of the individuals described in clause (i);

(iii) individuals who regularly have escorted access to aircraft of an air carrier or foreign air carrier or a secured area of an airport in the United States the Administrator designates that serves an air carrier or foreign air carrier; and

(iv) such other individuals who exercise security functions associated with baggage or cargo, as the Under Secretary determines is necessary to ensure air transportation security.

(C) BACKGROUND CHECKS OF CURRENT EMPLOYEES.—

(i) A new background check (including a criminal history record check and a review of available law enforcement data bases and records of other governmental and international agencies to the extent determined practicable by the [Under Secretary of Transportation for Transportation Security] *Under Secretary* shall be required for any individual who is employed in a position described in subparagraphs (A) and (B) on the date of enactment of the Aviation and Transportation Security Act.

(ii) The Under Secretary may provide by order (without regard to the provisions of chapter 5 of title 5, United States Code) for a phased-in implementation of the requirements of this subparagraph.

(D) EXEMPTION.—An employment investigation, including a criminal history record check, shall not be required under this subsection for an individual who is exempted under section 107.31(m)(1) or (2) of title 14, Code of Federal Regulations, as in effect on November 22, 2000. The Under Secretary shall work with the International Civil Aviation Organization and with appropriate authorities of foreign countries to ensure that individuals exempted under this subparagraph do not pose a threat to aviation or national security.

(2) An air carrier, foreign air carrier, airport operator, or government that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the Under Secretary requires is conducted.

(3) The Under Secretary shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection.

(b) PROHIBITED EMPLOYMENT.—(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, airport operator, or government may not employ, or authorize or make a contract for the services of, an individual in a position described in subsection (a)(1) of this section if—

(A) the investigation of the individual required under this section has not been conducted; or

(B) the results of that investigation establish that, in the 10-year period ending on the date of the investigation, the individual was convicted (or found not guilty by reason of insanity) of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title or section 32 of title 18;

(ii) murder;

(iii) assault with intent to murder;

(iv) espionage;

(v) sedition;

(vi) treason;

(vii) rape;

(viii) kidnapping;

(ix) unlawful possession, sale, distribution, or manufacture of an explosive or weapon;

(x) extortion;

(xi) armed or felony unarmed robbery;

(xii) distribution of, or intent to distribute, a controlled substance;

(xiii) a felony involving a threat;

(xiv) a felony involving—

(I) willful destruction of property;

(II) importation or manufacture of a controlled substance;

(III) burglary;

(IV) theft;

(V) dishonesty, fraud, or misrepresentation;

(VI) possession or distribution of stolen property;

(VII) aggravated assault;

(VIII) bribery; and

(IX) illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than 1 year, or any other crime classified as a felony that the Under Secretary determines indicates a propensity for placing contraband aboard an aircraft in return for money; or

(xv) conspiracy to commit any of the acts referred to in clauses (i) through (xiv).

(2) The Under Secretary may specify other factors that are sufficient to prohibit the employment of an individual in a position described in subsection (a)(1) of this section.

(3) An air carrier, foreign air carrier, airport operator, or government may employ, or authorize or contract for the services of, an individual in a position described in subsection (a)(1) of this section without carrying out the investigation required under this section, if the Under Secretary approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—(1) If the Under Secretary requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Under Secretary shall designate an individual to obtain fingerprints and submit those fingerprints to the Attorney General. The Attorney General may make the results of a check available to an individual the Under Secretary designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the Under Secretary shall consult with the Attorney General. All Federal agencies shall cooperate with the Under Secretary and the Under Secretary's designee in the process of collecting and submitting fingerprints.

(2) The Under Secretary shall prescribe regulations on—

(A) procedures for taking fingerprints; and

(B) requirements for using information received from the Attorney General under paragraph (1) of this subsection—

(i) to limit the dissemination of the information; and

(ii) to ensure that the information is used only to carry out this section.

(3) If an identification and criminal history record check is conducted as part of an investigation of an individual under this section, the individual—

(A) shall receive a copy of any record received from the Attorney General; and

(B) may complete and correct the information contained in the check before a final employment decision is made based on the check.

(d) FEES AND CHARGES.—The Under Secretary and the Attorney General shall establish reasonable fees and charges to pay expenses incurred in carrying out this section. The employer of the individual being investigated shall pay the costs of a record check of the individual. Money collected under this section shall be credited to the account in the Treasury from which the expenses were incurred and are available to the Under Secretary and the Attorney General for those expenses.

(e) WHEN INVESTIGATION OR RECORD CHECK NOT REQUIRED.—This section does not require an investigation or record check when the investigation or record check is prohibited by a law of a foreign country.

(f) PROTECTION OF PRIVACY OF APPLICANTS AND EMPLOYEES.—The Under Secretary shall formulate and implement procedures that are designed to prevent the transmission of information not relevant to an applicant's or employee's qualifications for unescorted access to secure areas of an airport when that applicant or employee is undergoing a criminal history records check.

* * * * * * *

§ 44939. Training to operate certain aircraft

(a) WAITING PERIOD.—

(1) IN GENERAL.—A person subject to regulation under this part may provide training in the operation of [any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more] *an aircraft* to an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) or to any other individual specified by the Under Secretary of Transportation for Security only if—

[(1)] *(A)* that person has first notified the Attorney General that the individual has requested such training and furnished the Attorney General with that individual's identification in such form as the Attorney General may require; and

[(2)] *(B)* the Attorney General has not directed, within 45 days after being notified under [paragraph (1),] *subparagraph (A), that person not to provide the requested training because the Attorney General has determined that the individual presents a risk to aviation or national security.*

(2) EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—

(A) has earned a Federal Aviation Administration type rating in an aircraft; or

(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.

(b) INTERRUPTION OF TRAINING.—If the Attorney General, more than 45 days after receiving notification under subsection (a) from a person providing training described in subsection (a), determines that the individual presents a risk to aviation or national security, the Attorney General shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

[(c) COVERED TRAINING.—For the purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.]

(c) COVERED TRAINING.—

(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.

(d) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The Under Secretary shall require flight schools to conduct a security awareness program for flight school employees to increase their awareness of suspicious circumstances and activities of individuals enrolling in or attending flight school.

§ 44940. Security service fee

(a) GENERAL AUTHORITY.—

(1) PASSENGER FEES.—The Under Secretary of Transportation for Security shall impose a uniform fee, on passengers of air carriers and foreign air carriers in air transportation and intrastate air transportation originating at airports in the United States, to pay for the following costs of providing civil aviation security services:

(A) Salary, benefits, overtime, retirement and other costs of screening personnel, their supervisors and managers, and Federal law enforcement personnel deployed at airport security screening locations under section 44901.

(B) The costs of training personnel described in subparagraph (A), and the acquisition, operation, and maintenance of equipment used by such personnel.

(C) The costs of performing background investigations of personnel described in subparagraphs (A), (D), (F), and (G).

(D) The costs of the Federal air marshals program.

(E) The costs of performing civil aviation security research and development under this title.

(F) The costs of Federal Security Managers under section 44903.

(G) The costs of deploying ⟦Federal law enforcement personnel pursuant to section 44903(h).⟧ *law enforcement personnel pursuant to this title.*

The amount of such costs shall be determined by the Under Secretary and shall not be subject to judicial review.

(2) AIR CARRIER FEES.—

(A) AUTHORITY.—In addition to the fee imposed pursuant to paragraph (1), and only to the extent that the Under Secretary estimates that such fee will be insufficient to pay for the costs of providing civil aviation security services described in paragraph (1), the Under Secretary may impose a fee on air carriers and foreign air carriers engaged in air transportation and intrastate air transportation to pay for the difference between any such costs and the amount collected from such fee, as estimated by the Under Secretary at the beginning of each fiscal year. The estimates of the Under Secretary under this subparagraph are not subject to judicial review.

(B) LIMITATIONS.—

(i) OVERALL LIMIT.—The amounts of fees collected under this paragraph for each fiscal year may not exceed, in the aggregate, the amounts paid in calendar year 2000 by carriers described in subparagraph (A) for screening passengers and property, as determined by the Under Secretary.

(ii) PER-CARRIER LIMIT.—The amount of fees collected under this paragraph from an air carrier described in subparagraph (A) for each of fiscal years 2002, 2003, and 2004 may not exceed the amount paid in calendar year 2000 by that carrier for screening passengers and property, as determined by the Under Secretary.

(iii) ADJUSTMENT OF PER-CARRIER LIMIT.—For fiscal year 2005 and subsequent fiscal years, the per-carrier limitation under clause (ii) may be determined by the Under Secretary on the basis of market share or any other appropriate measure in lieu of actual screening costs in calendar year 2000.

(iv) FINALITY OF DETERMINATIONS.—Determinations of the Under Secretary under this subparagraph are not subject to judicial review.

(C) SPECIAL RULE FOR FISCAL YEAR 2002.—The amount of fees collected under this paragraph from any carrier for fiscal year 2002 may not exceed the amounts paid by that carrier for screening passengers and property for a period of time in calendar year 2000 proportionate to the period of time in fiscal year 2002 during which fees are collected under this paragraph.

(b) SCHEDULE OF FEES.—In imposing fees under subsection (a), the Under Secretary shall ensure that the fees are reasonably related to the Transportation Security Administration's costs of providing services rendered.

(c) LIMITATION ON FEE.—Fees imposed under subsection (a)(1) may not exceed $2.50 per enplanement in air transportation or intrastate air transportation that originates at an airport in the United States, except that the total amount of such fees may not exceed $5.00 per one-way trip.

(d) IMPOSITION OF FEE.—

(1) IN GENERAL.—Notwithstanding section 9701 of title 31 and the procedural requirements of section 553 of title 5, the Under Secretary shall impose the fee under subsection (a)(1), and may impose a fee under subsection (a)(2), through the publication of notice of such fee in the Federal Register and begin collection of the fee within 60 days of the date of enactment of this Act, or as soon as possible thereafter.

(2) SPECIAL RULES *FOR* PASSENGER FEES.—A fee imposed under subsection (a)(1) through the procedures under subsection (d) shall apply only to tickets sold after the date on which such fee is imposed. If a fee imposed under subsection (a)(1) through the procedures under subsection (d) on transportation of a passenger of a carrier described in subsection (a)(1) is not collected from the passenger, the amount of the fee shall be paid by the carrier.

(3) SUBSEQUENT MODIFICATION OF FEE.—After imposing a fee in accordance with paragraph (1), the Under Secretary may modify, from time to time through publication of notice in the Federal Register, the imposition or collection of such fee, or both.

[(4) LIMITATION ON COLLECTION.—No fee may be collected under this section except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act.]

(4) FEE COLLECTION.—Fees may be collected under this section as provided in advance in appropriations Acts.

(e) ADMINISTRATION OF FEES.—

(1) FEES PAYABLE TO UNDER SECRETARY.—All fees imposed and amounts collected under this section are payable to the Under Secretary.

(2) FEES COLLECTED BY AIR CARRIER.—A fee imposed under subsection (a)(1) shall be collected by the air carrier or foreign air carrier that sells a ticket for transportation described in subsection (a)(1).

(3) DUE DATE FOR REMITTANCE.—A fee collected under this section shall be remitted on the last day of each calendar month by the carrier collecting the fee. The amount to be remitted shall be for the calendar month preceding the calendar month in which the remittance is made.

(4) INFORMATION.—The Under Secretary may require the provision of such information as the Under Secretary decides is necessary to verify that fees have been collected and remitted at the proper times and in the proper amounts.

(5) FEE NOT SUBJECT TO TAX.—For purposes of section 4261 of the Internal Revenue Code of 1986 (26 U.S.C. 4261), a fee imposed under this section shall not be considered to be part of the amount paid for taxable transportation.

(6) COST OF COLLECTING FEE.—No portion of the fee collected under this section may be retained by the air carrier or foreign air carrier for the costs of collecting, handling, or remitting the fee except for interest accruing to the carrier after collection and before remittance.

(f) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

(2) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(3) shall remain available until expended.

(g) REFUNDS.—The Under Secretary may refund any fee paid by mistake or any amount paid in excess of that required.

(h) EXEMPTIONS.—The Under Secretary may exempt from the passenger fee imposed under subsection (a)(1) any passenger enplaning at an airport in the United States that does not receive screening services under section 44901 for that segment of the trip for which the passenger does not receive screening.

§ 44942. Performance goals and objectives

(a) SHORT TERM TRANSITION.—

(1) IN GENERAL.—Within 180 days after the date of enactment of the Aviation and Transportation Security Act, the [Under Secretary for Transportation Security] *Under Secretary of Transportation for Security* may, in consultation with Congress—

(A) establish acceptable levels of performance for aviation security, including screening operations and access control, and

(B) provide Congress with an action plan, containing measurable goals and milestones, that outlines how those levels of performance will be achieved.

(2) BASICS OF ACTION PLAN.—The action plan shall clarify the responsibilities of the Transportation Security Administration, the Federal Aviation Administration and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.

(b) LONG-TERM RESULTS-BASED MANAGEMENT.—

[(1) PERFORMANCE PLAN AND REPORT.—]

[(A)] *(1)* PERFORMANCE PLAN.—

[(i)] *(A)* Each year, consistent with the requirements of the Government Performance and Results Act of 1993 (GPRA), the Secretary and the [Under Secretary for Transportation Security] *Under Secretary* shall agree on a performance plan for the succeeding 5 years that establishes measurable goals and objectives for aviation security. The plan shall identify action steps necessary to achieve such goals.

[(ii)] *(B)* In addition to meeting the requirements of GPRA, the performance plan should clarify the responsibilities of the Secretary, the Under Secretary for Transportation Security and any other agency or organization that may have a role in ensuring the safety and security of the civil air transportation system.

[(B)] *(2)* PERFORMANCE REPORT.—Each year, consistent with the requirements of GPRA, the Under Secretary for Transportation Security shall prepare and submit to Congress an annual report including an evaluation of the extent goals and objectives were met. The report shall include the results achieved during the year relative to the goals established in the performance plan.

§ 44943. Performance management system

(a) ESTABLISHING A FAIR AND EQUITABLE SYSTEM FOR MEASURING STAFF PERFORMANCE.—The [Under Secretary for Transportation Security] *Under Secretary of Transportation for Security* shall establish a performance management system which strengthens the organization's effectiveness by providing for the establishment of goals and objectives for managers, employees, and organizational performance consistent with the performance plan.

(b) ESTABLISHING MANAGEMENT ACCOUNTABILITY FOR MEETING PERFORMANCE GOALS.—

(1) IN GENERAL.—Each year, the Secretary and Under Secretary of Transportation for Security shall enter into an annual

performance agreement that shall set forth organizational and individual performance goals for the Under Secretary.

(2) GOALS.—Each year, the Under Secretary and each senior manager who reports to the Under Secretary shall enter into an annual performance agreement that sets forth organization and individual goals for those managers. All other employees hired under the authority of the Under Secretary shall enter into an annual performance agreement that sets forth organization and individual goals for those employees.

(c) PERFORMANCE-BASED SERVICE CONTRACTING.—To the extent contracts, if any, are used to implement the Aviation *and Transportation* Security Act, the [Under Secretary for Transportation Security] *Under Secretary* shall, to the extent practical, maximize the use of performance-based service contracts. These contracts should be consistent with guidelines published by the Office of Federal Procurement Policy.

§ 44944. Voluntary provision of emergency services

(a) PROGRAM FOR PROVISION OF VOLUNTARY SERVICES.—

(1) PROGRAM.—The [Under Secretary of Transportation for Transportation Security] *Under Secretary of Transportation for Security* shall carry out a program to permit qualified law enforcement officers, firefighters, and emergency medical technicians to provide emergency services on commercial air flights during emergencies.

(2) REQUIREMENTS.—The Under Secretary shall establish such requirements for qualifications of providers of voluntary services under the program under paragraph (1), including training requirements, as the Under Secretary considers appropriate.

(3) CONFIDENTIALITY OF REGISTRY.—If as part of the program under paragraph (1) the Under Secretary requires or permits registration of law enforcement officers, firefighters, or emergency medical technicians who are willing to provide emergency services on commercial flights during emergencies, the Under Secretary shall take appropriate actions to ensure that the registry is available only to appropriate airline personnel and otherwise remains confidential.

(4) CONSULTATION.—The Under Secretary shall consult with appropriate representatives of the commercial airline industry, and organizations representing community-based law enforcement, firefighters, and emergency medical technicians, in carrying out the program under paragraph (1), including the actions taken under paragraph (3).

(b) EXEMPTION FROM LIABILITY.—An individual shall not be liable for damages in any action brought in a Federal or State court that arises from an act or omission of the individual in providing or attempting to provide assistance in the case of an in-flight emergency in an aircraft of an air carrier if the individual meets such qualifications as the Under Secretary shall prescribe for purposes of this section.

(c) EXCEPTION.—The exemption under subsection (b) shall not apply in any case in which an individual provides, or attempts to provide, assistance described in that paragraph in a manner that constitutes gross negligence or willful misconduct.

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CHAPTER 463. PENALTIES

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§ 46301. Civil penalties

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than $1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), and 44908), or section 47107(b) (including any assurance made under such section) of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than $10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 (except sections 44717–44723), or chapter 449 (except sections 44902, 44903(d), 44904, and 44907–44909) of this title; or

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(3) A civil penalty of not more than $10,000 may be imposed for each violation under paragraph (1) of this subsection related to—

(A) the transportation of hazardous material;

(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation;

(C) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;

(D) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or

(E) a violation of section 41705, relating to discrimination against handicapped individuals.

(4) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41715) continues or, if applicable, for each flight involving the violation (other than a violation of section 41715).

(5) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation

of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(6) AIR SERVICE TERMINATION NOTICE.—Notwithstanding paragraph (1), the maximum civil penalty for violating section 41715 shall be $5,000 instead of $1,000.

(7) CONSUMER PROTECTION.—Notwithstanding paragraphs (1) and (4), the maximum civil penalty for violating section 40127 or 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary that is intended to afford consumer protection to commercial air transportation passengers, shall be $2,500 for each violation.

(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security is $10,000, except that the maximum civil penalty is $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).

(b) SMOKE ALARM DEVICE PENALTY.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than $2,000.

(c) PROCEDURAL REQUIREMENTS.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)–(f)), chapter 415 (except sections 41502, 41505, and 41507–41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) In this subsection—

(A) "flight engineer" means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) "mechanic" means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) "pilot" means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) "repairman" means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–44723) or section 46301(b), ⟦46302, 46303,⟧ 46318, or 47107(b) (as further defined by the Secretary under section 47107(l) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. ⟦The Under Secretary of Transportation for Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(f), 44908, and 44909) or a regulation prescribed or order issued under such chapter 449.⟧ *The Under Secretary of Transportation for Security may impose a civil penalty for a violation of section 114(l), section 40113, 40119, chapter 449 (except sections 44902, 44903(d), 44907(a)—(d)(1)(A), 44907(d)(1)(C)—(F), 44908, and 44909), section 46302, 46303, or 46318 of this title, or a regulation prescribed or order issued under any of those provisions.* The Under Secretary or Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Under Secretary or Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Under Secretary or Administrator initiates if—

(A) the amount in controversy is more than $50,000;

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

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

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

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the

Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

(i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(ii) each conclusion of law is made according to applicable law, precedent, and public policy; and

(iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

(i) a civil penalty shall not be assessed against an individual;

(ii) a civil penalty may be compromised as provided under subsection (f); and

(iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Under Secretary, Administrator, or Board may impose under this subsection is $50,000.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719–

44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)–(d)(1)(A) and (d)(1)(C)–(f), 44908, and 44909), or section 46302, 46303, or 47107(b) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the [Secretary] *Secretary, the Under Secretary of Transportation for Security,* or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

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CHAPTER 465. SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

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§ 46503. Interference with [security] screening personnel*; unauthorized circumvention of security systems or procedures*

(a) INTERFERENCE WITH SECURITY SCREENING PERSONNEL.—An individual in an area within a commercial service airport in the United States who, by assaulting a Federal, airport, or air carrier employee who has security duties within the airport, interferes with the performance of the duties of the employee or lessens the ability of the employee to perform those duties, shall be fined under title 18, imprisoned for not more than 10 years, or both. If the individual used a dangerous weapon in committing the assault or interference, the individual may be imprisoned for any term of years or life imprisonment.

(b) UNAUTHORIZED CIRCUMVENTION OF SECURITY SYSTEMS AND PROCEDURES.—An individual in an area within a commercial service airport in the United States who intentionally circumvents, in an unauthorized manner, a security system or procedure in the airport shall be fined under title 18, imprisoned for not more than 10 years, or both.

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CHAPTER 471. AIRPORT DEVELOPMENT

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§ 47115. Discretionary fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a discretionary fund. The fund consists of—

(1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)–(e) of this title; and

(2) 12.5 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter.

(c) MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.—At least 75 percent of the amount in the fund and distributed by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) CONSIDERATIONS.—In selecting a project for a grant to preserve and enhance capacity as described in subsection (c)(1) of this section, the Secretary shall consider—

(1) the effect the project will have on the overall national air transportation system capacity;

(2) the project benefit and cost, including, in the case of a project at a reliever airport, the number of operations projected to be diverted from a primary airport to the reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system;

(3) the financial commitment from non-United States Government sources to preserve or enhance airport capacity;

(4) the airport improvement priorities of the States, and regional offices of the Administration, to the extent such priorities are not in conflict with paragraphs (1) and (2);

(5) the projected growth in the number of passengers that will be using the airport at which the project will be carried out; and

(6) any increase in the number of passenger boardings in the preceding 12-month period at the airport at which the project will be carried out, with priority consideration to be given to projects at airports at which the number of passenger boardings increased by at least 20 percent as compared to the number of passenger boardings in the 12-month period preceding such period.

(e) WAIVING PERCENTAGE REQUIREMENT.—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are

insufficient qualified grant applications to meet that percentage, the amount the Secretary determines will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

(f) CONSIDERATION OF DIVERSION OF REVENUES IN AWARDING DISCRETIONARY GRANTS.—

(1) GENERAL RULE.—Subject to paragraph (2), in deciding whether or not to distribute funds to an airport from the discretionary funds established by subsection (a) of this section and section 47116 of this title, the Secretary shall consider as a factor militating against the distribution of such funds to the airport the fact that the airport is using revenues generated by the airport or by local taxes on aviation fuel for purposes other than capital or operating costs of the airport or the local airports system or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.

(2) REQUIRED FINDING.—Paragraph (1) shall apply only when the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of such revenues in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(g) MINIMUM AMOUNT TO BE CREDITED.—

(1) GENERAL RULE.—In a fiscal year, there shall be credited to the fund, out of amounts made available under section 48103 of this title, an amount that is at least equal to the sum of—

(A) $148,000,000; plus

(B) the total amount required from the fund to carry out in the fiscal year letters of intent issued before January 1, 1996, under section 47110(e) of this title or the Airport and Airway Improvement Act of 1982.

The amount credited is exclusive of amounts that have been apportioned in a prior fiscal year under section 47114 of this title and that remain available for obligation.

(2) REDUCTION OF APPORTIONMENTS.—In a fiscal year in which the amount credited under subsection (a) is less than the minimum amount to be credited under paragraph (1), the total amount calculated under paragraph (3) shall be reduced by an amount that, when credited to the fund, together with the amount credited under subsection (a), equals such minimum amount.

(3) AMOUNT OF REDUCTION.—For a fiscal year, the total amount available to make a reduction to carry out paragraph (2) is the total of the amounts determined under sections 47114(c)(1)(A), 47114(c)(2), 47114(d), and 47117(e) of this title. Each amount shall be reduced by an equal percentage to achieve the reduction.

(h) PRIORITY FOR LETTERS OF INTENT.—In making grants in a fiscal year with funds made available under this section, the Secretary shall fulfill intentions to obligate under section 47110(e).

(i) CONSIDERATIONS FOR PROJECT UNDER EXPANDED SECURITY ELIGIBILITY.—In order to assure that funding under this subchapter is provided to the greatest needs, the Secretary, in selecting a project described in section 47102(3)(J) for a grant, shall consider the [non-federal] *non-Federal* resources available to sponsor, the use of such [non-federal] *non-Federal* resources, and the degree to which the sponsor is providing increased funding for the project.

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CHAPTER 481. AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

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§ 48107. Civil aviation security research and development

After the review under section 44912(b) of this title is completed, necessary amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants under section [44912(a)(4)(A).] *44912(a)(5)(A).*

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AVIATION AND TRANSPORTATION SECURITY ACT

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SEC. 106. IMPROVED AIRPORT PERIMETER ACCESS SECURITY.

(a) IN GENERAL.—Section 44903 of title 49, United States Code, is amended by adding at the end the following:

"(h) IMPROVED AIRPORT PERIMETER ACCESS SECURITY.—

"(1) IN GENERAL.—The Under Secretary, in consultation with the airport operator and law enforcement authorities, may order the deployment of such personnel at any secure area of the airport as necessary to counter the risk of criminal violence, the risk of aircraft piracy at the airport, the risk to air carrier aircraft operations at the airport, or to meet national security concerns.

"(2) SECURITY OF AIRCRAFT AND GROUND ACCESS TO SECURE AREAS.—In determining where to deploy such personnel, the Under Secretary shall consider the physical security needs of air traffic control facilities, parked aircraft, aircraft servicing equipment, aircraft supplies (including fuel), automobile parking facilities within airport perimeters or adjacent to secured facilities, and access and transition areas at airports served by other means of ground or water transportation.

"(3) DEPLOYMENT OF FEDERAL LAW ENFORCEMENT PERSONNEL.—The Secretary may enter into a memorandum of understanding or other agreement with the Attorney General or

the head of any other appropriate Federal law enforcement agency to deploy Federal law enforcement personnel at an airport in order to meet aviation safety and security concerns.

"(4) AIRPORT PERIMETER SCREENING.—The Under Secretary—

"(A) shall require, as soon as practicable after the date of enactment of this subsection, screening or inspection of all individuals, goods, property, vehicles, and other equipment before entry into a secured area of an airport in the United States described in section 44903(c);

"(B) shall prescribe specific requirements for such screening and inspection that will assure at least the same level of protection as will result from screening of passengers and their baggage;

"(C) shall establish procedures to ensure the safety and integrity of—

"(i) all persons providing services with respect to aircraft providing passenger air transportation or intrastate air transportation and facilities of such persons at an airport in the United States described in section 44903(c);

"(ii) all supplies, including catering and passenger amenities, placed aboard such aircraft, including the sealing of supplies to ensure easy visual detection of tampering; and

"(iii) all persons providing such supplies and facilities of such persons;

"(D) shall require vendors having direct access to the airfield and aircraft to develop security programs; and

"(E) may provide for the use of biometric or other technology that positively verifies the identity of each employee and law enforcement officer who enters a secure area of an airport.".

(b) SMALL AND MEDIUM AIRPORTS.—

(1) TECHNICAL SUPPORT AND FINANCIAL ASSISTANCE.—The Under Secretary of Transportation for Security shall develop a plan to—

(A) provide technical support to airports, each of which had less than 1 percent of the total annual enplanements in the United States for the most recent calendar year for which data is available, to enhance security operations; and

(B) provide financial assistance to those airports to defray the costs of enhancing security.

(2) REMOVAL OF CERTAIN RESTRICTIONS.—

(A) CERTIFICATION BY OPERATOR.—If the operator of an airport described in paragraph (1), after consultation with the appropriate State and local law enforcement authorities, determines that safeguards are in place to sufficiently protect public safety, and so certifies in writing to the Under Secretary, then any security rule, order, or other directive restricting the parking of passenger vehicles shall not apply at that airport after the applicable time period specified in subparagraph (B), unless the Under Secretary, taking into account individual airport circumstances, notifies the airport operator that the safeguards in place do

not adequately respond to specific security risks and that the restriction must be continued in order to ensure public safety.

(B) COUNTERMAND PERIOD.—The time period within which the *Under* Secretary may notify an airport operator, after receiving a certification under subparagraph (A), that a restriction must be continued in order to ensure public safety at the airport is—

(i) 15 days for a nonhub airport (as defined in section 41714(h) of title 49, United States Code);

(ii) 30 days for a small hub airport (as defined in such section);

(iii) 60 days for a medium hub airport (as defined in such section); and

(iv) 120 days for an airport that had at least 1 percent of the total annual enplanements in the United States for the most recent calendar year for which data is available.

(c) IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.—Section 44903(g)(2) of title 49, United States Code, is amended—

(1) by striking "weaknesses by January 31, 2001;" in subparagraph (A) and inserting "weaknesses;";

(2) by striking subparagraph (D) and inserting the following:

"(D) on an ongoing basis, assess and test for compliance with access control requirements, report annually findings of the assessments, and assess the effectiveness of penalties in ensuring compliance with security procedures and take any other appropriate enforcement actions when noncompliance is found;";

(3) by striking "program by January 31, 2001;" in subparagraph (F) and inserting "program;"; and

(4) by striking subparagraph (G) and inserting the following:

"(G) work with airport operators to strengthen access control points in secured areas (including air traffic control operations areas, maintenance areas, crew lounges, baggage handling areas, concessions, and catering delivery areas) to ensure the security of passengers and aircraft and consider the deployment of biometric or similar technologies that identify individuals based on unique personal characteristics.".

(d) AIRPORT SECURITY PILOT PROGRAM.—Section 44903(c) of title 49, United States Code, is amended by adding at the end the following:

"(3) PILOT PROGRAMS.—The Administrator shall establish pilot programs in no fewer than 20 airports to test and evaluate new and emerging technology for providing access control and other security protections for closed or secure areas of the airports. Such technology may include biometric or other technology that ensures only authorized access to secure areas.".

(e) AIRPORT SECURITY AWARENESS PROGRAMS.—The Under Secretary of Transportation for Security shall require scheduled passenger air carriers, and airports in the United States described in section 44903(c) to develop security awareness programs for airport employees, ground crews, gate, ticket, and curbside agents of the air carriers, and other individuals employed at such airports.

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SEC. 119. INCREASED FUNDING FLEXIBILITY FOR AVIATION SECURITY.

(a) LIMITED USE OF AIRPORT IMPROVEMENT PROGRAM FUNDS.—

(1) AIRPORT DEVELOPMENT FUNDS.—Section 47102(3) of title 49, United States Code, is amended by adding at the end the following:

"(J) in fiscal year 2002, any additional security related activity required by law or by the Secretary after September 11, 2001, and before October 1, 2002.

"(K) in fiscal year 2002 with respect to funds apportioned under section 47114 in fiscal years 2001 and 2002, any activity, including operational activities, of an airport that is not a primary airport if that airport is located within the confines of enhanced class B airspace, as defined by Notice to Airmen FDC 1/0618 issued by the Federal Aviation Administration and the activity was carried out when any restriction in the Notice is in effect.

"(L) in fiscal year 2002, payments for debt service on indebtedness incurred to carry out a project at an airport owned or controlled by the sponsor or at a privately owned or operated airport passenger terminal financed by indebtedness incurred by the sponsor if the Secretary determines that such payments are necessary to prevent a default on the indebtedness.".

(2) ALLOWABLE COSTS.—Section 47110(b)(2) of title 49, United States Code, is amended—

(A) by striking "or" in subparagraph (B);

(B) by inserting "or" after "executed;" in subparagraph (C); and

(C) by adding at the end the following:

"(D) if the cost is incurred after September 11, 2001, for a project described in section 47102(3)(J), 47102(3)(K), or 47102(3)(L) and shall not depend upon the date of execution of a grant agreement made under this subchapter;".

(3) DISCRETIONARY GRANTS.—Section 47115 of title 49, United States Code, is amended by adding at the end the following:

"(i) CONSIDERATIONS FOR PROJECT UNDER EXPANDED SECURITY ELIGIBILITY.—In order to assure that funding under this subchapter is provided to the greatest needs, the Secretary, in selecting a project described in section 47102(3)(J) for a grant, shall consider the non-federal resources available to sponsor, the use of such non-federal resources, and the degree to which the sponsor is providing increased funding for the project.".

(4) FEDERAL SHARE.—Section 47109(a) of title 49, United States Code, is amended—

(A) by striking "and" in paragraph (3);

(B) by striking "47134." in paragraph (4) and inserting "47134; and"; and

(C) by adding at the end the following:

"(5) for fiscal year 2002, 100 percent for a project described in section 47102(3)(J), 47102(3)(K), or 47102(3)(L).".

(5) AIRPORT DEVELOPMENT.—Section 47102(3)(B) of title 49, United States Code, is amended—

(A) by striking "and" at the end of clause (viii);

(B) by striking the period at the end of clause (ix) and inserting "; and"; and

(C) by inserting after clause (ix) the following new clause:

"(x) replacement of baggage conveyor systems, and reconfiguration of terminal baggage areas, that the Secretary determines are necessary to install bulk explosive detection devices.".

(b) APPORTIONED FUNDS.—For the purpose of carrying out section 47114 of title 49, United States Code, for fiscal year 2003, the Secretary shall use, in lieu of passenger boardings at an airport during the prior calendar year, the greater of—

(1) the number of passenger boardings at that airport during 2000; or

(2) the number of passenger boardings at that airport during 2001.

(c) EXPEDITED PROCESSING OF SECURITY-RELATED PFC REQUESTS.—The Administrator of the Federal Aviation Administration shall, to the extent feasible, expedite the processing and approval of passenger facility fee requests under subchapter I of chapter 471 of title 49, United States Code, for projects described in [section 47192(3)(J)] *section 47102(3)(J)* of title 49, United States Code.

(d) AMENDMENT OF GENERAL FEE SCHEDULE PROVISION.—Section 45301(b)(1)(B) of title 49, United States Code, is amended—

(1) by striking "directly" and inserting "reasonably";

(2) by striking "Administration's costs" and inserting "Administration's costs, as determined by the Administrator,"; and

(3) by adding at the end "The Determination of such costs by the Administrator is not subject to judicial review.".

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SEC. 132. GENERAL AVIATION AND AIR CHARTERS.

(a) AIR CHARTER PROGRAM.—Within 90 days after the date of enactment of this Act, the Under Secretary of Transportation for Transportation Security shall implement an aviation security program for charter air carriers (as defined in section 40102(a)(13) of title 49, United States Code) with a maximum certificated takeoff weight of [12,500 pounds or more.] *more than 12,500 pounds.*

(b) GENERAL AVIATION PROGRAM.—Within 30 days after the date of enactment of this Act, the Under Secretary of Transportation for Transportation Security shall transmit a report on airspace and other security measures that can be deployed, as necessary, to improve general aviation security to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The Under Secretary may submit the report in both classified and redacted forms.

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