

Border Protection, or any other appropriate office or component of the Department, upon request, such information as may be necessary to allow such office or component to assist air carriers in improving their administration of the advanced passenger pre-screening system and reduce the number of false positives; and

(C) require air carriers and foreign air carriers take action to identify passengers determined, under the process established under subsection (a), to have been wrongly identified.

(4) **HANDLING OF PERSONALLY IDENTIFIABLE INFORMATION.**—The Secretary, in conjunction with the Chief Privacy Officer of the Department shall—

(A) require that Federal employees of the Department handling personally identifiable information of passengers (in this paragraph referred to as “PII”) complete mandatory privacy and security training prior to being authorized to handle PII;

(B) ensure that the records maintained under this subsection are secured by encryption, one-way hashing, other data anonymization techniques, or such other equivalent security technical protections as the Secretary determines necessary;

(C) limit the information collected from misidentified passengers or other individuals to the minimum amount necessary to resolve a redress request;

(D) require that the data generated under this subsection shall be shared or transferred via a secure data network, that has been audited to ensure that the anti-hacking and other security related software functions properly and is updated as necessary;

(E) ensure that any employee of the Department receiving the data contained within the records handles the information in accordance with the section 552a of title 5, United States Code, and the Federal Information Security Management Act of 2002 (Public Law 107-296);

(F) only retain the data for as long as needed to assist the individual traveler in the redress process; and

(G) conduct and publish a privacy impact assessment of the process described within this subsection and transmit the assessment to the Committee on Homeland Security of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and Committee on Homeland Security and Governmental Affairs of the Senate.

(5) **INITIATION OF REDRESS PROCESS AT AIRPORTS.**—The Office shall establish at each airport at which the Department has a significant presence a process to provide information to air carrier passengers to begin the redress process established pursuant to subsection (a).

(Added Pub. L. 110-53, title XVI, §1606(a), Aug. 3, 2007, 121 Stat. 482.)

REFERENCES IN TEXT

The Federal Information Security Management Act of 2002, referred to in subsec. (b)(4)(E), is title X of Pub.

L. 107-296, Nov. 25, 116 Stat. 2259. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Title 6, Domestic Security, and Tables.

SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

**[[§§ 44931, 44932. Repealed. Pub. L. 107-71, title I, § 101(f)(6), Nov. 19, 2001, 115 Stat. 603]**

Section 44931, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1215, related to the Director of Intelligence and Security.

Section 44932, Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1215; Pub. L. 107-71, title I, §110(a), Nov. 19, 2001, 115 Stat. 614, related to the Assistant Administrator for Civil Aviation Security.

**§ 44933. Federal Security Managers**

(a) **ESTABLISHMENT, DESIGNATION, AND STATIONING.**—The Under Secretary of Transportation for Security shall establish the position of Federal Security Manager at each airport in the United States described in section 44903(c). The Under Secretary shall designate individuals as Managers for, and station those Managers at, those airports.

(b) **DUTIES AND POWERS.**—The Manager at each airport shall—

(1) oversee the screening of passengers and property at the airport; and

(2) carry out other duties prescribed by the Under Secretary.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1216; Pub. L. 107-71, title I, §§101(f)(4), 103, Nov. 19, 2001, 115 Stat. 603, 605.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44933(a) .....	49 App.:1358b(a)(1), (2), (4).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §319(a); added Nov. 16, 1990, Pub. L. 101-604, §104, 104 Stat. 3070.
44933(b) .....	49 App.:1358b(a)(3).	
44933(c) .....	49 App.:1358b(a)(5).	

In subsection (a), the words “Not later than 90 days after November 16, 1990” are omitted as obsolete. The words “The Administrator shall designate individuals as Managers for, and station those Managers at, those airports” are substituted for “and shall begin designating persons as such Managers and stationing such Managers at such airports” for clarity and because of the restatement. The words “and designate a current field employee of the Administration as a Manager” are substituted for “assign the functions and responsibilities described in this section to existing Federal Aviation Administration field personnel and designate such personnel accordingly” to eliminate unnecessary words. The words “to the office of” are omitted as unnecessary. The words “Not later than 1 year after November 16, 1990” are omitted as obsolete. The words “Secretary of Transportation” are substituted for “Department of Transportation” because of 49:102.

In subsection (b), before clause (1), the words “The Manager at each airport shall” are substituted for “The responsibilities of a Federal Security Manager shall include the following” to eliminate unnecessary words. In clause (2)(A), the words “air carrier” are substituted for “such air carrier” because this is the first time the term is used in the source provisions. In clause (3), the words “United States Government” are substituted for “Federal” for clarity and consistency in the revised title and with other titles of the United

States Code. In clause (7), the words “other Managers” are substituted for “Federal Security Managers at other airports, as appropriate” to eliminate unnecessary words.

In subsection (c), the words “duties and powers” are substituted for “responsibilities” for clarity and consistency in the revised title and with other titles of the Code.

#### AMENDMENTS

2001—Pub. L. 107–71, §103, amended section generally, substituting provisions relating to designation, establishment, and stationing procedures and duties and powers for provisions which contained a more detailed listing of responsibilities and a prohibition against a Civil Aviation Security Field Officer being assigned security duties and powers at an airport having a Manager.

Subsec. (a). Pub. L. 107–71, §101(f)(4), substituted “Under Secretary” for “Assistant Administrator for Civil Aviation Security”.

#### TRANSFER OF FUNCTIONS

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

#### § 44934. Foreign Security Liaison Officers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The Under Secretary of Transportation for Security shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the Under Secretary decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the Under Secretary shall designate an Officer for each of those airports. In coordination with the Secretary, the Under Secretary shall designate an Officer for each of those airports where extraordinary security measures are in place. The Secretary shall give high priority to stationing those Officers.

(b) DUTIES AND POWERS.—An Officer reports directly to the Under Secretary. The Officer at each airport shall—

- (1) serve as the liaison of the Under Secretary to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and
- (2) to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.

(c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of the Secretary and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1217; Pub. L. 107–71, title I, §101(f)(4), (5), (7), (9), Nov. 19, 2001, 115 Stat. 603.)

#### HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44934(a) .....	49 App.:1358b(b)(1), (2).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §319(b); added Nov. 16, 1990, Pub. L. 101–604, §104, 104 Stat. 3071.
44934(b) .....	49 App.:1358b(b)(3), (4).	
44934(c) .....	49 App.:1358b(b)(5).	

In subsection (a), the words “Not later than 90 days after November 16, 1990” are omitted as obsolete. The words “shall designate” are substituted for “shall begin assigning” for consistency with the source provisions restated in section 44933 of the revised title and because of the restatement. The words “Not later than 2 years after November 16, 1990” are omitted as obsolete. The word “designate” is substituted for “assign” for consistency with the source provisions restated in section 44933 of the revised title. The words “outside the United States” are omitted as unnecessary.

In subsection (b), before clause (1), the words “to the office of” are omitted as unnecessary. In clause (1), the words “governments of foreign countries and foreign airport authorities” are substituted for “foreign governments and airport authorities” for clarity and consistency in the revised title and with other titles of the United States Code. In clause (2), the words “duties and powers” are substituted for “responsibilities” for consistency in the revised title and with other titles of the Code.

In subsection (c), the words “duties and powers” are substituted for “authorities” for clarity and consistency in the revised title and with other titles of the Code.

#### AMENDMENTS

2001—Subsec. (a). Pub. L. 107–71, §101(f)(7), (9), substituted “Under Secretary” for “Administrator” wherever appearing and “of Transportation for Security” for “of the Federal Aviation Administration”.

Subsec. (b). Pub. L. 107–71, §101(f)(4), substituted “Under Secretary” for “Assistant Administrator for Civil Aviation Security” in introductory provisions.

Subsec. (b)(1). Pub. L. 107–71, §101(f)(5), substituted “Under Secretary” for “Assistant Administrator”.

#### TRANSFER OF FUNCTIONS

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

#### § 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 guidelines 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 or a national of the United States, as defined in section 1101(a)(22)<sup>1</sup> of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(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) 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, containers, and other objects subject to security processing.

(v) Screeners who perform pat-downs or hand-held metal detector searches of indi-

<sup>1</sup> So in original. Probably should be section "101(a)(22)".

viduals 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)<sup>2</sup> 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.

<sup>2</sup> So in original. Two subsecs. (i) have been enacted.

(i)<sup>2</sup> 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.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1217; Pub. L. 106–528, §3, Nov. 22, 2000, 114 Stat. 2519; Pub. L. 107–71, title I, §§101(f)(7), (9), 111(a), Nov. 19, 2001, 115 Stat. 603, 616; Pub. L. 107–296, title XVI, §1603, Nov. 25, 2002, 116 Stat. 2313.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44935(a) .....	49 App.:1357(h).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §316(h)–(j); added Nov. 16, 1990, Pub. L. 101–604, §105(a), 104 Stat. 3073.
44935(b) .....	49 App.:1357(i).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §316(c); added Aug. 5, 1974, Pub. L. 93–366, §202, 88 Stat. 416; Oct. 31, 1992, Pub. L. 102–581, §202, 106 Stat. 4890.
44935(c) .....	49 App.:1357(c).	
44935(d) .....	49 App.:1357(j).	

In subsection (a), before clause (1), the words “Not later than 270 days after November 16, 1990” are omitted as obsolete. The words “contracting for” are substituted for “contracting of” for clarity and consistency in the revised title.

In subsection (c)(1)(A), the words “individuals employed” are substituted for “personnel employed by him . . . and for other personnel, including State, local, and private law enforcement personnel, whose services may be utilized” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (c)(1)(B), the words “individuals eligible” are substituted for “personnel whose services are utilized to enforce any such transportation security program, including State, local, and private law enforcement personnel . . . for personnel eligible” for clarity and consistency in the revised title and with other titles of the Code.

In subsection (c)(2), the words “under this section” are omitted as unnecessary. The words “United States” before “air carriers” are omitted because of the definition of “air carrier” in section 40102(a) of the revised title.

In subsection (d)(1), before clause (A), the words “Not later than 180 days after November 16, 1990” are omitted as obsolete.

REFERENCES IN TEXT

The date of enactment of the Aviation and Transportation Security Act, referred to in subssecs. (e)(2)(A) and (g)(2), is the date of enactment of Pub. L. 107–71, which was approved Nov. 19, 2001.

AMENDMENTS

2002—Subsec. (e)(2)(A)(ii). Pub. L. 107–296 substituted “citizen of the United States or 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))” for “citizen of the United States”.

2001—Subsec. (a). Pub. L. 107–71, §101(f)(7), (9), substituted “Under Secretary of Transportation for Security” for “Administrator of the Federal Aviation Administration” in introductory provisions.

Subsec. (b). Pub. L. 107–71, §101(f)(7), substituted “Under Secretary” for “Administrator” in two places.

Subsec. (c). Pub. L. 107–71, §101(f)(7), substituted “Under Secretary” for “Administrator” in introductory provisions of par. (1) and in par. (2).

Subsec. (d)(1). Pub. L. 107–71, §101(f)(7), substituted “Under Secretary” for “Administrator” in introductory provisions.

Subsec. (e). Pub. L. 107–71, §111(a)(2), added subsec. (e) and struck out former subsec. (e) which established training standards for screeners.

Subsec. (f). Pub. L. 107–71, §111(a)(2), added subsec. (f). Former subsec. (f) redesignated (i).

Pub. L. 107–71, §101(f)(7), substituted “Under Secretary” for “Administrator”.

Subsecs. (g), (h). Pub. L. 107–71, §111(a)(2), added subssecs. (g) and (h).

Subsec. (i). Pub. L. 107–71, §111(a)(2), added subsec. (i) relating to limitation on right to strike.

Pub. L. 107–71, §111(a)(1), redesignated subsec. (f) as (i) relating to accessibility of computer-based training facilities.

Subsec. (j). Pub. L. 107–71, §111(a)(2), added subsec. (j). 2000—Subsecs. (e), (f). Pub. L. 106–528 added subssecs. (e) and (f).

EFFECTIVE DATE OF 2002 AMENDMENT

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

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–528 effective 30 days after Nov. 22, 2000, see section 9 of Pub. L. 106–528, set out as a note under section 106 of this title.

TRANSFER OF FUNCTIONS

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

TRANSITION

Pub. L. 107–71, title I, §111(c), Nov. 19, 2001, 115 Stat. 620, provided that: “The Under Secretary of Transportation for Security shall complete the full implementation of section 44935 (e), (f), (g), and (h) of title 49, United States Code, as amended by subsection (a), as soon as is practicable. The Under Secretary may make or continue such arrangements for the training of security screeners under that section as the Under Secretary determines necessary pending full implementation of that section as so amended.”

IMPROVEMENT OF SCREENER JOB PERFORMANCE

Pub. L. 108–458, title IV, §4015, Dec. 17, 2004, 118 Stat. 3720, provided that:

“(a) REQUIRED ACTION.—The Assistant Secretary of Homeland Security (Transportation Security Administration) shall take such action as may be necessary to improve the job performance of airport screening personnel.

“(b) HUMAN FACTORS STUDY.—In carrying out this section, the Assistant Secretary shall provide, not later than 180 days after the date of the enactment of this Act [Dec. 17, 2004], to the appropriate congressional committees a report on the results of any human factors study conducted by the Department of Homeland Security to better understand problems in screener performance and to improve screener performance.”

[For definitions of “airport” and “appropriate congressional committees” used in section 4015 of Pub. L. 108–458, set out above, see section 4081 of Pub. L.

108-458, set out as a note under section 44901 of this title.]

#### SCREENER PERSONNEL

Pub. L. 107-71, title I, §111(d), Nov. 19, 2001, 115 Stat. 620, provided that: "Notwithstanding any other provision of law, the Under Secretary of Transportation for Security may employ, appoint, discipline, terminate, and fix the compensation, terms, and conditions of employment of Federal service for such a number of individuals as the Under Secretary determines to be necessary to carry out the screening functions of the Under Secretary under section 44901 of title 49, United States Code. The Under Secretary shall establish levels of compensation and other benefits for individuals so employed."

#### CERTIFICATION OF SCREENING COMPANIES

Pub. L. 104-264, title III, §302, Oct. 9, 1996, 110 Stat. 3250, provided that: "The Administrator of the Federal Aviation Administration is directed to certify companies providing security screening and to improve the training and testing of security screeners through development of uniform performance standards for providing security screening services."

#### STUDIES OF MINIMUM STANDARDS FOR PILOT QUALIFICATIONS AND OF PAY FOR TRAINING

Pub. L. 104-264, title V, §503, Oct. 9, 1996, 110 Stat. 3263, provided that:

"(a) STUDY.—The Administrator of the Federal Aviation Administration shall appoint a task force consisting of appropriate representatives of the aviation industry to conduct—

"(1) a study directed toward the development of—

"(A) standards and criteria for preemployment screening tests measuring the psychomotor coordination, general intellectual capacity, instrument and mechanical comprehension, and physical and mental fitness of an applicant for employment as a pilot by an air carrier; and

"(B) standards and criteria for pilot training facilities to be licensed by the Administrator and which will assure that pilots trained at such facilities meet the preemployment screening standards and criteria described in subparagraph (A); and

"(2) a study to determine if the practice of some air carriers to require employees or prospective employees to pay for the training or experience that is needed to perform flight check duties for an air carrier is in the public interest.

"(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 9, 1996], the Administrator shall transmit to Congress a report on the results of the study conducted under subsection (a)(2)."

#### STUDY OF MINIMUM FLIGHT TIME

Pub. L. 104-264, title V, §504, Oct. 9, 1996, 110 Stat. 3263, provided that:

"(a) STUDY.—The Administrator of the Federal Aviation Administration shall conduct a study to determine whether current minimum flight time requirements applicable to individuals seeking employment as a pilot with an air carrier are sufficient to ensure public safety.

"(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Oct. 9, 1996], the Administrator shall transmit to Congress a report on the results of the study."

### § 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,<sup>1</sup> 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) 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 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

<sup>1</sup> So in original.

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.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1218; Pub. L. 104-264, title III, §§304(a), 306, title V, §502(a), Oct. 9, 1996, 110 Stat. 3251, 3252, 3259; Pub. L. 105-102, §2(25), Nov. 20, 1997, 111 Stat. 2205; Pub. L. 105-142, §1, Dec. 5, 1997, 111 Stat. 2650; Pub. L. 106-181, title V, §508, Apr. 5, 2000, 114 Stat. 140; Pub. L. 106-528, §2(c), (d), Nov. 22, 2000, 114 Stat. 2517, 2518; Pub. L. 107-71, title I, §§101(f)(7), (9), 111(b), 138(a), (b)(1), 140(a)(1), Nov. 19, 2001, 115 Stat. 603, 620, 639-641.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44936(a) .....	49 App.:1357(g)(1).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, § 316(g); added Nov. 16, 1990, Pub. L. 101-604, § 105(a), 104 Stat. 3071.
	49 App.:1357 (note).	Oct. 28, 1991, Pub. L. 102-143, § 346, 105 Stat. 949.
44936(b) .....	49 App.:1357(g)(3).	
44936(c) .....	49 App.:1357(g)(2) (less (A) (2d sentence)).	
44936(d) .....	49 App.:1357(g)(2)(A) (2d sentence), (5).	
44936(e) .....	49 App.:1357(g)(4).	

In subsection (a), the text of section 346 of the Department of Transportation and Related Agencies Appropriations Act, 1992 (Public Law 102-143, 105 Stat. 949) is omitted as executed.

In subsection (a)(2), the words “shall ensure” are substituted for “shall take such actions as may be necessary to ensure” to eliminate unnecessary words. The word “conducted” is substituted for “performed” for consistency in the revised title.

In subsection (b)(2), the words “The Administrator may specify” are substituted for “The Administrator may specify . . . the Administrator determines” to eliminate unnecessary words. The words “prohibit the employment of an individual” are substituted for “make an individual ineligible for employment” for clarity.

In subsection (b)(3), the words “may employ” are substituted for “It shall not be a violation of subparagraph (A) for . . . to employ” to eliminate unnecessary words.

In subsection (c)(1), the words “Before designating an individual to obtain and submit fingerprints or receive results of a check, the Administrator shall consult with the Attorney General” are substituted for “after consultation with the Attorney General” for clarity.

In subsection (c)(2), before clause (A), the words “For purposes of administering this subsection” are omitted as unnecessary. In clause (A), the word “implement” is omitted as unnecessary because of the restatement. In clause (B), before subclause (ii), the word “establish” is omitted as unnecessary because of the restatement. In subclause (ii), the words “to carry out this section” are substituted for “for the purposes of this section” for clarity.

In subsection (e), the words “a law of a foreign country” are substituted for “applicable laws of a foreign government” for clarity and consistency in the revised title and with other titles of the United States Code.

PUB. L. 105-102

This amends 49:44936(f)(1)(C) to reflect the redesignation of 49:30305(b)(7) as 49:30305(b)(8) by section 207(b) of the Coast Guard Authorization Act of 1996 (Public Law 104-324, 110 Stat. 3908).

REFERENCES IN TEXT

The date of enactment of the Aviation and Transportation Security Act, referred to in subsec. (a)(1)(C)(i), is the date of enactment of Pub. L. 107-71, which was approved Nov. 19, 2001.

AMENDMENTS

2001—Subsec. (a)(1)(A). Pub. L. 107-71, § 138(a)(1), inserted “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,” after “record check” in introductory provisions.

Pub. L. 107-71, § 111(b)(1), inserted “as a security screener under section 44935(e) or a position” after “a position” in introductory provisions.

Pub. L. 107-71, § 101(f)(7), (9), in introductory provisions, substituted “Under Secretary” for “Adminis-

trator” and “of Transportation for Security” for “of the Federal Aviation Administration”.

Subsec. (a)(1)(A)(ii). Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator”.

Subsec. (a)(1)(B). Pub. L. 107-71, § 138(a)(2), in introductory provisions, substituted “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” for “in any case described in subparagraph (C)”.

Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator” in introductory provisions.

Subsec. (a)(1)(B)(i). Pub. L. 107-71, § 138(a)(3), substituted “are” for “will be”.

Subsec. (a)(1)(B)(ii). Pub. L. 107-71, § 138(a)(4), struck out “and” after semicolon.

Subsec. (a)(1)(B)(iii). Pub. L. 107-71, § 138(a)(6), added cl. (iii). Former cl. (iii) redesignated (iv).

Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator”.

Subsec. (a)(1)(B)(iv). Pub. L. 107-71, § 138(a)(5), redesignated cl. (iii) as (iv).

Subsec. (a)(1)(C). Pub. L. 107-71, § 138(a)(7), (8), added subpar. (C) and struck out former subpar. (C) which related to criminal history record checks.

Subsec. (a)(1)(D). Pub. L. 107-71, § 138(a)(7), (9), (10), redesignated subpar. (F) as (D), substituted “107.31(m)(1) or (2)” for “107.31(m)” and “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” for “the date of enactment of this subparagraph” and struck out former subpar. (D) which allowed a supervised employee to remain in position until completion of record check.

Subsec. (a)(1)(E). Pub. L. 107-71, § 138(a)(7), struck out subpar. (E) which related to criminal history record checks for screeners and others.

Subsec. (a)(1)(E)(iv). Pub. L. 107-71, § 111(b)(2), struck out cl. (iv) which related to effective dates for subpar. (E).

Subsec. (a)(1)(F). Pub. L. 107-71, § 138(a)(7), redesignated subpar. (F) as (D).

Subsec. (a)(2). Pub. L. 107-71, §§ 107(f)(7), 138(a)(11), substituted “carrier, airport operator, or government” for “carrier, or airport operator” and “Under Secretary” for “Administrator”.

Subsec. (a)(3). Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator”.

Subsec. (b)(1). Pub. L. 107-71, § 138(a)(12), substituted “carrier, airport operator, or government” for “carrier, or airport operator” in introductory provisions.

Subsec. (b)(1)(B)(xiv)(IX). Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator”.

Subsec. (b)(2). Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator”.

Subsec. (b)(3). Pub. L. 107-71, §§ 101(f)(7), 138(a)(13), substituted “carrier, airport operator, or government” for “carrier, or airport operator” and “Under Secretary” for “Administrator”.

Subsec. (c)(1). Pub. L. 107-71, § 138(a)(14), inserted at end “All Federal agencies shall cooperate with the Under Secretary and the Under Secretary’s designee in the process of collecting and submitting fingerprints.”

Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator” wherever appearing.

Subsec. (c)(2). Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator” in introductory provisions.

Subsec. (d). Pub. L. 107-71, § 101(f)(7), substituted “Under Secretary” for “Administrator” in two places.

Subsecs. (f) to (h). Pub. L. 107-71, §§ 138(b)(1), 140(a)(1), amended section identically, redesignating subsecs. (f) to (h) as (h) to (j), respectively, of section 44703 of this title.

2000—Subsec. (a)(1)(A). Pub. L. 106-528, § 2(c)(1), in introductory provisions, struck out “, as the Adminis-



trator decides is necessary to ensure air transportation security," after "shall be conducted".

Subsec. (a)(1)(C)(v). Pub. L. 106-181, §508(a), added cl. (v).

Subsec. (a)(1)(D). Pub. L. 106-528, §2(c)(2), substituted "in the position for which the individual applied" for "as a screener".

Subsec. (a)(1)(E), (F). Pub. L. 106-528, §2(c)(3), added subpars. (E) and (F).

Subsec. (b)(1)(B). Pub. L. 106-528, §2(d)(1), inserted "(or found not guilty by reason of insanity)" after "convicted" in introductory provisions.

Subsec. (b)(1)(B)(xi). Pub. L. 106-528, §2(d)(2), inserted "or felony unarmed" after "armed".

Subsec. (b)(1)(B)(xiii) to (xv). Pub. L. 106-528, §2(d)(3)-(5), added cls. (xiii) and (xiv), redesignated former cl. (xiii) as (xv), and in cl. (xv) substituted "clauses (i) through (xiv)" for "clauses (i)-(xii) of this paragraph".

Subsec. (f)(1)(B). Pub. L. 106-181, §508(b)(1), inserted "(except a branch of the United States Armed Forces, the National Guard, or a reserve component of the United States Armed Forces)" after "other person" in introductory provisions.

Subsec. (f)(1)(B)(ii). Pub. L. 106-181, §508(b)(2), substituted "individual's performance as a pilot" for "individual" in introductory provisions.

Subsec. (f)(5). Pub. L. 106-181, §508(b)(3), inserted before period at end of first sentence "; except that, for purposes of paragraph (15), the Administrator may allow an individual designated by the Administrator to accept and maintain written consent on behalf of the Administrator for records requested under paragraph (1)(A)".

Subsec. (f)(13). Pub. L. 106-181, §508(b)(4)(A), substituted "shall" for "may" in introductory provisions.

Subsec. (f)(13)(A)(i). Pub. L. 106-181, §508(b)(4)(B), inserted "and disseminated under paragraph (15)" after "requested under paragraph (1)".

Subsec. (f)(14)(B). Pub. L. 106-181, §508(b)(5), inserted "or from a foreign government or entity that employed the individual" after "exists".

Subsec. (f)(15). Pub. L. 106-181, §508(b)(6), added par. (15).

1997—Subsec. (f)(1). Pub. L. 105-142, §1(1), substituted "Subject to paragraph (14), before allowing an individual to begin service" for "Before hiring an individual" in introductory provisions.

Subsec. (f)(1)(B). Pub. L. 105-142, §1(2), inserted "as a pilot of a civil or public aircraft" before "at any time" in introductory provisions.

Subsec. (f)(1)(C). Pub. L. 105-102 substituted "section 30305(b)(8) of this title" for "section 30305(b)(7)".

Subsec. (f)(4). Pub. L. 105-142, §1(3), inserted "and air carriers" after "Administrator" and substituted "paragraphs (1)(A) and (1)(B)" for "paragraph (1)(A)".

Subsec. (f)(5). Pub. L. 105-142, §1(4), substituted "this subsection" for "this paragraph".

Subsec. (f)(10). Pub. L. 105-142, §1(5), inserted "who is or has been" before "employed" and "but not later than 30 days after the date" after "reasonable time".

Subsec. (f)(14). Pub. L. 105-142, §1(6), added par. (14).

1996—Subsec. (a)(1). Pub. L. 104-264, §304(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) of par. (1) as cls. (i) and (ii) of subpar. (A), respectively, and added subpars. (B) to (D).

Subsec. (a)(3). Pub. L. 104-264, §306, added par. (3).

Subsecs. (f) to (h). Pub. L. 104-264, §502(a), added subsecs. (f) to (h).

#### EFFECTIVE DATE OF 2000 AMENDMENTS

Amendment by Pub. L. 106-528 effective 30 days after Nov. 22, 2000, see section 9 of Pub. L. 106-528, set out as a note under section 106 of this title.

Amendment by Pub. L. 106-181 applicable only to fiscal years beginning after Sept. 30, 1999, see section 3 of Pub. L. 106-181, set out as a note under section 106 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 304(b) of Pub. L. 104-264 provided that: "The amendment made by subsection (a)(3) [amending this

section] shall apply to individuals hired to perform functions described in section 44936(a)(1)(B) of title 49, United States Code, after the date of the enactment of this Act [Oct. 9, 1996]; except that the Administrator of the Federal Aviation Administration may, as the Administrator determines to be appropriate, require such employment investigations or criminal history records checks for individuals performing those functions on the date of the enactment of this Act."

Amendment by section 502(a) of Pub. L. 104-264 applicable to any air carrier hiring an individual as a pilot whose application was first received by the carrier on or after the 120th day following Oct. 9, 1996, see section 502(d) of Pub. L. 104-264, set out as a note under section 30305 of this title.

Except as otherwise specifically provided, amendment by Pub. L. 104-264 applicable only to fiscal years beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104-264, set out as a note under section 106 of this title.

#### TRANSFER OF FUNCTIONS

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

#### CRIMINAL HISTORY RECORD CHECKS

Pub. L. 106-528, §2(a), (b), Nov. 22, 2000, 114 Stat. 2517, provided that:

"(a) EXPANSION OF FAA ELECTRONIC PILOT PROGRAM.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act [Nov. 22, 2000], the Administrator of the Federal Aviation Administration shall develop, in consultation with the Office of Personnel Management and the Federal Bureau of Investigation, the pilot program for individual criminal history record checks (known as the electronic fingerprint transmission pilot project) into an aviation industry-wide program.

"(2) LIMITATION.—The Administrator shall not require any airport, air carrier, or screening company to participate in the program described in subsection (a) if the airport, air carrier, or screening company determines that it would not be cost effective for it to participate in the program and notifies the Administrator of that determination.

"(b) APPLICATION OF EXPANDED PROGRAM.—

"(1) INTERIM REPORT.—Not later than 1 year after the date of enactment of this Act [Nov. 22, 2000], the Administrator 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 describing the status of the Administrator's efforts to utilize the program described in subsection (a).

"(2) NOTIFICATION CONCERNING SUFFICIENCY OF OPERATION.—If the Administrator determines that the program described in subsection (a) is not sufficiently operational 2 years after the date of enactment of this Act to permit its utilization in accordance with subsection (a), the Administrator shall notify the committees referred to in paragraph (1) of that determination."

#### § 44937. Prohibition on transferring duties and powers

Except as specifically provided by law, the Under Secretary of Transportation for Security

may not transfer a duty or power under section 44903(a), (b), (c), or (e), 44906, 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1219; Pub. L. 103-429, §6(57), Oct. 31, 1994, 108 Stat. 4385; Pub. L. 107-71, title I, §101(f)(7), (9), Nov. 19, 2001, 115 Stat. 603.)

HISTORICAL AND REVISION NOTES  
PUB. L. 103-272

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44937 .....	49 App.:1357(e)(1).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §316(e)(1); added Aug. 5, 1974, Pub. L. 93-366, §202, 88 Stat. 417.

The word “otherwise” is omitted as surplus. The word “assigned” is omitted as being included in “transfer”. The word “function” is omitted as being included in “duty or power”. The words “department, agency, or instrumentality of the United States Government” are substituted for “Federal department or agency” for clarity and consistency in the revised title and with other titles of the United States Code.

PUB. L. 103-429

This amends 49:44937 to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103-272, 108 Stat. 1219).

AMENDMENTS

2001—Pub. L. 107-71 substituted “Under Secretary of Transportation for Security” for “Administrator of the Federal Aviation Administration”.

1994—Pub. L. 103-429 substituted “44906” for “44906(a)(1) or (b)”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-429 effective July 5, 1994, see section 9 of Pub. L. 103-429, set out as a note under section 321 of this title.

TRANSFER OF FUNCTIONS

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

§ 44938. Reports

(a) TRANSPORTATION SECURITY.—Not later than March 31 of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Secretary considers appropriate. The report shall be prepared in conjunction with the biennial report the Under Secretary of Transportation for Security submits under subsection (b) of this section in each year the Under Secretary submits the biennial report, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

(1) an assessment of trends and developments in terrorist activities, methods, and other threats to transportation;

(2) an evaluation of deployment of explosive detection devices;

(3) recommendations for research, engineering, and development activities related to transportation security, except research engineering and development activities related to aviation security to the extent those activities are covered by the national aviation research plan required under section 44501(c) of this title;

(4) identification and evaluation of cooperative efforts with other departments, agencies, and instrumentalities of the United States Government;

(5) an evaluation of cooperation with foreign transportation and security authorities;

(6) the status of the extent to which the recommendations of the President’s Commission on Aviation Security and Terrorism have been carried out and the reasons for any delay in carrying out those recommendations;

(7) a summary of the activities of the Director of Intelligence and Security in the 12-month period ending on the date of the report;

(8) financial and staffing requirements of the Director;

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the Under Secretary related to security; and

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The Under Secretary shall submit biennially to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and

(3) that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the Under Secretary decides that Foreign Security Liaison Officers are necessary for air transportation security; and

(B) for which extraordinary security measures are in place.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1220; Pub. L. 103-305, title V, §502, Aug. 23, 1994, 108 Stat. 1595; Pub. L. 105-362, title XV, §1502(b), Nov. 10, 1998, 112 Stat. 3295; Pub. L. 107-71, title I, §101(f)(7), (9), Nov. 19, 2001, 115 Stat. 603.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44938(a) .....	49 App.:1356(b).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §315(b); added Nov. 16, 1990, Pub. L. 101-604, §102(a), 104 Stat. 3068.

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
44938(b)(1), (2).	49 App.:1356(a) (3d sentence 1st–18th words, last sentence).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §315(a) (3d sentence 1st–18th words, last sentence); added Aug. 5, 1974, Pub. L. 93–366, §202, 88 Stat. 415; Aug. 8, 1985, Pub. L. 99–83, §551(b)(1), 99 Stat. 225; Nov. 16, 1990, Pub. L. 101–604, §102(b), 104 Stat. 3069.
44938(b)(3) ..	49 App.:1357(k)(4).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §316(k)(4); added Nov. 16, 1990, Pub. L. 101–604, §105(a), 104 Stat. 3074.
44938(c) .....	49 App.:1357 (note).	Nov. 16, 1990, Pub. L. 101–604, §106(d), 104 Stat. 3075.

In subsection (a), before clause (1), the words “each year” are substituted for “of calendar year 1991 and of each calendar year thereafter” to eliminate unnecessary words. In clauses (8) and (9), the word “financial” is substituted for “funding” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1), the word “screening” is omitted as surplus.

In subsection (b)(2), the words “a summary of the assessments conducted under section 44907(a)(1) and (2) of this title” are substituted for “the information described in section 1515(c) of this Appendix” for clarity.

In subsection (b)(3), before clause (A), the words “that includes” are substituted for “The Administrator shall submit to Congress as part of the annual report required by section 315(a)” because of the restatement.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–71, §101(f)(7), (9), in introductory provisions, substituted “Under Secretary” for “Administrator” in two places and “of Transportation for Security” for “of the Federal Aviation Administration”.

Subsec. (a)(9). Pub. L. 107–71, §101(f)(7), substituted “Under Secretary” for “Administrator”.

Subsec. (b). Pub. L. 107–71, §101(f)(7), substituted “Under Secretary” for “Administrator” in introductory provisions and par. (3)(A).

1998—Subsec. (a). Pub. L. 105–362, §1502(b)(1), in second sentence of introductory provisions, substituted “biennial report” for “annual report” and inserted “in each year the Administrator submits the biennial report” after “subsection (b) of this section”.

Subsec. (b). Pub. L. 105–362, §1502(b)(2), substituted “biennially” for “annually” in introductory provisions.

Subsec. (c). Pub. L. 105–362, §1502(b)(3), struck out heading and text of subsec. (c). Text read as follows: “The Administrator shall submit to Congress an annual report for each of the calendar years 1991 and 1992 on the progress being made, and the problems occurring, in carrying out section 44904 of this title. The report shall include recommendations for improving domestic air transportation security.”

1994—Subsec. (a). Pub. L. 103–305 substituted “March 31” for “December 31”.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which the 8th item on page 132 and the 11th item on page 138 identify reporting provisions which, as subsequently amended, are contained, respectively, in subssecs. (a) and (b)(1), (2) of this section), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administra-

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

§ 44939. Training to operate certain aircraft

(a) WAITING PERIOD.—A person operating as a flight instructor, pilot school, or aviation training center or subject to regulation under this part may provide training in the operation of any aircraft having a maximum certificated takeoff weight of more than 12,500 pounds 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 Secretary of Homeland Security only if—

(1) that person has first notified the Secretary that the alien or individual has requested such training and submitted to the Secretary, in such form as the Secretary may prescribe, the following information about the alien or individual:

- (A) full name, including any aliases used by the applicant or variations in spelling of the applicant’s name;
- (B) passport and visa information;
- (C) country of citizenship;
- (D) date of birth;
- (E) dates of training; and
- (F) fingerprints collected by, or under the supervision of, a Federal, State, or local law enforcement agency or by another entity approved by the Federal Bureau of Investigation or the Secretary of Homeland Security, including fingerprints taken by United States Government personnel at a United States embassy or consulate; and

(2) the Secretary has not directed, within 30 days after being notified under paragraph (1), that person not to provide the requested training because the Secretary has determined that the individual presents a risk to aviation or national security.

(b) INTERRUPTION OF TRAINING.—If the Secretary of Homeland Security, more than 30 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 Secretary shall immediately notify the person providing the training of the determination and that person shall immediately terminate the training.

(c) NOTIFICATION.—A person operating as a flight instructor, pilot school, or aviation training center or 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 less 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 Secretary of Homeland Security only if that person has notified the Secretary that the individual has requested such training and furnished the Secretary with that individual’s identification in such form as the Secretary may require.

(d) EXPEDITED PROCESSING.—Not later than 60 days after the date of enactment of this section, the Secretary shall establish a process to ensure that the waiting period under subsection (a) shall not exceed 5 days for an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) who—

(1) holds an airman's certification of a foreign country that is recognized by an agency of the United States, including a military agency, that permits an individual to operate a multi-engine aircraft that has a certificated takeoff weight of more than 12,500 pounds;

(2) is employed by a foreign air carrier that is certified under part 129 of title 14, Code of Federal Regulations, and that has a security program approved under section 1546 of title 49, Code of Federal Regulations;

(3) is an individual that has unescorted access to a secured area of an airport designated under section 44936(a)(1)(A)(ii); or

(4) is an individual that is part of a class of individuals that the Secretary has determined that providing aviation training to presents minimal risk to aviation or national security because of the aviation training already possessed by such class of individuals.

(e) TRAINING.—In subsection (a), the term “training” means training received from an instructor in an aircraft or aircraft simulator and does not include recurrent training, ground training, or demonstration flights for marketing purposes.

(f) NONAPPLICABILITY TO CERTAIN FOREIGN MILITARY PILOTS.—The procedures and processes required by subsections (a) through (d) shall not apply to a foreign military pilot endorsed by the Department of Defense for flight training in the United States and seeking training described in subsection (e) in the United States.

(g) FEE.—

(1) IN GENERAL.—The Secretary of Homeland Security may assess a fee for an investigation under this section, which may not exceed \$100 per individual (exclusive of the cost of transmitting fingerprints collected at overseas facilities) during fiscal years 2003 and 2004. For fiscal year 2005 and thereafter, the Secretary may adjust the maximum amount of the fee to reflect the costs of such an investigation.

(2) OFFSET.—Notwithstanding section 3302 of title 31, any fee collected under this section—

(A) shall be credited to the account in the Treasury from which the expenses were incurred and shall be available to the Secretary for those expenses; and

(B) shall remain available until expended.

(h) INTERAGENCY COOPERATION.—The Attorney General, the Director of Central Intelligence, and the Administrator of the Federal Aviation Administration shall cooperate with the Secretary in implementing this section.

(i) SECURITY AWARENESS TRAINING FOR EMPLOYEES.—The 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.

(Added Pub. L. 107–71, title I, §113(a), Nov. 19, 2001, 115 Stat. 622; amended Pub. L. 108–176, title VI, §612(a), Dec. 12, 2003, 117 Stat. 2572.)

#### REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (d), probably means the date of enactment of Pub. L. 108–176, which amended this section generally and was approved Dec. 12, 2003.

#### AMENDMENTS

2003—Pub. L. 108–176 reenacted section catchline without change and amended text generally. Prior to amendment, text consisted of subsections (a) to (d) relating to waiting period for training, interruption of training, covered training, and security awareness training for employees.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108–176, title VI, §612(c), Dec. 12, 2003, 117 Stat. 2574, provided that: “The amendment made by subsection (a) [amending this section] takes effect on the effective date of the interim final rule required by subsection (b)(1) [set out below] [rule effective Sept. 20, 2004, see 69 F.R. 56323].”

#### EFFECTIVE DATE

Pub. L. 107–71, title I, §113(d), Nov. 19, 2001, 115 Stat. 622, provided that: “The amendment made by subsection (a) [enacting this section] applies to applications for training received after the date of enactment of this Act [Nov. 19, 2001].”

#### IMPLEMENTATION

Pub. L. 108–176, title VI, §612(b), Dec. 12, 2003, 117 Stat. 2574, provided that:

“(1) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Dec. 12, 2003], the Secretary of Homeland Security shall promulgate an interim final rule to implement section 44939 of title 49, United States Code, as amended by subsection (a).

“(2) USE OF OVERSEAS FACILITIES.—In order to implement section 44939 of title 49, United States Code, as amended by subsection (a), United States Embassies and Consulates that possess appropriate fingerprint collection equipment and personnel certified to capture fingerprints shall provide fingerprint services to aliens covered by that section if the Secretary requires fingerprints in the administration of that section, and shall transmit the fingerprints to the Secretary or other agency designated by the Secretary. The Attorney General and the Secretary of State shall cooperate with the Secretary of Homeland Security in carrying out this paragraph.

“(3) USE OF UNITED STATES FACILITIES.—If the Secretary of Homeland Security requires fingerprinting in the administration of section 44939 of title 49, United States Code, the Secretary may designate locations within the United States that will provide fingerprinting services to individuals covered by that section.”

#### REPORT

Pub. L. 108–176, title VI, §612(d), Dec. 12, 2003, 117 Stat. 2574, provided that: “Not later than 1 year after the date of enactment of this Act [Dec. 12, 2003], the Secretary of Homeland Security shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, in reducing risks to aviation security and national security.”

#### INTERNATIONAL COOPERATION

Pub. L. 107–71, title I, §113(c), Nov. 19, 2001, 115 Stat. 622, provided that: “The Secretary of Transportation, in consultation with the Secretary of State, shall work with the International Civil Aviation Organization and

the civil aviation authorities of other countries to improve international aviation security through screening programs for flight instruction candidates.”

**§ 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).

(H) The costs of security-related capital improvements at airports.

(I) The costs of training pilots and flight attendants under sections 44918 and 44921.

The amount of such costs shall be determined by the Under Secretary and shall not be subject to judicial review. For purposes of subparagraph (A), the term “Federal law enforcement personnel” includes State and local law enforcement officers who are deputized under section 44922.

(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 except for estimates and additional collections made pursuant to the appropriation for Aviation Security in Public Law 108–334: *Provided*, That such judicial review shall be pursuant to section 46110 of title 49, United States Code: *Provided further*, That such judicial review shall be limited

only to additional amounts collected by the Secretary before October 1, 2007.

(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 except for estimates and additional collections made pursuant to the appropriation for Aviation Security in Public Law 108–334: *Provided*, That such judicial review shall be pursuant to section 46110 of title 49, United States Code: *Provided further*, That such judicial review shall be limited only to additional amounts collected by the Secretary before October 1, 2007.

(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 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, other than subsection (i), 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 or in section 44923.

(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.

(i) CHECKPOINT SCREENING SECURITY FUND.—

(1) ESTABLISHMENT.—There is established in the Department of Homeland Security a fund to be known as the “Checkpoint Screening Security Fund”.

(2) DEPOSITS.—In fiscal year 2008, after amounts are made available under section 44923(h), the next \$250,000,000 derived from fees received under subsection (a)(1) shall be available to be deposited in the Fund.

(3) FEES.—The Secretary of Homeland Security shall impose the fee authorized by subsection (a)(1) so as to collect at least \$250,000,000 in fiscal year 2008 for deposit into the Fund.

(4) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available until expended by the Administrator of the Transportation Security Administration for the purchase, deployment, installation, research, and development of equipment to improve the ability of security screening personnel at screening checkpoints to detect explosives.

(Added Pub. L. 107-71, title I, §118(a), Nov. 19, 2001, 115 Stat. 625; amended Pub. L. 108-7, div. I, title III, §351(b), Feb. 20, 2003, 117 Stat. 420; Pub. L. 108-176, title VI, §605(b)(1), (2), Dec. 12, 2003, 117 Stat. 2568; Pub. L. 110-53, title XVI, §1601, Aug. 3, 2007, 121 Stat. 477; Pub. L. 110-161, div. E, title V, §540, Dec. 26, 2007, 121 Stat. 2079.)

#### REFERENCES IN TEXT

The date of enactment of this Act, referred to in subsec. (d)(1), probably means the date of enactment of Pub. L. 107-71, which enacted this section and which was approved Nov. 19, 2001.

#### CODIFICATION

Pub. L. 107-71, title I, §118(a), Nov. 19, 2001, 115 Stat. 625, which directed the addition of section 44940 at end of subchapter II of chapter 449 without specifying the Code title to be amended, was executed by adding this section at the end of this subchapter, to reflect the probable intent of Congress.

#### AMENDMENTS

2007—Subsec. (a)(2)(A), (B)(iv). Pub. L. 110-161, which directed amendment of subsec. (a)(2) “by striking the period in the last sentence of subparagraph (A) and the clause (iv) of subparagraph B and adding the following, ‘except for estimates and additional collections made pursuant to the appropriation for Aviation Security in Public Law 108-334: *Provided*, That such judicial review shall be limited only to additional amounts collected by the Secretary before October 1, 2007.’”, was executed by substituting the quoted language directed to be added for the period at the end of last sentence of subpar. (A) and for the period at the end of cl. (iv) of subpar. (B), to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 110-53, §1601(1), inserted “, other than subsection (i),” before “except to”.

Subsec. (i). Pub. L. 110-53, §1601(2), added subsec. (i).

2003—Subsec. (a)(1). Pub. L. 108-7 inserted at end of concluding provisions “For purposes of subparagraph (A), the term ‘Federal law enforcement personnel’ includes State and local law enforcement officers who are deputized under section 44922.”

Subsec. (a)(1)(H), (I). Pub. L. 108-176, § 605(b)(1), added subpars. (H) and (I).

Subsec. (d)(4). Pub. L. 108-176, § 605(b)(2), substituted “appropriations Act or in section 44923” for “appropriations Act”.

#### EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-176 applicable only to fiscal years beginning after Sept. 30, 2003, except as otherwise specifically provided, see section 3 of Pub. L. 108-176, set out as a note under section 106 of this title.

#### TRANSFER OF FUNCTIONS

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

#### DEEMED REFERENCES TO CHAPTERS 509 AND 511 OF TITLE 51

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

### § 44941. Immunity for reporting suspicious activities

(a) IN GENERAL.—Any air carrier or foreign air carrier or any employee of an air carrier or foreign air carrier who makes a voluntary disclosure of any suspicious transaction relevant to a possible violation of law or regulation, relating to air piracy, a threat to aircraft or passenger safety, or terrorism, as defined by section 3077 of title 18, United States Code, to any employee or agent of the Department of Transportation, the Department of Justice, any Federal, State, or local law enforcement officer, or any airport or airline security officer shall not be civilly liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, for such disclosure.

(b) APPLICATION.—Subsection (a) shall not apply to—

(1) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or

(2) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.

(Added Pub. L. 107-71, title I, § 125(a), Nov. 19, 2001, 115 Stat. 631.)

### § 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 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)<sup>1</sup> PERFORMANCE PLAN AND REPORT.—

(A) PERFORMANCE PLAN.—

(i) 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 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) 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) 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.

(Added Pub. L. 107-71, title I, § 130, Nov. 19, 2001, 115 Stat. 633.)

#### REFERENCES IN TEXT

The date of enactment of the Aviation and Transportation Security Act, referred to in subsec. (a)(1), is the date of enactment of Pub. L. 107-71, which was approved Nov. 19, 2001.

The Government Performance and Results Act of 1993, referred to in subsec. (b)(1), is Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

#### TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(2), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security

<sup>1</sup> So in original. No par. (2) has been enacted.

Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**§ 44943. Performance management system**

(a) ESTABLISHING A FAIR AND EQUITABLE SYSTEM FOR MEASURING STAFF PERFORMANCE.—The Under Secretary for Transportation 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 Security Act, the Under Secretary for Transportation Security 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.

(Added Pub. L. 107-71, title I, §130, Nov. 19, 2001, 115 Stat. 634.)

REFERENCES IN TEXT

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

TRANSFER OF FUNCTIONS

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

**§ 44944. Voluntary provision of emergency services**

(a) PROGRAM FOR PROVISION OF VOLUNTARY SERVICES.—

(1) PROGRAM.—The Under Secretary of Transportation for Transportation 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.

(Added Pub. L. 107-71, title I, §131(a), Nov. 19, 2001, 115 Stat. 635.)

TRANSFER OF FUNCTIONS

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

CONSTRUCTION

Pub. L. 107-71, title I, §131(c), Nov. 19, 2001, 115 Stat. 635, provided that: "Nothing in this section [enacting this section] may be construed to require any modification of regulations of the Department of Transportation governing the possession of firearms while in aircraft or air transportation facilities or to authorize the possession of a firearm in an aircraft or any such facility not authorized under those regulations."

[For definitions of "aircraft" and "air transportation" used in section 131(c) of Pub. L. 107-71, set out above, see section 133 of Pub. L. 107-71, set out as a note under section 40102 of this title.]



§ 44945. Disposition of unclaimed money

Notwithstanding section 3302 of title 31, unclaimed money recovered at any airport security checkpoint shall be retained by the Transportation Security Administration and shall remain available until expended for the purpose of providing civil aviation security as required in this chapter.

(Added Pub. L. 108-334, title V, §515(a), Oct. 18, 2004, 118 Stat. 1317.)

ANNUAL REPORT

Pub. L. 108-334, title V, §515(b), Oct. 18, 2004, 118 Stat. 1318, provided that: "Not later than 180 days after the date of enactment of this Act [Oct. 18, 2004] and annually thereafter, the Administrator of the Transportation Security Administration shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives; the Committee on Appropriations of the House of Representatives; the Committee on Commerce, Science and Transportation of the Senate; and the Committee on Appropriations of the Senate, a report that contains a detailed description of the amount of unclaimed money recovered in total and at each individual airport, and specifically how the unclaimed money is being used to provide civil aviation security."

CHAPTER 451—ALCOHOL AND CONTROLLED SUBSTANCES TESTING

- Sec. 45101. Definition. 45102. Alcohol and controlled substances testing programs. 45103. Prohibited service. 45104. Testing and laboratory requirements. 45105. Rehabilitation. 45106. Relationship to other laws, regulations, standards, and orders. 45107. Transportation Security Administration.

AMENDMENTS

2001—Pub. L. 107-71, title I, §139(5), Nov. 19, 2001, 115 Stat. 641, added item 45107.

§ 45101. Definition

In this chapter, "controlled substance" means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the Administrator of the Federal Aviation Administration.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1221.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 45101, 49 App. 1434(f), Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §614(f); added Oct. 28, 1991, Pub. L. 102-143, §3(a), 105 Stat. 956.

§ 45102. Alcohol and controlled substances testing programs

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—(1) In the interest of aviation safety, the Administrator of the Federal Aviation Administration shall prescribe regulations that establish a program requiring air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crew mem-

bers, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of a controlled substance in violation of law or a United States Government regulation; and to conduct reasonable suspicion, random, and post-accident testing of airmen, crew members, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol in violation of law or a United States Government regulation. The regulations shall permit air carriers and foreign air carriers to conduct preemployment testing of airmen, crew members, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of airmen, crew members, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—(1) The Administrator shall establish a program of preemployment, reasonable suspicion, random, and post-accident testing for the use of a controlled substance in violation of law or a United States Government regulation for employees of the Administration whose duties include responsibility for safety-sensitive functions and shall establish a program of reasonable suspicion, random, and post-accident testing for the use of alcohol in violation of law or a United States Government regulation for such employees. The Administrator may establish a program of preemployment testing for the use of alcohol for such employees.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of employees of the Administration responsible for safety-sensitive functions for use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) SANCTIONS.—In prescribing regulations under the programs required by this section, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to an individual referred to in this section, or the disqualification or dismissal of the individual, under this chapter when a test conducted and confirmed under this chapter indicates the individual has used alcohol or a controlled substance in violation of law or a Government regulation.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1221; Pub. L. 104-59, title III, §342(d), Nov. 28, 1995, 109 Stat. 609; Pub. L. 107-71, title I, §139(1), Nov. 19, 2001, 115 Stat. 640.)