

Calendar No. 764

106th Congress }
2d Session }

SENATE

{ REPORT
{ 106-388

**AIRPORT SECURITY IMPROVEMENT ACT
OF 2000**

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

on

S. 2440



AUGUST 25, 2000.—Ordered to be printed
Filed under authority of the order of the Senate of July 26, 2000

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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(II)

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AUGUST 25, 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2440]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2440) “A Bill to amend title 49, United States Code, to improve airport security”, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Airport Security Improvement Act, S. 2440, is to improve aviation security throughout the United States.

BACKGROUND AND NEEDS BACKGROUND AND NEEDS

Screening checkpoints and the screeners who operate them are a key line of defense against the introduction of dangerous objects and individuals into the aviation system. According to the General Accounting Office (GAO), more than two million passengers and their baggage must be checked each day for weapons, explosives, or other dangerous articles that could pose a threat to the safety of an aircraft and those aboard it. The FAA and air carriers share this responsibility. The FAA prescribes screening regulations and establishes basic standards for screeners, equipment, and procedures to be used. The air carriers are responsible for screening passengers and their baggage before they are permitted onto an aircraft.

Screeners at checkpoints use metal detectors, X-ray machines, and physical bag searches to identify dangerous objects. Some

screeners use explosive detection systems (EDS) to identify bulk explosives contained in checked baggage. It can be a difficult, stressful, yet monotonous job, requiring sustained attention to the task of identifying faint indications of infrequently appearing targets, which are at times difficult to detect. While eight hours of classroom training is typical for screeners in the U.S., a 40-hour requirement is the prevailing standard in the industrialized world. Airlines usually contract with private companies to handle the screening function in their concourse at an airport. A related problem associated with screeners is the high rate of turnover among employees. According to the GAO, between May 1998 and April 1999, turnover averaged 126 percent at the nation's 19 largest airports. One of these airports reported a turnover rate of 416 percent.

One of the key ways to improve screener performance is to require the certification of screening companies. Certification was mandated by section 302 of the 1996 FAA reauthorization act (P.L. 104-264). On January 5, 2000, the FAA issued a Notice of Proposed Rulemaking on the certification of screening companies pursuant to the legislative mandate. The certification of screening companies is designed to bring about important changes in the way air carriers and contractors conduct screening. It is hoped that this rule will professionalize the screener workforce, improve performance, reduce high turnover, and possibly lead to better pay and benefits for the screeners.

Airport access control has been, and continues to be, an area of concern due to the increased threat to U.S. airport facilities and aircraft. During late 1998 and early 1999, personnel from the Department of Transportation's Office of Inspector General (IG) successfully accessed secure areas in 68 percent of their tests at eight major U.S. airports. Once IG personnel entered secure areas, they boarded aircraft 117 times. According to the IG, the majority of the aircraft boardings would not have occurred if employees had taken the prescribed steps, such as making sure doors closed behind them.

LEGISLATIVE HISTORY

On April 6, 2000, the Aviation Subcommittee held a hearing on aviation security. Representatives from the FAA, GAO, IG, and the major airlines testified about the current state of aviation security in the U.S. Prior to the hearing, there was a closed briefing for Committee Members and staff by the FAA and the GAO about the level of the threat to civil aviation and the failures of current screening methods.

Senator Hutchison introduced S. 2440 on April 13, 2000. The bill was cosponsored by Senators McCain, Gorton, Inouye, Rockefeller, and Bryan. On June 15, 2000, the Committee, without objection, ordered S. 2440 reported with an amendment in the nature of a substitute, which was offered by Senator Hutchison and cosponsored by Senators McCain, Hollings, Rockefeller, Inouye, Bryan, and Dorgan.

ESTIMATED COSTS

In accordance with paragraph 11(a)(3) of rule XXVI of the Standing Rules of the Senate, the Committee states that, in its opinion,

it is necessary to dispense with the requirements of subsection (a)(1) of that paragraph in order to expedite the business of the Senate.

REGULATORY IMPACT STATEMENT

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

NUMBER OF PERSONS COVERED

Section 2 will subject all air carriers, and all new security screeners and their supervisors, to the additional regulations associated with the new requirement that all security screeners and supervisors undergo criminal history records checks. The expansion of the list of criminal convictions that disqualify a person from being a screener or supervisor, or from having access to secure airport areas, may cause a few individuals to be removed from their jobs or prevent others from being hired. However, the number of people affected (convicted felons) will be few, and such actions will be taken to increase air travel security.

Because section 3, which requires improved training of security screeners, mirrors a pending FAA rulemaking, no additional persons should be subject to regulation under this provision. This section would merely accelerate the time when the new regulations would be applied.

Under section 4, all air carriers, security screening companies, and certificated airports would be subject to the requirement of including a list of sanctions (for employee security infractions) in each of their security programs. Flowing from that requirement, all airline, screening, and airport personnel will be held individually responsible for security infractions rather than just the employers being held responsible. It should be noted, however, that such employees are already likely to face some level of discipline for serious security-related infractions. All airports and air carriers will be required to develop and implement training programs on aviation security and programs that foster compliance with access control requirements.

Section 6, consistent with FAA regulatory actions, will lead to more passengers having their checked bags selected randomly for screening by EDS machines. Most of these passengers will probably not be aware that their bags require such screening, unless there are indications of a suspicious object and the passenger must be present when his or her bag is opened.

ECONOMIC IMPACT

Section 2 will cause airports, and possibly air carriers, to incur the costs of purchasing fingerprint scanning equipment. These costs should be more than offset by the reduction in administrative and other costs that are associated with the current criminal history records check system and procedures. Airlines will have to bear the small financial burden (currently less than \$30 per applicant) associated with fingerprint processing by the Federal Bureau of Investigation for criminal history records checks on new employees.

Because section 3 mirrors a pending FAA rulemaking, no additional economic impact should result from this provision. This section would merely accelerate the time when the new regulations would be applied.

Under section 4, airline and airport employees who violate airport access control requirements will be subject to sanctions that may have an economic impact, especially if the employee is fined, suspended without pay, or dismissed. Implementation of aviation security training and related programs will impose moderate additional costs on the airlines and airports.

Section 6 may lead to modest economic costs for the airlines that are required to change software to increase the random selection factor under the Computer-Assisted Passenger Prescreening System (CAPPS) program. Again, however, this measure is consistent with ongoing efforts to increase security.

PRIVACY

Within the air transportation system, the overriding need to ensure safety and security has long been settled with respect to travelers' expectations of privacy. More passengers will have their checked bags screened by EDS machines under section 6. A small number of airline passengers may be subject to having their bags opened by security personnel if EDS machines detect suspicious objects. Passengers are already aware that their bags could be checked for security reasons.

PAPERWORK

Under section 2, air carriers, the FAA, the Federal Bureau of Investigation, and the federal Office of Personnel Management will have additional paperwork associated with conducting criminal history records checks on screener applicants, but the automation brought about by expansion of the pilot program should keep that to a minimum. Airport industry representatives believe that expansion of the fingerprint check automation pilot program will result in a considerable reduction in paperwork for airports given the burdens of the current process.

Because section 3 mirrors a pending FAA rulemaking, no additional paperwork should result from this provision. This section would merely accelerate the time when the new regulations would be applied.

Under section 4, there would be an additional paperwork burden associated with the requirement for the FAA to publish sanctions guidelines for airport, airline and screening company employees who violate airport access rules. Additional paperwork will also be involved in the requirement for airlines and airports to develop aviation security programs and training.

There may be a minimal amount of additional paperwork associated with changing CAPPS software to increase the random selection factor for passengers at airports where EDS machines are in use.

SUMMARY OF MAJOR PROVISIONS

S. 2440, as reported, would do the following: require criminal history records checks for all baggage and security checkpoint screen-

ers; expand the list of criminal convictions that disqualify an individual from being employed as a security screener; increase the amount of classroom and on-the-job training required of airline security screeners; require the FAA to work with air carriers and airport operators to strengthen procedures to prevent unauthorized access to aircraft; hold security personnel individually responsible for security lapses through progressive disciplinary measures; require the FAA to improve security at its own air traffic control facilities; and increase random screening of checked bags for explosives.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title.

Section 1 establishes the title of the bill as the “Airport Security Improvement Act of 2000.”

Sec. 2. Criminal History Records Checks.

Section 2 would require the FAA to expand and accelerate the current pilot program known as the Electronic Fingerprint Transmission Pilot. This automation pilot program has shown great promise in shortening the turnaround time for conducting criminal history record checks. Currently, these checks, which involve fingerprints taken with ink, can take two weeks or more. Early indications are that an automated program, which electronically scans fingerprints, will shorten that turnaround time to about three days. The FAA would be required to have a fully expanded program in place within one year of enactment of the bill.

Section 2 would also amend current law by expanding the circumstances under which a criminal history record check must be performed on an individual seeking a position as a security screener or supervisor of screeners. At present, the law requires a criminal history records check to be performed when—

- (1) there is a 12-month gap in employment;
- (2) the job applicant cannot support certain statements made on an application;
- (3) there are inconsistencies in the application; or
- (4) there is other information indicating that the applicant may have been convicted of a crime that would disqualify him or her from employment as a screener. 49 U.S.C. 44936(a).

The current laws and rules regarding employment investigations and criminal history background checks were developed when such paperwork-intensive reviews consumed considerable amounts of time. The changes proposed in this bill are made possible by recent developments in technology and automation, such as electronic fingerprint scanning and transmission.

Section 2 would require all future applicants for the positions of security screener or supervisor of screeners to undergo criminal history records checks. Anyone seeking a job that gives them unescorted access to secure airport areas would also be required to undergo such a check. An applicant for a job as screener or screener supervisor would be allowed to work in his or her position until the check is completed, except in any case where—

- (1) there is a 12-month gap in employment;
- (2) the job applicant cannot support certain statements made on an application;

(3) there are inconsistencies in the application; or

(4) there is other information indicating that the applicant may have been convicted of a crime that would disqualify him or her from employment as a screener.

One year after enactment of the bill, criminal history records checks would be required before a person could be employed as a screener or supervisor.

Section 2 would also expand the statutory list of criminal convictions that disqualify individuals from employment as security screeners or supervisors, or jobs that require the person to have unescorted access privileges to secure airport areas. This expansion is made pursuant to a recommendation by the IG.

Ensuring that employees with access to secure areas of an airport are trustworthy is one critical aspect of airport access. Federal Bureau of Investigation criminal history record checks on screeners are currently only required in certain cases, such as when there is an unexplained gap of employment of 12 months or more. According to the Department of Justice, however, 43 percent of violent felony convictions resulted in probation or an average jail time of just seven months. When the current requirements were proposed in 1992, processing fingerprints and performing the criminal history records check took up to 90 days. As already mentioned, developing technology is expected to allow this process to be completed in only a few days, and airport operators and the FAA both agree the requirements need to be revised.

Sec. 3. Improved Training.

Section 3 requires the FAA to improve training requirements for security screeners in two ways. Subsection (a) would require the FAA to issue, within 30 days of enactment of the bill, its proposed rule on the certification of screening companies as an interim final rule. The final rule would be issued no later than May 31, 2001, and would take into account any comments received from the public.

Subsection (b) would require security screeners to receive at least 40 hours of classroom training and 40 hours of practical on-the-job training before becoming qualified to provide security screening services. A screener would be allowed to undergo fewer than 40 hours of classroom training, but only if the screening company's classroom program has been certified by the FAA to train individuals to a level of proficiency. This subsection also includes a requirement that screeners successfully complete an on-the-job training examination.

This section would also require that computer-based training facilities for security screeners be conveniently located at larger airports.

Sec. 4. Improving Secure Area Access Control.

Section 4 would require the FAA to work in a variety of ways with air carriers and airport operators to strengthen procedures to eliminate unauthorized access to aircraft and other secure areas at airports. With respect to employee discipline for violations of airport access rules, this section would require the FAA to establish guidelines for a progressive disciplinary approach that keeps punishment in proportion to the severity or recurring nature of infractions. The FAA should consult with the air carriers and the air-

ports to ensure that employees are not subject to sanctions from more than one party for the same infraction. It should be noted that the FAA plans to issue regulations in 2000 making individuals directly accountable to the FAA for noncompliance with access control requirements.

It is the intent of the Committee that discipline imposed on employees for security breaches should be meaningful. One lapse could lead to the loss of life, and employees must realize there are significant impacts when not enough attention is paid to security measures. But the Committee realizes that employees must be focused on their assigned jobs, which can have an effect on flight safety. Employee sanctions should be clear and strong, but imposed in proportion to the potential impact of the lapse. A serious violation should involve serious discipline.

Sec. 5. Physical Security for ATC Facilities.

Section 5 would require the FAA to improve physical security at its own facilities that house air traffic control systems. This new provision is based upon recommendations made by the GAO.

Sec. 6. Explosives Detection Equipment.

Section 6 would require the FAA to increase gradually the random selection factor embedded in the Computer-Assisted Passenger Prescreening System (CAPPS) at airports where EDS equipment is being used.

Because of the limitations of EDS technology (primarily in terms of the number of bags that can be scanned in a given period of time), the CAPPS system has been developed to reduce the number of passengers whose checked bags need to be screened. Using CAPPS, all passengers continue to walk through the metal detectors and have their carry-on luggage screened. But only those who fit the profile are subject to higher levels of scrutiny, including having their checked bags screened by EDS machines. The FAA has announced a goal of requiring all checked baggage to be screened for explosives by 2009. The IG has found, however, that currently deployed EDS machines are being significantly underutilized. In order to increase utilization of EDSs and as a way to smooth transition to 100 percent screening, the IG has recommended that the number of randomly screened bags should be increased over time.

Sec. 7. Technical Amendment to Title 49.

Section 7 would make a purely technical correction to the law regarding the FAA's Management Advisory Council (MAC). The recent FAA reauthorization act (P.L. 106-181) expanded the size of the MAC from 15 to 18 members. A cross reference in the U.S. Code was not made to reflect this change, however. The law now says that there is a 15-member MAC and then proceeds to describe the 18 members on it. 49 U.S.C. 106(p)(2). This provision would correct that inconsistency.

CHANGES IN EXISTING LAW

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

TITLE 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 106. Federal Aviation Administration

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

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

(c) The administrator must—

- (1) be a citizen of the United States;
- (2) be a civilian; and
- (3) have experience in a field directly related to aviation.

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

(2) An officer on active duty or a retired officer serving as Deputy Administrator is entitled to hold a rank and grade not lower than that held when appointed as Deputy Administrator. The Deputy Administrator may elect to receive—

(A) the pay provided by law for the Deputy Administrator; or

(B) the pay and allowances or the retired pay of the military grade held. If the Deputy Administrator elects to receive the military pay and allowances or retired pay, the Administration shall reimburse the appropriate military department from funds available for the expenses of the Administration.

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

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

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

(1) Authority of the Secretary. Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activities, of

the Administration. Neither the Secretary nor the Administrator may submit decisions for the approval of, or be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

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

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

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

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

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

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

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

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

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

(3) REGULATIONS.—

(A) IN GENERAL.—In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out those functions. The issuance of such regulations shall be governed by the provisions of chapter 5 of title 5 . The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the Federal Register of notice of the proposed rulemaking. On February 1 and August 1 of each year the Administrator

shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a letter listing each deadline the Administrator missed under this subparagraph during the 6-month period ending on such date, including an explanation for missing the deadline and a projected date on which the action that was subject to the deadline will be taken.

(B) APPROVAL OF SECRETARY OF TRANSPORTATION.—

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

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

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

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

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

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

(C) PERIODIC REVIEW.—

(i) Beginning on the date which is 3 years after the date of the enactment of the Air Traffic Management

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

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

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

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

(4) DEFINITION OF POLITICAL APPOINTEE.—For purposes of this subsection, the term “political appointee” means any individual who—

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

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

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

(g) DUTIES AND POWERS OF ADMINISTRATION.—

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

(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d), 40113(e), 40114(a), and 40119, chapter 445 (except sections 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506, 44509, 44510, 44514, and 44515), chapter 447 (except sections 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and 44723), chapter 449 (except sections 44903(d), 44904, 44905, 44907-44911, 44913, 44915, and

44931-44934), chapter 451 , chapter 453 , sections 46104, 46301(d) and (h)(2), 46303(c), 46304-46308, 46310, 46311, and 46313-46316, chapter 465 , and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

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

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

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

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

(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.

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

- (A) such sums as may be necessary for fiscal year 2000;
- (B) \$6,592,235,000 for fiscal year 2001;
- (C) \$6,886,000,000 for fiscal year 2002; and
- (D) \$7,357,000,000 for fiscal year 2003.

Such sums shall remain available until expended.

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

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

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

- (i) may not be used for the construction of a building or other facility; and
- (ii) may only be awarded on the basis of open competition.

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

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

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

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

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

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

(I) Such sums as may be necessary for fiscal years 2000 through 2003 to develop and improve training programs (including model training programs and curriculum) for security screening personnel at airports that will be used by airlines to meet regulatory requirements relating to the training and testing of such personnel.

(1) PERSONNEL AND SERVICES.—

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

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

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

(4) USE OF PERSONNEL FROM OTHER AGENCIES.—The Administrator is authorized to utilize the services of personnel of any

other Federal agency (as such term is defined under section 551(1) of title 5).

(5) VOLUNTARY SERVICES.—

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

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

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

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

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

(n) ACQUISITION.—

(1) IN GENERAL.—The Administrator is authorized—

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

(i) air traffic control facilities and equipment;

(ii) research and testing sites and facilities; and

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

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

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

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

(o) TRANSFERS OF FUNDS.—The Administrator is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred by law to the Administrator or functions transferred pursuant to law to the Administrator on or after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996.

(p) MANAGEMENT ADVISORY COUNCIL.—

(1) ESTABLISHMENT.—Within 3 months after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall establish an advisory council which shall be known as the Federal Aviation Management Advisory Council (in this subsection referred to as the “Council”). With respect to Administration management, policy, spending, funding, and regulatory matters affecting the aviation industry, the Council may submit comments, recommended modifications, and dissenting views to the Administrator. The Administrator shall include in any submission to Congress, the Secretary, or the general public, and in any submission for publication in the Federal Register, a description of the comments, recommended modifications, and dissenting views received from the Council, together with the reasons for any differences between the views of the Council and the views or actions of the Administrator.

(2) MEMBERSHIP.—The Council shall consist of **[15]** 18 members, who shall consist of—

(A) a designee of the Secretary of Transportation;

(B) a designee of the Secretary of Defense;

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

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

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

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

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

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

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

(3) QUALIFICATIONS.—

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

(B) AIR TRAFFIC SERVICES SUBCOMMITTEE.—Members appointed under paragraph (2)(E) shall—

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

(ii) be citizens of the United States; and

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

(I) Management of large service organizations.

(II) Customer service.

(III) Management of large procurements.

(IV) Information and communications technology.

(V) Organizational development.

(VI) Labor relations. At least one of such members should have a background in managing large organizations successfully. In the aggregate, such members should collectively bring to bear expertise in all of the areas described in subclauses (I) through (VI).

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

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

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

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

(4) FUNCTIONS.—

(A) IN GENERAL.—

(i) The Council shall provide advice and counsel to the Administrator on issues which affect or are affected by the operations of the Administrator. The Council shall function as an oversight resource for

management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

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

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

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

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

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

(6) ADMINISTRATIVE MATTERS.—

(A) Terms of members appointed under paragraph (2)(c). Members of the Council appointed under paragraph (2)(C) shall be appointed for a term of 3 years. Of the members first appointed by the President under paragraph (2)(C)—

- (i) 3 shall be appointed for terms of 1 year;
- (ii) 4 shall be appointed for terms of 2 years; and
- (iii) 3 shall be appointed for terms of 3 years.

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

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

- (i) 2 members shall be appointed for a term of 3 years;
- (ii) 2 members shall be appointed for a term of 4 years; and
- (iii) 1 member shall be appointed for a term of 5 years.

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

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

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

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

(H) CLAIMS AGAINST MEMBERS OF SUBCOMMITTEE.—

(i) IN GENERAL.—A member appointed under paragraph (2)(E) shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member of the Air Traffic Services Subcommittee. (ii) Effect on other law. This subparagraph shall not be construed—

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

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

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

(I) ETHICAL CONSIDERATIONS.—

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

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

(J) CHAIRMAN; VICE CHAIRMAN.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (2)(C), each of whom shall serve

for a term of 1 year. The vice chair shall perform the duties of the chairman in the absence of the chairman.

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

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

(7) AIR TRAFFIC SERVICES SUBCOMMITTEE.—

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

(B) GENERAL RESPONSIBILITIES.—

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

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

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

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

(I) a mission and objectives;

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

(III) annual and long-range strategic plans.

(ii) MODERNIZATION AND IMPROVEMENT.—To review and approve—

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

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

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

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

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

(III) plans for training and education.

(iv) MANAGEMENT.—To—

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

(II) review the Administrator’s selection, evaluation, and compensation of senior executives of the

Administration who have program management responsibility over significant functions of the air traffic control system;

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

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

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

(v) BUDGET.—To—

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

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

(III) ensure that the budget request supports the annual and long-range strategic plans. The Secretary shall submit the budget request referred to in clause (v)(II) for any fiscal year to the President who shall transmit such request, without revision, to the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, together with the President's annual budget request for the Federal Aviation Administration for such fiscal year.

(D) SUBCOMMITTEE PERSONNEL MATTERS.—

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

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

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

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

(E) ADMINISTRATIVE MATTERS.—

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

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

- (I) establishing committees;
- (II) setting meeting places and times;
- (III) establishing meeting agendas; and
- (IV) developing rules for the conduct of business.

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

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

(F) **REPORTS.**—

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

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

(iii) **ACTION OF ADMINISTRATOR ON REPORT.**—Not later than 60 days after the date of a report of the Subcommittee under this subparagraph, the Administrator shall take action with respect to such report. If the Administrator overturns a recommendation of the Subcommittee, the Administrator shall report such action to the President, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

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

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

(q) **AIRCRAFT NOISE OMBUDSMAN.**—

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

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

(A) be appointed by the Administrator;

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

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

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

(r) CHIEF OPERATING OFFICER.—

(1) IN GENERAL.—

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

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

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

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

(E) VACANCY.—Any individual appointed to fill a vacancy in the position of Chief Operating Officer occurring before the expiration of the term for which the individual's predecessor was appointed shall be appointed for the remainder of that term.

(2) COMPENSATION.—

(A) IN GENERAL.—The Chief Operating Officer shall be paid at an annual rate of basic pay equal to the annual rate of basic pay of the Administrator. The Chief Operating Officer shall be subject to the post-employment provisions of section 207 of title 18 as if this position were described in section 207(c)(2)(A)(i) of that title.

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

(3) ANNUAL PERFORMANCE AGREEMENT.—The Administrator and the Chief Operating Officer, in consultation with the Air Traffic Control Subcommittee of the Aviation Management Advisory Committee, shall enter into an annual performance

agreement that sets forth measurable organization and individual goals for the Chief Operating Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis.

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

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

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

- (i) a mission and objectives;
- (ii) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity;
- (iii) annual and long-range strategic plans; and
- (iv) methods of the Administration to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control.

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

- (i) modernization of the air traffic control system;
- (ii) increasing productivity or implementing cost-saving measures; and
- (iii) training and education.

(C) BUDGET.—To—

- (i) develop a budget request of the Administration related to the air traffic control system prepared by the Administrator;
- (ii) submit such budget request to the Administrator and the Secretary of Transportation; and
- (iii) ensure that the budget request supports the annual and long-range strategic plans developed under subparagraph (A) of this subsection.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 449. SECURITY

SUBCHAPTER I.

§ 44903. AIR TRANSPORTATION SECURITY.

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

- (1) authorized to carry and use firearms;
- (2) vested with the degree of the police power of arrest the Administrator of the Federal Aviation Administration considers necessary to carry out this section; and

(3) identifiable by appropriate indicia of authority.

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

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

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

(A) protecting passengers; and

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

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

(A) their safety; and

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

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

(c) SECURITY PROGRAMS.—

(1) The Administrator shall prescribe regulations under subsection (b) of this section that require each operator of an airport regularly serving an air carrier holding a certificate issued by the Secretary of Transportation to establish an air transportation security program that provides a law enforcement presence and capability at each of those airports that is adequate to ensure the safety of passengers. The regulations shall authorize the operator to use the services of qualified State, local, and private law enforcement personnel. When the Administrator decides, after being notified by an operator in the form the Administrator prescribes, that not enough qualified State, local, and private law enforcement personnel are available to carry out subsection (b), the Administrator may authorize the operator to use, on a reimbursable basis, personnel employed by the Administrator, or by another department, agency, or instrumentality of the Government with the consent of the head of the department, agency, or instrumentality, to supplement State, local, and private law enforcement personnel. When deciding whether additional personnel are needed, the Administrator shall consider the number of passengers boarded at the airport, the extent of anticipated risk of criminal violence or aircraft piracy at the airport or to the air carrier aircraft operations at the airport, and the availability of qualified State or local law enforcement personnel at the airport.

(2)(A) The Administrator may approve a security program of an airport operator, or an amendment in an existing program, that incorporates a security program of an airport tenant (except an air carrier separately complying with part 108 or 129

of title 14, Code of Federal Regulations) having access to a secured area of the airport, if the program or amendment incorporates—

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

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

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

(d) **AUTHORIZING INDIVIDUALS TO CARRY FIREARMS AND MAKE ARRESTS.**— With the approval of the Attorney General and the Secretary of State, the Secretary of Transportation may authorize an individual who carries out air transportation security duties—

(1) to carry firearms; and

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

(e) **IMPROVEMENT OF SECURED-AREA ACCESS CONTROL.**—

(1) **ENFORCEMENT.**—

(A) **ADMINISTRATOR TO PUBLISH SANCTIONS.**—*The Administrator shall publish in the Federal Register a list of sanctions for use as guidelines in the discipline of employees for infractions of airport access control requirements. The guidelines shall incorporate a progressive disciplinary approach that relates proposed sanctions to the severity or recurring nature of the infraction, and shall include, but are not limited to, measures such as remedial training, suspension from security-related duties, suspension from all duties without pay, and termination of employment.*

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

commits an infraction of airport access control requirements.

(2) **IMPROVEMENTS.**—*The Administrator shall—*

(A) *work with airport operators and air carriers to implement and strengthen existing controls to eliminate access control weaknesses by September 30, 2000;*

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

(C) *require airport operators and air carriers—*

(i) *to develop and implement programs that foster and reward compliance with access control requirements, and discourage and penalize noncompliance in accordance with guidelines issued by the Administrator to measure employee compliance; and*

(ii) *to enforce individual compliance requirements under Administration oversight;*

(D) *assess and test for compliance with access control requirements, report findings, and assess penalties or take other appropriate enforcement actions when noncompliance is found;*

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

(F) *improve the execution of the Administration's quality control program by September 30, 2000; and*

(G) *require airport operators and air carriers to strengthen access control points in secured areas (including air traffic control operations areas) to ensure the security of passengers and aircraft by September 30, 2000.*

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

[(f)] (g) **GOVERNMENT AND INDUSTRY CONSORTIA.**—The Administrator may establish at airports such consortia of government and aviation industry representatives as the Administrator may designate to provide advice on matters related to aviation security and safety. Such consortia shall not be considered Federal advisory committees for purposes of the Federal Advisory Committee Act (5 U.S.C. App.). subparagraphs (A) and (B) of paragraph (1); or (B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

(13) **REGULATIONS.**—The Administrator shall prescribe such regulations as may be necessary—

(A) to protect—

- (i) the personal privacy of any individual whose records are requested under paragraph (1) and disseminated under paragraph (15); and
- (ii) the confidentiality of those records;

(B) to preclude the further dissemination of records received under paragraph (1) by the person who requested those records; and

(C) to ensure prompt compliance with any request made under paragraph (1).

(14) SPECIAL RULES WITH RESPECT TO CERTAIN PILOTS.—

(A) PILOTS OF CERTAIN SMALL AIRCRAFT.—Notwithstanding paragraph (1), an air carrier, before receiving information requested about an individual under paragraph (1), may allow the individual to begin service for a period not to exceed 90 days as a pilot of an aircraft with a maximum payload capacity (as defined in section 119.3 of title 14, Code of Federal Regulations) of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation (as defined in such section). Before the end of the 90-day period, the air carrier shall obtain and evaluate such information. The contract between the carrier and the individual shall contain a term that provides that the continuation of the individual's employment, after the last 90-day period, depends on a satisfactory evaluation.

(B) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier, without obtaining information about an individual under paragraph (1)(B) from an air carrier or other person that no longer exists or from a foreign government or entity that employed the individual, may allow the individual to begin service as a pilot if the air carrier required to request the information has made a documented good faith attempt to obtain such information.

(15) ELECTRONIC ACCESS TO FAA RECORDS.—For the purpose of increasing timely and efficient access to Federal Aviation Administration records described in paragraph (1), the Administrator may allow, under terms established by the Administrator, an individual designated by the air carrier to have electronic access to a specified database containing information about such records. The terms shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual provide assurances satisfactory to the Administrator that information obtained using such access will not be used for any purpose other than making the hiring decision.

(g) LIMITATION ON LIABILITY; PREEMPTION OF STATE LAW.—

(1) LIMITATION ON LIABILITY.—No action or proceeding may be brought by or on behalf of an individual who has applied for or is seeking a position with an air carrier as a pilot and who has signed a release from liability, as provided for under paragraph (2), against—

(A) the air carrier requesting the records of that individual under subsection (f)(1);

(B) a person who has complied with such request;

(C) a person who has entered information contained in the individual's records; or

(D) an agent or employee of a person described in subparagraph (A) or (B); in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal or State law with respect to the furnishing or use of such records in accordance with subsection (f).

(2) PREEMPTION.—No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (f).

(3) PROVISION OF KNOWINGLY FALSE INFORMATION.—Paragraphs (1) and (2) shall not apply with respect to a person who furnishes information in response to a request made under subsection (f)(1), that—

(A) the person knows is false; and

(B) was maintained in violation of a criminal statute of the United States.

(h) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in subsection (f) shall be construed as precluding the availability of the records of a pilot in an investigation or other proceeding concerning an accident or incident conducted by the Administrator, the National Transportation Safety Board, or a court.

SUBCHAPTER II.

§ 44935. EMPLOYMENT STANDARDS AND TRAINING.

(a) EMPLOYMENT STANDARDS.—The Administrator of the Federal Aviation Administration 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 Administrator shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the Administrator shall recommend guidelines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—

(1) THE ADMINISTRATOR.—

(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 Administrator 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 COORDINATIONS, SUPERVISORY PERSONNEL, AND PILOTS.—

(1) The Administrator 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) TRAINING STANDARDS FOR SCREENERS.—

(1) IN GENERAL.—*The Administrator shall prescribe minimum standards for training security screeners that include at least 40 hours of classroom instruction before an individual is qualified to provide security screening services under section 44901 of this title.*

(2) CLASSROOM EQUIVALENCY.—*The successful completion of a program certified by the Administrator as a program that will train individuals to a level of proficiency meets the classroom instruction requirement of paragraph (1).*

(3) ON-THE-JOB TRAINING.—*In addition to the requirements of paragraph (1), before an individual may exercise independent judgment as a security screener under section 44901 of this title the individual shall—*

(A) complete 40 hours of on-the-job training; and

(B) successfully complete an on-the-job training examination prescribed by the Administrator.

(f) ACCESSIBILITY OF COMPUTER-BASED TRAINING FACILITIES.—*The Administrator 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 be conveniently located for that airport and easily accessible.*

§ 44936. EMPLOYMENT INVESTIGATIONS AND RESTRICTIONS.

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—

(1)(A) The Administrator of the Federal Aviation Administration shall require by regulation that an employment investigation, including a criminal history record check, shall be [conducted, as the Administrator decides is necessary to ensure air transportation security, of] *conducted of* each individual employed in, or applying for, 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 Administrator designates that serves an air carrier or foreign air carrier.

(B) The Administrator shall require by regulation that an employment investigation (including a criminal history record check in any case described in **subparagraph (C))** *subparagraph (D)* be conducted for—

- (i) individuals who will be responsible for screening passengers or property under section 44901 of this title;
- (ii) supervisors of the individuals described in clause (i); and
- (iii) such other individuals who exercise security functions associated with baggage or cargo, as the Administrator determines is necessary to ensure air transportation security.

(C) A criminal history record check shall be conducted for every individual who applies for a position described in subparagraph (A) or in subparagraph (B)(i) or (ii) after the date of enactment of the Airport Security Improvement Act of 2000. For the 12-month period beginning on the date of enactment of that Act, an individual described in the preceding sentence may be employed in such a position before the check is completed if the individual is subject to supervision except in a case described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (D). After that 12-month period, such an individual may not be so employed until the check is completed.

[(C)] (D) Under the regulations issued under subparagraph (B), a criminal history record check shall be conducted in any case in which—

- (i) an employment investigation reveals a gap in employment of 12 months or more that the individual who is the subject of the investigation does not satisfactorily account for;
- (ii) such individual is unable to support statements made on the application of such individual;
- (iii) there are significant inconsistencies in the information provided on the application of such individual;
- (iv) information becomes available during the employment investigation indicating a possible conviction for one of the crimes listed in subsection (b)(1)(B); or
- (v) the Administrator decides it is necessary to ensure air transportation security with respect to passenger, baggage, or property screening at airports.

[(D)] (E) If an individual requires a criminal history record check under **subparagraph (C),** *subparagraph (D)*, the individual may be employed **[as a screener]** *in the position for which the individual applied* until the check is completed if the individual is subject to supervision.

(2) An air carrier, foreign air carrier, or airport operator 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 Administrator requires is conducted.

(3) The Administrator 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, or airport operator 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; **[or]**

(xiii) *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; or*

(VIII) *bribery; or*

[(xiii)] (xv) conspiracy to commit any of the acts referred to in **[clauses (i)-(xii) of this paragraph.]**
clauses (i) through (xiv) of this subparagraph.

(2) The Administrator 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, or airport operator 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 sec-

tion, if the Administrator approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—

(1) If the Administrator requires an identification and criminal history record check, to be conducted by the Attorney General, as part of an investigation under this section, the Administrator 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 Administrator designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the Administrator shall consult with the Attorney General. (2) The Administrator 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 Administrator 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 Administrator and the Attorney General for those expenses.

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

(f) RECORDS OF EMPLOYMENT OF PILOT APPLICANTS.—

(1) IN GENERAL.—Subject to paragraph (14), before allowing an individual to begin service as a pilot, an air carrier shall request and receive the following information:

(A) FAA RECORDS.—From the Administrator of the Federal Aviation Administration, records pertaining to the individual that are maintained by the Administrator concerning—

(i) current airman certificates (including airman medical certificates) and associated type ratings, including any limitations to those certificates and ratings; and

(ii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this

title or a regulation prescribed or order issued under this title that was not subsequently overturned.

(B) AIR CARRIER AND OTHER RECORDS.—From any air carrier or other person (except a branch of the United States Armed Forces, the National Guard, or a reserve component of the United States Armed Forces) that has employed the individual as a pilot of a civil or public aircraft at any time during the 5-year period preceding the date of the employment application of the individual, or from the trustee in bankruptcy for such air carrier or person—

(i) records pertaining to the individual that are maintained by an air carrier (other than records relating to flight time, duty time, or rest time) under regulations set forth in—

(I) section 121.683 of title 14, Code of Federal Regulations;

(II) paragraph (A) of section VI, appendix I, part 121 of such title;

(III) paragraph (A) of section IV, appendix J, part 121 of such title;

(IV) section 125.401 of such title; and

(V) section 135.63(a)(4) of such title; and

(ii) other records pertaining to the individual's performance as a pilot that are maintained by the air carrier or person concerning—

(I) the training, qualifications, proficiency, or professional competence of the individual, including comments and evaluations made by a check airman designated in accordance with section 121.411, 125.295, or 135.337 of such title;

(II) any disciplinary action taken with respect to the individual that was not subsequently overturned; and

(III) any release from employment or resignation, termination, or disqualification with respect to employment.

(C) NATIONAL DRIVER REGISTER RECORDS.—In accordance with section 30305(b)(8) of this title, from the chief driver licensing official of a State, information concerning the motor vehicle driving record of the individual.

(2) WRITTEN CONSENT; RELEASE FROM LIABILITY.—An air carrier making a request for records under paragraph (1)—

(A) shall be required to obtain written consent to the release of those records from the individual that is the subject of the records requested; and

(B) may, notwithstanding any other provision of law or agreement to the contrary, require the individual who is the subject of the records to request to execute a release from liability for any claim arising from the furnishing of such records to or the use of such records by such air carrier (other than a claim arising from furnishing information known to be false and maintained in violation of a criminal statute).

(3) 5-YEAR REPORTING PERIOD.—A person shall not furnish a record in response to a request made under paragraph (1) if the record was entered more than 5 years before the date of the request, unless the information concerns a revocation or suspension of an airman certificate or motor vehicle license that is in effect on the date of the request.

(4) REQUIREMENT TO MAINTAIN RECORDS.—The Administrator and air carriers shall maintain pilot records described in paragraphs (1)(A) and (1)(B) for a period of at least 5 years.

(5) RECEIPT OF CONSENT; PROVISION OF INFORMATION.—A person shall not furnish a record in response to a request made under paragraph (1) without first obtaining a copy of the written consent of the individual who is the subject of the records requested; 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). A person who receives a request for records under this subsection shall furnish a copy of all of such requested records maintained by the person not later than 30 days after receiving the request.

(6) RIGHT TO RECEIVE NOTICE AND COPY OF ANY RECORD FURNISHED.—A person who receives a request for records under paragraph (1) shall provide to the individual who is the subject of the records—

(A) on or before the 20th day following the date of receipt of the request, written notice of the request and of the individual's right to receive a copy of such records; and

(B) in accordance with paragraph (10), a copy of such records, if requested by the individual.

(7) REASONABLE CHARGES FOR PROCESSING REQUESTS AND FURNISHING COPIES.—A person who receives a request under paragraph (1) or (6) may establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records.

(8) STANDARD FORMS.—The Administrator shall promulgate—

(A) standard forms that may be used by an air carrier to request records under paragraph (1); and

(B) standard forms that may be used by an air carrier to—

(i) obtain the written consent of the individual who is the subject of a request under paragraph (1); and

(ii) inform the individual of—

(I) the request; and

(II) the individual right of that individual to receive a copy of any records furnished in response to the request.

(9) RIGHT TO CORRECT INACCURACIES.—An air carrier that maintains or requests and receives the records of an individual under paragraph (1) shall provide the individual with a reasonable opportunity to submit written comments to correct any inaccuracies contained in the records before making a final hiring decision with respect to the individual.

(10) RIGHT OF PILOT TO REVIEW CERTAIN RECORDS.—Notwithstanding any other provision of law or agreement, an air carrier shall, upon written request from a pilot who is or has been employed by such carrier, make available, within a reasonable time, but not later than 30 days after the date of the request, to the pilot for review, any and all employment records referred to in paragraph (1)(B) (i) or (ii) pertaining to the employment of the pilot.

(11) PRIVACY PROTECTIONS.—An air carrier that receives the records of an individual under paragraph (1) may use such records only to assess the qualifications of the individual in deciding whether or not to hire the individual as a pilot. The air carrier shall take such actions as may be necessary to protect the privacy of the pilot and the confidentiality of the records, including ensuring that information contained in the records is not divulged to any individual that is not directly involved in the hiring decision.

(12) PERIODIC REVIEW.—Not later than 18 months after the date of the enactment of the Pilot Records Improvement Act of 1996, and at least once every 3 years thereafter, the Administrator shall transmit to Congress a statement that contains, taking into account recent developments in the aviation industry—

(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration records, air carrier records, and other records required to be furnished under subparagraphs (A) and (B) of paragraph (1); or

(B) reasons why the Administrator does not recommend any proposed changes to the records referred to in subparagraph (A).

(13) REGULATIONS.—The Administrator shall prescribe such regulations as may be necessary—

(A) to protect—

(i) the personal privacy of any individual whose records are requested under paragraph (1) and disseminated under paragraph (15); and

(ii) the confidentiality of those records;

(B) to preclude the further dissemination of records received under paragraph (1) by the person who requested those records; and

(C) to ensure prompt compliance with any request made under paragraph (1).

(14) SPECIAL RULES WITH RESPECT TO CERTAIN PILOTS.—

(A) PILOTS OF CERTAIN SMALL AIRCRAFT.—Notwithstanding paragraph (1), an air carrier, before receiving information requested about an individual under paragraph (1), may allow the individual to begin service for a period not to exceed 90 days as a pilot of an aircraft with a maximum payload capacity (as defined in section 119.3 of title 14, Code of Federal Regulations) of 7,500 pounds or less, or a helicopter, on a flight that is not a scheduled operation (as defined in such section). Before the end of the 90-day period, the air carrier shall obtain and evaluate such information. The contract between the carrier and the indi-

vidual shall contain a term that provides that the continuation of the individual's employment, after the last 90-day period, depends on a satisfactory evaluation.

(B) GOOD FAITH EXCEPTION.—Notwithstanding paragraph (1), an air carrier, without obtaining information about an individual under paragraph (1)(B) from an air carrier or other person that no longer exists or from a foreign government or entity that employed the individual, may allow the individual to begin service as a pilot if the air carrier required to request the information has made a documented good faith attempt to obtain such information.

(15) ELECTRONIC ACCESS TO FAA RECORDS.—For the purpose of increasing timely and efficient access to Federal Aviation Administration records described in paragraph (1), the Administrator may allow, under terms established by the Administrator, an individual designated by the air carrier to have electronic access to a specified database containing information about such records. The terms shall limit such access to instances in which information in the database is required by the designated individual in making a hiring decision concerning a pilot applicant and shall require that the designated individual provide assurances satisfactory to the Administrator that information obtained using such access will not be used for any purpose other than making the hiring decision.

(g) LIMITATION ON LIABILITY; PREEMPTION OF STATE LAW.—

(1) LIMITATION ON LIABILITY.—No action or proceeding may be brought by or on behalf of an individual who has applied for or is seeking a position with an air carrier as a pilot and who has signed a release from liability, as provided for under paragraph (2), against—

(A) the air carrier requesting the records of that individual under subsection (f)(1);

(B) a person who has complied with such request;

(C) a person who has entered information contained in the individual's records; or

(D) an agent or employee of a person described in subparagraph (A) or (B); in the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal or State law with respect to the furnishing or use of such records in accordance with subsection (f).

(2) PREEMPTION.—No State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law) that prohibits, penalizes, or imposes liability for furnishing or using records in accordance with subsection (f).

(3) PROVISION OF KNOWINGLY FALSE INFORMATION.—Paragraphs (1) and (2) shall not apply with respect to a person who furnishes information in response to a request made under subsection (f)(1), that—

(A) the person knows is false; and

(B) was maintained in violation of a criminal statute of the United States.

(h) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in subsection (f) shall be construed as precluding the availability of the records of a pilot in an investigation or other proceeding concerning an accident or incident conducted by the Administrator, the National Transportation Safety Board, or a court.

