

on whom service of notice and process in a proceeding before, and an action of, the Secretary of Transportation (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may be made.

(2) The designation—

(A) shall be in writing and filed with the Secretary, Under Secretary, or Administrator; and

(B) may be changed in the same way as originally made.

(b) SERVICE.—(1) Service may be made—

(A) by personal service;

(B) on a designated agent; or

(C) by certified or registered mail to the person to be served or the designated agent of the person.

(2) The date of service made by certified or registered mail is the date of mailing.

(c) SERVING AGENTS.—Service on an agent designated under this section shall be made at the office or usual place of residence of the agent. If an air carrier or foreign air carrier does not have a designated agent, service may be made by posting the notice, process, or action in the office of the Secretary, Under Secretary, or Administrator.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1227; Pub. L. 107-71, title I, §140(b)(1), (2), Nov. 19, 2001, 115 Stat. 641.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
46103(a)	49 App.:1485(b) (1st sentence). 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85-726, §1005(b), 72 Stat. 794. Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98-443, §3(e), 98 Stat. 1704. Oct. 15, 1966, Pub. L. 89-670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97-449, §7(b), 96 Stat. 2444.
	49 App.:1655(c)(1).	
46103(b)	49 App.:1485(c).	Aug. 23, 1958, Pub. L. 85-726, §1005(c), 72 Stat. 794; re-stated Aug. 25, 1959, Pub. L. 86-199, 73 Stat. 427.
46103(c)	49 App.:1485(b) (last sentence). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1).	

In subsection (a)(1), the words “in a proceeding before” are added for clarity. The word “action” is substituted for “orders, decisions, and requirements” to eliminate unnecessary words. The words “for and on behalf of said carrier” are omitted as surplus.

In subsection (a)(2)(B), the words “from time to time” are omitted as surplus.

In subsection (b)(1)(B), the words “in writing for the purpose” are omitted as surplus.

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

In subsection (b)(2), the word “date” is substituted for “time” for clarity and consistency.

In subsection (c), the words “with like effect as if made personally upon such carrier” are omitted as surplus.

AMENDMENTS

2001—Subsec. (a)(1). Pub. L. 107-71, §140(b)(1), inserted “the Under Secretary of Transportation for Security

with respect to security duties and powers designated to be carried out by the Under Secretary or” after “(or”.

Subsec. (a)(2)(A). Pub. L. 107-71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator”.

Subsec. (c). Pub. L. 107-71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator”.

TRANSFER OF FUNCTIONS

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

§ 46104. Evidence

(a) GENERAL.—In conducting a hearing or investigation under this part, the Secretary of Transportation (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may—

(1) subpoena witnesses and records related to a matter involved in the hearing or investigation from any place in the United States to the designated place of the hearing or investigation;

(2) administer oaths;

(3) examine witnesses; and

(4) receive evidence at a place in the United States the Secretary, Under Secretary, or Administrator designates.

(b) COMPLIANCE WITH SUBPENAS.—If a person disobeys a subpoena, the Secretary, the Under Secretary, the Administrator, or a party to a proceeding before the Secretary, Under Secretary, or Administrator may petition a court of the United States to enforce the subpoena. A judicial proceeding to enforce a subpoena under this section may be brought in the jurisdiction in which the proceeding or investigation is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena as a contempt of court.

(c) DEPOSITIONS.—(1) In a proceeding or investigation, the Secretary, Under Secretary, or Administrator may order a person to give testimony by deposition and to produce records. If a person fails to be deposed or to produce records, the order may be enforced in the same way a subpoena may be enforced under subsection (b) of this section.

(2) A deposition may be taken before an individual designated by the Secretary, Under Secretary, or Administrator and having the power to administer oaths.

(3) Before taking a deposition, the party or the attorney of the party proposing to take the deposition must give reasonable notice in writing to the opposing party or the attorney of record

of that party. The notice shall state the name of the witness and the time and place of taking the deposition.

(4) The testimony of a person deposed under this subsection shall be under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent. Each deposition shall be filed promptly with the Secretary, Under Secretary, or Administrator.

(5) If the laws of a foreign country allow, the testimony of a witness in that country may be taken by deposition—

(A) by a consular officer or an individual commissioned by the Secretary, Under Secretary, or Administrator or agreed on by the parties by written stipulation filed with the Secretary, Under Secretary, or Administrator; or

(B) under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary, Under Secretary, or Administrator.

(d) WITNESS FEES AND MILEAGE AND CERTAIN FOREIGN COUNTRY EXPENSES.—A witness summoned before the Secretary, Under Secretary, or Administrator or whose deposition is taken under this section and the individual taking the deposition are each entitled to the same fee and mileage that the witness and individual would have been paid for those services in a court of the United States. Under regulations of the Secretary, Under Secretary, or Administrator, the Secretary, Under Secretary, or Administrator shall pay the necessary expenses incident to executing, in another country, a commission or letter rogatory issued at the initiative of the Secretary, Under Secretary, or Administrator.

(e) DESIGNATING EMPLOYEES TO CONDUCT HEARINGS.—When designated by the Secretary, Under Secretary, or Administrator, an employee appointed under section 3105 of title 5 may conduct a hearing, subpoena witnesses, administer oaths, examine witnesses, and receive evidence at a place in the United States the Secretary, Under Secretary, or Administrator designates. On request of a party, the Secretary, Under Secretary, or Administrator shall hear or receive argument.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1227; Pub. L. 107–71, title I, §140(b)(1), (2), (6), Nov. 19, 2001, 115 Stat. 641.)

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
46104(c)(1) ..	49 App.:1484(c) (last sentence), (d). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter).	
46104(c)(2) ..	49 App.:1484(e) (1st, last sentences). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter).	
46104(c)(3) ..	49 App.:1484(e) (2d sentence). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter).	
46104(c)(4) ..	49 App.:1484(e) (3d sentence). 49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter).	
46104(c)(5) ..	49 App.:1484(f). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter).	
46104(d)	49 App.:1484(g). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter).	
46104(e)	49 App.:1484(b) (last sentence), (h). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter). 49 App.:1484(a) (related to examiner). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1).	

In this section, the word “Administrator” in section 313(c) of the Federal Aviation Act of 1958 (Public Law 85–726, 72 Stat. 753) is retained on authority of 49:106(g).

Subsection (a)(1) is substituted for “sign and issue subpoenas”, “shall have the power to require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation”, and “The attendance of witnesses, and the production of books, papers, and documents, may be required from any place in the United States, at any designated place of hearing” in 49 App.:1484 for clarity and consistency in the revised title and with other titles of the United States Code and to eliminate unnecessary words.

In subsection (b), the words “petition a court of the United States to enforce the subpoena” are substituted for “invoke the aid of any court of the United States in requiring attendance and testimony of witnesses and the production of such books, papers, and documents under the provisions of this section” in 49 App.:1484(c) to eliminate unnecessary words. The words “to enforce a subpoena under this section” are substituted for “in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring such person to appear before the Board (and produce books, papers, or documents if so ordered) and give evidence touching the matter in question” in 49 App.:1484(d) to eliminate unnecessary words.

In subsection (c)(1), the words “pending before it, at any stage of such proceeding or investigation” in 49 App.:1484(e) are omitted as surplus. The words “a person to give” are substituted for “to be taken”, and the words “to produce records” are added, for clarity and consistency. The last sentence is substituted for 49 App.:1484(e) (last sentence) for clarity and consistency and to eliminate unnecessary words.

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
46104(a)	49 App.:1354(c) (related to this chapter). 49 App.:1484(a) (related to member of the Board), (b) (1st sentence), (c) (1st sentence). 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85–726, §§313(c) (related to this Act), 1004(a)–(h), 72 Stat. 753, 792.
46104(b)	49 App.:1655(c)(1). 49 App.:1354(c) (related to this chapter).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98–443, §3(e), 98 Stat. 1704. Oct. 15, 1966, Pub. L. 89–670, §6(c)(1), 80 Stat. 938; Jan. 12, 1983, Pub. L. 97–449, §7(b), 96 Stat. 2444.

In subsection (c)(4), the words “shall be cautioned . . . to testify the whole truth, and shall be carefully examined” in 49 App.:1484(f) are omitted as surplus. The words “shall be under oath” are substituted for “shall be required to swear (or affirm, if he so requests)” for consistency and because of 1:1.

In subsection (d), the words “that the witness and individual would have been” are added for clarity and consistency in the revised title and with other titles of the Code. The words “fees, charges, or” and “on the subject” are omitted as surplus.

In subsection (e), the words “duly . . . for such purpose” are omitted as surplus. The words “employee appointed under section 3105 of title 5” are substituted for “examiner”, and the words “subpena witnesses” are substituted for “sign and issue subpoenas”, for consistency in the revised title and with other titles of the Code. The words “In all cases heard by an examiner or a single member” are omitted as surplus.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–71, §140(b)(1), in introductory provisions inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “(or)”.

Subsec. (a)(4). Pub. L. 107–71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator”.

Subsec. (b). Pub. L. 107–71, §140(b)(2), (6), inserted “the Under Secretary,” after “Secretary,” and substituted “, Under Secretary, or Administrator” for “or Administrator”.

Subsecs. (c) to (e). Pub. L. 107–71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator” wherever appearing.

TRANSFER OF FUNCTIONS

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

§ 46105. Regulations and orders

(a) EFFECTIVENESS OF ORDERS.—Except as provided in this part, a regulation prescribed or order issued by the Secretary of Transportation (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) takes effect within a reasonable time prescribed by the Secretary, Under Secretary, or Administrator. The regulation or order remains in effect under its own terms or until superseded. Except as provided in this part, the Secretary, Under Secretary, or Administrator may amend, modify, or suspend an order in the way, and by giving the notice, the Secretary, Under Secretary, or Administrator decides.

(b) CONTENTS AND SERVICE OF ORDERS.—An order of the Secretary, Under Secretary, or Administrator shall include the findings of fact on which the order is based and shall be served on the parties to the proceeding and the persons affected by the order.

(c) EMERGENCIES.—When the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to this part and subchapter II of chapter 5 of title 5. The Administrator shall begin a proceeding immediately about an emergency under this subsection and give preference, when practicable, to the proceeding.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1228; Pub. L. 107–71, title I, §140(b)(1), (2), Nov. 19, 2001, 115 Stat. 641.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
46105(a)	49 App.:1485(a) (words before 1st proviso), (d), (e). 49 App.:1551(b)(1)(E).	Aug. 23, 1958, Pub. L. 85–726, §1005(a), (d)–(f), 72 Stat. 794. Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §1601(b)(1)(E); added Oct. 4, 1984, Pub. L. 98–443, §3(e), 98 Stat. 1704. Oct. 15, 1966, Pub. L. 89–670, §6(c)(1), 80 Stat. 938; Jan. 12, 1963, Pub. L. 97–449, §7(b), 96 Stat. 2444.
	49 App.:1655(c)(1).	
46105(b)	49 App.:1485(f). 49 App.:1551(b)(1)(E). 49 App.:1655(c)(1).	
46105(c)	49 App.:1485(a) (provisos). 49 App.:1655(c)(1).	

In subsection (a), the words “under its own terms or until superseded” are substituted for “until their further order, rule, or regulation, or for a specified period of time, as shall be prescribed in the order, rule, or regulation” for clarity and to eliminate unnecessary words. The word “amend” is added for consistency in the revised title. The text of 49 App.:1485(e) is omitted as surplus.

In subsection (c), the words “without complaint” and “if he so orders” are omitted as surplus. The words “prescribe . . . issue” are substituted for “make” for consistency in the revised title and with other titles of the United States Code. The words “just and reasonable” and “as may be essential in the interest of safety in air commerce” are omitted as surplus. The words “without regard to this part and subchapter II of chapter 5 of title 5” are substituted for “without answer or other form of pleading by the interested person or persons, and . . . hearing, or the making or filing of a report” to eliminate unnecessary words. The words “over all others under this chapter” are omitted as surplus.

AMENDMENTS

2001—Subsec. (a). Pub. L. 107–71, §140(b)(1), (2), inserted “the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or” after “(or)” and substituted “, Under Secretary, or Administrator” for “or Administrator” wherever appearing.

Subsec. (b). Pub. L. 107–71, §140(b)(2), substituted “, Under Secretary, or Administrator” for “or Administrator”.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sec-