

that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) The Secretary may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

(Added Pub. L. 101-225, title III, §305(1), Dec. 12, 1989, 103 Stat. 1924.)

Statutory Notes and Related Subsidiaries

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 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.

§ 337. Budget request for the Director of Intelligence and Security

The annual budget the Secretary of Transportation submits shall include a specific request for the Office of the Director of Intelligence and Security. In deciding on the budget request for the Office, the Secretary shall consider recommendations in the annual report submitted under section 44938(a) of this title.

(Pub. L. 103-272, §4(j)(10)(A), July 5, 1994, 108 Stat. 1367.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
337	49 App.:1652b (note).	Nov. 16, 1990, Pub. L. 101-604, §102(d), 104 Stat. 3069.

The words “the Secretary of Transportation submits” are substituted for “submission for the Department of Transportation”, and the words “budget request for the Office” are substituted for “budget request for the Director”, for clarity and consistency in the revised title and with other titles of the United States Code.

SUBCHAPTER III—MISCELLANEOUS

§ 351. Judicial review of actions in carrying out certain transferred duties and powers

(a) JUDICIAL REVIEW.—An action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, or the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.

(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory requirement related to notice, an opportunity for a hearing, action on the record, or administrative review that applied to a duty or power transferred by the Act applies to the Secretary or Administrator when carrying out the duty or power.

(c) NONAPPLICATION.—This section does not apply to a duty or power transferred from the Interstate Commerce Commission to the Secretary under section 6(e)(1)–(4) and (6)(A) of the Act.

(Pub. L. 103-272, §4(j)(10)(A), July 5, 1994, 108 Stat. 1367; Pub. L. 109-59, title IV, §4125(b), Aug. 10, 2005, 119 Stat. 1738.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
351	49 App.:1653(c).	Oct. 15, 1966, Pub. L. 89-670, §4(c), 80 Stat. 933.

In this subchapter, the words “duty or power” are substituted for “functions, powers, and duties” for clarity and consistency. The words “department, agency, or instrumentality of the United States Government” are substituted for “department or agency” for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the word “orders” is omitted as being included in “action”.

Editorial Notes

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsecs. (a) and (b), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97-449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103-272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

AMENDMENTS

2005—Subsec. (a). Pub. L. 109-59 substituted “Federal Motor Carrier Safety Administration” for “Federal Highway Administration”.

Statutory Notes and Related Subsidiaries

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 1302 of this title, and section 101 of Pub. L. 104-88, set out as a note under section 1301 of this title. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 1301 of this title.

§ 352. Authority to carry out certain transferred duties and powers

In carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), the Secretary of Transportation and the Administrators of the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, and the Federal Aviation Administration have the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer. An action of the Secretary or Administrator in carrying out the duty or power has the same effect as when carried out by the department, agency, or instrumentality.

(Pub. L. 103-272, §4(j)(10)(A), July 5, 1994, 108 Stat. 1368; Pub. L. 109-59, title IV, §4125(c), Aug. 10, 2005, 119 Stat. 1738.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
352	49 App.:1653(d).	Oct. 15, 1966, Pub. L. 89-670, §4(d), 80 Stat. 934.

The words “force and” are omitted as surplus.

Editorial Notes

REFERENCES IN TEXT

The Department of Transportation Act, referred to in text, is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97-449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103-272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104-287, §7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

AMENDMENTS

2005—Pub. L. 109-59 substituted “Federal Motor Carrier Safety Administration” for “Federal Highway Administration”.

§ 353. Toxicological testing of officers and employees

(a) **COLLECTING SPECIMENS.**—When the Secretary of Transportation or the head of a component of the Department of Transportation conducts post-accident or post-incident toxicological testing of an officer or employee of the Department, the Secretary or head shall collect the specimen from the officer or employee as

soon as practicable after the accident or incident. The Secretary or head shall try to collect the specimen not later than 4 hours after the accident or incident.

(b) **REPORTS.**—The head of each component shall submit a report to the Secretary on the circumstances about the amount of time required to collect the specimen for a toxicological test conducted on an officer or employee who is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the National Transportation Safety Board.

(c) **NONCOMPLIANCE NOT A DEFENSE.**—An officer or employee required to submit to toxicological testing may not assert failure to comply with this section as a claim, cause of action, or defense in an administrative or judicial proceeding.

(Pub. L. 103-272, §4(j)(10)(A), July 5, 1994, 108 Stat. 1368.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
353	49 App.:1657-1.	Nov. 28, 1990, Pub. L. 101-641, §5, 104 Stat. 4656.

In this section, the words “officer or employee” are substituted for “employee” for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (a), the words “Secretary of Transportation or the head of a component of the Department of Transportation” are substituted for “Department of Transportation, including any of its agencies” for consistency in the revised title and with other titles of the Code.

In subsection (b), the word “Secretary” is substituted for “Office of the Secretary of Transportation” for consistency in the revised title and with other titles of the Code. The words “within that agency” are omitted as unnecessary.

In subsection (c), the words “An officer or employee required to submit to toxicological testing may not assert” are substituted for “may not be asserted” for clarity.

§ 354. Investigative authority of Inspector General

(a) **IN GENERAL.**—The statutory authority of the Inspector General of the Department of Transportation includes authority to conduct, pursuant to Federal criminal statutes, investigations of allegations that a person or entity has engaged in fraudulent or other criminal activity relating to the programs and operations of the Department or its operating administrations.

(b) **REGULATED ENTITIES.**—The authority to conduct investigations referred to in subsection (a) extends to any person or entity subject to the laws and regulations of the Department or its operating administrations, whether or not they are recipients of funds from the Department or its operating administrations.

(Added and amended Pub. L. 108-168, §8(a), (b)(1), Dec. 6, 2003, 117 Stat. 2034.)

Editorial Notes

CODIFICATION

The text of section 228 of Pub. L. 106-159, formerly set out as a note under section 4 of the Inspector General