**Calendar No. 539**

| 104TH CONGRESS *2d Session* | SENATE | REPORT 104–333 |
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# FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION ACT OF 1996

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1994

JULY 26, 1996.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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JULY 26, 1996.—Ordered to be printed

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

## REPORT

[To accompany S. 1994]

The Committee on Commerce, Science, and Transportation reports favorably an original bill to amend title 49, United States Code, to reauthorize programs of the Federal Aviation Administration, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

### PURPOSE OF THE BILL

Titles I through V of the bill, as reported, authorize the programs of the Federal Aviation Administration (FAA), including its Airport Improvement Program (AIP), for fiscal year (FY) 1997. The titles dealing with reauthorization involve very few programmatic changes. However, a key provision regarding AIP essentially provides a modest level of funding protection for the nation's smallest airports, which may suffer disproportionate cuts in grant monies when appropriations levels go down. The bill is designed to ensure the FAA is able to keep functioning and provide for the safety, operational, and capital needs of the national air transportation system.

The purpose of Title VI is to reform the Federal Aviation Administration (FAA) and make it a more efficient and effective organization by significantly improving how the FAA operates in the following areas: governance, funding, rulemaking, procurement management, and personnel management. The Committee believes that reform in these areas will create incentives for the agency to make necessary improvements in the performance of the nation's air traffic control (ATC) system.

Title VII of the bill, as reported, would require an air carrier to request and receive certain employment and performance records before hiring an individual as a pilot.

## BACKGROUND AND NEEDS

### TITLES I–V

The FAA is responsible for ensuring the safety and development of civil aviation and overseeing the development of a national system of airports. Funding for the FAA comes largely from the Airport and Airway Trust Fund (Trust Fund). The monies in the Trust Fund are distributed among specific programs, including: operations; facilities and equipment (F&E); research, engineering and development (RE&D); and AIP. AIP, for example, is funded entirely by the Trust Fund.

Until January 1, 1996, the Trust Fund was supported entirely by the following sources of revenue: 10 percent passenger ticket tax; 6.25 percent freight waybill tax; $6 international departure tax; 15 cents per gallon general aviation gas fuel tax; 17.5 cents per gallon general aviation jet fuel tax; and interest paid on the Treasury certificates in which the Trust Fund balance is invested. However, most of the taxes involved expired at the end of 1995 and have not been reauthorized. The FAA estimated the aviation excise taxes would have raised about $5.9 billion in FY 1996 (not including interest of about $772 million). For each month the excise taxes are not in effect, the Trust Fund is failing to take in about $500 million. The aviation excise taxes supported about 70 percent of the FAA's $8.15 billion budget (FY 1996 appropriation; $9.1 billion in FY 1996 budget authority). The remaining portion of the FAA's budget (approximately $2 billion in FY 1996) is appropriated out of the general fund.

In addition to AIP, the Trust Fund also fully funds the FAA's F&E and RE&D programs. The Trust Fund partially pays for the FAA's operations and fully funds DOT's program to subsidize essential air service (EAS) to small communities. By a statutory provision (which expires at the end of FY 1996), the Trust Fund can only contribute up to 50 percent of the FAA's operations budget.

At the beginning of calendar year 1996, there was an uncommitted surplus of about $5.1 billion in the Trust Fund. With the expiration of the aviation excise taxes, the surplus is being drawn down. The General Accounting Office (GAO) has estimated that the Trust Fund surplus will be completely spent down by about December 1996 unless the excise taxes are reinstated or another source of funding replaces them. If the Trust Fund is depleted for most of FY 1997, funding for the FAA will need to come from the general fund.

For many years, total AIP spending had been trending upward and peaked at $1.9 billion in FY 1992. Since then, spending has been decreasing. For FY 1996, $2.21 billion was authorized, but only $1.45 billion in spending was provided in the DOT Appropriations Act.

Most AIP funds are used for planning, designing, and constructing airport projects directly affecting aircraft operations, including

runways, aprons, and taxiways. AIP funds are not available for funding airport operations.

AIP money is distributed by statutory formulas, which were last changed in 1994. The money is divided into two broad categories—entitlement funds and discretionary funds. Entitlement funds are further divided into the following four sub-categories: primary airport grants; cargo service airport grants; state grants; and Alaskan airport grants.

Discretionary money is subject to five set-asides and other restrictions. The five set asides are for: airport noise planning and projects; system planning; reliever airports; nonprimary commercial service airports; and the Military Airport Program (MAP).

After entitlements and set-asides are funded, the remaining AIP funds can be spent as the FAA sees fit. Of these remaining discretionary funds, 75 percent must be directed toward: (1) preserving and enhancing capacity, safety, and security; and (2) carrying out noise compatibility planning and programs at primary and reliever airports. The last 25 percent is a true discretionary fund for eligible projects.

As AIP funding has been declining over the last few years, the FAA has been issuing letters of intent (LOIs) to several airports. LOIs are FAA commitments to obligate future funds for important airport development projects. These commitments are predominantly funded from the discretionary portion of AIP. Because most major airport projects are multi-year exercises, the airport community believes the LOI program is critical to its ability to secure reasonable financing for significant projects. Because overall AIP funding has declined, a smaller amount of discretionary funds generated concern the FAA would not be able to meet its LOI commitments.

In 1994, Congress specified that not less than $325 million per year remain in discretionary funds after all entitlements and set-asides are satisfied. If less than this amount remains, all entitlements and set-asides (except for the Alaska entitlement) are to be reduced by the same percentage so as to ensure $325 million is available for discretionary grants. Therefore, money also is ensured for funding LOIs. For FY 1996, entitlements were cut by about 8.5 percent to ensure the minimum discretionary fund level.[1] Funding for AIP would have to be about $1.8 billion to avoid the reduction in entitlements.

In 1990, Congress recognized the expanding infrastructure needs of the nation's airports and authorized the collection of Passenger Facility Charges (PFCs) to augment AIP. PFCs are local fees of up to $3 which the airlines collect from each passenger and pay directly to the airport. No passenger has to pay more than $12 in PFCs per roundtrip regardless of the number of airports through which the passenger connects. The FAA must approve an application from an airport before a PFC can be charged. PFC funds can be used for AIP-eligible projects and for some projects not eligible for AIP funding, such as debt financing.

[1] This cut was made to an amount of entitlement money already reduced by the 44 percent cap on entitlements for primary and cargo service airports. Thus, for FY 1996, entitlements were cut by a total of 23 percent to meet statutory restrictions.

Large and medium hub airports which collect PFCs are required to return some of their entitlement monies for discretionary distribution to smaller hubs. An airport must return AIP entitlement funds in an amount equal to 50 percent of the projected revenues it will derive from a PFC in a fiscal year (but with a cap of 50 percent of its total entitlement). The foregone entitlements go into a special "small airport fund." The FAA distributes the money in this fund as follows: 50 percent to non-hub commercial airports; 25 percent to general aviation airports; 12.5 percent to small hub airports; and 12.5 percent to the discretionary fund.

## TITLE VI

## ASSESSMENT OF FEDERAL AVIATION ADMINISTRATION

### FAA'S PROBLEMS

For 38 years, the FAA has consistently assured the traveling public that the nation's air transportation system is safe and reliable. At present, the FAA is involved in every aspect of ensuring the safety of the system. The agency provides licenses to those who work in the industry, certifies what can be used within the system, determines the scope of airport development, and decides when and where aircraft can fly. In the past, the FAA has had significant resources to meet its primary objective of providing a safe and efficient air transportation system. As a general matter, the resources needed have been provided by the Congress, and, particularly during the 1980s, the FAA saw its budget increase significantly.

The future, however, may be considerably different, particularly given the trend of a decreasing federal role in maintaining and developing the nation's infrastructure. According to testimony before the Committee, the demand for air transportation services will increase dramatically over the next several years, while available resources will not be adequate to meet demand. Without substantial, comprehensive reform of the FAA, the United States is facing the undesirable prospect of continued reliance upon an outdated, inefficient ATC system. In the continental United States, as well as in unique states that are highly dependent on air service, such as Alaska and Hawaii, the adverse effects on safety and efficiency could be substantial.

Over the years, particularly following airline deregulation and the subsequent expansion of the air transportation system, the demand for a more efficient ATC system has increased. This demand undoubtedly will continue to increase in the future. Air carriers, which historically have covered most of the costs of this increased demand, can no longer assume the added costs of an inefficient system. Indeed, over the years, the commercial airline industry has reduced costs in every conceivable way. One carrier, for example, now spends only 12 cents per passenger on food. Today, the industry is a far different one than it was prior to deregulation because air carriers themselves have become much more efficient and operate in a more cost-effective way. Accordingly, the focus must now be on enacting legislation to make comprehensive changes in how the FAA conducts its business and to remedy inefficiencies within the organization and its ATC system.

For many years, the U.S. ATC system, which carries more than 50 percent of the world's air traffic, has remained the world's safest air transportation system. Despite maintaining an excellent safety record and low accident rate, the Administration and industry have continued to work to achieve a "zero accident" standard. However, maintaining the world's safest system and achieving even greater safety margins may not be possible in the future without meaningful reform of the entire FAA, including significant improvements in the areas of funding, governance, more efficient equipment procurement, and staffing.

The ATC system also has consistently been the most efficient in the world. The current ATC system consists of more than 30,000 pieces of equipment, including 402 towers, 167 radar approach controls (TRACONs), 21 air traffic control centers, and 61 flight service stations. Radars, computers, and navigation and landing aids are placed throughout the entire country to provide the best system possible. As the largest ATC system in the world, it handles two operations every second of every hour of every day. In effect, the FAA, which operates the ATC system 365 days per year, 24 hours per day, is running the production line for commercial airlines and all other segments of the aviation system. Such a complex ATC system, however, tends to function much less efficiently than it should in the heavily bureaucratic environment of the existing FAA.

The general inefficiencies of our nation's ATC system have had an enormous, detrimental economic impact. Delays in the system are estimated to cost $3.5 to $5 billion per year, according to the Air Transport Association. One air carrier, when testifying before the Committee, indicated its annual delay costs exceed $250 million. Another carrier told the Committee a single ATC power outage at Dallas-Fort Worth International Airport in 1995 was estimated to result in more than $730,000 in direct costs. Although approximately two-thirds of ATC system delays may be weather-related, the Committee believes the ATC system itself is far from operating as efficiently as it should.

The future of our nation's air transportation system is critical to helping our economy expand. Without a safe, efficient, and reliable system, many U.S. businesses and the U.S. travel and tourism industry will not be able to function or grow effectively. The Committee believes the need for reform of the air transportation system, which includes making significant changes within the FAA, requires more than simply modifying a particular program or programs. If reform does not provide the FAA with the ability to meet future demand, to make the ATC system more efficient, and to modernize, then the safety and the efficiency of the entire U.S. air transportation network are at risk and dependent U.S. industries will be detrimentally affected. This bill seeks to enable the FAA to implement comprehensive reform to address all of these areas.

### FUTURE DEMAND AND SUPPLY OF ATC SERVICES

The FAA faces two interrelated problems that highlight the urgent need to reform the FAA. First, there will be a much greater demand for ATC services in the coming years. Second, at a time in which increased demand will necessitate the system be adequately funded to meet this demand, the federal government's con-

tribution to the FAA is very likely to decrease. Under current projections, funding for ATC services may not be adequate to meet future demand.

Every day, the FAA provides about 600,000 ATC services to commercial airlines, business jets, general aviation pilots, and the military. Approximately 519 million people flew on commercial airlines in 1994, according to the Department of Transportation (DOT). By 2002, the number of passengers is expected to grow by 300 million, a 35 percent increase. Over the same period, the number of ATC system user operations is expected to rise by 18 percent. This projected growth clearly requires that the ATC system must be modernized and its capacity expanded. In turn, airport infrastructure deficiencies must be addressed to accommodate demand.

As demand for ATC system services increases steadily, the FAA will face ever increasing belt tightening, primarily because of efforts to balance the federal budget. In the past, and particularly during the 1980s, the FAA's budget grew significantly. According to FAA data included in General Accounting Office (GAO) testimony, the FAA's budget needs have generally been accommodated by Congress until very recently.

TABLE 1.—FAA APPROPRIATIONS AND TRUST FUND REVENUES

[In billions of dollars]

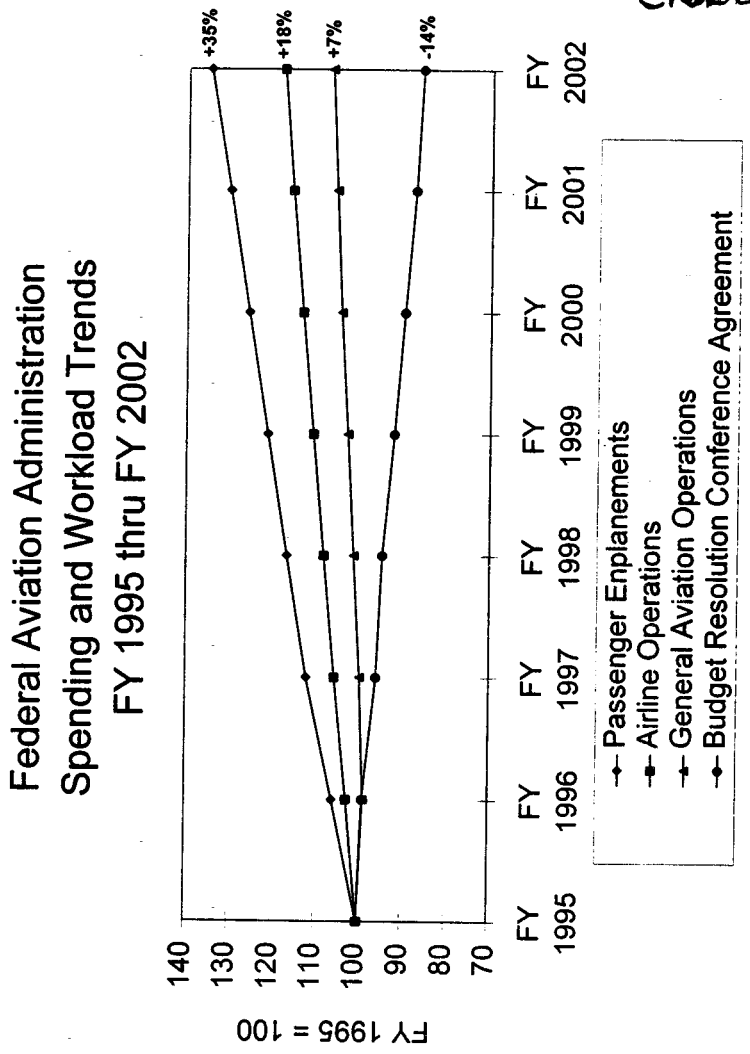
| Fiscal year | FAA approp. | General Fund approp. | Trust Fund approp. | Trust Fund revenues (receipts plus interest) | Trust Fund ending uncommitted balance |
|---|---|---|---|---|---|
| 1986 | $4.8 | $2.4 | $2.4 | $3.6 | $4.3 |
| 1987 | 5.0 | 2.4 | 2.6 | 3.9 | 5.6 |
| 1988 | 5.7 | 2.4 | 3.4 | 4.1 | 5.8 |
| 1989 | 6.4 | 3.0 | 3.4 | 4.7 | 6.9 |
| 1990 | 7.1 | 3.0 | 4.1 | 4.9 | 7.4 |
| 1991 | 8.1 | 2.0 | 6.1 | 6.2 | 7.7 |
| 1992 | 8.9 | 2.3 | 6.6 | 5.9 | 6.9 |
| 1993 | 8.9 | 2.3 | 6.6 | 6.1 | 4.3 |
| 1994 | 8.6 | 2.3 | 6.3 | 6.0 | 3.7 |
| 1995 (est.) | 8.3 | 2.1 | 6.2 | 6.4 | 3.0 |

Note: Totals may not add because of rounding.

Source: FAA; included in GAO testimony.

Over the last few years, however, the FAA's budget has been cut by a total of $600 million. In addition, the FAA has reduced its workforce by 5,000, and eliminated many programs. As discussed in more detail below, FAA funding likely will further decrease over the next several years because of spending reductions in transportation programs proposed in the recent balanced budget resolution.

Chart #1


Federal Aviation Administration
Spending and Workload Trends
FY 1995 thru FY 2002
FY 1995 = 100
140
130
120
110
100
90
80
70
FY 1995
FY 1996
FY 1997
FY 1998
FY 1999
FY 2000
FY 2001
FY 2002
+35%
+18%
+7%
-14%
Passenger Enplanements
Airline Operations
General Aviation Operations
Budget Resolution Conference Agreement

Without meaningful and coordinated reform, particularly in the area of long-term FAA funding, the FAA's ability to meet growing demand and provide services to all segments of the aviation community will be compromised.

The Committee is well aware of the need for meaningful reform of the FAA. Over the last 10 years, the Committee and the aviation community have examined many options designed to make the FAA a more effective organization, without imposing unnecessary and burdensome restrictions on its operations.

ATC SYSTEM MODERNIZATION

The Committee, the FAA, and the entire aviation community want to see the ATC system modernized quickly and efficiently. In fact over the last several years, the FAA has significantly reduced its workforce, worked directly with the system users to reduce delays, taken action to incorporate satellite technology as quickly as possible, restructured its acquisition process, restructured and reduced the cost of the Display System Replacement, and worked with the general aviation industry to create a more effective certification process. Despite these considerable efforts, however, the nation's ATC system is nowhere near to being as efficient as it should be. Moreover, it is not based, for the most part, on current technology, much less state-of-the-art technology.

Given the extent of the FAA's problems, particularly with regard to modernization of the ATC system, the Committee and the aviation community strongly believe that the agency must be fundamentally reformed, both to improve its administrative efficiency and to stimulate improved performance of the ATC system. During several hearings in 1995 and 1996, the Committee heard testimony on many different proposals to reform the FAA. In addition to examining specific reform proposals, much of the discussion on reform focused on federal laws and regulations that inhibit timely implementation of technological improvements. The Committee believes the installation of new technology is a critical mission the FAA must fulfill. Unnecessary regulatory or legal hurdles must not stand in the way.

Frequent turnover in FAA upper management and a lack of budgetary stability have been cited as causes for the FAA's tendency toward reactionary operations. In addition, observers believe that in the past, there has been little or no long-term managerial accountability within the organization. The Committee believes, however, that simply liberating the FAA from current restrictions in the areas of personnel and procurement or making it an independent agency are not sufficient to solve all of its problems. Moreover, the Committee believes that changes to procurement laws, while essential, must be accomplished in the context of an overall change in the way the FAA conducts its business.

The FAA's procurement problems, such as modernization delays, are attributed in great part to the 10,500 pages of statutes and regulations under which the FAA and other government agencies acquire goods and services. These laws and regulations, despite well-intentioned drafting, have resulted in a procurement process that is too rigid, takes too long, and results in the inefficient use of time, people, and money. The Committee, however, recognizes ac-

quisition delays are not solely caused by burdensome rules and regulations; the GAO and even the FAA have cited mismanagement as a factor that has led to modernization delays. Although Congress already has voted to allow the FAA to develop its own personnel and procurement systems as part of the FY 1996 DOT Appropriations bill (P.L. 104–50), broad-based reform of the FAA must accompany procurement and personnel reform.

The substantial number of federal requirements governing personnel also place a significant burden on FAA's ability to effectively manage its workforce. Prior to the effective date of the new personnel and procurement systems, FAA managers and employees had to work with 47,200 pages of federal personnel laws and regulations. According to the DOT, the restrictions contained in these laws and regulations created an environment lacking flexible recruiting, flexible salary setting, and performance-based rewards. A more flexible and innovative personnel program or structure will provide incentives for increased productivity, compensate employees based on performance, facilitate moving employees based on changes in the demand for ATC services, and improve overall management of the FAA's workforce.

CURRENT FAA FUNDING

Until January 1, 1996, nearly all FAA funding was derived from the users of the nation's air transportation system. Prior to that time, aviation system users paid taxes into the Airport and Airway Trust Fund (Aviation Trust Fund). These taxes included a 10 percent passenger ticket tax, a 6.25 percent cargo waybill tax, a $6 international departure tax, a 15 cents per gallon tax on gasoline for piston-engine aircraft, and a 17.5 cents per gallon tax on general aviation jet fuel. These taxes brought in approximately $5-6 billion annually.[2] The Aviation Trust Fund currently has about $8-9 billion in assets, comprised of U.S. Treasury certificates. Most of those assets are already committed for FAA expenditures, such as airport-related projects and ATC facilities and equipment. The remaining balance is comprised of uncommitted funds (often referred to as a "surplus").

Since the aviation excise taxes lapsed at the beginning of calendar year 1996, the surplus in the Aviation Trust Fund has been drawn down at a rate of about $500 million per month. GAO has reported that the surplus will be completely spent down by about December 1996 unless the excise taxes are reinstated or another source of funding replaces them.

The FAA's $8.3 billion budget for FY 1995 was comprised of approximately $6.2 billion in tax revenues from the Aviation Trust Fund. The remaining $2.1 billion was appropriated out of the General Fund. The General Fund contributes to the FAA's budget in part because of the various services the FAA provides to the Department of Defense (DoD), including national security services. In addition, the activities of the FAA and the ATC system provide benefits to the whole nation, not only to airspace users. For example, the FAA's actions affect air cargo and mail transportation as well as the safety of those on the ground.

[2] See Table #1 from FAA.

NEED FOR FAA FUNDING SOLUTIONS

Although the FAA's budget grew significantly in the 1980s, the years of growth in federal FAA funding appear unlikely to continue. As previously noted, the FAA's budget has been cut by $600 million over the last few years. The lapse in the excise taxes has simply exacerbated the situation and made it of more immediate concern.

Testimony before the Committee clearly confirmed that future funding is very likely to fall far short of what the FAA will need to provide even the current level of services, and that drastic cuts in services will probably need to be made if changes in how the FAA is funded are not made. The Administration, for example, projects an aggregate $12 billion shortfall in FAA funding over the time period from fiscal year 1997 to fiscal year 2002. This projected funding shortfall represents the difference between FAA's stated need of $59 billion during that period and an estimated budget cap of $47 billion on FAA spending over those same six fiscal years. Aviation Trust Fund revenues, including interest, are expected to total about $47 billion during that same period. This implies that the General Fund contribution to FAA will decrease significantly over that period.

The Committee agrees that a substantial FAA funding shortfall is looming. However, the actual amount of the shortfall is the source of some disagreement. Therefore, the bill as reported requires independent assessments to verify the accuracy of the FAA's projected needs over the next several years.

The aviation community, also recognizes the dire situation regarding FAA's funding needs. In July 1995, the National Aviation Associations Coalition (NAAC), which includes 30 organizations representing all segments of the aviation community, issued a consensus statement on FAA reform that stated, "funding reform * * * is the most critical element of FAA reform." On October 31, 1995, the NAAC issued another consensus statement reiterating its belief "that achieving budget and funding reform, including means for dedicating aviation resources, is critical." The Committee concurs adequate funding is the most critical element for meaningful reform of the FAA. For this reason, the bill as reported requires an independent assessment and establishes a task force to review existing and innovative funding mechanisms.

Many in the aviation community also believe the year-to-year appropriations process makes it difficult for the FAA to operate under a long-term capital investment plan. This leads to reactive, near-term investment decisions by the FAA based on an artificially imposed federal budget process, rather than on the basis of need or sound business practices.

If the projected shortfall in the FAA's budget is verified and not remedied in the short-term, there will be a detrimental impact on all segments of the aviation community. With respect to the impact on general aviation, the FAA has advised the Committee it would have to eliminate the general aviation safety program, which would make it more difficult for private pilots to get important information on aviation programs. The FAA's Office of Aviation Medicine would likely have to reduce funding for the annual processing of

aviation medical certificates, which would create delays in processing medical certification for pilots' licenses. The number of FAA inspectors and field facilities would decrease, which would create delays for those in the general aviation community who need certification and additional ratings processed. In addition, the FAA may need to close many if not all flight service stations and Level I and Level II towers, which provide important weather and safety information to general aviation pilots. In fact, over the last few months alone, the FAA has closed nearly 20 control towers. Without a predictable funding stream, the FAA will continue to cut services.

The funding provisions in this bill are critical because they provide a structure and timeframe for development of long-term funding reform at the FAA, which are intended to help alleviate the agency's projected funding problems and ensure aviation dollars will be dedicated for aviation purposes.

DEVELOPMENT OF COMPREHENSIVE FAA REFORM LEGISLATION

Throughout 1995, many different groups reviewed several distinct proposals to make the FAA more efficient, while enhancing its safety function and the performance of the nation's ATC system. For example, certain FAA reform proposals focused on either making the FAA an independent agency, creating a government-owned corporation to run the ATC system, or privatizing the agency.

On August 2, 1995, the Aviation Subcommittee held a hearing on the various FAA and ATC reform proposals. The Subcommittee heard testimony from many distinguished witnesses on these proposals and current problems facing FAA. Testimony by DOT Secretary Federico Peña, FAA Administrator David Hinson, Kenneth Mead (then Director of Transportation issues at GAO), and others emphasized their strong belief that any feasible reform bill must address the future funding requirements of the FAA. Other testimony concentrated on the merits of making the FAA an independent agency.

Until the August 2, 1995 hearing, the DOT and FAA remained adamant in their support for the Administration's proposal to create a government corporation to handle the nation's ATC services. Although the ATC corporation proposal lacked considerable Congressional support, it nonetheless contributed to a serious and comprehensive examination of how best to address the future needs of FAA and the aviation community. Moreover, during the August 2, 1995 hearing, Secretary Peña indicated that the DOT would be willing to work with Congress to craft a mutually acceptable proposal for meaningful FAA reform. Since that hearing, the Administration and members of the Aviation Subcommittee have met frequently to develop a comprehensive FAA reform proposal.

TITLE VII

Under FAA regulations, for an individual to become an air transport pilot, the individual must meet a number of minimum qualifications. For example, the individual must be 23 years of age, be of good moral character, have a first-class medical certificate, have a high school (or equivalent) degree, and obtain a type rating for each aircraft type the person is seeking to operate. An air carrier

cannot hire an individual who does not meet those minimum qualifications.

In addition to the FAA minimum requirements, each air carrier has its own screening system to aid in hiring decisions, and its own set of minimum criteria. One carrier, for example, may conduct its own set of qualification and background checks, including pilot peer review boards, and a battery of tests to ensure that the person seeking the position is not only qualified, but meets the carrier-specific requirements. Personnel records are reviewed, flight simulator checks are performed, psychological tests undertaken, interview boards deployed, and a pilot selection board constituted to review the individuals' qualifications. It is an arduous process, designed to eliminate non-qualified applicants. The Committee is aware that because each carrier sets its own standards, those standards can change from time to time.

As discussed below, one area that this section seeks to bolster is to make sure that prior to employing an individual, an air carrier is able to obtain records from the person's previous employee.

Currently, the FAA does not specifically require potential employers to obtain background information on individuals who apply for positions as pilots from the individual's prior employer. While carriers carry out their own screening processes, and the pilot has to meet certain criteria, it is up to each carrier to determine its own personnel priorities. The Committee is aware that air carriers, as well as employers in all fields and industries, do not divulge information about current or former employees, including pilots, to prospective new employers, other than confirmation of positions held and dates of employment. There are many valid reasons for such policies, from the threat of lawsuits to privacy concerns.

The Committee believes employers must be able to share records to ensure as much available and relevant information as possible is provided to the hiring air carrier, prior to a hiring decision. While the Committee recognizes the privacy of individual pilots could be compromised, the interests of aviation safety simply outweigh such privacy concerns. However, the Committee has included some protections in the legislation to ensure pilots are able to correct inaccuracies and, if records are falsified or maintained against the law, challenges can be made. The Committee believes air carriers should have full access to training, disciplinary, and proficiency records of applicants for pilot positions. Thus, correcting this unacceptable situation and requiring the exchange of relevant background information is now a policy imperative.

Following six commercial airplane crashes since 1987 that were attributable to some extent to pilot error, the NTSB found that the air carriers that employed these pilots did not have access to information that indicated poor past performance by certain of these pilots. As a result, the NTSB has recommended to the FAA that air carriers should be required to conduct substantive background checks on pilot applicants, including verification of personal flight records and examination of training, performance, and disciplinary records of previous employers.

The pilot records sharing provisions of the title (sections 702 and 703 of this bill) are intended to follow through on some of the NTSB's recommendations, and facilitate the free flow of useful and

relevant information about the fitness of applicants for commercial pilot positions. At the same time, these provisions respect the privacy rights of such applicants.

This title would require an air carrier to request and entitle it to receive certain personnel and performance records of applicants for commercial pilot positions. It is intended that air carriers have broad access to such files, so that they can make hiring decisions based on all useful and relevant information known to the applicant's other employers. Given this intent, this title requires the production to prospective air carrier employers of not only training records maintained pursuant to federal aviation regulations by other air carriers employing the individual, but also records otherwise maintained by employers in the nature of training, proficiency, disciplinary and other personnel files. Medical records that are segregated by law from personnel files, however, are not covered.

As noted above, this title also contains several provisions designed to recognize and address the legitimate concerns of pilot applicants that they have adequate opportunity to review and correct information being provided to prospective employers. This title would give pilots the right to review covered records in the possession of their current employer. Before covered records could be disseminated to the prospective employer, express written notice to and consent of the pilot applicant to the disclosure would be required. The applicant is also given an opportunity to submit written comments to prospective employers to facilitate correction of potential inaccuracies. The Committee believes these measures will sufficiently protect the legitimate interests of pilot applicants. Title VII also provides authority to the FAA Administrator to issue such regulations as may be needed to protect the privacy interests of applicants and the confidentiality of covered records.

The immunity provisions of title VII would prevent lawsuits with respect to the furnishing or using of records against the prospective employing air carrier, as well as the past or current employer, who comply with these provisions, except in those unusual circumstances in which the person who furnishes the information knows it is false, and maintained such false information in violation of U.S. criminal law. The preemption provision in title VII is intended to ensure that no lawsuit may proceed on the federal or state level, and no state shall enact any law or regulation, that seeks to impose liability for the furnishing or use of covered records. The Committee believes these provisions are essential to deter the filing of frivolous lawsuits that allege "falsity".

The Committee also believes that U.S. air carriers and the pilots they hire generally set the quality standard for the rest of the world. The Committee recognizes, however, that various air carriers use different methods of pre-employment screening with respect to pilot candidates. The Committee is also aware that pilot record sharing is only one part of the equation to increasing the quality of available pilots. To address this issue the section also would establish a task force to review how best to increase pilot training and standards.

## LEGISLATIVE HISTORY

On May 14, 1996, the Committee held a hearing on reauthorization of the programs of the FAA, including AIP. Testimony was heard from Administrator Hinson, representatives of airports and airlines, and the mayor of a small city. On June 13, 1996, the Committee met in open executive session to consider the Federal Aviation Administration Reauthorization Act of 1996.

Senators McCain, Ford, Pressler, Stevens, and Hollings offered an amendment that embodied a modified version of S. 1239. The original version of S. 1239, the "Air Traffic Management System Performance Improvement Act", was introduced on September 13, 1995, by Senators McCain, Ford and Hollings.

In addition to the August 2, 1995 hearing on various FAA reform proposals, the Aviation Subcommittee held the first of two hearings on S. 1239 on September 27, 1995. Secretary Peña, Administrator Hinson and Deputy Administrator Linda Hall Daschle testified at that time regarding the Administration's support of the bill. Testimony also was heard from an aviation expert and representatives from the aviation community, including FAA labor, business aircraft, and manufacturers.

On October 12, 1995, the Subcommittee held its second hearing on the bill. Testimony was heard from representatives of the air carrier industry, including major air carriers, low-cost carriers, and a cargo carrier, and a representative of a flight attendants union. On November 9, 1995, the Committee met in open executive session to consider an amendment in the nature of a substitute to S. 1239 offered by Senators McCain and Ford. S. 1239, as amended, was ordered to be reported.

With regard to the June 13, 1996 executive session, Senators McCain (pilot record sharing), Stevens (authority for state-specific safety measures), Dorgan (technical clarification regarding unobligated expenditures going to small airports), and Wyden (FAA safety mission) each offered separate amendments to the reauthorization bill, all of which were adopted by voice vote. Subsequently the Federal Aviation Administration Reauthorization Act of 1996, as amended, was ordered to be reported.

## SUMMARY OF MAJOR PROVISIONS

Total budget authority for the FAA would be $9.28 billion. That figure includes: $5 billion for Operations; $2.28 billion for AIP; $1.8 billion for Facilities and Equipment (F&E); and $200 million for Research, Engineering, and Development(RE&D).

The bill includes several changes to AIP. There would be 10 State-sponsored pilot projects established on airport pavement maintenance. Airports would be permitted to use PFCs to pay for unfunded federal mandates, bringing PFC usage in line with permissible uses of AIP funds.

To help smaller airports, which may suffer disproportionately when federal funding levels decline, funding to large and medium hub airports would be limited to a percentage (of total AIP funding), which would vary according to the appropriations level. The FAA would be required to fulfill LOI commitments from discretionary funds available to the FAA. The State Block Grant Pro-

gram would be extended for one year. The bill also extends for one year the authority for expenditure of funds from the Aviation Trust Fund.

The FAA would have authority to acquire housing units outside the contiguous U.S. if such acquisition is the most cost-beneficial means of providing necessary accommodations. The FAA could require background checks of airport baggage screeners and their supervisors. The FAA would be given authority to protect from public disclosure information that is voluntarily provided to the FAA, if it is determined the information would promote safety and security and that disclosure could inhibit submission of such information.

There also are provisions in the bill dealing with commercial space transportation. This bill would expand current licensing authority of the Office of Commercial Space Transportation (OCST) to cover reentry space vehicles and reentry sites and directs OCST to issue regulations to implement those amendments. OCST also would be prohibited from issuing licenses for the launch of payloads to be used for obtrusive space advertising.

Title VI of the bill as reported would provide for reform of the entire FAA by giving the FAA more autonomy, while at the same time keeping it within the DOT. The title also would provide for direct aviation community input to FAA through a Management Advisory Council (MAC).

An 11-member task force, intended to represent the views of all interests in aviation, also would be established to coordinate an independent assessment of the FAA's needs and develop specific recommendations for long-term FAA funding. The recommendations would be submitted to the DOT, which would in turn submit a report that includes proposed legislation to Congress. Title VI of the bill would change the manner in which the FAA handles its rulemaking and regulatory functions. The DOT would retain an outside entity to prepare independent, objective assessment of the FAA's budget needs and assumptions, and the allocation of FAA costs among various segments of the aviation community.

Title VI also would provide the FAA with a three-year appropriations cycle. In addition, the Essential Air Service (EAS) program would receive adequate funding and be transferred from the DOT to FAA. The DOT also would conduct a study on rural air service and air fares.

Title VII would require an air carrier to request and receive certain employment and performance records before hiring an individual as a pilot and establish a task force to review ways to upgrade pilot qualifications.

## ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and Section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, July 16, 1996.*

Hon. Larry Pressler,
*Chairman, Committee on Commerce, Science, and Transportation,United States Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the Federal Aviation Reauthorization Act of 1996, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 13, 1996. Enclosed are estimates of the bill's impact on the federal budget and on the private sector, and a preliminary estimate of its state and local impact (included with the federal estimate).

Enactment of this legislation would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES. L. BLUM
(For June E. O'Neill, Director).

Enclosures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.

2. Bill title: Federal Aviation Reauthorized Act of 1996.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 13, 1996.

4. Bill purpose: The bill would authorize 1997 appropriations for the following Federal Aviation Administration (FAA) programs: $5 billion for operations, $1.8 billion for facilities and equipment, and $200 million for research, engineering, and development. In addition, the bill would provide contract authority of $2.3 billion in 1997 for the airport improvement program. The bill also would establish user fees for air traffic control and other services for aircraft that do not take off or land in the United States and for other services provided to foreign governments. Of the amounts collected from these fees, $50 million would be authorized for the FAA's essential air service program. In addition, this bill would authorize appropriations of $10 million for aviation safety in Alaska. Other key provisions of the bill are summarized below.

Title I would enable the Administrator of the FAA to transfer funds among the operations, facilities and equipment, and research, and engineering, and development accounts.

Title II would extend the military airport program and the spending limit of $4 million per airport while reducing the number of airports in the program from 15 to 10.

Title V would revise certain aspects of federal policy regarding commercial space launch activities. The bill would expand the scope of the Office of Commercial Space Transportation's (OCST's) licensing authority to include reentry vehicles, sites, and services. It would direct the office to issue rules and reports on matters related to reentry operations and on the allocation of excess or underutilized federal launch services and property. The bill also would

codify the existing practice of requiring nonfederal entities to reimburse the government only for the "additive" costs of using excess of underutilized launch services or facilities. Finally, OCST's limited authority to charge user fees to cover the cost of licensing activities would be repealed.

Title VI would enable the Administrator to accept the transfer of unobligated balances and unexpended funds from other agencies to carry out functions transferred to the FAA.

Title VII would require air carriers to gather records on prospective pilots from the FAA, other air carriers, and state departments of motor vehicles. Reasonable charges for the cost of processing requests would be established. A task force would be appointed to conduct a study on standards for pilot qualifications.

In addition, this bill would require the Secretary of Transportation to form advisory committees and ask task forces to review FAA activities, conduct multiple studies, prescribe regulations, publish reports, and employ experts to conduct evaluations.

5. Estimated cost to the Federal Government: Enacting this bill would affect spending subject to appropriation and direct spending, and could affect revenues. Assuming appropriation of the authorized amounts, CBO estimates that enacting the bill would result in new discretionary spending of about $9.5 billion over the 1997—2002 period. We estimate that this bill would establish fees yielding collections of $50 million in 1997 and $65 million a year thereafter. Finally, CBO estimates that any impact on revenues from the assessment of civil penalties under OCST's expanded licensing activities would be insignificant. The following table provides CBO's estimate of the budgetary impact of enacting the bill.

[By fiscal year, in millions of dollars]

| | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 |
|---|---|---|---|---|---|---|---|
| SPENDING SUBJECT TO APPROPRIATION | | | | | | | |
| Spending Under Current Law: | | | | | | | |
| Budget authority | 6,704 | ..... | ..... | ..... | ..... | ..... | ..... |
| Estimated outlays | 8,698 | 3,886 | 1,830 | 826 | 400 | 201 | ..... |
| Proposed Changes: | | | | | | | |
| Authorized level | ..... | 7,021 | 11 | 50 | 50 | 50 | 50 |
| Estimated outlays | ..... | 5,395 | 2,172 | 902 | 458 | 326 | 249 |
| Spending Under the Bill:. | | | | | | | |
| Authorization level | 6,704 | 7,021 | 11 | 50 | 50 | 50 | 50 |
| Estimated outlays | 8,698 | 9,281 | 4,002 | 1,728 | 858 | 527 | 249 |
| CHANGES IN DIRECT SPENDING AND REVENUES | | | | | | | |
| Airport Improvement Program: | | | | | | | |
| Budget authority[1] | ..... | 2,280 | ..... | ..... | ..... | ..... | ..... |
| Air Traffic Control Fees: | | | | | | | |
| Estimated budget authority | ..... | −50 | −65 | −65 | −65 | −65 | −65 |
| Estimated outlays | ..... | −50 | −65 | −65 | −65 | −65 | −65 |
| Civil Penalties: | | | | | | | |
| Estimates revenues | ..... | [2] | [2] | [2] | [2] | [2] | [2] |

[1] Budget authority for the airport improvement program is provided in the form of contract authority. For 1996, the program received $2,214 million in contract authority. Outlays from such authority are controlled by obligation limitations set in appropriation bills and are shown as spending subject to appropriation.

[2] Less than $500,000.

The costs of this bill fall within budget function 400.

6. Basis of estimate:

*Spending subject to appropriation*

For purposes of this estimate, CBO assumes that appropriations would be provided before the start of each fiscal year. Outlay estimates are based on historical spending rates for the FAA.

*Contract Authority and Specified Authorizations.* The bill specifies authorizations of appropriations totaling $7.0 billion, and would provide contract authority of $2.3 billion for grants-in-aid to airports. To estimate outlays from the contract authority, we assumed that obligation limitations customarily established in appropriation acts would equal the budget authority. Because these outlays are subject to such limitations and to liquidating appropriations, they are considered discretionary and so are included in the above table under estimated outlays subject to appropriation. The contract authority is shown separately as direct spending.

*Essential Air Service.* Starting in fiscal year 1997, this bill would authorize appropriations of $50 million annually for the essential air service program. The essential air service program is currently funded by contract authority and is authorized through 1998. It is unclear from the bill how the $50 million authorized would be incorporated into the current funding. In addition, the bill directs the FAA to spend on rural air safety any of the fees that are not obligated or expended at the end of the fiscal year for the essential air service program. It is unclear if "fees" refers to the $50 million earmarked for the essential air service program or the remaining portion of all the fees collected. If the Department of Transportation adopts the latter interpretation, all of the fee income generated by this act would be earmarked for essential air service and rural air safety, but the spending of such income would be subject to appropriation. This estimate assumes that only $50 million annually would be made available for essential air service and rural air safety. The table includes an incremental authorization of $11 million under proposed changes for 1997 and 1998 because $39 million in contract authority has already been provided for those years. Costs of $50 million annually are shown for subsequent years.

*Other Provisions.* This bill would enable the Administrator of the FAA to transfer funds among the operations, facilities and equipment, and research, engineering, and development accounts. Transfers would not be permitted if they would result in an outlay increase or if they would result in a net decrease of more than 5 percent or a net increase of more than 10 percent in the budget authority available to any appropriation involved in the transfer. While the bill includes restrictions on the amount of the transfer, it is difficult to determine what estimate of outlays would be used a as measurement. While a transfer of funds from one account to another could affect outlays, CBO cannot estimate the potential budgetary impact—if any—of transfers that might occur under this provision because we have no way of predicting what transfers might occur.

The cost of developing standard forms required by Title VII would be less than $40,000. The development of privacy regulations would be at the discretion of the Administrator. If the Administrator chooses to promulgate the regulations to protect privacy and confidentiality, the cost would be about $175,000. Based on information from the FAA, CBO estimates that the cost of forming a

task force and conducting a study to develop standards and criteria for preemployment screening tests and pilot training facilities would be less than $100,000. Based on information from the FAA, CBO estimates that the cost of developing the regulatory standards and reports required by Title V would be less than $200,000.

*Direct spending and revenues*

This bill would create a new user fee for air traffic control and other services provided to aircraft that do not take off or land in the United States and for other services provided by the FAA to foreign governments.

*Budgetary Classification of Fees.* The new fees could be classified as either offsetting receipts or governmental receipts. Fees that are established as charges for business-type services and are based on the cost or value of the service being provided are generally classified as offsetting receipts (or offsetting collections when they are credited as an offset to appropriations). In contrast, fees that primarily reflect the government's sovereign power to mandate such payment and that do not have a direct link to the service are generally classified as governmental receipts.

The classification of fees as either offsetting receipts or governmental receipts depends to some degree on the link between the fee and the cost of service that is being provided. This legislation directs that the fees be reasonably related to the cost and value of the service. In addition, the legislation indicates that the fees to be established are intended to be offsetting receipts. Based on the bill's stated intent and structure of the fees, CBO assumes that these fees would be categorized as offsetting receipts.

*Fee Collection.* The legislation sets a target amount of fee collections at $100 million a year, starting October 1, 1996. According to the FAA, the $100 million level represents full cost recovery for overflights and services to foreign governments. Depending on how the fee language is interpreted, enacting the bill could result in recovery of either all or a portion of full costs. Although it is possible that the FAA could collect the targeted level of $100 million a year, CBO estimates that the most likely level of annual collections would be less than $100 million. Based on information from FAA staff, CBO estimates that fee collections would total about $50 million in 1997, taking into account a likely delay in the start of collections beyond the bill's required start date of October 1, 1996, and about $65 million a year in 1998 and thereafter.

The provisions in Title V regarding cost reimbursement and user fees for commercial space activities could affect offsetting receipts, but we estimate that the impact would not be significant. The Department of Defense and National Aeronautics and Space Administration, the two agencies that make launch services or property available to nonfederal entities, currently base their fee structures on the "additive" costs of the activity. Hence, codifying this practice would have no effect on projected receipts. Likewise, OCST has not imposed user fees since fiscal year 1993, because of the absence of the specific Congressional approvals needed for such fees to take effect.

*Revenues.* Title V could affect revenues but CBO estimates that any additional receipts from penalties associated with OCST licens-

ing activities required by this bill would be insignificant. DOT has never collected a penalty for a violation of the licensing and related requirements of the commercial space transportation program.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Because this bill would increase offsetting receipts, resulting in a decrease in direct spending, and it could increase civil penalties, pay-as-you-go procedures would apply to this bill.

CBO estimates that the collections of fees on air traffic control and other services for aircraft that do not take off or land in the United States and other services provided to foreign governments would be $50 million in 1997 and $65 million in 1998. Provisions affecting commercial space activity are not expected to affect offsetting receipts significantly.

The estimated pay-as-you-go impact of the bill is shown in the following table:

[By fiscal year, in millions of dollars]

| | 1996 | 1997 | 1998 |
|---|---|---|---|
| Change in outlays [1] | 0 | −50 | −65 |
| Change in receipts | 0 | 0 | 0 |

[1] For purposes of this estimate, CBO assumes that the fees to be assessed under this bill would be classified as offsetting receipts.

8. Estimated impact on state, local, and tribal governments: This section represents a preliminary analysis of the mandates contained in the bill and their potential impacts on the budgets of state, local, and tribal governments. CBO's mandate cost statement, as required by the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), will be sent when it is completed.

The bill contains one mandate on state, local, and tribal governments and one provision that could be a mandate on state governments. Depending upon the interpretation of the latter provision, the bill's mandate costs could exceed the $50 million annual threshold established in the mandates law.

*Pilot Records.* The bill would increase the amount of background information an air carrier must obtain before hiring an individual as a pilot. In doing so, it would impose a mandate on employers, including state, local, and tribal governments, that have employed the prospective pilot within the previous five years. The bill would require that employers provide to air carriers, upon their request and within 30 days, information on the work record of these individuals. Employers would have to obtain written consent from the individual prior to releasing the information as well as notify them of the request and of their right to receive a copy of the records.

CBO estimates that the direct costs of this mandate on state, local, and tribal employers would be insignificant, primarily because only a fraction of prospective pilots have worked for these governments in the past and thus minimal additional work would be required by any state, local, and tribal governments. The bill would allow employers to charge air carriers and prospective pilots a fee for the cost of processing the requests and furnishing the records.

*State Taxing Authority*. The bill contains a provision intended as a technical correction to the section of Title 49 establishing the authority of states to levy certain aviation-related taxes. When that section of the United States Code was recodified, it appeared to broaden the power of states to tax airlines. The correction is intended to return the issue of state taxation to the status quo as it existed before the recodification.

The impact of this provision, however, is unclear. A simple correction would impose no new mandates. There is concern among some tax experts, however, that the proposed change goes beyond the intended fix and would impose new preemptions on states' taxing authority. A number of state tax officials assert that the proposed correction would increase the ambiguities in the statute and could lead to an interpretation of the law that would prohibit states from imposing aviation-related property, net income, and other taxes. Under such an interpretation, the provision would constitute a mandate on state governments as defined by Public Law 104–4, Because some states raise significant amounts of revenues through these types of taxes, it is possible that the direct costs to states could exceed the $50 million annual threshold established in the mandates law.

CBO is continuing to review this issue and will include its analysis in the final intergovernmental mandates statement.

9. Estimated impact on the private sector: CBO's estimate of the bill's impact on the private sector is provided as a separate enclosure.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal Cost Estimate: Clare Doherty. State and Local Government Impact: Karen McVey. Private-Sector Impact: Jean Wooster.

12. Estimate approved by: Robert A. Sunshine, for Paul N. Van de Water, Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE ESTIMATE OF COSTS OF PRIVATE-SECTOR MANDATES

1. Bill number: Not yet assigned.

2. Bill title: Federal Aviation Reauthorization Act of 1996.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 13, 1996.

4. Bill purpose: The bill would provide contract authority and authorize 1997 appropriations for Federal Aviation Administration (FAA) programs. The bill would also establish new requirements for the hiring of pilots and passenger and property screeners. The bill would establish user fees for air traffic control and other services for aircraft that do not take off or land in the United States. In addition, the bill would direct the FAA to prescribe standards applicable to the emission of air pollutants from aircraft engines.

5. Private-sector mandates contained in bill: The Congressional Budget Office (CBO) identified private-sector mandates in this bill that would impose requirements on air carriers and owners of a space reentry system. One mandate would impose requirements on all employers in the United States. The bill also includes a provision excluded under section 4, of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), which excludes from the applica-

tion of that act legislative provisions that enforce the constitutional rights of individuals.

6. Estimated direct cost to the private sector: CBO estimates that the direct costs of the private-sector mandates identified in this bill would not exceed the $100 million annual threshold established in Public Law 104–4.

*Mandates on air carriers and other employers*

The bill would give the FAA authority to require that an employment investigation include a check for the existence of a criminal record for those persons responsible for screening passengers and property. The specific circumstances that would require such a check for a criminal record would be determined through FAA rulemaking. Based on information from the FAA and the airline industry, CBO estimates that the added cost to the air carriers would range from $50,000 to $8 million annually, depending on the exact rule. That estimate is based on the cost per person of the check for a criminal record that is currently required for other employees and the employment turnover rate for passenger and property screeners.

Section 673 would impose fees for air traffic control and related services on owners of aircraft that neither take off from nor land in the United States. Based on information provided by the airline industry, CBO estimates that few flights by domestic air carriers would fall into that category. Thus the direct costs to the private sector would be negligible.

Section 702 would increase the amount of background information that air carriers must obtain before hiring a pilot. This information would be requested from the FAA, the pilot's previous air carrier employer and other employers, and the National Driver Register. If requested to supply information, former employers would be required to furnish it. Although some air carriers now request such records, industrywide search request for records are not a routine part of the hiring process. To accommodate those requirements, additional clerical staff may be needed by air carriers to handle employment applications and by other employers who would be required to supply information. Based on information from the airline industry, CBO estimates that in total the costs associated with providing such information would be well below the threshold for private-sector mandates.

*Mandates on space re-entry systems*

Section 501 amends the Commercial Launch Act to extend the current licensing authority of the Department of Transportation's Office of Commercial Space Transportation (OCST) to cover reentry space vehicles and reentry sites and directs OCST to issue regulations to implement this new authority. The direct costs related to the licensing of space reentry systems would be negligible.

*Other*

Section 631 grants authority to the FAA to prescribe emission standards applicable to pollutants from aircraft engines. This authority is currently granted to the Environmental Protection Agency (EPA). The bill does not explicitly relieve the EPA of its existing

authority, thus creating the potential for conflicting standards. However, based on information from the FAA, CBO does not expect the FAA to create standards that would be more stringent than those currently in force.

7. Appropriations or other Federal financial assistance: None.

8. Previous CBO estimate: On June 12, 1996, CBO transmitted a private-sector cost estimate for H.R. 3536, the Airline Pilot Hiring and Safety Act of 1996, as ordered reported by the House Committee on Transportation and Infrastructure on June 6, 1996. However, H.R. 3536 did not include the requirement that air carriers verify records with a pilot's previous employers, other than air carriers, and differed by requiring air carriers to maintain employment records for five years.

On April 24, 1996, CBO transmitted a private-sector cost estimate for H.R. 2043, the National Aeronautics and Space Administration Authorization Act, as ordered reported by the House Committee on Science on July 25, 1995. On April 30, 1996, CBO transmitted a private-sector cost estimate for H.R. 3322, the Omnibus Civilian Science Authorization Act of 1996, as ordered reported by the House Committee on Science on April 24, 1996. On June 25, 1996, CBO transmitted a private-sector cost estimate for S. 1839, the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1997, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 6, 1996. Those bills contained provisions similar to section 501 of this bill.

9. Estimate prepared by: Jean Wooster.

10. Estimate approved by: Jan Acton, Assistant Director.

## 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

The authority granted FAA to require background checks on baggage screeners would likely lead to new regulations imposed on their employers as well as new obligations imposed on those being screened.

Currently, individuals or businesses flying over the United States utilize this country's ATC services without compensating the United States for such services. This bill would enable the FAA to charge a fee for providing ATC services for those overflights. As a result, a new fee system would be required and would apply to a new group of individuals and businesses.

The regulatory and rulemaking reforms contained in the bill are expected to reduce the level and nature of current FAA regulation of the aviation community.

Title VII of the bill requiring the sharing of pilot records would have an impact on airlines, pilots, the FAA, and state officials handling drivers' license records, but only to the extent that the existing National Driver Register system is accessed.

ECONOMIC IMPACT

The pavement maintenance pilot projects established by the bill could lead to substantial savings of federal grant funds and local contributions to projects if anticipated cost savings are realized. Preserving the life of runways, taxiways, and aprons should yield substantial long-term benefits over allowing those structures to deteriorate to the point where a complete replacement is necessary.

The authority for the FAA to acquire housing units outside the contiguous United States should lead to cost savings for the federal government where it is required to provide accommodations for employees in particular locations.

The authority for the FAA to require background checks on baggage screeners will almost certainly impose costs on the employers who must perform such checks.

Unneeded or unduly burdensome regulations ultimately should be eliminated or refined because of the regulatory reform provisions contained in the bill. The economic impact of regulations would decrease for affected individuals or groups.

The pilot record provisions (Title VII) will impose some economic costs on: air carriers to maintain new records and request employee records from former employers; the FAA to develop new standard forms and regulations to carry out the mandates of the bill; and pilots who request copies of their records when changing employers. However, there may be substantial safety benefits if marginally-qualified or poor pilots are screened out and accidents or incidents are subsequently avoided.

PRIVACY

Baggage screeners and their supervisors could have their privacy incidentally affected to the extend that their backgrounds are investigated as a result of new FAA regulations authorized under the bill. This same scrutiny applies, however, to most safety-critical employees in the airline industry.

The pilot record provisions of the bill also could affect personal privacy in that exchanged or requested records may reveal private matters. However, the FAA is required to promulgate regulations to protect the privacy of individuals and the confidentiality of any records maintained and exchanged.

PAPERWORK

The acquisition of housing units outside the contiguous United States by the FAA would require the FAA to certify the acquisition is the most cost-beneficial means of providing necessary accommodations.

There would be increased paperwork for employers and baggage screeners associated with requirements for background checks.

If, as expected, current rules and regulations are eliminated or amended due to regulatory reforms contained in title VI of the bill, affected individuals and businesses may have reductions in paperwork.

The pilot records provisions would entail a minimal amount of paperwork in the nature of the consent forms, liability release forms, and record request forms. The mandatory notice to pilots

that their records are being requested would also lead to increased paperwork for the airlines.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title; table of contents*

Section 1 cites the title of the bill as the "Federal Aviation Administration Reauthorization Act of 1996". This section also contains a table of contents for the bill, as reported.

*Section 2. Amendments to title 49, United States Code*

Section 2 provides that references in the bill to sections or provisions in the law are considered to be sections or provision of title 49, United States Code.

## TITLE I—REAUTHORIZATION OF FAA PROGRAMS

*Section 101. Federal Aviation Administration operations*

Section 101 authorizes the FAA operations account for FY 1997 at $5 billion.

This section also reinstates the FY 1993 limit on amounts that may be appropriated from the Trust Fund for FAA activities at 75 percent of the FAA's total budget. For FY 1994 through FY 1996, monies from the Trust Fund could only comprise up to 50 percent of the Operations budget or 70 percent of the total FAA budget.

*Section 102. Air navigation facilities*

Section 102 authorizes the F&E account for FY 1997 at $1.8 billion.

*Section 103. Research and development*

Section 103 authorizes the RE&D account for FY 1997 at $200 million.

*Section 104. Airport Improvement Program*

Section 104 authorizes AIP for FY 1997 at $2.28 billion.

*Section 105. Interaccount flexibility*

Section 105 provides the FAA with budget flexibility by permitting the Administrator to transfer limited amounts of budget authority among the Operations, F&E, and RE&D appropriations accounts. Transfers of budget authority could not be made if outlays would exceed the aggregate estimated outlays. A transfer also could not result in a net decrease of more than 5 percent, or a net increase of more than 10 percent, in budget authority available under any appropriation involved in that transfer. Any transfer would be treated as a reprogramming of funds and could only occur after the FAA submitted a report to the appropriate authorizing and appropriating committees of Congress. Each committee would have 30 days to object to any transfer.

## TITLE II—AIRPORT IMPROVEMENT PROGRAM MODIFICATIONS

*Section 201. Pavement maintenance program*

Section 201 permits the FAA, using funds apportioned to it under state entitlements, to carry out projects that would preserve and extend the useful life of runways, taxiways, and aprons (at general aviation, nonprimary commercial, and reliever airports). The program is a three-year pilot program under which not more than 10 projects may be sponsored. No state may have more than two such projects and at least two must be in states without a large or medium hub airport. In selecting projects, the FAA must take into account geographical, climatological, and soil diversity.

This section also permits the use of PFCs for relocation of air traffic control towers and navigational aids when necessary to carry out an approved project, and conforms eligibility to use PFCs to meet certain unfunded federal mandates to what is currently authorized in the AIP program.

*Section 202. Maximum percentages of amount made available for grants to certain primary airports*

Section 202 establishes a sliding cap or limit scale on the level of total AIP funds going to large and medium hubs. The percentage limit would vary depending upon the level of funds appropriated to AIP. The percentage of total AIP funds going to projects at large and medium hub airports would be: 44.3 percent at funding of $1.45-1.55 billion; 44.8 percent at funding of $1.35-1.45 billion; 45.4 percent at funding of $1.25-1.35 billion; 46 percent at funding of $1.15-1.25 billion; and 47 percent at funding below $1.15 billion.

According to FAA estimates, under current law (and with a funding level of $1.35 billion), large and medium hub airports would receive 48 percent of total AIP in FY 1997. The FAA further estimates this sliding scale provision would shift approximately $35 million from larger to smaller airports. This shift effectively would involve discretionary funds only. The FAA would retain ultimate discretion as to how the balance in AIP funding would be maintained between the larger and smaller airports.

*Section 203. Discretionary fund*

Section 203 requires the FAA to fulfill LOI commitments under FAA's discretionary spending.

*Section 204. Designating current and former military airports*

Section 204 extends the Military Airport Program for one year and changes it by lowering the number of airports that can be included from 15 to 10. Also extended is a discretionary fund spending limit of $4 million per airport for grants to construct, improve, or repair parking lots, fuel farms, and utilities.

*Section 205. State Block Grant Program*

Section 205 extends the State Block Grant Pilot Program for one year. Participating States would be allowed to use their own priority system for awarding grants when not inconsistent with the national system.

*Section 206. Access to airports by intercity buses*

Section 206 adds a new grant assurance requiring an airport owner or operator to permit, to the maximum extent practicable, intercity buses, or other modes of transportation, access to the airport. The section is meant to encourage airports to accommodate transportation of passengers by bus between airports and many cities or communities, particularly those without commercial airports. Wherever practicable, these communities should have convenient transportation access to airports in other communities. At the same time, the Committee recognizes there are circumstances under which such access is not practicable.

Airports should encourage intercity access. This section is not intended to preempt or to disturb any state or local laws, or airport ordinances regulating intercity or other modes of transportation (other mass transit-types of transportation providing intercity travel), consistent with the obligation under this section to provide intercity bus access where practicable. This section is not intended to limit an airport's authority to charge fees to bus companies or other modes of transportation, require contractual arrangements, or impose obligations for access to the airport. However, airports must not impose prohibitive fees, which have the effect of inhibiting compliance with this grant assurance. Nor does it preclude or affect airport operation of bus service or other transportation services to the airport. Furthermore, this section is not intended to interfere with or limit an airport's right to manage its facilities, the transportation services provided, or the operation of vehicles at an airport, consistent with the airport's overall responsibility for safe and efficient operations. Airports, for example, would be able to limit the number of service providers, consistent with safe and efficient management practices.

## TITLE III—EXTENSION OF AIRPORT AND AIRWAY TRUST FUND EXPENDITURE AUTHORITY

*Section 301. Expenditures from Airport and Airway Trust Fund*

Section 301 extends for one year the authority for expenditure of funds from the Trust Fund.

## TITLE IV—MISCELLANEOUS PROVISIONS

*Section 401. Acquisition of Housing Units*

Section 401 gives the FAA authority to acquire housing units outside the contiguous United States, even if there are continuing obligations to pay fees, such as homeowner fees. Such an acquisition can occur only if the FAA reports to Congressional authorizing committees and certifies the acquisition is the most cost-beneficial means of providing necessary accommodations for its employees. Presently, the FAA cannot obligate itself to pay future homeowner fees (and, thus, cannot buy certain types of housing) because such an obligation would violate the Anti-Deficiency Act. This authority was requested by the FAA as a means of reducing housing costs, and similar authority is currently provided to the Coast Guard.

*Section 402. Technical correction of title 49 codification*

Section 402 corrects a mistake related to state taxation that was made when title 49 was recodified. As the statute currently reads, states arguably could tax certain aviation-related activities contrary to the intent of Congress.

*Section 403. Protection of voluntary submission of information*

Section 403 permits the FAA to withhold voluntarily provided safety and security information if it is determined public disclosure would discourage the voluntary provision of such information, the information would help the FAA fulfill its safety and security responsibilities, and withholding the information would be consistent with the FAA's safety and security responsibilities. A person could not voluntarily submit information as a way of avoiding an enforcement action. This new authority potentially would facilitate the flow to the FAA of operational and safety information from the airlines and other aviation organizations. This authority is similar to existing statutory authority to protect security and research and development information.

*Section 404. Discretionary authority for criminal history records checks*

Section 404 authorizes the FAA to require employers to conduct background checks (including criminal history) before hiring baggage screeners or their supervisors.

*Section 405. Application of FAA regulations*

Section 405 requires the FAA to consider, when amending federal aviation regulations in a manner affecting intrastate aviation in Alaska, the extent to which Alaska is not served by other modes of transportation. It would be within the discretion of the FAA, as it deems appropriate, to establish regulatory distinctions with regard to these considerations.

*Section 406. Sense of the Senate regarding the funding of the Federal Aviation Administration*

Section 406 is a Sense of the Senate provision stating that the aviation excise taxes should be reinstated for 18 months while long-term funding options for the FAA are developed and acted upon pursuant to Title VI of the bill.

*Section 407. Authorization for state-specific safety measures*

Section 407 authorizes the appropriation of up to $10 million to the FAA in FY 1997 for use to address aviation safety problems identified by the National Transportation Safety Board (NTSB) in specific states. For example, the NTSB issued a report on aviation safety in Alaska in November of 1995 that identified specific aviation safety problems unique to the State of Alaska. This amendment would authorize funding for measures to address such problems. Any other State for which the NTSB identifies state-specific aviation safety problems would also be eligible under this section.

*Section 408. Sense of the Senate regarding the air ambulance exemption from certain federal excise taxes*

Section 408 is a Sense of the Senate provision stating that if the aviation excise taxes are reinstated, the exemption from these taxes (i.e., from the passenger ticket tax) for helicopter air ambulance transportation should be broadened to include transportation by fixed-wing air ambulances. This provision is based upon S. 358, a bill to amend the Internal Revenue Code to provide for an excise tax exemption for transportation by a fixed-wing aircraft for an emergency medical condition or for an appropriate transfer to a medical facility.

*Section 409. FAA safety mission*

This section is designed to add an emphasis on safety to the FAA Administrator's duties of encouraging the development of civil aeronautics and air commerce. Whereas current law requires the FAA Administrator to "encourage the development of civil aeronautics and air commerce in and outside the United States", the bill as reported would change this mandate to "encourage the development of civil aeronautics and safety of air commerce in and outside the United States."

## TITLE V—COMMERCIAL SPACE TRANSPORTATION

*Sec. 501—Commercial Space Launch Amendments*

Section 501 amends the Commercial Space Launch Act, as amended, to extend the current licensing authority of the DOT Office of Commercial Space Transportation (OCST) to cover reentry space vehicles and reentry sites and directs OCST to issue regulations to implement such amendments. Under current law, OCST is authorized only to license U.S. commercial launches and launch facilities. Commercial reentry vehicles and sites were not contemplated when the current regulatory regime was established. This expansion of licensing authority is critical to the placement of these emerging commercial space activities within the risk allocation regime established under the current law limiting third party liability associated with commercial launches.

This section also establishes a requirement for DOT to provide an annual report to Congress on the activities of OCST. It also prohibits OCST from issuing or transferring licenses for the launch of payloads to be used for obtrusive space advertising and asks the President to negotiate with other foreign space launching nations to reach an agreement that would prohibit the use of outer space as a medium for obtrusive advertising purposes. This provision is not intended to prohibit on-vehicle advertising such as that found on racing cars.

## TITLE VI—AIR TRAFFIC MANAGEMENT SYSTEM PERFORMANCE IMPROVEMENT ACT

*Section 601. Short title*

Section 601 cites the short title of title VI as the "Air Traffic Management System Performance Improvement Act of 1996".

*Section 602. Definitions*

Section 602 defines the terms "Administration", "Administrator", and "Secretary" for the purposes of this title of the bill.

*Section 603. Effective date*

Section 603 establishes that the provisions of title VI will take effect 30 days after enactment of the legislation.

SUBTITLE A—GENERAL PROVISIONS

*Section 621. Findings*

*Section 621 sets forth a series of findings establishing the general basis for enactment of the provisions contained in title VI. The findings recognize, for example, the unique character of the FAA's activities and the need for funding reform.*

*Section 622. Purposes*

*Section 622 sets forth four critical purposes underpinning title VI.*

*Section 623. Regulation of civilian air transportation and related services by the Federal Aviation Administration and Department of Transportation*

Section 623 amends section 106 of title 49, United States Code, to provide the FAA Administrator express autonomy and authority with regard to the internal functioning of the agency. As the current law provides, the FAA Administrator would be appointed by the President, with the advice and consent of the Senate, for a fixed, 5-year term. The Committee believes that helping to ensure that future Administrators remain in their position for the duration of their terms is of the utmost importance, because frequent turnover in the past has had a detrimental effect on the agency.

Some authority previously transferred to the DOT under the Department Of Transportation Act (P.L. 89–670) would be recommitted to the FAA under this section. The Administrator would be the final authority for: the promulgation of all FAA rules and regulations (except as otherwise specifically provided in the bill); and for any obligation, authority, function, or power addressed in the bill.

This increased autonomy for the Administrator stems from concerns that the DOT, on occasion, has unnecessarily involved itself with the operations and activities of the FAA. In that regard, this section specifically preserves the Administrator's existing authority for exercise by the Administrator, reaffirming that, as envisioned in the enactment of the provisions of existing section 106 of title 49, Congress did not intend the FAA's operational, safety, and technical capabilities to be duplicated within or exercised by the DOT. This section complements and affirms these existing FAA safety authorities by providing the Administrator additional autonomy and authority to better manage activities of the agency without undue second-guessing or interference.

This section enables the Administrator to delegate his or her functions, powers, or duties to other FAA employees. Further, the Administrator would not need to seek the approval or advice of the DOT on any matter within the authority of the Administrator. Nevertheless, the FAA remains within the DOT, which would continue

to provide general oversight of the agency as well as cooperate with the more autonomous FAA. The FAA must remain accountable, especially given the enhanced authority it is provided in this bill. Although the DOT has some role in that regard, it should not interfere in the FAA's purely internal workings.

This section also gives the Administrator some voice in the selection of the eight political appointees who serve under him or her. The President would consult closely with the Administrator when considering FAA appointments to ensure harmony and stability within the FAA's leadership. The Committee strongly believes the FAA should be a professional, service-oriented organization. Political appointees should be chosen based on their appropriate skills that will further the mission of the FAA, consistent with the Administration's policies. The leadership of the FAA should be chosen based on the knowledge, expertise, and experience of its members, and for their commitment to a safe, effective, and efficient national air transportation system.

This section adds a definition of "political appointee" to the statute. This section also preserves all authority vested in the Administrator (by delegation or by statute) prior to enactment of the bill. Nothing in this bill is meant to take anything away from any of the current powers, duties, or authority resting with the FAA or its Administrator.

*Section 624. Regulations*

Section 624 affirms the Administrator's authority to issue, rescind and revise such regulations as necessary to carry out the functions of the FAA. The Administrator would be required to act upon a petition for rulemaking within six months by dismissing the petition, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking (NPRM) or advanced notice of proposed rulemaking (ANPRM). This provision is meant to address concerns the FAA is not sufficiently responsive to rulemaking petitions filed by interested parties.

This section also requires the Administrator to issue a final regulation, or take other final action, on an NPRM within 18 months of the date it is published in the Federal Register (or within 24 months in the case of an ANPRM). This section is intended to address criticism by some in the aviation community that the FAA's current rulemaking process often takes too long. This section also recognizes that, because very few rules will be submitted to the DOT under the new provisions, the FAA can be held more accountable for timely performance in its rulemaking.

Under this section, the DOT's authority to review FAA rules is limited. In specified, limited circumstances, the FAA could not issue certain regulations without the prior approval by the DOT. The DOT Secretary would have 45 days to review, for approval or disapproval, any FAA regulation likely to result in an annual, aggregate cost of $50 million or more to state, local, and tribal governments, or to the private sector. The DOT Secretary would also have 45 days to review "significant" regulations, which are rules that, in the judgment of the Administrator (in consultation with the Secretary, as appropriate), are likely to: have an annual effect on the economy of $100 million or adversely affect in a material

way other parts of the society; be inconsistent or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates. The criteria for determining a "significant" regulation are modeled on Executive Order 12866 as printed in the Federal Register on October 4, 1993 (Vol. 58, No. 190).

This section also provides that in an emergency, the Administrator may issue regulations that require DOT approval without obtaining such prior approval. Such regulations, however, are subject to DOT ratification, and would be rescinded within 5 business days without such ratification.

Under this section, the Administrator also would issue non-significant regulations or other actions that are routine, frequent or procedural in nature, without review or approval by the DOT. Examples of routine or frequent actions that are non-significant include standard instrument approach procedure regulations, en route altitude regulations, most airspace actions, and airworthiness directives. The DOT also would not be authorized to review "rules of particular applicability," such as exemptions, operations specifications, and special conditions, all of which apply to one individual or entity, unless such exemptions met the definition of significant in this section.

Finally, this section requires the FAA (three years after the bill is enacted) to review "unusually burdensome" regulations that are at least three years old. "Unusually burdensome" regulations are defined as those that result in the annual, aggregate expenditure of $25 million or more by State, local, and tribal governments, or by the private sector. Such regulations are to be reviewed to determine: the accuracy of the original cost assumptions; the overall benefit of the regulations; and the need to continue such regulations in their present form. This section also provides that the Administrator may review immediately any three-year-old regulation in force prior to enactment of the bill, such as rules issued in 1988 regarding certification of foreign maintenance facilities used to repair or maintain U.S. aircraft. The Committee expects the FAA to use the MAC and the Aviation Rules Advisory Committee (ARAC), as appropriate, in the process of any of these reviews. Of course, with regard to any reviewed regulations, FAA should eliminate those that are truly harmful or burdensome, revise or modify those with some overall value, and retain those that are truly worthwhile and promote a safe and healthy ATC system and aviation industry.

*Section 625. Personnel and services*

Section 625 provides that the Administrator may appoint and fix the compensation of necessary employees and officers of FAA. This section also provides that, in fixing the compensation and benefits of employees, the Administrator may not engage in any type of bargaining, except as provided for under section 653 of the bill. Further, this section provides that the Administrator shall not be bound by any requirement to establish compensation or benefits at particular levels.

This section also provides other personnel authority to the Administrator, including, for example, the authority to hire experts and consultants and to use the services of personnel from any other Federal agency.

This section represents one more element of the bill that defines the Administrator's authority over internal FAA matters. It provides the Administrator with powers and authority similar to those given to the head of an independent agency.

This section also provides that officers and employees shall be appointed in accordance with civil service laws and compensated in accordance with title 5, United States Code, except as otherwise provided by law.

*Section 626. Contracts*

This section provides broad, general authority for the Administrator to enter into contracts, leases, cooperative agreements, and other transactions, as necessary to carry out the functions of the FAA.

The Committee encourages the use of authority granted under this section to contract with foreign governments for services the FAA can provide civil aviation authorities in other countries as a means of generating revenue. The FAA has indicated that significant revenue may be generated from such arrangements. The FAA should provide an annual summary of such revenue to the Committee. In addition, the term "cooperative agreements" is included in this section to ensure the FAA can receive in-kind goods or services from an individual, business, or government. Such goods or services may be used to offset any relevant or applicable fees one may be required to pay the FAA.

The Committee also encourages the FAA to examine the possibility of using authority under this section to enter into lease arrangements for the facilities and equipment needs of the FAA. Leasing arrangements may lead to substantial cost savings and efficiency gains at the agency.

*Section 627. Facilities*

This section provides the Administrator with authority to use or accept, with or without reimbursement, services, equipment, personnel, and facilities of any other Federal agency or public or private entity. Such acceptance would not constitute an augmentation of the Administration's budget. Heads of other Federal agencies would be asked to cooperate with the Administrator.

*Section 628. Property*

Section 628 provides broad authority to the Administrator to acquire, construct, improve, repair, operate, and maintain air traffic control and research facilities and equipment, as well as other real and personal property. Further, the Administrator is authorized to lease such real and personal property to others.

*Section 629. Transfers of funds from other Federal agencies*

Section 629 permits the Administrator to accept the transfer of unobligated balances and unexpended funds from other agencies to carry out functions assigned to FAA by this or other Acts.

*Section 630. Management Advisory Council*

Section 630 establishes a 15-member Federal Aviation Management Advisory Council (MAC) to provide the Administrator with input from the aviation industry and community. The MAC would be comprised of one designee each of the Secretaries of Transportation and Defense and representatives from various segments of the aviation community who would be appointed by the President with the advice and consent of the Senate. Members of the MAC should be selected from among individuals who are experts in disciplines relevant to the aviation community and who are collectively able to represent a balanced view of the issues before the FAA. The MAC members also should not be selected based on political or partisan considerations.

The Committee does not consider the MAC to be a "paper tiger". All views of each member should be taken into account so that even minority views can be adopted by the FAA if the Administrator regards such views as proper given the circumstances. In other words, this is an advisory council, not a board of directors for which a majority vote constitutes FAA policy. The Administrator must maintain objectivity and keep overriding goals and objectives, such as ensuring ATC system safety and efficiency, above the infighting that frequently occurs within the aviation community.

The MAC also would be provided authority to review the FAA's regulatory cost-benefit process and the process through which the FAA issues advisory circulars and service bulletins.

Two other particular areas on which the MAC should focus its oversight are ATC modernization and FAA acquisition management. The past problems of the FAA in these areas are well known. The Committee does not want the FAA to be free from Federal procurement rules so that it can simply acquire the wrong items more quickly. The Committee therefore believes the MAC can be a valuable resource in ensuring the FAA's Capital Investment Program emphasizes improving ATC system performance.

The MAC also would provide advice and counsel on many issues to the Administrator on a regular basis. Although this section only provides that the MAC shall meet on a regular and periodic basis, or at the call of the Administrator or MAC Chair, the MAC should, at a minimum, meet on a quarterly basis.

To facilitate its advisory function, the MAC must be given reasonable access to internal FAA documents and materials. Such access, however, must be given with due consideration for privacy and proprietary concerns. This section, therefore, would subject MAC members to criminal penalties for unauthorized disclosure of commercial or other proprietary information.

*Section 631. Aircraft engine standards*

Section 631 vests the Administrator with new authority (currently under the Environmental Protection Agency (EPA)) to prescribe standards applicable to the emission of air pollutants from aircraft engines. Currently, the FAA only has authority over noise emission standards for aircraft engines. The Committee believes it is important for one agency to be responsible for regulating all aircraft engine emission standards so that there is consistency. Nevertheless, the FAA should work with the EPA to ensure regulations

are consistent with national environmental policy, objectives, and efforts. In the past, differences between the FAA and the EPA have impeded a unified U.S. approach to consideration of international emissions standards.

This section is not meant to alter or eliminate any existing federal regulations or standards regarding aircraft engine emissions until and unless modified or amended by the Administrator.

*Section 632. Rural air fare study*

This section requires the DOT Secretary to conduct a study of rural air fares, and to provide a report to the Committee within 60 days after enactment of this bill. The study would encompass an analysis of the types of air service provided to rural communities as well as competitive aspects of such air service. The requirement to conduct this study stems from concerns over any detrimental effects of deregulation of the air carrier industry on small communities throughout the nation.

SUBTITLE B—FEDERAL AVIATION ADMINISTRATION STREAMLINING PROGRAMS

*Section 651. Review of acquisition management system*

Pursuant to this section, not later than April 1, 1999 the FAA would employ outside experts to determine whether the system has been streamlined without creating waste, fraud, or abuse. The FY 1996 DOT Appropriations bill (P.L. 104–50) gave the FAA authority to implement new procurement and personnel systems as of April 1, 1996.

*Section 652. Air traffic control modernization reviews*

Section 652 establishes a safeguard, built into the procurement system, that would require the FAA to terminate facilities and equipment programs that are 50 percent or more: (1) over cost, (2) below performance goals, or (3) behind schedule. The Administrator could waive the termination requirement if a termination would be inconsistent with the safe and efficient operation of the national air transportation system. Also, the FAA would be required to consider terminating any program that is 10 percent or more: (1) over cost, (2) below performance goals, or (3) behind schedule. This section, in effect, requires the FAA to set realistic goals and standards for major acquisitions, which FAA has had problems doing in the past.

*Section 653. Federal Aviation Administration personnel management system*

Section 653 directs the Administrator, in developing and making changes to the new personnel system, to consult with FAA employees and negotiate with the exclusive bargaining representatives of employees. If the Administrator fails to reach agreement with such bargaining units, the parties will engage the services of the Federal Mediation and Conciliation Service. If agreement is not reached following such mediation, proposed changes to the personnel system shall not take effect until 60 days have elapsed after the Administrator has submitted the proposed change, any objections of the exclusive bargaining representatives, and the reasons for such objec-

tions, to the Congress. In negotiating changes to the personnel system, the Administrator and the exclusive bargaining representatives would be required to use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units, as well as within the FAA as a whole. Nothing in this bill, therefore, prohibits the exclusive bargaining representatives from assisting in identifying cost savings in the procurement system as well as the new personnel system.

The overriding goal of FAA reform is the enhancement of aviation safety. In this regard, the cost-saving efforts of the FAA and the exclusive bargaining representatives in the development of changes to the personnel system are not intended to, nor should they, adversely impact aviation safety. Any cost-saving effort that adversely affects aviation safety should be deemed contrary to the public interest and not developed or implemented. Further, in the annual meeting mandated by this section between the FAA and the exclusive bargaining representatives to identify additional cost savings within the agency, no such cost savings should be contrary to the public interest and any identified costs savings that have an adverse effect on aviation safety should not be acted upon by the FAA. Reasonable discovery and inspection of FAA documents pertaining to costs associated with personnel, procurement, and other operational budgets should be made available for the above cost-saving purposes.

The recently implemented personnel system would be evaluated after three years by outside experts to ensure it has been effective. The basic rate of pay for any FAA employee is capped by the basic rate of pay for the Administrator, as set by statute.

## SUBTITLE C—SYSTEM TO FUND CERTAIN FEDERAL AVIATION ADMINISTRATION FUNCTIONS

### *Section 671. Findings*

Section 671 sets forth fourteen findings establishing the general basis for the provisions in the bill related to FAA funding. These findings concern the important services provided by the FAA in a variety of critical areas that benefit the users of the air transportation system.

### *Section 672. Purposes*

Section 672 sets forth seven critical purposes underlying the enactment of Title VI of the bill. Those purposes include providing a financial structure for the FAA that would enable it to support the future growth in the national aviation, ATC, and airport system. The third purpose, which is to ensure that any funding would be dedicated solely for the use of the FAA, is in reference to the user fees authorized under section 673.

### *Section 673. User fees for various Federal Aviation Administration services*

Section 673 creates a new section 45301 under title 49, United States Code, providing authority, with certain limitations, for the FAA to establish a performance-based system for the collection of fees for certain services it provides. Not later than 30 days after

the bill is enacted, the Administrator shall establish a schedule of new fees and a collection process for services (other than air traffic control) provided to a foreign government and for air traffic control services for flights that neither take off from, nor land in the United States, which could include trans-oceanic flights that use U.S. ATC services. Currently, international overflights receive what some call a "free ride" through the ATC system because they consume services, but contribute nothing in trust fund taxes. Furthermore, many, if not most, other countries charge our air carriers for overflights.

A variety of limitations on the fee authority are prescribed. For example, in developing fees, the Administrator must consider the impact on segments of the aviation industry at levels that will recover $100 million in FY 1997, and are reasonably related to the total cost of providing the service rendered and/or the value of the service provided to the recipient.

The FAA also must maximize its collection of existing fees.

It is envisioned that the FAA will move as quickly as possible to develop and impose these fees and systems. The sooner funds can be drawn from the proposed fees on international overflights and for non-ATC services provided to foreign governments, the better off the FAA will be in the short-term. In developing user fees under this section, the Administrator may consult with nongovernmental experts.

*Section 674. Independent assessment and task force to review existing and innovative funding mechanisms*

This section requires the DOT to contract with an outside entity to conduct a comprehensive FAA needs and cost allocation assessment of the financial requirements of the FAA through 2002. The assessment must be complete within 90 days of the contract being awarded. The DOT should select persons with no direct financial interest in the results of the assessment to perform the objective analysis of FAA's funding needs and assumptions for operations, capital spending, and airport infrastructure of the FAA.

The purpose of this assessment is to determine independently what the financial needs of the FAA will be in the short- and long-term. The assessment also must include a cost allocation analysis detailing which segments of the aviation community are driving the various costs imposed on the FAA. Costs attributed to users should reflect the full range of FAA expenditures and activities associated directly or indirectly with a particular aviation segment, including, for example, costs of airport infrastructure financed in whole or in part by the FAA. This assessment is urgently needed by the task force, Congress, and the aviation community so proper evaluation of the FAA's financial picture can be done using a single, objective set of numbers and assumptions.

According to the GAO, since the advent of the National Airspace System (NAS) plan in 1982, the FAA has spent more than $19.8 billion attempting to fulfill the NAS blueprint for the future. Under the more ambitious and recently revised Capital Improvement Plan (CIP), it is anticipated that at least another $17.5 billion will be spent through the early years of the next century. The scope, com-

plexity, and cost of the FAA's requirements appear to necessitate a complete assessment, as called for in this title.

The Committee believes the objective assessment must contain an analysis of current and future spending of the entire FAA, including airport capital needs. A major premise of this legislation is that old assumptions and old ways of doing business must be reevaluated and updated. This includes an independent assessment of the FAA's needs and the nation's airport capital needs to ensure that capacity is able to meet demand. As a result, the task force, Congress and the FAA must be in a position to determine which projects expand capacity and enhance the safety and security of the national air transportation system.

The assessment should provide assistance to Congress as to appropriate reforms, which will allow the FAA and airports to more efficiently utilize and maximize Airport Improvement Program (AIP) dollars for necessary capacity, safety, and security.

The GAO recently issued a report stating that a majority of PFC funds were for terminal projects, access roads, and debt service. The Committee is concerned this program has not been dedicated to the safety, capacity, and security priorities, which the Committee identified in 1990. In most instances, the carriers and airports are able to work together on funding airport projects, and the system works. However, the Committee is aware of one instance in which an airport has collected in excess of $150 million through PFCs, but has not spent the money. The right to collect PFCs should not be abused by any airport.

The Committee expects the assessment to be performed independently of the FAA and DOT. No contractor, FAA employee, or other person with a financial interest in the result of such assessment shall be utilized to analyze, comment, or validate those aspects of the FAA's financial picture in which such person or entity has a proprietary interest.

The requirement for independence and detachment from the results of the assessment is not limited to hardware and software providers. Consulting firms and other entities that deliver specifications, provide rationale, or otherwise were compensated by the FAA or the DOT for advice and guidance on any aspect of the FAA's needs, should not be put in the position to comment, validate, or rationalize previous recommendations provided by such contractor. By the same token, the importance of the assessments' independence is not to be taken to such extremes that consulting firms and other entities with knowledge of, expertise in, or experience with the affairs of the FAA would be excluded from consideration.

The assessment must take a variety of factors into consideration, including: air traffic forecasts and other workload measures; estimated productivity gains; the need for specific programs; and the need to provide safety and operational improvements.

This section also requires that FAA establish an independent 11-member task force. The membership would represent a cross-section of aviation community experience and expertise. The main purpose of the task force would be to develop specific recommendations on how best to fund the FAA in the long-term. The task force should elect a chair and vice chair from among its members.

Using the independent assessment, the task force would hold public hearings, consult with appropriate Congressional committees, and eventually prepare a report on long-term funding for the FAA. The report would analyze budget requirements and alternative funding means and include specific legislative recommendations. The task force would submit a preliminary report to the DOT within six months of the completion of the independent assessment. Prior to issuance of a final report, there would be an opportunity for the DOT to comment on the task force report and for the task force to respond to those comments. Within one year of enactment of the bill, the DOT would transmit its own draft legislation of an FAA funding proposal(s) along with the final task force report and recommendations. If the DOT proposals are different from those of the task force, the DOT would also be required to explain those differences.

If each task force and DOT deadline in the bill were taken to its limit, the DOT might appear to have 13 months to submit its report and draft legislation to Congress. However, these deadlines are meant to indicate the maximum time allowed for a specific action. The task force and DOT must try to complete their respective tasks as swiftly as possible. In any circumstance, the final DOT report to Congress must be submitted no later than one year after the bill is enacted.

The recommendations of the task force may include a variety of possibilities, such as alternate funding proposals, user fee system proposals, modifications to the aviation excise tax system, a combination of excise taxes and user fees, and means of meeting airport infrastructure needs. The task force also shall consider a limited, innovative program for airport-related funding mechanisms. For each recommendation, the task force must assess the impact on safety, administrative costs, the Congressional budget process, industry economics, the ability of the FAA to use sums collected, and the needs of the FAA.

If the task force report includes a recommendation that the existing tax structure be modified, the report would include the specific tax rates proposed for each segment of the aviation community, a consideration of the impact on specific system users, and an explanation of the basis for the recommendations.

If the task force recommends that a fee system be established, the task force is required to consider numerous factors, including: the impact on air fares (including low-fare, high frequency service) and competition; the unique circumstances associated with inter-island air carrier service in Hawaii and rural air service in Alaska; the impact on service to small communities; and the impact on services provided by regional carriers. The report must also include an explanation of the basis for the recommendations.

Because of their location on our nation's only island State, Hawaii's residents and its largest industry, tourism, depend almost exclusively on affordable and frequent inter-island air service. Hawaii lacks the traditional alternate means of transportation available in the contiguous States. Accordingly, the Committee is concerned about any fee systems recommended by the task force that substantially increases the financial burden of Hawaii's inter-island passengers or shippers, because of the impact it would have

on the cost of inter-island service for Hawaii's residents and visitors. The Committee expects, to the maximum extent possible, that Hawaii's unique situation be fully considered by the task force if it recommends a fee system. The Committee expects the same considerations to be given to the State of Alaska where 75 percent of its communities are accessible only by air.

The Committee expects that any fees, taxes, or other charges recommended by the task force must not, to the maximum extent possible, unreasonably restrain competition by being, for example, unfair, unreasonable, unjustly discriminatory among current or potential users of the FAA's services, or unreasonably disadvantageous to new entrants or entrepreneurs. If recommended by the task force, ATC fees should be broadly based, covering the full range of direct and indirect costs of air traffic-related services and activities, including, for example, costs of facilities and equipment, research and development, and airport infrastructure grants.

With regard to funding mechanisms, the task force also should examine all existing funding options available for airport development. This is not limited to AIP and Passenger Facility Charges (PFCs), but should include airline and concession revenues, non-aeronautical revenues, and state and local funding sources. The Committee wants the task force to critically evaluate the role that existing non-Federal funding sources have played and can play in financing airport capital projects. In addition, the task force report should identify specific instances in which airports have been unable to accomplish capacity-enhancement, safety or security projects because of airline interference or "majority-in-interest" clauses, and the overall magnitude of this purported problem.

This section also requires that, within 120 days, GAO must conduct an assessment of the manner in which cost for ATC services are allocated between the FAA and the DoD. The only way for the task force to get a complete understanding of the FAA's costs is if they consider the costs that the FAA and the DoD impose on each other as well as the benefits each derives from the other. Therefore, the GAO should be allowed access to the FAA's and the DoD's budget records in this area so long as such access does not interfere with classified, national security matters. The task force and Congress should be made aware of GAO's findings and should consider any financial burdens placed upon the national air transportation system.

*Section 675. Procedure for consideration of certain funding proposals*

This section sets forth the expedited Congressional procedures for consideration of a legislative funding proposal submitted by the DOT pursuant to section 674. (The procedure is similar to the one used for consideration of line item veto legislation.) Once a draft proposal has been submitted to Congress, the legislation would be introduced within 15 days and referred to the appropriate committee (or committees in the case of joint referral). Each committee would then have 45 days to consider and amend the legislation before it would automatically be discharged and placed on the calendar. In the Senate, a motion to proceed to consideration would be nondebatable. Debate would be limited to 20 hours and only

amendments related to aviation funding and the FAA would be in order. This section also contains an expedited procedure for consideration of any conference report.

The expedited legislative procedures in the bill do not imply that any particular approach to financing is preferable. The purpose of establishing the task force is to objectively evaluate the independent assessment and to generate legislative recommendations to address future financing needs.

*Section 676. Administrative provisions*

Section 676 creates a separate, dedicated account (established in the Treasury) for all new fees and other receipts (except for those associated with the Aviation Insurance Program) collected by the FAA. The receipts and disbursements of this account would be classified as offsetting collections and not be subject to budget caps, the appropriations process, or sequestration. Expenditure of amounts from the account could be used only for Congressionally authorized activities of the agency. This Treasury account goes very much to the heart of this bill by ensuring that revenues from the aviation community go directly to the FAA for the needs of the national air transportation system. Amounts credited to the account would not include amounts collected by the Administrator which, on the effective date of this bill, would be required pursuant to law to be credited to the General Fund of the Treasury. Such excluded amounts would continue to be credited to the General Fund by the Administrator.

This section also requires the FAA to develop a cost accounting system. The existing FAA accounting system masks the costs of providing the various services, which in turn has created cross-subsidies, misallocations, and inefficiencies. A cost accounting system would expose (to the MAC and Congress) FAA costs of providing each and every service, and provide incentives for the FAA to improve its performance, as an agency in general, and the ATC system's performance. By knowing the cost of a particular service, there will be a basis from which to propose alternate ways of providing that service. Moreover, determining the costs of the services provided by the FAA is a critical initial step to reforming the FAA. The FAA will need this information early in the process to be able to make informed decisions as to how best to proceed on reform. A subsequent step would be to determine what FAA can charge for the services it provides based in part on these cost determinations and input from the MAC. One example of how such cost information can be helpful was the FAA's determination that pre-flight services at FAA flight service stations, which had cost approximately $9 per transaction, could be provided by private businesses for about $2 per transaction.

This section also provides that when an air carrier is required by the Administrator, pursuant to this legislation, to collect a fee imposed on a third party by the FAA (e.g., a system based on a per passenger fee), the Administrator shall ensure that such air carrier may collect from such third party an additional uniform amount reflecting necessary and reasonable expenses (net of interest) incurred in collecting and handling the fee.

This section further requires that the Administrator provide to the Congress, prior to the submission of any proposed user fee or excise tax schedule, a report justifying the need for the proposed user fees or taxes and including other specified information such as steps the Administrator has taken to reduce costs and improve efficiency within FAA.

*Section 677. Advance appropriations for Airport and Airway Trust Fund activities*

Section 677 prescribes a three-year authorization and three-year appropriation cycle for the FAA to provide the agency with greater funding stability in planning its programs and activities.

*Section 678. Rural Air Service Survival Act*

Pursuant to section 678, authority to administer and operate the EAS program would be transferred from the DOT Secretary to the Administrator. Although responsibility for administering the EAS program is transferred, some language in this section refers to the DOT Secretary rather than the Administrator so that these amendments remain consistent with the provisions of the current statute. The program would be established at a $50 million level, with authority for the program to be funded by user fees collected under this legislation, including those specifically derived from overflights. At the end of each fiscal year, if less than $50 million has been obligated for EAS programs, the Administrator shall make those remaining amounts available under the Airport Improvement Program for grants to rural airports to improve rural air safety. This section also, in effect, repeals a provision in the current law sunsetting the EAS program.

## TITLE VII—PILOT RECORDS

*Section 701. Short title*

Section 701 cites the short title of title VII as the "Pilot Records Improvement Act of 1996".

*Section 702. Employment investigations of pilot applicants*

Section 702 requires that, before hiring an individual as a pilot, an air carrier would be required to request and receive: (1) FAA records (i.e., current airman certificates (including airman medical certificates) and associated type ratings, and summaries of legal enforcement actions); (2) records from any carrier that has employed the individual at any time during the 5-year period preceding the date of the employment application of the individual; and (3) National Driver Register (NDR) records from the chief driver licensing official of a State concerning the motor vehicle driving record of the individual.

An air carrier making a records request must obtain a consent for release of the records from the prospective employee/pilot, and may require the pilot to execute a liability release regarding the exchange of those records.

The FAA would do a periodic review and recommend changes to the records that the airlines, the FAA, and others are required to maintain pursuant to this section.

A recent or current employer would not be permitted to furnish a pilot record in response to a request made by a prospective employing carrier without first obtaining the written consent of the individual whose records are being requested. If written consent from the individual has been received, the person would be required to furnish all of the records maintained by the person that have been requested within 30 days of obtaining the written consent of the individual.

A current or previous employer who receives a request for pilot records from a prospective employing carrier would be required to provide written notification to the individual of the request for that individual's records, and a copy of such records, if requested by the individual. A current or previous employer who receives a request for a pilot's records may establish a reasonable charge for the cost of processing the request and furnishing copies of the requested records to the requesting carrier.

The FAA Administrator also would promulgate standard forms relating to the transference of pilot records from the former employing carrier to the prospective employing carrier. Standard forms also would be issued by the Administrator for the use of a former employing carrier to obtain the written consent of the pilot/applicant, and to inform the applicant of the request and of his or her right to receive a copy of any records furnished in response to the request.

An air carrier that receives the records of a pilot applicant must give that individual a reasonable opportunity to submit written comments to correct inaccuracies. Air carriers also must use any records for relevant and appropriate purposes, and take action to protect the personal privacy of the pilots and confidentiality of shared pilot records.

The FAA Administrator may prescribe such regulations as necessary to protect the personal privacy of an individual whose records are requested and the confidentiality of those records, to limit the further dissemination of records received by the employing carrier, and to ensure prompt compliance with any request for records by an employing carriers.

No action or proceeding in the nature of defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any State or Federal law with respect to the furnishing or use of such records, may be brought by or on behalf of an individual who is seeking a position with an air carrier as a pilot against: 1) the prospective employing air carrier for requesting the individual's records; 2) the current or past employer who has complied with such request after obtaining the written consent of the individual whose records have been requested; or 3) an agent or employee of the prospective employing air carrier or the current or past employer.

No State or locality may enact, prescribe, issue, continue in effect, or enforce any law, regulation, standard, or other provision having the force and effect of law that prohibits, penalizes, or imposes liability for furnishing or using pilot records.

The limitation on liability and preemption would not apply with respect to a person (e.g., an employer) who, in response to a request for records, furnishes information that the person knows is

false and the false information was maintained in violation of a U.S. criminal statute.

*Section 703. Study of minimum standards for pilot qualifications*

Section 703 requires the FAA Administrator to appoint a task force to conduct a study directed toward the development of standards and criteria for pre-employment screening tests and for pilot training facilities that would assure pilots trained at such facilities meet the newly developed pre-employment screening standards and criteria.

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):

# INTERNAL REVENUE CODE OF 1986

## CHAPTER 98—TRUST FUND CODE

### Subchapter A—Establishment of Trust Funds

**SEC. 9502. AIRPORT AND AIRWAY TRUST FUND.**

(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Airport and Airway Trust Fund", consisting of such amounts as may be appropriated or credited to the Airport and Airway Trust Fund as provided in this section or section 9602(b).

(b) TRANSFER TO AIRPORT AND AIRWAY TRUST FUND OF AMOUNTS EQUIVALENT TO CERTAIN TAXES.—There is hereby appropriated to the Airport and Airway Trust Fund—

(1) amounts equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1996, under subsections (c) and (e) of section 4041 (taxes on aviation fuel) and under sections 4261 and 4271 (taxes on transportation by air);

(2) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1996, under section 4081 (to the extent of 14 cents per gallon), with respect to gasoline used in aircraft;

(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1996, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate); and

(4) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1996, under section 4071 with respect to tires of the types used on aircraft.

(c) APPROPRIATION OF ADDITIONAL SUMS.—There are hereby authorized to be appropriated to the Airport and Airway Trust Fund such additional sums as may be required to make the expenditures referred to in subsection (d) of this section.

(d) EXPENDITURES FROM AIRPORT AND AIRWAY TRUST FUND.—

(1) AIRPORT AND AIRWAY PROGRAM.—Amounts in the Airport and Airway Trust Fund shall be available, as provided by appropriation Acts, for making expenditures before October 1, [1996,] *1997,* to meet those obligations of the United States—

(A) incurred under title I of the Airport and Airway Development Act of 1970 or of the Airport and Airway Development Act Amendments of 1976 or of the Aviation Safety and Noise Abatement Act of 1979 or under the Fiscal Year 1981 Airport Development Authorization Act or the provisions of the Airport and Airway Improvement Act of 1982 or the Airport and Airway Safety and Capacity Expansion Act of 1987 or the Federal Aviation Administration Research, Engineering, and Development Authorization Act of 1990 or the Aviation Safety and Capacity Expansion Act of 1990 or the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 or the Airport Improvement Program Temporary Extension Act of 1994 or the Federal Aviation Administration Authorization Act of 1994 *or the Federal Aviation Reauthorization Act of 1996;*

(B) heretofore or hereafter incurred under part A of subtitle VII of title 49, United States Code, which are attributable to planning, research and development, construction, or operation and maintenance of—

(i) air traffic control,

(ii) air navigation,

(iii) communications, or

(iv) supporting services,

for the airway system; or

(C) for those portions of the administrative expenses of the Department of Transportation which are attributable to activities described in subparagraph (A) or (B).

Any reference in subparagraph (A) to an Act shall be treated as a reference to such Act and the corresponding provisions (if any) of title 49, United States Code, as such Act and provisions were in effect on the date of the enactment of the last Act referred to in subparagraph (A).

(2) TRANSFERS FROM AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN REFUNDS.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the amounts paid after August 31, 1982, in respect of fuel used in aircraft, under section 6420 (relating to amounts paid in respect of gasoline used on farms, 6421 (relating to amounts paid in respect of gasoline used for certain nonhighway purposes), or 6427 (relating to fuels not used for taxable purposes).

(3) TRANSFERS FROM THE AIRPORT AND AIRWAY TRUST FUND ON ACCOUNT OF CERTAIN SECTION 34 CREDITS.—The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section 34 with respect to fuel used after August 31, 1982. Such amounts shall be transferred on the basis of estimates by the Secretary

of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the credits allowed.

(4) TRANSFERS FOR REFUNDS AND CREDITS NOT TO EXCEED TRUST FUND REVENUES ATTRIBUTABLE TO FUEL USED.—The amounts payable from the Airport and Airway Trust Fund under paragraph (2) or (3) shall not exceed the amounts required to be appropriated to such Trust Fund with respect to fuel so used.

(e) SPECIAL RULES FOR TRANSFERS INTO TRUST FUND.—

(1) INCREASES IN TAX REVENUES BEFORE 1993 TO REMAIN IN GENERAL FUND.—In the case of taxes imposed before January 1, 1993, the amounts required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be determined without regard to any increase in a rate of tax enacted by the Revenue Reconciliation Act of 1990.

(2) CERTAIN TAXES ON ALCOHOL MIXTURES TO REMAIN IN GENERAL FUND.—For purposes of this section, the amounts which would (but for this paragraph) be required to be appropriated under paragraphs (1), (2), and (3) of subsection (b) shall be reduced by—

(A) 0.6 cent per gallon in the case of taxes imposed on any mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) if any portion of such alcohol is ethanol, and

(B) 0.67 cent per gallon in the case of fuel used in producing a mixture described in subparagraph (A).

(f) DEFINITION OF AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of this section—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the Airport and Airway Trust Fund financing rate is—

(A) in the case of fuel used in an aircraft in noncommercial aviation (as defined in section 4041(c)(4)), 17.5 cents per gallon, and

(B) in the case of fuel used in an aircraft other than in noncommercial aviation (as so defined), zero.

(2) ALCOHOL FUELS.—If the rate of tax on any fuel is determined under section 4091(c), the Airport and Airway Trust Fund financing rate is the excess (if any) of the rate of tax determined under section 4091(c) over 4.4 cents per gallon ( 10/9 of 4.4 cents per gallon in the case of a rate of tax determined under section 4091(c)(2)).

(3) TERMINATION.—Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate is zero with respect to tax received after December 31, 1995.

# 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. [The Administrator] *Except as provided in subsection (f) of this section 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 the date of the enactment of this sentence 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) The Secretary of Transportation shall carry out the duties and powers,and controls the personnel and activities, of the Administration. The Secretary may not submit decisions for the approval

of, nor be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.]

*(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 of the Administration.*

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

*(ii) 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 to the contrary, 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 18 months after the date of publication in the Federal Register of a notice of proposed rulemaking or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after that date.*

*(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 $50,000,000 or more (adjusted annually for inflation beginning with the year following the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996) in any 1 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 it is likely to—*

*(I) have an annual effect on the economy of $100 million or more or adversely affect in a 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;*

*(II) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;*

*(III) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or*

*(IV) raise novel legal or policy issues arising out of legal mandates.*

*(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 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 the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 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 regula-*

*tions that were issued before the date of 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 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 on the Executive Schedule under sections 5312 through 5316 of title 5;*

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

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

(g) DUTIES AND POWERS OF ADMINISTRATOR.—

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

(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132 (c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113 (a), (c), and (d), 40114(a), 40119, 44501 (a) and (c), 44502 (a)(1), (b), and (c), 44504, 44505, 44507, 44508, 44511–44513, 44701–44716, 44718(c), 44721(a), 44901, 44902, 44903 (a)–(c) and (e), 44906, 44912, 44935–44937, and 44938 (a) and (b), chapter 451 [49 U.S.C. 45101 et seq.], sections 45302, 45303, 46104, 46301 (d) and (h)(2), 46303(c), 46304–46308, 46310, 46311, and 46313–46316, chapter 465 [49 U.S.C. 46501 et seq.], 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 [5 U.S.C. 901 et seq.]. 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.—There is authorized to be appropriated to the Secretary of Transportation for operations of the Administration $4,088,000,000 for fiscal year 1991, $4,412,600,000 for fiscal year 1992, $4,716,500,000 for fiscal year 1993, $4,576,000,000 for fiscal year 1994, $4,674,000,000 for fiscal year 1995, [and] $4,810,000,000 for fiscal year [1996.] *1996, and $5,000,000,000 for fiscal year 1997.*

*(l) INTERACCOUNT FLEXIBILITY.—*

*(1) Except as provided in paragraph (2), the Administrator may transfer budget authority derived from trust funds among appropriations authorized by subsection (k) and sections 48101 and 48102, if the aggregate estimated outlays in such accounts in the fiscal year in which the transfers are made will not be increased as a result of such transfer.*

*(2) The transfer of budget authority under paragraph (1) may be made only to the extent that outlays do not exceed the aggregate estimated outlays.*

*(3) A transfer of budget authority under paragraph (1) may not result in a net decrease of more than 5 percent, or a net increase of more than 10 percent, in the budget authority available under any appropriation involved in that transfer.*

*(4) Any action taken pursuant to this section shall be treated as a reprogramming of funds that is subject to review by the appropriate committees of the Congress.*

*(5) The Administrator may transfer budget authority pursuant to this section only after—*

*(A) submitting a written explanation of the proposed transfer 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; and*

*(B) 30 days have passed after the explanation is submitted and none of the Committees notifies the Administrator in writing that it objects to the proposed transfer within the 30 day period.*

*(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) PERSONNEL AND SERVICES.—*

*(1) OFFICERS AND EMPLOYEES.—Upon development of a personnel management system under section 40121(c) of this title and section 347 of Public Law 104–50, 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. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and compensated in accordance with title 5. 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 40121c), 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) IN GENERAL.—(i) 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.*

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

*(iii) 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.*

*(n) 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.*

*(o) 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.*

*(p) 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 this Act 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.*

*(q) MANAGEMENT ADVISORY COUNCIL.—*

*(1) ESTABLISHMENT.—Within 3 months after the date of 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 Federal Aviation Administration management, policy, spending, user fees, 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 members, who shall consist of—*

*(A) a designee of the Secretary of Transportation;*

*(B) a designee of the Secretary of Defense; and*

*(C) 13 members representing aviation interests, appointed by the President by and with the advice and consent of the Senate.*

*(3) QUALIFICATIONS.—No member appointed under paragraph (2)(C) may serve as an officer or employee of the United States Government while serving as a member of the Council.*

*(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) PANELS AND WORKING GROUPS.—The chairman of the Council shall establish a panel or working group, from among the members of the Council, on the development of all fees under sections 45301 and 45302, and may establish such additional panels and working groups, consisting of members of the Council, as may be necessary to carry out the functions of the Council.*

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

*(D) 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.—(i) Except as provided in subparagraph (B), members of the Council appointed by the President under paragraph (2)(C) shall be appointed for a term of 3 years.*

*(ii) Of the members first appointed by the President—*

*(I) 4 shall be appointed for terms of 1 year;*

*(II) 5 shall be appointed for terms of 2 years; and*

*(III) 4 shall be appointed for terms of 3 years.*

*(iii) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.*

*(iv) A member whose term expires shall continue to serve until the date on which the member's successor takes office.*

*(B) 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.*

*(C) 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.*

*(D) 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.*

# Subtitle VI—Motor Vehicle and Driver Programs

## PART A—GENERAL

### CHAPTER 303—NATIONAL DRIVER REGISTER

#### § 30305. Access to Register Information

(a) REFERRALS OF INFORMATION REQUESTS.—

(1) To carry out duties related to driver licensing, driver improvement, or transportation safety, the chief driver licensing official of a participating State may request the Secretary of Transportation to refer, electronically or by United States mail, a request for information about the motor vehicle driving record of an individual to the chief driver licensing official of a State of record.

(2) The Secretary of Transportation shall relay, electronically or by United States mail, information received from the chief driver licensing official of a State of record in response to a request under paragraph (1) of this subsection to the chief driver licensing official of the participating State requesting the information. However, the Secretary may refuse to relay information to the chief driver licensing official of a participating State that does not comply with section 30304 of this title.

(b) REQUESTS TO OBTAIN INFORMATION.—

(1) The Chairman of the National Transportation Safety Board and the Administrator of the Federal Highway Administration may request the chief driver licensing official of a State to obtain information under subsection (a) of this section about an individual who is the subject of an accident investigation conducted by the Board or the Administrator. The Chairman and the Administrator may receive the information.

(2) An individual who is employed, or is seeking employment, as a driver of a motor vehicle may request the chief driver licensing official of the State in which the individual is employed or seeks employment to provide information about the individual under subsection (a) of this section to the individual's employer or prospective employer. An employer or prospective employer may receive the information and shall make the information available to the individual. Information may not be obtained from the National Driver Register under this paragraph if the information was entered in the Register more than 3 years before the request.

(3) An individual who has received, or is applying for, an airman's certificate may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the Administrator of the Federal Aviation Administration. The Administrator may receive the information and shall make the information available to the individual for review and written comment. The Administrator may use the information to verify information required to be reported to the Administrator by an airman applying for an airman medical certificate and to evaluate whether the air-

man meets the minimum standards prescribed by the Administrator to be issued an airman medical certificate. The Administrator may not otherwise divulge or use the information. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(4) An individual who is employed, or is seeking employment, by a rail carrier as an operator of a locomotive may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the individual's employer or prospective employer or to the Secretary of Transportation. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(5) An individual who holds, or is applying for, a license or certificate of registry under section 7101 of title 46, or a merchant mariner's document under section 7302 of title 46, may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to the Secretary of the department in which the Coast Guard is operating. The Secretary may receive the information and shall make the information available to the individual for review and written comment before denying, suspending, or revoking the license, certificate, or document of the individual based on the information and before using the information in an action taken under chapter 77 of title 46 [46 U.S.C. 7701 et seq.]. The Secretary may not otherwise divulge or use the information, except for purposes of section 7101, 7302, or 7703 of title 46. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

(6) An individual may request the chief driver licensing official of a State to obtain information about the individual under subsection (a) of this section—

(A) to learn whether information about the individual is being provided;

(B) to verify the accuracy of the information; or

(C) to obtain a certified copy of the information.

*(7) An individual who is seeking employment by an air carrier as a pilot may request the chief driver licensing official of a State to provide information about the individual under paragraph (2) to the prospective employer of the individual or to the Secretary of Transportation. Information may not be obtained from the National Driver Register under this subsection if the information was entered in the Register more than 5 years before the request unless the information is about a revocation or suspension still in effect on the date of the request.*

[(7)] *(8)* A request under this subsection shall be made in the form and way the Secretary of Transportation prescribes by regulation.

(c) RELATIONSHIP TO OTHER LAWS.—A request for, or receipt of, information from the Register is subject to sections 552 and 552a of title 5, and other applicable laws of the United States or a State, except that—

(1) the Secretary of Transportation may not relay or otherwise provide information specified in section 30304(b)(1)(A) or (C) of this title to a person not authorized by this section to receive the information;

(2) a request for, or receipt of, information by a chief driver licensing official, or by a person authorized by subsection (b) of this section to request and receive the information, is deemed to be a routine use under section 552a(b) of title 5; and

(3) receipt of information by a person authorized by this section to receive the information is deemed to be a disclosure under section 552a(c) of title 5, except that the Secretary of Transportation is not required to retain the accounting made under section 552a(c)(1) for more than 7 years after the disclosure.

(d) AVAILABILITY OF INFORMATION PROVIDED UNDER PRIOR LAW.—Information provided by a State under the Act of July 14, 1960 (Public Law 86-660, 74 Stat. 526) [23 U.S.C. 313 note], as restated by section 401 of the National Traffic and Motor Vehicle Safety Act of 1966 (Public Law 89-563, 80 Stat. 730) [23 U.S.C. 313 note], and under this chapter [49 U.S.C. 30301 et seq.], shall be available under this section during the transition from the register maintained under that Act to the Register maintained under this chapter [49 U.S.C. 30301 et seq.].

# PART A—AIR COMMERCE AND SAFETY

## Subpart I—General

### CHAPTER 401—GENERAL PROVISIONS

* * * * * * *

#### § 40104. Promotion of civil aeronautics and *safety of* air commerce

(a) DEVELOPING CIVIL AERONAUTICS AND *SAFETY OF* AIR COMMERCE.—The Administrator of the Federal Aviation Administration shall encourage the development of civil aeronautics and *safety of* air commerce in and outside the United States. In carrying out this subsection, the Administrator shall take action that the Administrator considers necessary to establish, within available resources, a program to distribute civil aviation information in each region served by the Administration. The program shall provide, on request, informational material and expertise on civil aviation to State and local school administrators, college and university officials, and officers of other interested organizations.

(b) DEVELOPING AND CONSTRUCTING CIVIL SUPERSONIC AIRCRAFT.—The Secretary of Transportation may develop and construct a civil supersonic aircraft.

* * * * * * *

**§ 40110. General procurement authority**

(a) GENERAL.—In carrying out this part [49 U.S.C. 40101 et seq.], the Administrator of the Federal Aviation Administration—

(1) to the extent that amounts are available for obligation, may acquire services or, by condemnation or otherwise, an interest in property, including an interest in airspace immediately adjacent to and needed for airports and other air navigation facilities owned by the United States Government and operated by the Administrator;

(2) may dispose of an interest in property for adequate compensation; and

(3) may construct and improve laboratories and other test facilities.

*(b) ACQUISITION OF HOUSING UNITS.—*

*(1) AUTHORITY.—In carrying out this part, the Administrator may acquire interests in housing units outside the contiguous United States.*

*(2) CONTINUING OBLIGATIONS.—Notwithstanding section 1341 of title 31, United States Code, the Administrator may acquire an interest in a housing unit under paragraph (1) even if there is an obligation thereafter to pay necessary and reasonable fees duly assessed upon such unit, including fees related to operation, maintenance, taxes, and insurance.*

*(3) CERTIFICATION TO CONGRESS.—The Administrator may acquire an interest in a housing unit under paragraph (1) only if the Administrator transmits to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate at least 30 days before completing the acquisition a report containing—*

*(A) a description of the housing unit and its price; and*

*(B) a certification that acquiring the housing unit is the most cost-beneficial means of providing necessary accommodations in carrying out this part.*

*(4) PAYMENT OF FEES.—The Administrator may pay, when due, fees resulting from the acquisition of an interest in a housing unit under this subsection from any amounts made available to the Administrator.*

**[**(b)**]** *(c)* DUTIES AND POWERS.—When carrying out subsection (a) of this section, the Administrator of the Federal Aviation Administration—

(1) is the senior procurement executive referred to in section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) for approving the justification for using procedures other than competitive procedures, as required under section 303(f)(1)(B)(iii) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)(B)(iii)); and

(2) may—

(A) notwithstanding section 1341(a)(1) of title 31, lease an interest in property for not more than 20 years;

(B) consider the reasonable probable future use of the underlying land in making an award for a condemnation of an interest in airspace;

(C) construct, or acquire an interest in, a public building (as defined in section 13 of the Public Buildings Act of 1959 (40 U.S.C. 612)) only under a delegation of authority from the Administrator of General Services;

(D) use procedures other than competitive procedures, as provided under section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c));

(E) use procedures other than competitive procedures only when the property or services needed by the Administrator of the Federal Aviation Administration are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the Administrator; and

(F) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under title II of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481 et seq.).

**§ 40116. State taxation**

(a) DEFINITION.—In this section, "State" includes the District of Columbia, a territory or possession of the United States, and a political authority of at least 2 States.

(b) PROHIBITIONS.—Except as provided in [subsection (c) of this section and] section 40117 of this title, a State or political subdivision of a State may not levy or collect a tax, fee, head charge, or other charge on—

(1) an individual traveling in air commerce;

(2) the transportation of an individual traveling in air commerce;

(3) the sale of air transportation; or

(4) the gross receipts from that air commerce or transportation.

(c) AIRCRAFT TAKING OFF OR LANDING IN STATE.—A State or political subdivision of a State may levy or collect a tax on or related to a flight of a commercial aircraft or an activity or service on the aircraft only if the aircraft takes off or lands in the State or political subdivision as part of the flight.

(d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.—

(1) In this subsection—

(A) "air carrier transportation property" means property (as defined by the Secretary of Transportation) that an air carrier providing air transportation owns or uses.

(B) "assessment" means valuation for a property tax levied by a taxing district.

(C) "assessment jurisdiction" means a geographical area in a State used in determining the assessed value of property for ad valorem taxation.

(D) "commercial and industrial property" means property (except transportation property and land used primarily for agriculture or timber growing) devoted to a commercial or industrial use and subject to a property tax levy.

(2)(A) A State, political subdivision of a State, or authority acting for a State or political subdivision may not do any of the following acts because those acts unreasonably burden and discriminate against interstate commerce:

(i) assess air carrier transportation property at a value that has a higher ratio to the true market value of the property than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(ii) levy or collect a tax on an assessment that may not be made under clause (i) of this subparagraph.

(iii) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate greater than the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(iv) Levy or collect a tax, fee, or charge, first taking effect after the date of the enactment of this clause, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee, or charge wholly utilized for airport or aeronautical purposes.

(B) Subparagraph (A) of this paragraph does not apply to an in lieu tax completely used for airport and aeronautical purposes.

(e) OTHER ALLOWABLE TAXES AND CHARGES.—Except as provided in subsection (d) of this section, a State or political subdivision of a State may levy or collect—

(1) taxes (except those taxes enumerated in subsection (b) of this section), including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and

(2) reasonable rental charges, landing fees, and other service charges from aircraft operators for using airport facilities of an airport owned or operated by that State or subdivision.

(f) PAY OF AIR CARRIER EMPLOYEES.—

(1) In this subsection—

(A) "pay" means money received by an employee for services.

(B) "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

(C) an employee is deemed to have earned 50 percent of the employee's pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the

total scheduled flight time of the employee when employed during the calendar year.

(2) The pay of an employee of an air carrier having regularly assigned duties on aircraft in at least 2 States is subject to the income tax laws of only the following:

(A) the State or political subdivision of the State that is the residence of the employee.

(B) the State or political subdivision of the State in which the employee earns more than 50 percent of the pay received by the employee from the carrier.

(3) Compensation paid by an air carrier to an employee described in subsection (a) in connection with such employee's authorized leave or other authorized absence from regular duties on the carrier's aircraft in order to perform services on behalf of the employee's airline union shall be subject to the income tax laws of only the following:

(A) The State or political subdivision of the State that is the residence of the employee.

(B) The State or political subdivision of the State in which the employee's scheduled flight time would have been more than 50 percent of the employee's total scheduled flight time for the calendar year had the employee been engaged full time in the performance of regularly assigned duties on the carrier's aircraft.

## CHAPTER 401—GENERAL PROVISIONS

### § 40117. Passenger facility fees

(a) DEFINITIONS.—In this section—

(1) "airport", "commercial service airport", and "public agency" have the same meanings given those terms in section 47102 of this title.

(2) "eligible agency" means a public agency that controls a commercial service airport.

(3) "eligible airport-related project" means a project—

(A) for airport development or airport planning under subchapter I of chapter 471 of this title [49 U.S.C. 47101 et seq.];

(B) for terminal development described in section 47110(d) of this title;

(C) for airport noise capability planning under section 47505 of this title;

(D) to carry out noise compatibility measures eligible for assistance under section 47504 of this title, whether or not a program for those measures has been approved under section 47504; *and*

(E) for constructing gates and related areas at which passengers board or exit **[**aircraft; and**]** *aircraft.*

**[**(F) in addition to projects eligible under subparagraph (A), the construction, reconstruction, repair, or improvement of areas of an airport used for the operation of aircraft or actions to mitigate the environmental effects of such construction, reconstruction, repair, or improvement when the construction, reconstruction, repair, improve-

ment, or action is necessary for compliance with the responsibilities of the operator or owner of the airport under the Americans with Disabilities Act of 1990, the Clean Air Act [42 U.S.C. 7401 et seq.], or the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] with respect to the airport.]

(4) "passenger facility fee" means a fee imposed under this section.

(5) "passenger facility revenue" means revenue derived from a passenger facility fee.

(b) GENERAL AUTHORITY.—

(1) The Secretary of Transportation may authorize under this section an eligible agency to impose a passenger facility fee of $1, $2, or $3 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, to be carried out in connection with the airport or any other airport the agency controls.

(2) A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not regulate or prohibit the imposition or collection of a passenger facility fee or the use of the passenger facility revenue.

(3) A passenger facility fee may be imposed on a passenger of an air carrier or foreign air carrier originating or connecting at the commercial service airport that the agency controls.

(c) APPLICATIONS.—

(1) An eligible agency must submit to the Secretary an application for authority to impose a passenger facility fee. The application shall contain information and be in the form that the Secretary may require by regulation.

(2) Before submitting an application, the eligible agency must provide reasonable notice to, and an opportunity for consultation with, air carriers and foreign air carriers operating at the airport. The Secretary shall prescribe regulations that define reasonable notice and contain at least the following requirements:

(A) The agency must provide written notice of individual projects being considered for financing by a passenger facility fee and the date and location of a meeting to present the projects to air carriers and foreign air carriers operating at the airport.

(B) Not later than 30 days after written notice is provided under subparagraph (A) of this paragraph, each air carrier and foreign air carrier operating at the airport must provide to the agency written notice of receipt of the notice. Failure of a carrier to provide the notice may be deemed certification of agreement with the project by the carrier under subparagraph (D) of this paragraph.

(C) Not later than 45 days after written notice is provided under subparagraph (A) of this paragraph, the agency must conduct a meeting to provide air carriers and for-

eign air carriers with descriptions of projects and justifications and a detailed financial plan for projects.

(D) Not later than 30 days after the meeting, each air carrier and foreign air carrier must provide to the agency certification of agreement or disagreement with projects (or total plan for the projects). Failure to provide the certification is deemed certification of agreement with the project by the carrier. A certification of disagreement is void if it does not contain the reasons for the disagreement.

(3) After receiving an application, the Secretary shall provide notice and an opportunity to air carriers, foreign air carriers, and other interested persons to comment on the application. The Secretary shall make a final decision on the application not later than 120 days after receiving it.

(d) LIMITATIONS ON APPROVING APPLICATIONS.—The Secretary may approve an application that an eligible agency has submitted under subsection (c) of this section to finance a specific project only if the Secretary finds, based on the application, that—

(1) the amount and duration of the proposed passenger facility fee will result in revenue (including interest and other returns on the revenue) that is not more than the amount necessary to finance the specific project;

(2) each project is an eligible airport-related project that will—

(A) preserve or enhance capacity, safety, or security of the national air transportation system;

(B) reduce noise resulting from an airport that is part of the system; or

(C) provide an opportunity for enhanced competition between or among air carriers and foreign air carriers; and

(3) the application includes adequate justification for each of the specific projects.

(e) LIMITATIONS ON IMPOSING FEES.—

(1) An eligible agency may impose a passenger facility fee only—

(A) if the Secretary approves an application that the agency has submitted under subsection (c) of this section; and

(B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility fee may not be collected from a passenger—

(A) for more than 2 boardings on a one-way trip or a trip in each direction of a round trip;

(B) for the boarding to an eligible place under subchapter II of chapter 417 of this title [49 U.S.C. 41731 et seq.] for which essential air service compensation is paid under subchapter II [49 U.S.C. 41731 et seq.];

(C) for a project the Secretary does not approve under this section before October 1, 1993, if, during the fiscal year ending September 30, 1993, the amount available for obligation under subchapter II of chapter 417 of this title

[49 U.S.C. 41731 et seq.] is less than $38,600,000, except that this clause—

(i) does not apply if the amount available for obligation under subchapter II of chapter 417 of this title [49 U.S.C. 41731 et seq.] is less than $38,600,000 because of sequestration or other general appropriations reductions applied proportionately to appropriations accounts throughout an appropriation law; and

(ii) does not affect the authority of the Secretary to approve the imposition of a fee or the use of revenues, derived from a fee imposed under an approval made under this section, by a public agency that has received an approval to impose a fee under this section before September 30, 1993, regardless of whether the fee is being imposed on September 30, 1993; and

(D) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement, including any case in which the passenger obtained the ticket for the air transportation with a frequent flier award coupon without monetary payment.

(f) LIMITATIONS ON CONTRACTS, LEASES, AND USE AGREEMENTS.—

(1) A contract between an air carrier or foreign air carrier and an eligible agency made at any time may not impair the authority of the agency to impose a passenger facility fee or to use the passenger facility revenue as provided in this section.

(2) A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air carrier or foreign air carrier, as defined by regulations of the Secretary.

(3) A lease or use agreement of an air carrier or foreign air carrier related to a project whose construction or expansion was financed with a passenger facility fee may not restrict the eligible agency from financing, developing, or assigning new capacity at the airport with passenger facility revenue.

(g) TREATMENT OF REVENUE.—

(1) Passenger facility revenue is not airport revenue for purposes of establishing a price under a contract between an eligible agency and an air carrier or foreign air carrier.

(2) An eligible agency may not include in its price base the part of the capital costs of a project paid for by using passenger facility revenue to establish a price under a contract between the agency and an air carrier or foreign air carrier.

(3) For a project for terminal development, gates and related areas, or a facility occupied or used by at least one air carrier or foreign air carrier on an exclusive or preferential basis, a price payable by an air carrier or foreign air carrier using the facilities must at least equal the price paid by an air carrier or foreign air carrier using a similar facility at the airport that was not financed with passenger facility revenue.

(h) COMPLIANCE.—

(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring recordkeeping and auditing of accounts maintained by an air carrier or for-

eign air carrier and its agent collecting a passenger facility fee and by the eligible agency imposing the fee.

(2) The Secretary periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the Secretary may end any part of the authority of the agency to impose a passenger facility fee to the extent the Secretary decides that the revenue is not being used as provided in this section.

(3) The Secretary may set off amounts necessary to ensure compliance with this section against amounts otherwise payable to an eligible agency under subchapter I of chapter 471 of this title [49 U.S.C. 47101 et seq.] if the Secretary decides a passenger facility fee is excessive or that passenger facility revenue is not being used as provided in this section.

(i) REGULATIONS.—The Secretary shall prescribe regulations necessary to carry out this section. The regulations—

(1) may prescribe the time and form by which a passenger facility fee takes effect; and

(2) shall—

(A) require an air carrier or foreign air carrier and its agent to collect a passenger facility fee that an eligible agency imposes under this section;

(B) establish procedures for handling and remitting money collected;

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the fee, is paid promptly to the eligible agency for which they are collected; and

(D) require that the amount collected for any air transportation be noted on the ticket for that air transportation.

### *§ 40120. Protection of voluntarily submitted information*

*(a) IN GENERAL.—Notwithstanding any other provision of law, neither the Administrator of the Federal Aviation Administration, nor any agency receiving information from the Administrator, shall disclose voluntarily-provided safety or security related information if the Administrator finds that—*

*(1) the disclosure of the information would inhibit the voluntary provision of that type of information and that the receipt of that type of information aids in fulfilling the Administrator's safety and security responsibilities; and*

*(2) withholding such information from disclosure would be consistent with the Administrator's safety and security responsibilities.*

*(b) REGULATIONS.—The Administrator shall issue regulations to carry out this section. S6603*

### *§ 40121. Air traffic control modernization reviews*

*(a) REQUIRED TERMINATIONS OF ACQUISITIONS.—The Administrator of the Federal Aviation Administration (hereafter referred to in this section as the "Administrator") shall terminate any program initiated after the date of enactment of the Air Traffic Management*

*System Performance Improvement Act of 1996 and funded under the Facilities and Equipment account that—*

*(1) is more than 50 percent over the cost goal established for the program;*

*(2) fails to achieve at least 50 percent of the performance goals established for the program; or*

*(3) is more than 50 percent behind schedule as determined in accordance with the schedule goal established for the program.*

*(b) AUTHORIZED TERMINATIONS OF ACQUISITIONS.—The Administrator shall consider terminating, under the authority of subsection (a), any substantial acquisition that—*

*(1) is more than 10 percent over the cost goal established for the program;*

*(2) fails to achieve at least 90 percent of the performance goals established for the program; or*

*(3) is more than 10 percent behind schedule as determined in accordance with the schedule goal established for the program.*

*(c) EXCEPTIONS AND REPORT.—*

*(1) CONTINUANCE OF PROGRAM, ETC.—Notwithstanding subsection (a), the Administrator may continue an acquisitions program required to be terminated under subsection (a) if the Administrator determines that termination would be inconsistent with the development or operation of the national air transportation system in a safe and efficient manner.*

*(2) DEPARTMENT OF DEFENSE.—The Department of Defense shall have the same exemptions from acquisition laws as are waived by the Administrator under section 348(b) of Public Law 104–50 when engaged in joint actions to improve or replenish the national air traffic control system. The Administration may acquire real property, goods, and services through the Department of Defense or other appropriate agencies, but is bound by the acquisition laws and regulations governing those cases.*

*(3) REPORT.—If the Administrator makes a determination under paragraph (1), the Administrator shall transmit a copy of the determination, together with a statement of the basis for the determination, to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.*

### *§ 40122. Federal Aviation Administration personnel management system*

*(a) IN GENERAL.—*

*(1) CONSULTATION AND NEGOTIATION.—In developing and making changes to the personnel management system initially implemented by the Administrator on April 1, 1996, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration.*

*(2) MEDIATION.—If the Administrator does not reach an agreement under paragraph (1) with the exclusive bargaining representatives, the services of the Federal Mediation and Con-*

*ciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator's proposed change to the personnel management system shall not take effect until 60 days have elapsed after the Administrator has transmitted the proposed change, along with the objections of the exclusive bargaining representatives to the change, and the reasons for such objections, to the Congress.*

*(3) COST SAVINGS AND PRODUCTIVITY GOALS.—The Administration and the exclusive bargaining representatives of the employees shall use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units.*

*(4) ANNUAL BUDGET DISCUSSIONS.—The Administration and the exclusive bargaining representatives of the employees shall meet annually for the purpose of finding additional cost savings within the Administration's annual budget as it applies to each of the affected bargaining units and throughout the agency.*

*(b) EXPERT EVALUATION.—On the date which is 3 years after the personnel management system is implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. For this purpose, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.*

*(c) PAY RESTRICTION.—No officer or employee of the Administration may receive an annual rate of basic pay in excess of the annual rate of basic pay payable to the Administrator.*

*(d) ETHICS.—The Administration shall be subject to Executive Order 12674 and regulations and opinions promulgated by the Office of Government Ethics, including those set forth in section 2635 of title 5 of the Code of Federal Regulations.*

*(e) EMPLOYEE PROTECTIONS.—Until July 1, 1999, basic wages (including locality pay) and operational differential pay provided employees of the Administration shall not be involuntarily adversely affected by reason of the enactment of this section, except for unacceptable performance or by reason of a reduction in force or reorganization or by agreement between the Administration and the affected employees' exclusive bargaining representative.*

*(f) LABOR-MANAGEMENT AGREEMENTS.—Except as otherwise provided by this title, all labor-management agreements covering employees of the Administration that are in effect on the effective date of the Air Traffic Management System Performance Improvement Act of 1996 shall remain in effect until their normal expiration date, unless the Administrator and the exclusive bargaining representative agree to the contrary.*

### § **[40120.]** ***40123*** **Relationship to other laws**

(a) NONAPPLICATION.—Except as provided in the International Navigational Rules Act of 1977 (33 U.S.C. 1601 et seq.), the navigation and shipping laws of the United States and the rules for the

prevention of collisions do not apply to aircraft or to the navigation of vessels related to those aircraft.

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# Subpart II—Economic Regulation

## CHAPTER 417—OPERATIONS OF CARRIERS

### Subchapter II—Small Community Air Service

### § 41737. Compensation guidelines, limitations, and claims

(a) COMPENSATION GUIDELINES.—

(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter [49 U.S.C. 41731 et seq.]. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter [49 U.S.C. 41731 et seq.]. The guidelines shall—

(A) provide for a reduction in compensation when an air carrier does not provide service or transportation agreed to be provided;

(B) consider amounts needed by an air carrier to promote public use of the service or transportation for which compensation is being paid; and

(C) include expense elements based on representative costs of air carriers providing scheduled air transportation of passengers, property, and mail on aircraft of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter [49 U.S.C. 41731 et seq.].

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter [49 U.S.C. 41731 et seq.] only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter [49 U.S.C. 41731 et seq.], the Secretary shall—

(1) pay or deny the United States Government's share of a claim; and

(2) if denying the claim, notify the carrier of the denial and the reasons for the denial.

(d) AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.—

(1) The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter [49 U.S.C. 41731 et seq.]. An agreement by the Secretary under

this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

(2) Not more than $38,600,000 is available to the Secretary out of the Fund for each of the fiscal years ending September 30, 1993–1998, to incur obligations under this section. Amounts made available under this section remain available until expended.

*(e) MATCHING FUNDS.—No earlier than 2 years after the effective date of section 679 of the Air Traffic Management System Performance Improvement Act of 1996, the Secretary may require an eligible agency, as defined in section 40117(a)(2) of this title, to provide matching funds of up to 10 percent for any payments it receives under this subchapter.*

**[§ 41742. Ending effective date**

**[**This subchapter [49 U.S.C. 41731 et seq.] is not effective after September 30, 1998.**]**

***§ 41742. Essential air service authorization***

*(a) IN GENERAL.—Out of the amounts received by the Administration and credited to the account established under section 45303(a)(3) or otherwise provided to the Administration, the sum of $50,000,000 is authorized and shall be made available immediately for obligation and expenditure to carry out the essential air service program under this subchapter for each fiscal year.*

*(b) FUNDING FOR SMALL COMMUNITY AIR SERVICE.—Notwithstanding any other provision of law, monies credited to the account established under section 45303(a)(3), including funds derived from fees imposed under the authority contained in section 45301(a), shall be used to carry out the essential air service program under this subchapter. Notwithstanding section 47114(g) of this title, any amounts from those fees that are not obligated or expended at the end of the fiscal year for the purpose of funding the essential air service program under this subchapter shall be made available to the Administration for use in improving rural air safety under subchapter I of chapter 471 of this title and shall be used exclusively for projects at rural airports under this subchapter.*

## Subpart III—Safety

### CHAPTER 447—SAFETY REGULATION

**§ 44715. Controlling aircraft noise and sonic boom**

(a) STANDARDS AND REGULATIONS.—

**[**(1) To relieve and protect the public health and welfare from aircraft noise and sonic boom, the Administrator of the Federal Aviation Administration shall prescribe—

**[**(A) standards to measure aircraft noise and sonic boom; and

**[**(B) regulations to control and abate aircraft noise and sonic boom.**]**

*(1) To relieve and protect the public health and welfare from aircraft noise, sonic boom, and aircraft engine emissions, the*

*Administrator of the Federal Aviation Administration, as he deems necessary, shall prescribe—*

*(A) standards to measure aircraft noise and sonic boom;*

*(B) regulations to control and abate aircraft noise and sonic boom; and*

*(C) emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.*

(2) The Administrator of the Federal Aviation Administration may prescribe standards and regulations under this subsection only after consulting with the Administrator of the Environmental Protection Agency.—The standards and regulations shall be applied when issuing, amending, modifying, suspending, or revoking a certificate authorized under this chapter [49 U.S.C. 44701 et seq.].

(3) An original type certificate may be issued under section 44704(a) of this title for an aircraft for which substantial noise abatement can be achieved only after the Administrator of the Federal Aviation Administration prescribes standards and regulations under this section that apply to that aircraft.

(b) CONSIDERATIONS AND CONSULTATION.—When prescribing a standard or regulation under this section, the Administrator of the Federal Aviation Administration shall—

(1) consider relevant information related to aircraft noise and sonic boom;

(2) consult with appropriate departments, agencies, and instrumentalities of the United States Government and State and interstate authorities;

(3) consider whether the standard or regulation is consistent with the highest degree of safety in air transportation or air commerce in the public interest;

(4) consider whether the standard or regulation is economically reasonable, technologically practicable, and appropriate for the applicable aircraft, aircraft engine, appliance, or certificate; and

(5) consider the extent to which the standard or regulation will carry out the purposes of this section.

(c) PROPOSED REGULATIONS OF ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency shall submit to the Administrator of the Federal Aviation Administration proposed regulations to control and abate aircraft noise and sonic boom (including control and abatement through the use of the authority of the Administrator of the Federal Aviation Administration) that the Administrator of the Environmental Protection Agency considers necessary to protect the public health and welfare. The Administrator of the Federal Aviation Administration shall consider those proposed regulations and shall publish them in a notice of proposed regulations not later than 30 days after they are received. Not later than 60 days after publication, the Administrator of the Federal Aviation Administration shall begin a hearing at which interested persons are given an opportunity for oral and written presentations. Not later than 90

days after the hearing is completed and after consulting with the Administrator of the Environmental Protection Agency, the Administrator of the Federal Aviation Administration shall—

(1) prescribe regulations as provided by this section—

(A) substantially the same as the proposed regulations submitted by the Administrator of the Environmental Protection Agency; or

(B) that amend the proposed regulations; or

(2) publish in the Federal Register—

(A) a notice that no regulation is being prescribed in response to the proposed regulations of the Administrator of the Environmental Protection Agency;

(B) a detailed analysis of, and response to, all information the Administrator of the Environmental Protection Agency submitted with the proposed regulations; and

(C) a detailed explanation of why no regulation is being prescribed.

(d) CONSULTATION AND REPORTS.—

(1) If the Administrator of the Environmental Protection Agency believes that the action of the Administrator of the Federal Aviation Administration under subsection (c)(1)(B) or (2) of this section does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations in subsection (b) of this section, the Administrator of the Environmental Protection Agency shall consult with the Administrator of the Federal Aviation Administration and may request a report on the advisability of prescribing the regulation as originally proposed. The request, including a detailed statement of the information on which the request is based, shall be published in the Federal Register.

(2) The Administrator of the Federal Aviation Administration shall report to the Administrator of the Environmental Protection Agency within the time, if any, specified in the request. However, the time specified must be at least 90 days after the date of the request. The report shall—

(A) be accompanied by a detailed statement of the findings of the Administrator of the Federal Aviation Administration and the reasons for the findings;

(B) identify any statement related to an action under subsection (c) of this section filed under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(C) specify whether and where that statement is available for public inspection; and

(D) be published in the Federal Register unless the request proposes specific action by the Administrator of the Federal Aviation Administration and the report indicates that action will be taken.

(e) SUPPLEMENTAL REPORTS.—The Administrator of the Environmental Protection Agency may request the Administrator of the Federal Aviation Administration to file a supplemental report if the report under subsection (d) of this section indicates that the proposed regulations under subsection (c) of this section, for which a statement under section 102(2)(C) of the Act (42 U.S.C. 4332(2)(C))

is not required, should not be prescribed. The supplemental report shall be published in the Federal Register within the time the Administrator of the Environmental Protection Agency specifies. However, the time specified must be at least 90 days after the date of the request. The supplemental report shall contain a comparison of the environmental effects, including those that cannot be avoided, of the action of the Administrator of the Federal Aviation Administration and the proposed regulations of the Administrator of the Environmental Protection Agency.

(f) EXEMPTIONS.—An exemption from a standard or regulation prescribed under this section may be granted only if, before granting the exemption, the Administrator of the Federal Aviation Administration consults with the Administrator of the Environmental Protection Agency. However, if the Administrator of the Federal Aviation Administration finds that safety in air transportation or air commerce requires an exemption before the Administrator of the Environmental Protection Agency can be consulted, the exemption may be granted. The Administrator of the Federal Aviation Administration shall consult with the Administrator of the Environmental Protection Agency as soon as practicable after the exemption is granted.

# Subpart III—Safety

## CHAPTER 449—SECURITY

### Subchapter II—Administration and Personnel

### § 44932. Assistant Administrator for Civil Aviation Security

(a) ORGANIZATION.—There is an Assistant Administrator for Civil Aviation Security.—The Assistant Administrator reports directly to the Administrator of the Federal Aviation Administration and is subject to the authority of the Administrator.

(b) DUTIES AND POWERS.—The Assistant Administrator shall—

(1) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including Federal Security Managers as provided by section 44933 of this title;

(2) enforce security-related requirements;

(3) identify the research and development requirements of security-related activities;

(4) inspect security systems;

(5) report information to the Director of Intelligence and Security that may be necessary to allow the Director to carry out assigned duties and powers;

(6) assess threats to civil aviation; and

(7) carry out other duties and powers the Administrator considers appropriate.

(c) REVIEW AND DEVELOPMENT OF WAYS TO STRENGTHEN SECURITY.—The Assistant Administrator shall review and, as necessary, develop ways to strengthen air transportation security, including ways—

(1) to strengthen controls over checked baggage in air transportation, including ways to ensure baggage reconciliation and

inspection of items in passenger baggage that could potentially contain explosive devices;

(2) to strengthen control over individuals having access to aircraft;

(3) to improve testing of security systems;

(4) to ensure the use of the best available x-ray equipment for air transportation security purposes; and

(5) to strengthen preflight screening of passengers.

## CHAPTER 449—SECURITY

### Subchapter II—Administration and Personnel

### § 44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—

[(1)] *(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 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—

[(A)] *(i)* aircraft of an air carrier or foreign air carrier; or

[(B)] *(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 may require by regulation that an employment investigation, (including a criminal history record check in cases in which the employment investigation reveals a gap in employment of 12 months or more that the individual does not satisfactorily account for or the individual is unable to support statements made or there are significant inconsistencies between information provided on an application) be conducted for individuals who will be responsible for screening passengers or property under chapter 449 of this title and their supervisors.*

(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.

(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 of—

(i) a crime referred to in section 46306, 46308, 46312, 46314, or 46315 or chapter 465 of this title [49 U.S.C. 46501 et seq.] 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 robbery;

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

(xiii) conspiracy to commit any of the acts referred to in clauses (i)-(xii) of this paragraph.

(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 section, 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 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.—Before hiring an individual as a pilot, an air carrier shall request and receive the following information:*

*(A) FAA RECORDS.—From the Administrator of the Federal Aviation Administration (hereafter in this subsection referred to as the "Administrator"), 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 that has employed the individual 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 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 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)(7), 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 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 shall maintain pilot records described in paragraph (1)(A) 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. A person who receives a request for records under this paragraph 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) written notice of the request and of the right of that individual to receive a copy of such records; and*

*(B) 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 employed by such carrier, make available, within a reasonable time 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 enactment of the Pilot Records Improvement Act of 1996, and at least once every 3 years thereafter, the Administrator shall transmit to the 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 may 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*

*(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).*

*(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 (a)(1);*

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

*(C) 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 (a).*

*(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 (a).*

*(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.*

## Subpart III—Safety

### CHAPTER 453—FEES

**[§ 45301. Authority to impose fees**

[(a) GENERAL AUTHORITY.—The Secretary of Transportation may impose a fee for an approval, test, authorization, certificate, permit, registration, transfer, or rating related to aviation that has not been approved by Congress only when the fee—

[(1) (A) was in effect on January 1, 1973; and

[(B) is not more than the fee in effect on January 1, 1973, adjusted in proportion to changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor between January 1, 1973, and the date the fee is imposed; or

[(2) is imposed under section 45302 of this title.

[(b) NONAPPLICATION.—Subsection (a) does not apply to a fee for a test, authorization, certificate, permit, or rating related to an airman or repair station administered or issued outside the United States.

[(c) RECOVERY OF COST OF FOREIGN AVIATION SERVICES.—

[(1) ESTABLISHMENT OF FEES.—The Administrator may establish and collect fees for providing or carrying out the following aviation services outside the United States: any test, authorization, certificate, permit, rating, evaluation, approval, inspection, review.

[(2) FOREIGN REPAIR STATION CERTIFICATION AND INSPECTION FEES.—The Administrator must establish and collect under this subsection fees for certification and inspection of repair stations outside of the United States.

[(3) LEVEL OF FEES.—Fees shall be established under this subsection as necessary to recover the additional cost of providing or carrying out such services outside the United States, as compared to the cost of providing or carrying out such services within the United States; except that the Administrator may for such services as the Administrator designates (and shall for certification and inspection of repair stations outside the United States) establish fees at a level necessary to recover the full cost of providing such services.

[(4) EFFECT ON OTHER AUTHORITY.—The provisions of this subsection do not limit the Administrator's authority to establish and collect fees under subsection (a).

[(5) CREDITING OF PRE-ESTABLISHED FEES.—Fees described in paragraph (1) that were not established before the date of the enactment of this subsection may be credited in accordance with section 45302(d).]

***§ 45301. General provisions***

*(a) SCHEDULE OF FEES.—The Administrator shall establish a schedule of new fees, and a collection process for such fees, for the following services provided by the Administration:*

*(1) Air traffic control and related services provided to aircraft (other than foreign government aircraft) that neither take off from nor land in the United States.*

*(2) Services (other than air traffic control services) provided to a foreign government.*

*(b) LIMITATIONS.—*

*(1) AUTHORIZATION AND IMPACT CONSIDERATIONS.—In establishing fees under subsection (a), the Administrator—*

*(A) is authorized to recover in fiscal year 1997; and*

*(B) shall ensure that each of the fees required by subsection (a) is reasonably related to—*

*(i) the Administration's total cost of providing the service rendered; or*

*(ii) the value of the service provided to the recipient, including in the case of air traffic control and related services described in subsection (a)(1), distance traveled, aircraft weight or size, and the nature of the operation conducted.*

*(2) PUBLICATION; COMMENT.—The Administrator shall publish in the Federal Register an initial fee schedule and associated collection process as an interim final rule, pursuant to which public comment will be sought and a final rule issued.*

*(c) USE OF EXPERTS AND CONSULTANTS.—In developing the system, the Administrator may consult with such nongovernmental ex-*

*perts as the Administrator may employ and the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary. Notwithstanding any other provision of law to the contrary, the Administrator may retain such experts under a contract awarded on a basis other than a competitive basis and without regard to any such provisions requiring competitive bidding or precluding sole source contract authority.*

***§ 45303. Administrative provisions***

*(a) IN GENERAL.—*

*(1) FEES PAYABLE TO ADMINISTRATOR.—All fees imposed and amounts collected under this chapter for services performed, or materials furnished, by the Federal Aviation Administration (hereafter in this section referred to as the "Administration") are payable to the Administrator.*

*(2) REFUNDS.—The Administrator may refund any fee paid by mistake or any amount paid in excess of that required.*

*(3) RECEIPTS CREDITED TO ACCOUNT.—Notwithstanding section 3302 of title 31 all fees and amounts collected by the Administration, except insurance premiums and other fees charged for the provision of insurance and deposited in the Aviation Insurance Revolving Fund and interest earned on investments of such Fund, and except amounts which on the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 are required to be credited to the General Fund of the Treasury, (whether imposed under this section or not)—*

*(A) shall be credited to a separate account established in the Treasury and made available for Administration activities as offsetting collections;*

*(B) shall be available immediately for expenditure but only for Congressionally authorized and intended purposes; and*

*(C) shall remain available until expended.*

*(4) ANNUAL BUDGET REPORT BY ADMINISTRATOR.—The Administrator shall, on the same day each year as the President submits the annual budget to the Congress, provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—*

*(A) a list of fee collections by the Administration during the preceding fiscal year;*

*(B) a list of activities by the Administration during the preceding fiscal year that were supported by fee expenditures and appropriations;*

*(C) budget plans for significant programs, projects, and activities of the Administration, including out-year funding estimates;*

*(D) any proposed disposition of surplus fees by the Administration; and*

*(E) such other information as those committees consider necessary.*

*(5) DEVELOPMENT OF COST ACCOUNTING SYSTEM.—The Administration shall develop a cost accounting system that adequately and accurately reflects the investments, operating and overhead costs, revenues, and other financial measurement and reporting aspects of its operations.*

*(6) COMPENSATION TO CARRIERS FOR ACTING AS COLLECTION AGENTS.—The Administration shall prescribe regulations to ensure that any air carrier required, pursuant to the Air Traffic Management System Performance Improvement Act of 1996 or any amendments made by that Act, to collect a fee imposed on another party by the Administrator may collect from such other party an additional uniform amount that the Administrator determines reflects the necessary and reasonable expenses (net of interest accruing to the carrier after collection and before remittance) incurred in collecting and handling the fee.*

*(7) COST REDUCTION AND EFFICIENCY REPORT.—Prior to the submission of any proposal for establishment, implementation, or expansion of any fees or taxes imposed on the aviation industry, the Administrator shall prepare a report for submission to the Congress which includes—*

*(A) a justification of the need for the proposed fees or taxes;*

*(B) a statement of steps taken by the Administrator to reduce costs and improve efficiency within the Administration;*

*(C) an analysis of the impact of any fee or tax increase on each sector of the aviation transportation industry; and*

*(D) a comparative analysis of any decrease in taxes amounts equal to the receipts from which are credited to the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986.*

### *§ [45303.] 45304. Maximum fees for private person services*

*The Administrator of the Federal Aviation Administration may establish maximum fees that private persons may charge for services performed under a delegation to the person under section 44702(d) of this title.*

# *Subtitle VII—Aviation Programs*

## *PART B—DEVELOPMENT AND NOISE*

### *CHAPTER 471—AIRPORT DEVELOPMENT*

#### *Subchapter I—Airport Improvement*

* * * * * * *

### *§ 47102. Definitions*

*In this subchapter [49 U.S.C. 47101 et seq.]—*

*(1) "air carrier airport" means a public airport regularly served by—*

*(A) an air carrier certificated by the Secretary of Transportation under section 41102 of this title (except a charter air carrier); or*

*(B) at least one air carrier—*

*(i) operating under an exemption from section 41101(a)(1) of this title that the Secretary grants; and*

*(ii) having at least 2,500 passenger boardings at the airport during the prior calendar year.*

*(2) "airport"—*

*(A) means—*

*(i) an area of land or water used or intended to be used for the landing and taking off of aircraft;*

*(ii) an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; and*

(iii) airport buildings and facilities located in any of those areas; and

(B) includes a heliport.

(3) "airport development" means the following activities, if undertaken by the sponsor, owner, or operator of a public-use airport:

(A) constructing, repairing, or improving a public-use airport, including—

(i) removing, lowering, relocating, marking, and lighting an airport hazard;and

(ii) preparing a plan or specification, including carrying out a field investigation.

(B) acquiring for, or installing at, a public-use airport—

(i) a navigation aid or another aid (including a precision approach system)used by aircraft for landing at or taking off from the airport, including preparing the site as required by the acquisition or installation;

(ii) safety or security equipment, including explosive detection devices and universal access systems, the Secretary requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport;

(iii) equipment to remove snow, to measure runway surface friction, or for aviation-related weather reporting;

(iv) firefighting and rescue equipment at an airport that serves scheduled passenger operations of air carrier aircraft designed for more than 20 passenger seats;

(v) aircraft deicing equipment and structures (except aircraft deicing fluids and storage facilities for the equipment and fluids); and

(vi) interactive training systems.

(C) acquiring an interest in land or airspace, including land for future airport development, that is needed—

(i) to carry out airport development described in subclause (A) or (B) of this clause; or

(ii) to remove or mitigate an existing airport hazard or prevent or limit the creation of a new airport hazard.

(D) acquiring land for, or constructing, a burn area training structure on or off the airport to provide live fire drill training for aircraft rescue and firefighting personnel required to receive the training under regulations the Secretary prescribes, including basic equipment and minimum structures to support the training under standards the Administrator of the Federal Aviation Administration prescribes.

(E) relocating after December 31, 1991, an air traffic control tower and any navigational aid (including radar) if the relocation is necessary to carry out a project approved by the Secretary under this subchapter [49 U.S.C. 47101 et seq.] *or section 40117.*

(F) constructing, reconstructing, repairing, or improving an airport, or purchasing capital equipment for an airport, if ⌊paid for by a grant under this subchapter [49 U.S.C. 47101 et seq.] and⌋ necessary for compliance with the responsibilities of the operator or owner of the airport under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.), except constructing or purchasing capital equipment that would benefit primarily a revenue-producing area of the airport used by a nonaeronautical business.(G) acquiring land for, or work necessary to construct, a pad suitable for deicing aircraft before takeoff at a commercial service airport, including constructing or reconstructing paved areas, drainage collection structures, treatment and discharge systems, appropriate lighting, paved access for deicing vehicles and aircraft, but not including acquiring aircraft deicing fluids or constructing or reconstructing storage facilities for aircraft deicing equipment or fluids.

(4) "airport hazard" means a structure or object of natural growth located on or near a public-use airport, or a use of land near the airport, that obstructs or otherwise is hazardous to the landing or taking off of aircraft at or from the airport.

(5) "airport planning" means planning as defined by regulations the Secretary prescribes and includes integrated airport system planning.

(6) "amount made available under section 48103 of this title" means the amount authorized for grants under section 48103 of this title as reduced by any law enacted after September 3, 1982.

(7) "commercial service airport" means a public airport in a State that the Secretary determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.

(8) "integrated airport system planning" means developing for planning purposes information and guidance to decide the extent, kind, location, and timing of airport development need-

ed in a specific area to establish a viable,balanced, and integrated system of public-use airports, including—

(A) identifying system needs;

(B) developing an estimate of systemwide development costs;

(C) conducting studies, surveys, and other planning actions, including those related to airport access, needed to decide which aeronautical needs should be met by a system of airports; and

(D) standards prescribed by a State, except standards for safety of approaches, for airport development at nonprimary public-use airports.

(9) "landed weight" means the weight of aircraft transporting only cargo in intrastate, interstate, and foreign air transportation, as the Secretary determines under regulations the Secretary prescribes.

(10) "passenger boardings"—

(A) means revenue passenger boardings on an aircraft in service in air commerce as the Secretary determines under regulations the Secretary prescribes;and

(B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.

(11) "primary airport" means a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year.

(12) "project" means a project, separate projects included in one project grant application, or all projects to be undertaken at an airport in a fiscal year, to achieve airport development or airport planning.

(13) "project cost" means a cost involved in carrying out a project.

(14) "project grant" means a grant of money the Secretary makes to a sponsor to carry out at least one project.

(15) "public agency" means—

(A) a State or political subdivision of a State;

(B) a tax-supported organization; or

(C) an Indian tribe or pueblo.

(16) "public airport" means an airport used or intended to be used for public purposes—

(A) that is under the control of a public agency; and

(B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned.

(17) "public-use airport" means—

(A) a public airport; or

(B) a privately-owned airport used or intended to be used for public purposes that is—

(i) a reliever airport; or

(ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.

(18) "reliever airport" means an airport the Secretary designates to relieve congestion at a commercial service airport

and to provide more general aviation access to the overall community.

(19) "sponsor" means—

(A) a public agency that submits to the Secretary under this subchapter [49U.S.C. 47101 et seq.] an application for financial assistance; and

(B) a private owner of a public-use airport that submits to the Secretary under this subchapter [49 U.S.C. 47101 et seq.] an application for financial assistance for the airport.

(20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and Guam.

### § 47104. Project grant authority

(a) GENERAL AUTHORITY.—To maintain a safe and efficient nationwide system of public-use airports that meets the present and future needs of civil aeronautics, the Secretary of Transportation may make project grants under this subchapter [49 U.S.C. 47101 et seq.] from the Airport and Airway Trust Fund.

(b) INCURRING OBLIGATIONS.—The Secretary may incur obligations to make grants from amounts made available under section 48103 of this title as soon as the amounts are apportioned under section 47114(c) and (d)(2) of this title.

(c) EXPIRATION OF AUTHORITY.—After September 30, [1996,] *1997,* the Secretary may not incur obligations under subsection (b) of this section, except for obligations of amounts—

(1) remaining available after that date under section 47117(b) of this title; or

(2) recovered by the United States Government from grants made under this chapter [49 U.S.C. 47101 et seq.] if the amounts are obligated only for increases under section 47108(b)(2) and (3) of this title in the maximum amount of obligations of the Government for any other grant made under this title.

### § 47107. Project grant application approval conditioned on assurances about airport operations

(a) GENERAL WRITTEN ASSURANCES.—The Secretary of Transportation may approve a project grant application under this subchapter [49 U.S.C. 47101 et seq.] for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

(1) the airport will be available for public use on reasonable conditions and without unjust discrimination;

(2) air carriers making similar use of the airport will be subject to substantially comparable charges—

(A) for facilities directly and substantially related to providing air transportation; and

(B) regulations and conditions, except for differences based on reasonable classifications, such as between—

(i) tenants and nontenants; and

(ii) signatory and nonsignatory carriers;

(3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;

(4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—

(A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and

(B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;

(5) fixed-base operators similarly using the airport will be subject to the same charges;

(6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;

(7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;

(8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;

(9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;

(10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;

(11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;

(12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

(13) the airport owner or operator will maintain a schedule of charges for use of facilities and services at the airport—

(A) that will make the airport as self-sustaining as possible under the circumstances existing at the airport, including volume of traffic and economy of collection; and

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter [49 U.S.C. 47101 et seq.] or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

(14) the project accounts and records will be kept using a standard system of accounting that the Secretary, after consulting with appropriate public agencies, prescribes;

(15) the airport owner or operator will submit any annual or special airport financial and operations reports to the Secretary that the Secretary reasonably requests and make such reports available to the public;

(16) the airport owner or operator will maintain a current layout plan of the airport that meets the following requirements:

(A) the plan will be in a form the Secretary prescribes;

(B) the Secretary will approve the plan and any revision or modification before the plan, revision, or modification takes effect;

(C) the owner or operator will not make or allow any alteration in the airport or any of its facilities if the alteration does not comply with the plan the Secretary approves, and the Secretary is of the opinion that the alteration may affect adversely the safety, utility, or efficiency of the airport; and

(D) when an alteration in the airport or its facility is made that does not conform to the approved plan and that the Secretary decides adversely affects the safety, utility, or efficiency of any property on or off the airport that is owned, leased, or financed by the Government, the owner or operator, if requested by the Secretary, will—

(i) eliminate the adverse effect in a way the Secretary approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made;

(17) each contract and subcontract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services will be awarded in the same way that a contract for architectural and engineering services is negotiated under title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) or an equivalent qualifications-based requirement prescribed for or by the sponsor;

(18) the airport and each airport record will be available for inspection by the Secretary on reasonable request, and a report of the airport budget will be available to the public at reasonable times and places; **[**and**]**

(19) the airport owner or operator will submit to the Secretary and make available to the public an annual report listing in detail—

(A) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and

(B) all services and property provided to other units of government and the amount of compensation received for provision of each such service and [property.] *property; and*

*(20) the airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport, but the sponsor does not have any obligation under this paragraph, or because of it, to fund special facilities for intercity bus service or for other modes of transportation.*

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—

(1) The Secretary of Transportation may approve a project grant application under this subchapter [49 U.S.C. 47101 et seq.] for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

(2) Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

(3) This subsection does not prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation purpose.

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—

(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

(A)(i) the land may be needed for an aeronautical purpose (including runway protection zone) or serves as noise buffer land; and

(ii) revenue from interim uses of the land contributes to the financial self-sufficiency of the airport; and

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land

and did not object to the use and the land is still being used for that purpose.

(2) The Secretary of Transportation may approve an application under this subchapter [49 U.S.C. 47101 et seq.] for an airport development project grant only if the Secretary receives written assurances, satisfactory to the Secretary, that if an airport owner or operator has received or will receive a grant for acquiring land and—

(A) if the land was or will be acquired for a noise compatibility purpose—

(i) the owner or operator will dispose of the land at fair market value at the earliest practicable time after the land no longer is needed for a noise compatibility purpose;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be paid to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) or, as the Secretary prescribes, reinvested in an approved noise compatibility project; or

(B) if the land was or will be acquired for an airport purpose (except a noise compatibility purpose)—

(i) the owner or operator, when the land no longer is needed for an airport purpose, will dispose of the land at fair market value or make available to the Secretary an amount equal to the Government's proportional share of the fair market value;

(ii) the disposition will be subject to retaining or reserving an interest in the land necessary to ensure that the land will be used in a way that is compatible with noise levels associated with operating the airport; and

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested, on application to the Secretary, in another eligible airport development project the Secretary approves under this subchapter [49 U.S.C. 47101 et seq.] or paid to the Secretary for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraph (2)(A)(iii) and (B)(iii) of this subsection and deposited in the Airport and Airway Trust Fund are available as provided in subsection (f) of this section.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter [49 U.S.C. 47101 et seq.] for an airport development project grant for a privately owned public-use airport only if the

Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter [49 U.S.C. 47101 et seq.].

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—

(1) The Secretary of Transportation may approve a project grant application under this subchapter [49 U.S.C. 47101 et seq.] for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business operated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

(3) Except as provided in paragraph (4) of this subsection, an airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including the purchase from disadvantaged business enterprises of goods and services used in businesses conducted at the airport, but the owner or operator and the businesses conducted at the airport shall make good faith efforts to explore all available options to achieve, to the maximum extent practicable, compliance with the goal through direct ownership arrangements, including joint ventures and franchises.

(4) (A) In complying with paragraph (1) of this subsection, an airport owner or operator shall include the revenues of car rental firms at the airport in the base from which the percentage goal in paragraph (1) is calculated.

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual.

(C) This subsection does not require a car rental firm to change its corporate structure to provide for direct ownership arrangements to meet the requirements of this subsection.

(5) This subsection does not preempt—

(A) a State or local law, regulation, or policy enacted by the governing body of an airport owner or operator; or

(B) the authority of a State or local government or airport owner or operator to adopt or enforce a law, regulation, or policy related to disadvantaged business enterprises.

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual to participate through direct contractual agreement with that concern.

(7) An air carrier that provides passenger or property-carrying services or another business that conducts aeronautical activities at an airport may not be included in the percentage goal of paragraph (1) of this subsection for participation of small business concerns at the airport.

(8) Not later than April 29, 1993, the Secretary of Transportation shall prescribe regulations to carry out this subsection.

(f) AVAILABILITY OF AMOUNTS.—An amount deposited in the Airport and Airway Trust Fund under—

(1) subsection (c)(2)(A)(iii) of this section is available to the Secretary of Transportation to make a grant for airport development or airport planning under section 47104 of this title;

(2) subsection (c)(2)(B)(iii) of this section is available to the Secretary—

(A) to make a grant for a purpose described in section 47115(b) of this title; and

(B) for use under section 47114(d)(2) of this title at another airport in the State in which the land was disposed of under subsection (c)(2)(B)(ii) of this section; and

(3) subsection (c)(2)(B)(iii) of this section is in addition to an amount made available to the Secretary under section 48103 of this title and not subject to apportionment under section 47114 of this title.

(g) ENSURING COMPLIANCE.—

(1) To ensure compliance with this section, the Secretary of Transportation—

(A) shall prescribe requirements for sponsors that the Secretary considers necessary; and

(B) may make a contract with a public agency.

(2) The Secretary of Transportation may approve an application for a project grant only if the Secretary is satisfied that the requirements prescribed under paragraph (1)(A) of this subsection have been or will be met.

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—Before modifying an assurance required of a person receiving a grant under this subchapter [49 U.S.C. 47101 et seq.] and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

(1) publish notice of the proposed modification in the Federal Register; and

(2) provide an opportunity for comment on the proposal.

(i) RELIEF FROM OBLIGATION TO PROVIDE FREE SPACE.—When a sponsor provides a property interest in a land or water area or a building that the Secretary of Transportation uses to construct a facility at Government expense, the Secretary may relieve the sponsor from an obligation in a contract made under this chapter [49 U.S.C. 47101 et seq.], the Airport and Airway Development Act of 1970, or the Federal Airport Act to provide free space to the Government in an airport building, to the extent the Secretary finds that the free space no longer is needed to carry out activities related to air traffic control or navigation.

(j) USE OF REVENUE IN HAWAII.—

(1) In this subsection—

(A) "duty-free merchandise" and "duty-free sales enterprise" have the same meanings given those terms in section 555(b)(8) of the Tariff Act of 1930 (19 U.S.C. 1555(b)(8)).

(B) "highway" and "Federal-aid system" have the same meanings given those terms in section 101(a) of title 23.

(2) Notwithstanding subsection (b)(1) of this section, Hawaii may use, for a project for construction or reconstruction of a highway on a Federal-aid system that is not more than 10 miles by road from an airport and that will facilitate access to the airport, revenue from the sales at off-airport locations in Hawaii of duty-free merchandise under a contract between Hawaii and a duty-free sales enterprise. However, the revenue resulting during a Hawaiian fiscal year may be used only if the amount of the revenue, plus amounts Hawaii receives in the fiscal year from all other sources for costs Hawaii incurs for operating all airports it operates and for debt service related to capital projects for the airports (including interest and amortization of principal costs), is more than 150 percent of the projected costs for the fiscal year.

(3)(A) Revenue from sales referred to in paragraph (2) of this subsection in a Hawaiian fiscal year that Hawaii may use may not be more than the amount that is greater than 150 percent as determined under paragraph (2).

(B) The maximum amount of revenue Hawaii may use under paragraph (2) of this subsection is $250,000,000.

(4) If a fee imposed or collected for rent, landing, or service from an aircraft operator by an airport operated by Hawaii is increased during the period from May 4, 1990, through December 31, 1994, by more than the percentage change in the Consumer Price Index of All Urban Consumers for Honolulu, Hawaii, that the Secretary of Labor publishes during that period and if revenue derived from the fee increases because the fee increased, the amount under paragraph (3)(B) of this subsection shall be reduced by the amount of the projected revenue increase in the period less the part of the increase attributable to changes in the Index in the period.

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit

the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

(6) Hawaii is not eligible for a grant under section 47115 of this title in a fiscal year in which Hawaii uses under paragraph (2) of this subsection revenue from sales referred to in paragraph (2). Hawaii shall repay amounts it receives in a fiscal year under a grant it is not eligible to receive because of this paragraph to the Secretary of Transportation for deposit in the discretionary fund established under section 47115.

(7)(A) This subsection applies only to revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, and to amounts in the Airport Revenue Fund of Hawaii that are attributable to revenue before May 4, 1990, on sales referred to in paragraph (2).

(B) Revenue from sales referred to in paragraph (2) of this subsection from May 5, 1990, through December 30, 1994, may be used under paragraph (2) in any Hawaiian fiscal year, including a Hawaiian fiscal year beginning after December 31, 1994.

(k) ANNUAL SUMMARIES OF FINANCIAL REPORTS.—The Secretary shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives an annual summary of the reports submitted to the Secretary under subsection (a)(19) of this section and under section 111(b) of the Federal Aviation Administration Authorization Act of 1994.

(l) POLICIES AND PROCEDURES TO ENSURE ENFORCEMENT AGAINST ILLEGAL DIVERSION OF AIRPORT REVENUE.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this subsection, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider.

(2) REVENUE DIVERSION.—Policies and procedures to be established pursuant to paragraph (1) of this subsection shall prohibit, at a minimum, the diversion of airport revenues (except as authorized under subsection (b) of this section) through—

(A) direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

(B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

(C) payments in lieu of taxes or other assessments that exceed the value of services provided; or

(D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

(3) EFFORTS TO BE SELF-SUSTAINING.—With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.

(4) ADMINISTRATIVE SAFEGUARDS.—Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section and grant assurances made under such subsections and to alert the Secretary to such possible violations.

**§ 47114. Apportionments**

(a) DEFINITION.—In this section, "amount subject to apportionment" means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—

(1)(A) The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) $7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) $5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) $2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year; and

(iv) $.65 for each additional passenger boarding at the airport during the prior calendar year.

(B) Not less than $500,000 nor more than $22,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.—

(2)(A) The Secretary shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3.5 percent of the amount subject to apportionment each year, allocated among those airports in the proportion that the total annual landed weight of those aircraft landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports. However, not more than 8 percent of the amount apportioned under this paragraph may be apportioned for any one airport.

(B) Landed weight under subparagraph (A) of this paragraph is the landed weight of aircraft landing at each of those airports and all those airports during the prior calendar year.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 49.5 percent of the amount subject to apportionment for a fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 49.5 percent limit is achieved.

(B) If a law limits the amount subject to apportionment to less than $1,900,000,000 for a fiscal year, the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for that fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the Secretary shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 44 percent limit is achieved.

(d) AMOUNTS APPORTIONED TO STATES.—

(1) In this subsection—

(A) "area" includes land and water.

(B) "population" means the population stated in the latest decennial census of the United States.

(2) The Secretary shall apportion to the States 12 percent of the amount subject to apportionment for each fiscal year as follows:

(A) one percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(B) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the population of each of those States bears to the total population of all of those States.

(C) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the area of each of those States bears to the total area of all of those States.

(3) An amount apportioned under paragraph (2) of this subsection for an airport in—

(A) Alaska may be made available by the Secretary for a public airport described in section 47117(e)(1)(C)(ii) of this title to which section 15(a)(3)(A)(II) of the Airport and Airway Development Act of 1970 applied during the fiscal year that ended September 30, 1981; and

(B) Puerto Rico may be made available by the Secretary for a primary airport and an airport described in section 47117(e)(1)(C) of this title.

(e) Alternative Apportionment for Alaska.—

(1) Instead of apportioning amounts for airports in Alaska under subsections (c) and (d) of this section, the Secretary may apportion amounts for those airports in the way in which amounts were apportioned in the fiscal year ending September 30, 1980, under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the Secretary shall apportion—

(A) for each primary airport at least as much as would be apportioned for the airport under subsection (c)(1) of this section; and

(B) a total amount at least equal to the minimum amount required to be apportioned to airports in Alaska in the fiscal year ending September 30, 1980, under section 15(a)(3)(A) of the Act.

(2) This subsection does not prohibit the Secretary from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(3) Airports referred to in this subsection include those public airports that received scheduled service as of September 3, 1982, but were not apportioned amounts in the fiscal year ending September 30, 1980, under section 15(a) of the Act because the airports were not under the control of a State or local public agency.

(f) REDUCING APPORTIONMENTS.—An amount that would be apportioned under this section (except subsection (c)(2)) in a fiscal year to the sponsor of an airport having at least .25 percent of the total number of boardings each year in the United States and for which a fee is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section.

*(g) SLIDING SCALE.—*

*(1) Notwithstanding any other provision of this title, of the amount newly made available under section 48103 of this title for fiscal year 1997 to make grants, not more than the percentage of such amount newly made available that is specified in paragraph (2) shall be distributed in total in such fiscal year for grants described in paragraph (3).*

*(2) If the amount newly made available is—*

*(A) not more than $1,150,000,000, then the percentage is 47.0;*

*(B) more than $1,150,000,000 but not more than $1,250,000,000, then the percentage is 46.0;*

*(C) more than $1,250,000,000 but not more than $1,350,000,000, then the percentage is 45.4;*

*(D) more than $1,350,000,000 but not more than $1,450,000,000, then the percentage is 44.8; or*

*(E) more than $1,450,000,000 but not more than $1,550,000,000, then the percentage is 44.3.*

*(3) This section applies to the aggregate amount of grants in a fiscal year for projects at those primary airports that each have not less than 0.25 per centum of the total passenger boardings in the United States in the preceding calendar year.*

**§ 47115. Discretionary fund**

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

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

(2) 25 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter [49 U.S.C. 47101 et seq.]. However, 50 percent of amounts not apportioned under section 47114 of this title because of section 47114(f) and added to the fund is available for making grants for projects at small hub airports (as defined in section 41731 of this title).

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

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

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

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

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

(2) the project benefit and cost; and

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

(e) WAIVING PERCENTAGE REQUIREMENT.—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are insufficient qualified grant applications to meet that percentage, the amount the Secretary determines will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

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

(1) GENERAL RULE.—Subject to paragraph (2), in deciding whether or not to distribute funds to an airport from the discretionary funds established by subsection (a) of this section and section 47116 of this title, the Secretary shall consider as a factor militating against the distribution of such funds to the airport the fact that the airport is using revenues generated by the airport or by local taxes on aviation fuel for purposes other than capital or operating costs of the airport or the local air-

ports system or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.

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

[(f)] *(g)* MINIMUM AMOUNT TO BE CREDITED.—

(1) In a fiscal year, at least $325,000,000 of the amount made available under section 48103 of this title shall be credited to the fund. The amount credited is exclusive of amounts that have been apportioned in a prior fiscal year under section 47114 of this title and that remain available for obligation.

(2) In a fiscal year in which the amount credited under subsection (a) of this section is less than $325,000,000, the total amount calculated under paragraph (3) of this subsection shall be reduced by an amount that, when credited to the fund, together with the amount credited under subsection (a), equals $325,000,000.

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

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

### § 47117. Use of apportioned amounts

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114(c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year. If the amount is not obligated under the apportionment within that time, it shall be added to the discretionary fund.

(c) PRIMARY AIRPORTS.—

(1) An amount apportioned to a sponsor of a primary airport under section 47114(c)(1) of this title is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

(2) A sponsor of a primary airport may make an agreement with the Secretary of Transportation waiving any part of the amount apportioned for the airport under section 47114(c)(1) of this title if the Secretary makes the waived amount available

for a grant for another public-use airport in the same State or geographical area as the primary airport.

(d) STATE USE.—An amount apportioned to a State under—

(1) section 47114(d)(2)(A) of this title is available for grants for airports located in the State; and

(2) section 47114(d)(2)(B) or (C) of this title is available for grants for airports described in section 47114(d)(2)(B) or (C) and located in the State.

(e) SPECIAL APPORTIONMENT CATEGORIES.—

(1) The Secretary shall use amounts made available under section 48103 of this title for each fiscal year as follows:

(A) at least 5 percent for grants for reliever airports.

(B) at least 12.5 percent for grants for airport noise compatibility planning under section 47505(a)(2) of this title and for carrying out noise compatibility programs under section 47504(c)(1) of this title.

(C) at least 1.5 percent for grants for—

(i) nonprimary commercial service airports; and

(ii) public airports (except commercial service airports) that were eligible for United States Government assistance from amounts apportioned under section 15(a)(3) of the Airport and Airway Development Act of 1970, and to which section 15(a)(3)(A)(I) or (II) of the Act applied during the fiscal year that ended September 30, 1981.

(D) at least .75 percent for integrated airport system planning grants to planning agencies designated by the Secretary and authorized by the laws of a State or political subdivision of a State to do planning for an area of the State or subdivision in which a grant under this chapter [49 U.S.C. 47101 et seq.] is to be used.

(E) at least 2.25 percent for the fiscal year ending September 30, 1993, and at least 2.5 percent for each of the fiscal years ending September 30, 1994, 1995, [and 1996,] *1996, and 1997,]* *to sponsors of current or former military airports designated by the Secretary under section 47118(a) of this title for grants for developing current and former military airports to improve the capacity of the national air transportation system.*

(2) A grant from the amount apportioned under section 47114(e) of this title may not be included as part of the 1.5 percent required to be used for grants under paragraph (1)(C) of this subsection.

(3) If the Secretary decides that an amount required to be used for grants under paragraph (1) of this subsection cannot be used for a fiscal year because there are insufficient qualified grant applications, the amount the Secretary determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(f) LIMITATION FOR COMMERCIAL SERVICE AIRPORT IN ALASKA.—The Secretary may not make a grant for a commercial service airport in Alaska of more than 110 percent of the amount apportioned for the airport for a fiscal year under section 47114(e) of this title.

(g) DISCRETIONARY USE OF APPORTIONMENTS.—

(1) Subject to paragraph (2) of this subsection, if the Secretary finds, based on the notices the Secretary receives under section 47105(e) of this title or otherwise, that an amount apportioned under section 47114 of this title will not be used for grants during a fiscal year, the Secretary may use an equal amount for grants during that fiscal year for any of the purposes for which amounts are authorized for grants under section 48103 of this title.

(2) The Secretary may make a grant under paragraph (1) of this subsection only if the Secretary decides that—

(A) the total amount used for grants for the fiscal year under section 48103 of this title will not be more than the amount made available under section 48103 for that fiscal year; and

(B) the amounts authorized for grants under section 48103 of this title for later fiscal years are sufficient for grants of the apportioned amounts that were not used for grants under the apportionment during the fiscal year and that remain available under subsection (b) of this section.

(h) LIMITING AUTHORITY OF SECRETARY.—The authority of the Secretary to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

### § 47118. Designating current and former military airports

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall designate [not more than 15] current or former military airports for which grants may be made under section 47117(e)(1)(E) of this title. *The maximum number of airports which may be designated by the Secretary under this section at any time is 10.* The Secretary may only designate an airport for such grants (other than an airport designated for such grants on or before the date of the enactment of this sentence if the Secretary finds that grants under such section for projects at such airport would reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings.

(b) SURVEY.—Not later than September 30, 1991, the Secretary shall complete a survey of current and former military airports to identify which airports have the greatest potential to improve the capacity of the national air transportation system. The survey shall identify the capital development needs of those airports to make them part of the system and which of those qualify for grants under section 47104 of this title.

(c) CONSIDERATIONS.—In carrying out this section, the Secretary shall consider only current or former military airports that, when at least partly converted to civilian commercial or reliever airports as part of the national air transportation system, will enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

(d) GRANTS.—Grants under section 47117(e)(1)(E) of this title may be made for an airport designated under subsection (a) of this section for the 5 fiscal years following the designation.

(e) TERMINAL BUILDING FACILITIES.—Notwithstanding section 47109(c) of this title, not more than $5,000,000 for each airport from amounts the Secretary distributes under section 47115 of this title for a fiscal year is available to the sponsor of a current or former military airport the Secretary designates under this section to construct, improve, or repair a terminal building facility, including terminal gates used for revenue passengers getting on or off aircraft. A gate constructed, improved, or repaired under this subsection—

(1) may not be leased for more than 10 years; and

(2) is not subject to majority in interest clauses.

(f) PARKING LOTS, FUEL FARMS, AND UTILITIES.—Not more than a total of $4,000,000 for each airport from amounts the Secretary distributes under section 47115 of this title for [the fiscal years ending September 30, 1993–1996,] *for fiscal years beginning after September 30, 1992,* is available to the sponsor of a current or former military airport the Secretary designates under this section to construct, improve, or repair airport surface parking lots, fuel farms, and utilities.

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**§ 47128. State block grant pilot program**

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall prescribe regulations to carry out a State block grant pilot program. The regulations shall provide that the Secretary may designate not more than 7 qualified States to assume administrative responsibility for all airport grant amounts available under this subchapter [49 U.S.C. 47101 et seq.], except for amounts designated for use at primary airports.

(b) APPLICATIONS AND SELECTION.—

[(1)] A State wishing to participate in the program must submit an application to the Secretary. The Secretary shall select a State on the basis of its application only after—

[(A)] *(1)* deciding the State has an organization capable of effectively administering a block grant made under this section;

[(B)] *(2)* deciding the State uses a satisfactory airport system planning process;

[(C)] *(3)* deciding the State uses a programming process acceptable to the Secretary;

[(D)] *(4)* finding that the State has agreed to comply with United States Government standard requirements for administering the block grant; and

[(E)] *(5)* finding that the State has agreed to provide the Secretary with program information the Secretary requires.

[(2) For the fiscal years ending September 30, 1993-1996, the States selected shall include Illinois, Missouri, and North Carolina.]

(c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before deciding whether a planning process is satisfactory or a programming process is acceptable under subsection (b)(1)(B) or (C) of this section, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government. *In carrying out this subsection, the Secretary shall permit a State to use the priority system of the State if such system is not inconsistent with the national priority system.*

(d) ENDING EFFECTIVE DATE AND REPORT.—This section is effective only through September 30, [1996.] *1997.*

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***§ 47132. Pavement maintenance***

*(a) IN GENERAL.—The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out a pavement maintenance pilot project to preserve and extend the useful life of runways, taxiways, and aprons at airports for which apportionments are made under section 47114(d). The regulations shall provide that the Administrator may designate not more than 10 projects. The regulations shall provide criteria for the Administrator to use in choosing the projects. At least 2 such projects must be in States without a primary airport that had 0.25 percent or more of the total boardings in the United States in the preceding calendar year. In designating projects, the Administrator shall take into consideration geographical, climatological, and soil diversity.*

*(b) EFFECTIVE DATE.—This section shall be effective beginning on the date of enactment of the Federal Aviation Reauthorization Act of 1996 and ending on September 30, 1999.*

# PART C—FINANCING

## CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

**§ 48101. Air navigation facilities**

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C.—9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title:

(1) For the fiscal years ending September 30, 1991-1993, $8,200,000,000.

(2) For the fiscal years ending September 30, 1991-1994, $10,724,000,000.

(3) For the fiscal years ending September 30, 1991-1995, $13,394,000,000.

(4) For the fiscal years ending September 30, 1991-1996, $16,129,000,000.

*(5) For the fiscal years ending September 30, 1991-1997, $17,929,000,000.*

(b) MAJOR AIRWAY CAPITAL INVESTMENT PLAN CHANGES.—If the Secretary decides that it is necessary to augment or substantially modify elements of the Airway Capital Investment Plan referred to in section 44501(b) of this title (including a decision that it is necessary to establish more than 23 area control facilities), not more than $100,000,000 may be appropriated to the Secretary out of the Fund for the fiscal year ending September 30, 1994, to carry out the augmentation or modification.

(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

**§ 48102. Research and development**

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out sections 44504, 44505, 44507, 44509, and 44511-44513 of this [title:

[(1) for fiscal year 1995—

[(A) $7,673,000 for management and analysis projects and activities;

[(B) $80,901,000 for capacity and air traffic management technology projects and activities;

[(C) $39,242,000 for communications, navigation, and surveillance projects and activities;

[(D) $2,909,000 for weather projects and activities;

[(E) $8,660,000 for airport technology projects and activities;

[(F) $51,004,000 for aircraft safety technology projects and activities;

[(G) $36,604,000 for system security technology projects and activities;

[(H) $26,484,000 for human factors and aviation medicine projects and activities;

[(I) $8,124,000 for environment and energy projects and activities; and

[(J) $5,199,000 for innovative/cooperative research projects and activities; and

[(2) for fiscal year 1996—

[(A) $8,056,000 for management and analysis projects and activities;

[(B) $84,946,000 for capacity and air traffic management technology projects and activities;

[(C) $41,204,000 for communications, navigation, and surveillance projects and activities;

[(D) $3,054,000 for weather projects and activities;

[(E) $9,093,000 for airport technology projects and activities;

[(F) $53,554,000 for aircraft safety technology projects and activities;

[(G) $38,434,000 for system security technology projects and activities;

[(H) $27,808,000 for human factors and aviation medicine projects and activities;

[(I) $8,532,000 for environment and energy projects and activities; and

[(J) $5,459,000 for innovative/cooperative research projects and activities.] *title, $200,000,000 for fiscal year 1997.*

(b) AVAILABILITY FOR RESEARCH.—

(1) At least 15 percent of the amount appropriated under subsection (a) of this section shall be for long-term research projects.

(2) At least 3 percent of the amount appropriated under subsection (a) of this section shall be available to the Administrator of the Federal Aviation Administration to make grants under section 44511 of this title.

(c) TRANSFERS BETWEEN CATEGORIES.—

(1) Not more than 10 percent of the net amount authorized for a category of projects and activities in a fiscal year under subsection (a) of this section may be transferred to or from that category in that fiscal year.

(2) The Secretary may transfer more than 10 percent of an authorized amount to or from a category only after—

(A) submitting a written explanation of the proposed transfer to the Committees on Science, Space, and Technology and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

(B) 30 days have passed after the explanation is submitted or each Committee notifies the Secretary in writing that it does not object to the proposed transfer.

(d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—

(1) Of the amounts made available under subsection (a) of this section, at least $25,000,000 may be appropriated each fiscal year for research and development under section 44505(a) and (c) of this title on preserving and enhancing airport capacity, including research and development on improvements to airport design standards, maintenance, safety, operations, and environmental concerns.

(2) The Administrator shall submit to the Committees on Science, Space, and Technology and Public Works and Transportation of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made under paragraph (1) of this subsection for each fiscal year. The report shall be submitted not later than 60 days after the end of the fiscal year.

(e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary amounts may be appropriated to the Secretary out of amounts in the Fund available for research and development to conduct research under section 44506(a) and (b) of this title.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

### § 48103. Airport planning and development and noise compatibility planning and programs

The total amounts which shall be available after September 30, 1981, to the Secretary of Transportation out of the Airport and Air-

way Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to make grants for airport planning and airport development under section 47104 of this title, airport noise compatibility planning under section 47505(a)(2) of this title, and carrying out noise compatibility programs under section 47504(c) of this title shall be $17,583,500,000 for fiscal years ending before October 1, 1994, $19,744,500,000 for fiscal years ending before October 1, 1995, [and $21,958,500,000] *$19,200,500,000* for fiscal years ending before October 1, [1996.] *1996, and $21,480,500,000 for fiscal years ending before October 1, 1997.*

### § 48104. Certain direct costs and joint air navigation services

(a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this section, the balance of the money available in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) may be appropriated to the Secretary of Transportation out of the Fund for—

(1) direct costs the Secretary incurs to flight check, operate, and maintain air navigation facilities referred to in section 44502(a)(1)(A) of this title safely and efficiently; and

(2) the costs of services provided under international agreements related to the joint financing of air navigation services assessed against the United States Government.

(b) LIMITATION [FOR FISCAL YEARS 1993].—The amount that may be appropriated out of the Fund [for fiscal year 1993] may not be more than an amount equal to—

(1) 75 percent of the amount made available under sections 106(k) and 48101–48103 of this title for that fiscal year; less

(2) the amount made available under sections 48101–48103 of this title for that fiscal year.

[(c) LIMITATION FOR FISCAL YEARS 1994–1996.—The amount appropriated from the Trust Fund for the purposes of paragraphs (1) and (2) of subsection (a) for each of fiscal years 1994, 1995, and 1996 may not exceed the lesser of—

[(1) 50 percent of the amount of funds made available under sections 48101–48103 of this title for such fiscal year; or

[(2) (A) 70 percent of the amount of funds made available under sections 106(k) and 48101–48103 of this title for such fiscal year; less

[(B) the amount of funds made available under sections 48101–48103 of this title for such fiscal year.]

### § 48108. Availability and uses of amounts

(a) AVAILABILITY OF AMOUNTS.—Amounts equal to the amounts authorized under sections 48101–48105 of this title remain in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) until appropriated for the purposes of sections 48101–48105.

(b) LIMITATIONS ON USES.—

(1) Amounts in the Fund may be appropriated only to carry out a program or activity referred to in this chapter [49 U.S.C. 48101 et seq.].

(2) Amounts in the Fund may be appropriated for administrative expenses of the Department of Transportation or a component of the Department only to the extent authorized by section 48104 of this title.

(c) LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.—In a fiscal year beginning after September 30, 1996, the Secretary of Transportation may obligate or expend an amount appropriated out of the Fund under section 48104 of this title only if a law expressly amends section 48104.

***§ 48111. Funding Proposals***

*(a) INTRODUCTION AND REFERRAL.—Within 15 days (not counting any day on which either House is not in session) after a funding proposal is submitted to the House of Representatives and the Senate by the Secretary of Transportation under section 674(c) of the Air Traffic Management System Performance Improvement Act of 1996, an implementing bill with respect to such funding proposal shall be introduced in the House by the majority leader of the House, for himself and the minority leader of the House, or by Members of the House designated by the majority leader and minority leader of the House; and shall be introduced in the Senate by the majority leader of the Senate, for himself and the minority leader of the Senate, or by Members of the Senate designated by the majority leader and minority leader of the Senate. The implementing bill shall be referred by the Presiding Officers of the respective Houses to the appropriate committee, or, in the case of a bill containing provisions within the jurisdiction of two or more committees, jointly to such committees for consideration of those provisions within their respective jurisdictions.*

*(b) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—*

*(1) REFERRAL AND REPORTING.—Any committee of the House of Representatives to which an implementing bill is referred shall report it, with or without recommendation, not later than the 45th calendar day of session after the date of its introduction. If any committee fails to report the bill within that period, it is in order to move that the House discharge the committee from further consideration of the bill. A motion to discharge may be made only by a Member favoring the bill (but only at a time or place designated by the Speaker in the legislative schedule of the day after the calendar day on which the Member offering the motion announces to the House his intention to do so and the form of the motion), the motion is highly privileged. Debate thereon shall be limited to not more than one hour, the time to be divided in the House equally between a proponent and an opponent. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order.*

*(2) CONSIDERATION OF IMPLEMENTING BILL.—After an implementing bill is reported or a committee has been discharged from further consideration, it is in order to move that the House resolve into the Committee of the Whole House on the State of the Union for consideration of the bill. If reported and the report has been available for at least one calendar day, all points*

*of order against the bill and against consideration of the bill are waived. If discharged, all points of order against the bill and against consideration of the bill are waived. The motion is highly privileged. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. During consideration of the bill in the committee of the Whole, the first reading of the bill shall be dispensed with. General debate shall proceed, shall be confined to the bill, and shall not exceed one hour equally divided and controlled by a proponent and an opponent of the bill. The bill shall be considered as read for amendment under the five-minute rule. Only one motion to rise shall be in order, except if offered by the manager. No amendment to the bill is in order except an amendment that is relevant to aviation funding and the Federal Aviation Administration. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except pro forma amendments for the purposes of debate only. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion. A motion to reconsider the vote on passage of the bill shall not be in order.*

*(3) APPEALS OF RULINGS.—Appeals from decision of the Chair regarding application of the rules of the House of Representatives to the procedure relating to an implementing bill shall be decided without debate.*

*(4) CONSIDERATION OF MORE THAN ONE IMPLEMENTING BILL.—It shall not be in order to consider under this subsection more than one implementing bill under this section, except for consideration of a similar Senate bill (unless the House has already rejected an implementing bill) or more than one motion to discharge described in paragraph (1) with respect to an implementing bill.*

*(c) CONSIDERATION IN THE SENATE.—*

*(1) REFERRAL AND REPORTING.—An implementing bill introduced in the Senate shall be referred to the appropriate committee or committees. A committee to which an implementing bill has been referred shall report the bill not later than the 45th day of session following the date of introduction of that bill. If any committee fails to report the bill within that period, that committee shall be automatically discharged from further consideration of the bill and the bill shall be placed on the Calendar.*

*(2) IMPLEMENTING BILL FROM HOUSE.—When the Senate receives from the House of Representatives an implementing bill, the bill shall not be referred to committee and shall be placed on the Calendar.*

*(3) CONSIDERATION OF SINGLE IMPLEMENTING BILL.—After the Senate has proceeded to the consideration of an implementing bill under this subsection, then no other implementing bill orig-*

*inating in that same House shall be subject to the procedures set forth in this subsection.*

*(4) AMENDMENTS.—No amendment to the bill is in order except an amendment that is relevant to aviation funding and the Federal Aviation Administration. Consideration of the bill for amendment shall not exceed one hour excluding time for recorded votes and quorum calls. No amendment shall be subject to further amendment, except for perfecting amendments.*

*(5) MOTION NONDEBATABLE.—A motion to proceed to consideration of an implementing bill under this subsection shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed was adopted or rejected, although subsequent motions to proceed may be made under this paragraph.*

*(6) LIMIT ON CONSIDERATION.—*

*(A) After no more than 20 hours of consideration of an implementing bill, the Senate shall proceed, without intervening action or debate (except as permitted under paragraph (9)), to vote on the final disposition thereof to the exclusion of all amendments not then pending and to the exclusion of all motions, except a motion to reconsider or table.*

*(B) The time for debate on the implementing bill shall be equally divided between the Majority Leader and the Minority Leader or their designees.*

*(7) DEBATE OF AMENDMENTS.—Debate on any amendment to an implementing bill shall be limited to one hour, equally divided and controlled by the Senator proposing the amendment and the majority manager, unless the majority manager is in favor of the amendment, in which case the minority manager shall be in control of the time in opposition.*

*(8) NO MOTION TO RECOMMIT.—A motion to recommit an implementing bill shall not be in order.*

*(9) DISPOSITION OF SENATE BILL.—If the Senate has read for the third time an implementing bill that originated in the Senate, then it shall be in order at any time thereafter to move to proceed to the consideration of an implementing bill for the same special message received from the House of Representatives and placed on the Calendar pursuant to paragraph (2), strike all after the enacting clause, substitute the text of the Senate implementing bill, agree to the Senate amendment, and vote on final disposition of the House implementing bill, all without any intervening action or debate.*

*(10) CONSIDERATION OF HOUSE MESSAGE.—Consideration in the Senate of all motions, amendments, or appeals necessary to dispose of a message from the House of Representatives on an implementing bill shall be limited to not more than 4 hours. Debate on each motion or amendment shall be limited to 30 minutes. Debate on any appeal or point of order that is submitted in connection with the disposition of the House message shall be limited to 20 minutes. Any time for debate shall be equally divided and controlled by the proponent and the majority manager, unless the majority manager is a proponent of the*

*motion, amendment, appeal, or point of order, in which case the minority manager shall be in control of the time in opposition.*

*(d) CONSIDERATION IN CONFERENCE.—*

*(1) CONVENING OF CONFERENCE.—In the case of disagreement between the 2 Houses of Congress with respect to an implementing bill passed by both Houses, conferees should be promptly appointed and a conference promptly convened, if necessary.*

*(2) HOUSE CONSIDERATION.—Notwithstanding any other rule of the House of Representatives, it shall be in order to consider the report of a committee of conference relating to an implementing bill if such report has been available for one calendar day (excluding Saturdays, Sundays, and legal holidays, unless the House is in session on such a day) and the accompanying statement shall have been filed in the House.*

*(3) SENATE CONSIDERATION.—Consideration in the Senate of the conference report and any amendments in disagreement on an implementing bill shall be limited to not more than 4 hours equally divided and controlled by the Majority Leader and the Minority Leader or their designees. A motion to recommit the conference report is not in order.*

*(e) DEFINITIONS.—For purposes of this section—*

*(1) IMPLEMENTING BILL.—The term "implementing bill" means only a bill of either House of Congress which is introduced as provided in subsection (a) with respect to one or more Federal Aviation Administration funding proposals which contains changes in existing laws or new statutory authority required to implement such funding proposal or proposals.*

*(2) FUNDING PROPOSAL.—The term "funding proposal" means a proposal to provide interim or permanent funding for operations of the Federal Aviation Administration.*

*(f) RULES OF HOUSE OF REPRESENTATIVES AND SENATE.—This section is enacted by the Congress—*

*(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of implementing bills described in subsection (d); and they supersede other rules only to the extent that they are inconsistent therewith; and*

*(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.*

## *CHAPTER 482—ADVANCE APPROPRIATIONS FOR AIRPORT AND AIRWAY TRUST FACILITIES*

*Sec.*



### *§ 48201. Advance appropriations*

*(a) MULTIYEAR AUTHORIZATIONS.—Beginning with fiscal year 1998, any authorization of appropriations for an activity for which amounts are to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code*

*of 1986 shall provide funds for a period of not less than 3 fiscal years unless the activity for which appropriations are authorized is to be concluded before the end of that period.*

*(b) MULTIYEAR APPROPRIATIONS.—Beginning with fiscal year 1998, amounts appropriated from the Airport and Airway Trust Fund shall be appropriated for periods of 3 fiscal years rather than annually.*

## CHAPTER 701—COMMERCIAL SPACE LAUNCH ACTIVITIES

### § 70101. Findings and purposes

(a) FINDINGS.—Congress finds that—

(1) the peaceful uses of outer space continue to be of great value and to offer benefits to all mankind;

(2) private applications of space technology have achieved a significant level of commercial and economic activity and offer the potential for growth in the future, particularly in the United States;

(3) new and innovative equipment and services are being sought, produced, and offered by entrepreneurs in telecommunications, information services, *microgravity research,* and remote sensing technologies;

(4) the private sector in the United States has the capability of developing and providing *commercial space transportation services, including in-space transportation activities and* private satellite launching and associated services that would complement the launching and associated services now available from the United States Government;

(5) the development of [commercial launch vehicles] *commercial space transportation including commercial launch vehicles, in-space transportation activities, reentry vehicles,* and associated services would enable the United States to retain its competitive position internationally, contributing to the national interest and economic well-being of the United States;

(6) providing [launch] *launch, in-space transportation, and reentry* services by the private sector is consistent with the national security and foreign policy interests of the United States and would be facilitated by stable, minimal, and appropriate regulatory guidelines that are fairly and expeditiously applied;

(7) the United States should encourage private sector [launches] *launches, in-space transportation activities, reentries* and associated services and, only to the extent necessary, regulate those [launches] *launches, in-space transportation activities, reentries* and services to ensure compliance with international obligations of the United States and to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States;

(8) space transportation, including the establishment and operation of launch [sites and complementary facilities, the providing of launch] *sites, in-space transportation control sites, reentry sites, and complementary facilities, the providing of launch, in-space transportation, and reentry* services, the establishment of support facilities, and the providing of support

services, is an important element of the transportation system of the United States, and in connection with the commerce of the United States there is a need to develop a strong space transportation infrastructure with significant private sector involvement; and

(9) the participation of State governments in encouraging and facilitating private sector involvement in space-related activity, particularly through the establishment of a space transportation-related infrastructure, including launch sites, *in-space transportation control sites, reentry sites,* complementary facilities, and launch site support facilities, is in the national interest and is of significant public benefit.

(b) PURPOSES.—The purposes of this chapter are—

(1) to promote economic growth and entrepreneurial activity through use of the space environment for peaceful purposes;

(2) to encourage the United States private sector to provide [launch vehicles] *commercial space transportation services, including launch vehicles, in-space transportation activities, reentry vehicles,* and associated services by—

(A) simplifying and expediting the issuance and transfer of commercial launch licenses; and

(B) facilitating and encouraging the use of Government-developed space technology;

(3) to provide that the Secretary of Transportation is to oversee and coordinate the conduct of commercial [launch] *launch, in-space transportation vehicle, and reentry* operations, issue and transfer [commercial launch] licenses authorizing those operations, and protect the public health and safety, safety of property, and national security and foreign policy interests of the United States; and

(4) to facilitate the strengthening and expansion of the United States space transportation infrastructure, including the enhancement of United States launch sites and launch-site support facilities, *in-space transportation vehicle control facilities, and development of reentry sites* with Government, State, and private sector involvement, to support the full range of United States space-related activities.

**§ 70102. Definitions**

In this chapter—

(1) "citizen of the United States" means—

(A) an individual who is a citizen of the United States;

(B) an entity organized or existing under the laws of the United States or a State; or

(C) an entity organized or existing under the laws of a foreign country if the controlling interest (as defined by the Secretary of Transportation) is held by an individual or entity described in subclause (A) or (B) of this clause.

(2) "executive agency" has the same meaning given that term in section 105 of title 5.

(3) "launch" means to place or try to place a launch vehicle and any payload *from Earth, including a reentry vehicle and its payload, if any*—

(A) in a suborbital trajectory;

(B) in Earth orbit in outer space; or

(C) otherwise in outer space.

(4) "launch property" means an item built for, or used in, the launch preparation or launch of a launch vehicle.

(5) "launch services" means—

(A) activities involved in the preparation of a launch vehicle and payload for launch; and

(B) the conduct of a launch.

(6) "launch site" means the location on Earth from which a launch takes place (as defined in a license the Secretary issues or transfers under this chapter) and necessary facilities.

(7) "launch vehicle" means—

(A) a vehicle built to operate in, or place a payload in, outer space; and

(B) a suborbital rocket.

(8) "payload" means an [object] *object, including a reentry vehicle and its payload, if any,* that a person undertakes to place in outer space by means of a launch vehicle, including components of the vehicle specifically designed or adapted for that object.

*(9) "in-space transportation vehicle" means any vehicle designed to operate in space and designed to transport any payload or object substantially intact from one orbit to another orbit.*

*(10) "in-space transportation services" means—*

*(A) those activities involved in the direct transportation or attempted transportation of a payload or object from one orbit to another;*

*(B) the procedures, actions, and activities necessary for conduct of those transportation services; and*

*(C) the conduct of transportation services.*

*(11) "in-space transportation control site" means a location from which an in-space transportation vehicle is controlled or operated (as such terms may be defined in any license the Secretary issues or transfers under this chapter).*

*(12) "obtrusive space advertising" means advertising in outer space that is capable of being recognized by a human being on the surface of the earth without the aid of a telescope or other technological device.*

*(13) "reenter" and "reentry" mean to return purposefully, or attempt to return, a reentry vehicle and payload, if any, from Earth orbit or outer space to Earth.*

*(14) "reentry services" means—*

*(A) activities involved in the preparation of a reentry vehicle and its payload, if any, for reentry; and*

*(B) the conduct of a reentry.*

*(15) "reentry site" means the location on Earth to which a reentry vehicle is intended to return (as defined in a license the Secretary issues or transfers under this chapter).*

*(16) "reentry vehicle" means any vehicle designed to return substantially intact from Earth orbit or outer space to Earth.";*

[(9)] *(17)* "person" means an individual and an entity organized or existing under the laws of a State or country.

[(10)] *(18)* "State" means a State of the United States, the District of Columbia, and a territory or possession of the United States.

[(11)] *(19)* "third party" means a person except—

(A) the United States Government or the Government's contractors or subcontractors involved in launch [services] *services, in-space transportation activities, or reentry services;*

(B) a licensee or transferee under this chapter;

(C) a licensee's or transferee's contractors, subcontractors, or customers involved in launch [services] *services, in-space transportation activities, or reentry services; or*

(D) the customer's contractors or subcontractors involved in launch [services] *services, in-space transportation activities, or reentry services.*

[(12)] *(20)* "United States" means the States of the United States, the District of Columbia, and the territories and possessions of the United States.

### § 70103. General authority

(a) GENERAL.—The Secretary of Transportation shall carry out this chapter.

(b) FACILITATING COMMERCIAL [LAUNCHES] *SPACE ACTIVITIES*.—In carrying out this chapter, the Secretary shall—

(1) encourage, facilitate, and promote [commercial space launches] *commercial space transportation services* by the private sector; and

(2) take actions to facilitate private sector involvement in commercial space transportation activity, and to promote public-private partnerships involving the United States Government, State governments, and the private sector to build, expand, modernize, or operate [a space launch] *space transportation* infrastructure.

(c) EXECUTIVE AGENCY ASSISTANCE.—When necessary, the head of an executive agency shall assist the Secretary in carrying out this chapter.

### § 70104. [Restrictions on launches and operations] *Restrictions on launches, in-space transportation activities, operations, and reentries*

(a) LICENSE REQUIREMENT.—A license issued or transferred under this chapter is required for the following:

(1) for a person to launch a launch vehicle or to operate a launch [site] *site, an in-space transportation operations site, reentry site, or reenter a reentry vehicle,* in the United States.

(2) for a citizen of the United States (as defined in section 70102(1)(A) or (B) of this title) to launch a launch vehicle or to operate a launch [site] *site, an in-space transportation operations site, reentry site, or reenter a reentry vehicle,* outside the United States.

(3) for a citizen of the United States (as defined in section 70102(1)(C) of this title) to launch a launch vehicle or to operate a launch [site] *site, an in-space transportation operations site, reentry site, or reenter a reentry vehicle,* outside the United

States and outside the territory of a foreign country unless there is an agreement between the United States Government and the government of the foreign country providing that the government of the foreign country has jurisdiction over the [launch or operation.] *launch, in-space transportation activity, or reentry operation.*

(4) for a citizen of the United States (as defined in section 70102(1)(C) of this title) to launch a launch vehicle or to operate a launch [site] *site, an in-space transportation operations site, reentry site, or reenter a reentry vehicle,* in the territory of a foreign country if there is an agreement between the United States Government and the government of the foreign country providing that the United States Government has jurisdiction over the [launch or operation.] *launch, in-space transportation activity, or reentry operation.*

[(b) COMPLIANCE WITH PAYLOAD REQUIREMENTS.—The holder of a launch license under this chapter may launch a payload only if the payload complies with all requirements of the laws of the United States related to launching a payload.]

*(b) COMPLIANCE WITH PAYLOAD REQUIREMENTS.—The holder of a license under this chapter may launch a payload, operate an in-space transportation vehicle, or reenter a payload only if the payload or vehicle complies with all requirements of the laws of the United States related to launching a payload, operating an in-space transportation vehicle, or reentering a payload.*

(c) [PREVENTING LAUNCHES.—] *PREVENTING LAUNCHES, IN-SPACE TRANSPORTATION ACTIVITIES, OR RE-ENTRIES.*—The Secretary of Transportation shall establish whether all required licenses, authorizations, and permits required for a payload have been obtained. If no license, authorization, or permit is required, the Secretary may prevent the [launch] *launch, in-space transportation activity, or reentry* if the Secretary decides the [launch] *launch, in-space transportation activity, or reentry* would jeopardize the public health and safety, safety of property, or national security or foreign policy interest of the United States.

### § 70105. License applications and requirements

(a) APPLICATIONS.—A person may apply to the Secretary of Transportation for a license or transfer of a license under this chapter in the form and way the Secretary prescribes. Consistent with the public health and safety, safety of property, and national security and foreign policy interests of the United States, the Secretary, not later than 180 days after receiving an application, shall issue or transfer a license if the Secretary decides in writing that the applicant complies, and will continue to comply, with this chapter and regulations prescribed under this chapter. The Secretary shall inform the applicant of any pending issue and action required to resolve the issue if the Secretary has not made a decision not later than 120 days after receiving an application.

(b) REQUIREMENTS.—

(1) Except as provided in this subsection, all requirements of the laws of the United States applicable to the launch of a launch vehicle or the operation of a launch [site] *site, an in-space transportation control site, or a reentry site or the reentry*

*of a reentry vehicle,* are requirements for a license under this chapter.

(2) The Secretary may prescribe—

(A) any term necessary to ensure compliance with this chapter, including on-site verification that a [launch or operation] *launch, in-space transportation activity, operation, or reentry* complies with representations stated in the application;

(B) an additional requirement necessary to protect the public health and safety, safety of property, national security interests, and foreign policy interests of the United States; and

(C) by regulation that a requirement of a law of the United States not be a requirement for a license if the Secretary, after consulting with the head of the appropriate executive agency, decides that the requirement is not necessary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(3) The Secretary may waive a requirement for an individual applicant if the Secretary decides that the waiver is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(c) PROCEDURES AND TIMETABLES.—The Secretary shall establish procedures and timetables that expedite review of a license application and reduce the regulatory burden for an applicant.

### § 70106. Monitoring activities

(a) GENERAL REQUIREMENTS.—A licensee under this chapter must allow the Secretary of Transportation to place an officer or employee of the United States Government or another individual as an observer at a launch [site] *site, in-space transportation control site, or reentry site* the licensee uses, at a production facility or assembly site a contractor of the licensee uses to produce or assemble a launch [vehicle,] *vehicle, in-space transportation vehicle, or reentry vehicle* or at a site at which a payload is integrated with a launch [vehicle.] *vehicle, in-space transportation vehicle, or reentry vehicle.* The observer will monitor the activity of the licensee or contractor at the time and to the extent the Secretary considers reasonable to ensure compliance with the license or to carry out the duties of the Secretary under section 70104(c) of this title. A licensee must cooperate with an observer carrying out this subsection.

(b) CONTRACTS.—To the extent provided in advance in an appropriation law, the Secretary may make a contract with a person to carry out subsection (a) of this section.

**§ 70108. [Prohibition, suspension, and end of launches and operation of launch sites] *Prohibition, suspension, and end of launches, in-space transportation activities, reentries, or operation of launch sites, in-space transportation control sites, or reentry sites***

(a) GENERAL AUTHORITY.—The Secretary of Transportation may prohibit, suspend, or end immediately the launch of a launch vehicle or the operation of a launch [site] *site, in-space transportation control site, in-space transportation activity, or reentry site, or reentry of a reentry vehicle,* licensed under this chapter if the Secretary decides the [launch or operation] *launch, in-space transportation activity, operation, or reentry* is detrimental to the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(b) EFFECTIVE PERIODS OF ORDERS.—An order under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

**§ 70109. [Preemption of scheduled launches] *Preemption of scheduled launches, in-space transportation activities, or reentries***

(a) GENERAL.—With the cooperation of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, the Secretary of Transportation shall act to ensure that a launch *or reentry* of a payload is not preempted from access to a United States Government launch [site] *site, reentry site,* or launch property, *nor shall an in-space transportation activity or operation be preempted,* except for imperative national need, when a launch date commitment *or reentry date commitment* from the Government has been obtained for a launch *or reentry* licensed under this chapter. A licensee or transferee preempted from access to a launch [site] *site, reentry site,* or launch property does not have to pay the Government any amount for launch [services] *services, or services related to a reentry,* attributable only to the scheduled launch *or reentry* prevented by the preemption. *A licensee or transferee preempted from access to a reentry site does not have to pay the Government agency responsible for the preemption any amount for reentry services attributable only to the scheduled reentry prevented by the preemption.*

(b) IMPERATIVE NATIONAL NEED DECISIONS.—In consultation with the Secretary of Transportation, the Secretary of Defense or the Administrator shall decide when an imperative national need requires preemption under subsection (a) of this section. That decision may not be delegated.

(c) REPORTS.—In cooperation with the Secretary of Transportation, the Secretary of Defense or the Administrator, as appropriate, shall submit to Congress not later than 7 days after a decision to preempt under subsection (a) of this section, a report that includes an explanation of the circumstances justifying the decision and a schedule for ensuring the prompt launching *or reentry* of a preempted payload.

**§ 70109a. Space advertising**

*(a) LICENSING.—Notwithstanding the provisions of this chapter or any other provision of law, the Secretary shall not—*

*(1) issue or transfer a license under this chapter; or*

*(2) waive the license requirements of this chapter;*

*for the launch of a payload containing any material to be used for the purposes of obtrusive space advertising.*

*(b) LAUNCHING.—No holder of a license under this chapter may launch a payload containing any material to be used for purposes of obtrusive space advertising on or after the date of enactment of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1996.*

*(c) COMMERCIAL SPACE ADVERTISING.—Nothing in this section shall apply to nonobtrusive commercial space advertising, including advertising on commercial space transportation vehicles, space infrastructure, payloads, space launch facilities, and launch support facilities.*

**§ 70110. Administrative hearings and judicial review**

(a) ADMINISTRATIVE HEARINGS.—The Secretary of Transportation shall provide an opportunity for a hearing on the record to—

(1) an applicant under this chapter, for a decision of the Secretary under section 70105(a) of this title to issue or transfer a license with terms or deny the issuance or transfer of a license;

(2) an owner or operator of a payload under this chapter, for a decision of the Secretary under section 70104(c) of this title to prevent the **[**launch**]** *launch, in-space transportation activity, or reentry* of the payload; and

(3) a licensee under this chapter, for a decision of the Secretary under—

(A) section 70107 (b) or (c) of this title to modify, suspend, or revoke a license; or

(B) section 70108(a) of this title to prohibit, suspend, or end a launch or operation of a launch **[**site**]** *site, in-space transportation control site, in-space transportation activity, reentry site, or reentry of a reentry vehicle,* licensed by the Secretary.

(b) JUDICIAL REVIEW.—A final action of the Secretary under this chapter is subject to judicial review as provided in chapter 7 of title 5.

**§ 70111. Acquiring United States Government property and services**

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—

(1) The Secretary of Transportation shall facilitate and encourage the acquisition by the private sector and State governments of—

(A) launch *or reentry* property of the United States Government that is excess or otherwise is not needed for public use; and

(B) launch services, *in-space transportation activities, or reentry services,* including utilities, of the Government otherwise not needed for public use.

(2) In acting under paragraph (1) of this subsection, the Secretary shall consider the commercial availability on reasonable terms of substantially equivalent launch *or reentry* property or launch [services] *services, in-space transportation activities, or reentry services,* from a domestic source.

(b) PRICE.—

(1) In this subsection, "direct costs" means the actual costs that—

(A) can be associated unambiguously with a commercial [launch] *launch, in-space transportation activity, or reentry* effort; and

(B) the Government would not incur if there were no commercial [launch] *launch, in-space transportation activity, or reentry* effort.

(2) In consultation with the Secretary, the head of the executive agency providing the property or service under subsection (a) of this section shall establish the price for the property or service. The price for—

(A) acquiring launch property by sale or transaction instead of sale is the fair market value;

(B) acquiring launch property (except by sale or transaction instead of sale) is an amount equal to the direct costs, including specific wear and tear and property damage, the Government incurred because of acquisition of the property; and

(C) launch [services] *services, in-space transportation activities or services, or reentry services* is an amount equal to the direct costs, including the basic pay of Government civilian and contractor personnel, the Government incurred because of acquisition of the services.

(c) COLLECTION BY SECRETARY.—The Secretary may collect a payment under this section with the consent of the head of the executive agency establishing the price. Amounts collected under this subsection shall be deposited in the Treasury. Amounts (except for excess launch property) shall be credited to the appropriation from which the cost of providing the property or services was paid.

[(d) COLLECTION BY OTHER GOVERNMENTAL HEADS.—The head of a department, agency, or instrumentality of the Government may collect a payment for an activity involved in producing a launch vehicle or its payload for launch if the activity was agreed to by the owner or manufacturer of the launch vehicle or payload.]

*(d) COLLECTION BY OTHER GOVERNMENTAL HEADS.—The head of a department, agency, or instrumentality of the Government may collect a payment for any activity involved in producing a launch vehicle, in-space transportation vehicle, or reentry vehicle or its payload for launch, in-space transportation activity, or reentry if the activity was agreed to by the owner or manufacturer of the launch vehicle, in-space transportation vehicle, reentry vehicle, or payload.*

### § 70112. Liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—

(1) When a license is issued or transferred under this chapter, the licensee or transferee shall obtain liability insurance or

demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(A) a third party for death, bodily injury, or property damage or loss resulting from an activity carried out under the license; and

(B) the United States Government against a person for damage or loss to Government property resulting from an activity carried out under the license.

(2) The Secretary of Transportation shall determine the amounts required under paragraph (1)(A) and (B) of this subsection, after consulting with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate executive agencies.

(3) For the total claims related to one [launch,] *launch or reentry, or to the operations of each in-space transportation vehicle,* a licensee or transferee is not required to obtain insurance or demonstrate financial responsibility of more than—

(A)(i) $500,000,000 under paragraph (1)(A) of this subsection; or

(ii) $100,000,000 under paragraph (1)(B) of this subsection; or

(B) the maximum liability insurance available on the world market at reasonable cost if the amount is less than the applicable amount in clause (A) of this paragraph.

(4) An insurance policy or demonstration of financial responsibility under this subsection shall protect the following, to the extent of their potential liability for involvement in launch [services,] *services, in-space transportation activities, or reentry services* at no cost to the Government:

(A) the Government.

(B) executive agencies and personnel, contractors, and subcontractors of the Government.

(C) contractors, subcontractors, and customers of the licensee or transferee.

(D) contractors and subcontractors of the customer.

(b) RECIPROCAL WAIVER OF CLAIMS.—

(1) A license issued or transferred under this chapter shall contain a provision requiring the licensee or transferee to make a reciprocal waiver of claims with its contractors, subcontractors, and customers, and contractors and subcontractors of the customers, involved in launch [services] *services, in-space transportation activities, or reentry services* under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the *applicable* license.

(2) The Secretary of Transportation shall make, for the Government, executive agencies of the Government involved in launch [services,] *services, in-space transportation activities, or reentry services* and contractors and subcontractors involved in launch [services,] *services, in-space transportation activities, or reentry services* a reciprocal waiver of claims with the licensee or transferee, contractors, subcontractors, and customers of the licensee or transferee, and contractors and subcontractors of

the customers, involved in launch [services] *services, in-space transportation activities, or reentry services* under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the *applicable* license. The waiver applies only to the extent that claims are more than the amount of insurance or demonstration of financial responsibility required under subsection (a)(1)(B) of this section. After consulting with the Administrator and the Secretary of the Air Force, the Secretary of Transportation may waive, for the Government and a department, agency, and instrumentality of the Government, the right to recover damages for damage or loss to Government property to the extent insurance is not available because of a policy exclusion the Secretary of Transportation decides is usual for the type of insurance involved.

(c) DETERMINATION OF MAXIMUM PROBABLE LOSSES.—The Secretary of Transportation shall determine the maximum probable losses under subsection (a)(1)(A) and (B) of this section associated with an activity under a license not later than 90 days after a licensee or transferee requires a determination and submits all information the Secretary requires. The Secretary shall amend the determination as warranted by new information.

(d) ANNUAL REPORT.—

(1) Not later than November 15 of each year, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Science, Space, and Technology] *Science* of the House of Representatives a report on current determinations made under subsection (c) of this section related to all issued licenses and the reasons for the determinations.

(2) Not later than May 15 of each year, the Secretary of Transportation shall review the amounts specified in subsection (a)(3)(A) of this section and submit a report to Congress that contains proposed adjustments in the amounts to conform with changed liability expectations and availability of insurance on the world market. The proposed adjustment takes effect 30 days after a report is submitted.

(e) [LAUNCHES] *LAUNCHES, IN-SPACE TRANSPORTATION ACTIVITIES, OR REENTRIES* INVOLVING GOVERNMENT FACILITIES AND PERSONNEL.—The Secretary of Transportation shall establish requirements consistent with this chapter for proof of financial responsibility and other assurances necessary to protect the Government and its executive agencies and personnel from liability, death, bodily injury, or property damage or loss as a result of a launch or operation of a launch [site] *site, in-space transportation control site, or control or an in-space transportation vehicle or activity, or reentry site or a reentry* involving a facility or personnel of the Government. The Secretary may not relieve the Government of liability under this subsection for death, bodily injury, or property damage or loss resulting from the willful misconduct of the Government or its agents.

(f) COLLECTION AND CREDITING PAYMENTS.—The head of a department, agency, or instrumentality of the Government shall collect a payment owed for damage or loss to Government property under its jurisdiction or control resulting from an activity carried out under a license issued or transferred under this chapter. The payment shall be credited to the current applicable appropriation, fund, or account of the department, agency, or instrumentality.

### § 70113. Paying claims exceeding liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—

(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a licensee or transferee under this chapter, a contractor, subcontractor, or customer of the licensee or transferee, or a contractor or subcontractor of a customer, resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one [launch—] *launch, operation of one in-space transportation vehicle, or one reentry—*

(A) is more than the amount of insurance or demonstration of financial responsibility required under section 70112(a)(1)(A) of this title; and

(B) is not more than $ 1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The Secretary may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 70112(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an insurance policy exclusion the Secretary decides is usual for the type of insurance involved, the Secretary may provide for paying the excluded claims without regard to the limitation contained in section 70112(a)(1).

(b) NOTICE, PARTICIPATION, AND APPROVAL.—Before a payment under subsection (a) of this section is made—

(1) notice must be given to the Government of a claim, or a civil action related to the claim, against a party described in subsection (a)(1) of this section for death, bodily injury, or property damage or loss;

(2) the Government must be given an opportunity to participate or assist in the defense of the claim or action; and

(3) the Secretary must approve any part of a settlement to be paid out of appropriations of the Government.

(c) WITHHOLDING PAYMENTS.—The Secretary may withhold a payment under subsection (a) of this section if the Secretary certifies that the amount is not reasonable. However, the Secretary shall deem to be reasonable the amount of a claim finally decided by a court of competent jurisdiction.

(d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—

(1) If as a result of an activity carried out under a license issued or transferred under this chapter the total of claims related to one launch is likely to be more than the amount of required insurance or demonstration of financial responsibility, the Secretary shall—

(A) survey the causes and extent of damage; and

(B) submit expeditiously to Congress a report on the results of the survey.

(2) Not later than 90 days after a court determination indicates that the liability for the total of claims related to one launch may be more than the required amount of insurance or demonstration of financial responsibility, the President, on the recommendation of the Secretary, shall submit to Congress a compensation plan that—

(A) outlines the total dollar value of the claims;

(B) recommends sources of amounts to pay for the claims;

(C) includes legislative language required to carry out the plan if additional legislative authority is required; and

(D) for a single event or incident, may not be for more than $ 1,500,000,000.

(3) A compensation plan submitted to Congress under paragraph (2) of this subsection shall—

(A) have an identification number; and

(B) be submitted to the Senate and the House of Representatives on the same day and when the Senate and House are in session.

(e) CONGRESSIONAL RESOLUTIONS.—

(1) In this subsection, "resolution"—

(A) means a joint resolution of Congress the matter after the resolving clause of which is as follows: "That the Congress approves the compensation plan numbered _____ submitted to the Congress on _____, 19_____.", with the blank spaces being filled appropriately; but

(B) does not include a resolution that includes more than one compensation plan.

(2) The Senate shall consider under this subsection a compensation plan requiring additional appropriations or legislative authority not later than 60 calendar days of continuous session of Congress after the date on which the plan is submitted to Congress.

(3) A resolution introduced in the Senate shall be referred immediately to a committee by the President of the Senate. All resolutions related to the same plan shall be referred to the same committee.

(4)(A) If the committee of the Senate to which a resolution has been referred does not report the resolution within 20 calendar days after it is referred, a motion is in order to discharge

the committee from further consideration of the resolution or to discharge the committee from further consideration of the plan.

(B) A motion to discharge may be made only by an individual favoring the resolution and is highly privileged (except that the motion may not be made after the committee has reported a resolution on the plan). Debate on the motion is limited to one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed and another motion to discharge the committee from another resolution on the same plan may not be made.

(5)(A) After a committee of the Senate reports, or is discharged from further consideration of, a resolution, a motion to proceed to the consideration of the resolution is in order at any time, even though a similar previous motion has been disagreed to. The motion is highly privileged and is not debatable. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph is limited to not more than 10 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(6) The following shall be decided in the Senate without debate:

(A) a motion to postpone related to the discharge from committee.

(B) a motion to postpone consideration of a resolution.

(C) a motion to proceed to the consideration of other business.

(D) an appeal from a decision of the chair related to the application of the rules of the Senate to the procedures related to resolution.

(f) APPLICATION.—This section applies to a license issued or transferred under this chapter for which the Secretary receives a complete and valid application not later than December 31, 1999.

**§ 70115. Enforcement and penalty**

(a) PROHIBITIONS.—A person may not violate this chapter, a regulation prescribed under this chapter, or any term of a license issued or transferred under this chapter.

(b) GENERAL AUTHORITY.—

(1) In carrying out this chapter, the Secretary of Transportation may—

(A) conduct investigations and inquiries;

(B) administer oaths;

(C) take affidavits; and

(D) under lawful process—

(i) enter at a reasonable time a launch site, *in-space transportation control site, or reentry site,* production facility, assembly site of a launch [vehicle,] *vehicle, in-space transportation vehicle, or reentry vehicle* or site at which a payload is integrated with a launch [vehicle] *vehicle, in-space transportation vehicle, or reentry vehicle* to inspect an object to which this chapter applies or a record or report the Secretary requires be made or kept under this chapter; and

(ii) seize the object, record, or report when there is probable cause to believe the object, record, or report was used, is being used, or likely will be used in violation of this chapter.

(2) The Secretary may delegate a duty or power under this chapter related to enforcement to an officer or employee of another executive agency with the consent of the head of the agency.

(c) CIVIL PENALTY.—

(1) After notice and an opportunity for a hearing on the record, a person the Secretary finds to have violated subsection (a) of this section is liable to the United States Government for a civil penalty of not more than $ 100,000. A separate violation occurs for each day the violation continues.

(2) In conducting a hearing under paragraph (1) of this subsection, the Secretary may—

(A) subpoena witnesses and records; and

(B) enforce a subpoena in an appropriate district court of the United States.

(3) The Secretary shall impose the civil penalty by written notice. The Secretary may compromise or remit a penalty imposed, or that may be imposed, under this section.

(4) The Secretary shall recover a civil penalty not paid after the penalty is final or after a court enters a final judgment for the Secretary.

### § 70117. Relationship to other executive agencies, laws, and international obligations

(a) EXECUTIVE AGENCIES.—Except as provided in this chapter, a person is not required to obtain from an executive agency a license, approval, waiver, or exemption to launch a launch vehicle or operate a launch [site.] *site, perform in-space transportation activities or operate an in-space transportation control site or reentry site, or reenter a reentry vehicle.*

(b) FEDERAL COMMUNICATIONS COMMISSION AND SECRETARY OF COMMERCE.—This chapter does not affect the authority of—

(1) the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 et seq.); or

(2) the Secretary of Commerce under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 et seq.).

(c) STATES AND POLITICAL SUBDIVISIONS.—A State or political subdivision of a State—

(1) may not adopt or have in effect a law, regulation, standard, or order inconsistent with this chapter; but

(2) may adopt or have in effect a law, regulation, standard, or order consistent with this chapter that is in addition to or more stringent than a requirement of, or regulation prescribed under, this chapter.

(d) CONSULTATION.—The Secretary of Transportation is encouraged to consult with a State to simplify and expedite the approval of a space [launch] *launch, perform an in-space transportation activity, or reentry* activity.

(e) FOREIGN COUNTRIES.—The Secretary of Transportation shall—

(1) carry out this chapter consistent with an obligation the United States Government assumes in a treaty, convention, or agreement in force between the Government and the government of a foreign country; and

(2) consider applicable laws and requirements of a foreign country when carrying out this chapter.

[(f) LAUNCH NOT AN EXPORT.—A launch vehicle or payload that is launched is not, because of the launch, an export for purposes of a law controlling exports.

[(g) NONAPPLICATION.—This chapter does not apply to—

[(1) a launch, operation of a launch vehicle or launch site, or other space activity the Government carries out for the Government; or

[(2) planning or policies related to the launch, operation, or activity.]

*(f) LAUNCH NOT AN EXPORT OR IMPORT.—A launch vehicle, reentry vehicle, or payload that is launched or reentered is not, because of the launch or reentry, an export or import for purposes of a law controlling exports or imports.*

*(g) NONAPPLICATION.—This chapter does not apply to—*

*(1) a launch, in-space transportation activity, reentry, operation of a launch vehicle, in-space transportation vehicle, or reentry vehicle, or of a launch site, in-space transportation control site, or reentry site, or other space activity the Government carries out for the Government; or*

*(2) planning or policies related to the launch, in-space transportation activity, reentry, or operation.*

**[§ 70118. User fees**

[The Secretary of Transportation may collect a user fee for a regulatory or other service conducted under this chapter [49 U.S.C. 70101 et seq.] only if specifically authorized by this chapter [49 U.S.C. 70101 et seq.].]

**§ 70120. Report to Congress**

*The Secretary of Transportation shall submit to Congress an annual report to accompany the President's budget request that—*

*(1) describes all activities undertaken under this chapter, including a description of the process for the application for and approval of licenses under this chapter and recommendations for legislation that may further commercial launches and reentries; and*

*(2) reviews the performance of the regulatory activities and the effectiveness of the Office of Commercial Space Transportation.*

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