Calendar No. 29

106th CONGRESS, *1st Session* | SENATE | REPORT 106–9

AIR TRANSPORTATION IMPROVEMENT ACT

REPORT

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 82

together with

ADDITIONAL VIEWS

MARCH 8, 1999.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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(II)

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106TH CONGRESS 1st Session } SENATE { REPORT 106–9

AIR TRANSPORTATION IMPROVEMENT ACT

MARCH 8, 1999.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 82]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 82), "A Bill to authorize appropriations for the Federal Aviation Administration, and for other purposes", having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of the Air Transportation Improvement Act, S. 82, as reported, is to provide a two-year authorization for the majority of the programs of the Federal Aviation Administration (FAA), including the Airport Improvement Program (AIP). The bill includes several provisions to improve aviation safety, security, and system capacity, to enhance competition and service in the aviation industry, and to address the effects of commercial air tour flights over national parks.

The Research, Engineering and Development (RE&D) programs have already been authorized for fiscal year (FY) 1999. The reauthorization for RE&D for FY 2000 and beyond will be contained in separate legislation.

BACKGROUND AND NEEDS

Titles I through IV of the bill reaffirm the commitment of the Committee to ensuring that the U.S. continues to have the safest

and most efficient air transportation system in the world. They reauthorize for two years the major programmatic areas within the FAA, which are divided into operations, facilities and equipment (F&E), research, engineering, and development (RE&D), as well as the AIP. Title V addresses Committee concerns with the need to ensure that the airline industry remains competitive and that small communities receive air service. Title VI incorporates legislation to address air tour operations over our National Parks.

FAA AND AIP REAUTHORIZATION (TITLES I–IV)

The FAA is responsible for ensuring the safety, security, and efficiency of civil aviation, and for overseeing the development of a national system of airports. The AIP provides grants to fund the capital needs of the nation's commercial airports and general aviation facilities. Funding for most of the FAA, and all of the AIP, derives from the Airport and Airway Trust Fund (aviation trust fund), which was created by the Airport and Airway Development Act of 1970, primarily as a capital account to build our nation's aviation infrastructure. Over the years, the aviation trust fund has been used to a limited extent to fund the operations of the FAA (e.g., salaries for personnel). According to the Congressional Budget Office (CBO), the uncommitted trust fund balance will be $9.185 billion by the end of fiscal year 1999, and the balance will grow even larger in the out years. The December 1998 CBO baseline projections, however, show a trust fund balance by the end of fiscal year 2003 of only $13.029 billion. This lower-than-expected balance is the result of a change in the spend-out rates from the trust fund, a change that was part of the 1999 Omnibus Appropriations Act (P.L. 105–277). The percentage of trust fund revenues spent on the FAA's operations account was increased from 50 percent to 85 percent. The spend-out rate is expected to return to its historical levels in fiscal year 2000.

The broad range of critical safety activities the agency undertakes includes controlling air traffic across the entire United States, and over vast stretches of the airspace of neighboring countries and over the world's oceans. The agency is responsible for ensuring that pilots and aircraft mechanics are properly trained, developing technologies to detect potential security threats, monitoring the design and production of aircraft, and certifying and monitoring our nation's air carriers.

It is important to note that legislation to reauthorize the AIP establishes contract authority for the program. Without the contract authority in place, the FAA cannot distribute airport grants, regardless of whether an AIP appropriation is in place.

Recently, the fiscal year 1999 Omnibus Appropriations Act extended the AIP through March 31, 1999. The act established $1.205 billion in contract authority for the AIP for the first six months of fiscal year 1999. It set an obligation limitation of $975 million for the same six-month period. As long as the AIP authorization does not lapse at the end of March, the total fiscal year 1999 appropriation for the program will be $1.95 billion.

AIRLINE COMPETITION AND AIR SERVICE (TITLE V)

Over the last several years, there has been growing concern within the Committee over airline competition and service. The Committee has held numerous hearings, taking testimony from a wide variety of witnesses. The Committee members likewise have engaged in lengthy discussions on the impacts of deregulation on small communities, air fares, the ability to serve specific cities, and the impact of limitations on operations at four major airports. Aviation competition has become a key issue and an important policy goal, given rising air fares in certain markets, the relative lack of new low fare competition, and the announced alliances among the major air carriers.

Network carriers, with numerous code-sharing relationships with smaller carriers, are able to aggregate traffic at large hubs, giving them the ability to increase frequencies to many communities that could not support point-to-point nonstop service. New entrant carriers generally have entered the medium and large markets, providing nonstop services different from the hub networks. Not all of these carriers have been successful over the years—new entrants have failed, as have carriers such as Eastern, Pan Am, and Braniff.

Overall, according to analyses conducted by the Department of Transportation (DOT) and others, air fares have fallen since deregulation. The General Accounting Office (GAO) reported in October of 1996 that barriers exist that thwart the ability of carriers to provide new service at airports that are limited by slot constraints, and that market entry barriers, such as perimeter rules prohibiting flights at airports that exceed a certain distance, also impede competition and entry. DOT officials and academics supported these conclusions in testimony before the committee. The GAO noted that the DOT had not exercised its statutory authority provided for under the 1994 FAA reauthorization legislation that gave the DOT the ability to grant exemptions from the High Density Rule that are in the public interest and if "circumstances" are "exceptional." Over the last several months, the DOT has granted slot exemption requests under the 1994 statute to provide more access to New York's LaGuardia and Chicago's O'Hare airports. The Committee believes that the DOT's actions to grant the exemptions will provide new access for communities to these airports, yet more needs to be done to ensure access for new entrant air carriers and small communities.

The foregoing concerns prompted the Committee to take action in Title V of the bill to improve the state of competition in the airline industry.

AIR TOUR FLIGHTS OVER NATIONAL PARKS (TITLE VI)

Legislation (S. 268) was introduced in 1997 to curb the harmful effects of excessive aircraft overflights of national parks. In response, the Administration empaneled a National Parks Overflights Working Group to develop a plan for instituting flight restrictions over national parks. Environmentalists, general aviation and air tour industry representatives, and Native American representatives constitute the membership of the working group. The group produced a consensus proposal on overflights at the end of

1997, which includes a recommendation that the group endorse legislation that encapsulates the agreement.

In cooperation with the Committee, as well as the House Transportation and Infrastructure Committee, air tour industry representatives, environmentalists, and Native American representatives were able to agree on a legislative package to embody the working group's consensus agreement. That consensus, with some slight modifications, is contained in Title VI of the bill.

SUMMARY OF MAJOR PROVISIONS

As reported, S. 82 would authorize the operations, F&E, and AIP accounts of the FAA for FY 1999 and FY 2000. The bill would make several substantive and technical amendments to the AIP. The bill also includes a variety of provisions to enhance and improve aviation system safety, security, efficiency and capacity.

To promote competition and quality air service, the bill would do the following: establish a four-year program to facilitate the initiation and development of air service for small communities; require the DOT to review marketing practices of air carriers that may inhibit the availability of quality, affordable air transportation service to small and medium-sized communities; provide authority for slot exemptions at high density airports for nonstop regional jet service; provide 24 new daily slot exemptions at Ronald Reagan Washington National Airport within the 1,250-mile perimeter at the airport, 12 of which would be reserved for commuter aircraft service to small and medium-sized markets; provide 24 new daily slot exemptions at Reagan National Airport for service beyond the perimeter; and require the DOT to issue 30 slot exemptions at Chicago's O'Hare Airport.

The national parks overflights provisions of the bill would require that commercial air tour operators, in order to conduct operations over a national park, must conduct the tours in accordance with the air tour management plan (ATMP) for that park. The FAA and the National Park Service (NPS) would work together to develop such plans for the conduct of commercial air tours over individual national parks. Commercial air tour operators would have to apply for authority to conduct operations over a park, and the FAA would prescribe operating conditions and limitations for each commercial air tour operator.

LEGISLATIVE HISTORY

On January 19, 1999, Chairman McCain and Senators Hollings, Lott, Rockefeller, Frist, Bryan, Wyden, Akaka, Gorton, and Akaka introduced S. 82, the Air Transportation Improvement Act, which was referred to the Committee. As introduced, S. 82 was nearly identical to the FAA reauthorization bill that was developed by the Committee in the 105th Congress (S. 2279, the Wendell H. Ford National Air Transportation System Improvement Act). Specifically, S. 82 was modeled after the version of S. 2279 that was approved on the Senate floor on September 25, 1998, by a vote of 92 to one. The differences between S. 2279 and S. 82, as introduced, were technical or involved removal of provisions already enacted into law.

On January 20, 1999, the Commerce Committee held a hearing on S. 82. Testimony was heard from representatives of the GAO, FAA, and DOT.

On February 11, 1999, the Committee met in open executive session to consider S. 82, and amendments thereto. Chairman McCain and Senators Hollings, Gorton, and Rockefeller offered a managers amendment that provided a variety of technical and substantive amendments, and it was adopted by voice vote. The managers amendment included provisions that were sought by Senators Breaux (surplus Department of Defense aircraft), Bryan (parks overflights Lake Mead exemption), Burns (AIP eligibility for in-pavement lighting for runway incursion prevention), Gorton (marketing practices rulemaking not mandatory), Hollings and Rockefeller (deletion of foreign air carrier waiver of Stage 2 noise requirements; deletion of foreign ownership study; updating section on Flight Operations Quality Assurance; modification of FAA authority to collect fees for foreign services; FAA long-term capital leasing demonstration program; AIP eligibility for small airports where enplanements temporarily dip below 10,000), Rockefeller and Dorgan (increase in authorization for the small community grant program), Hutchison (letters of intent and Passenger Facility Charges (PFCs)), Inouye (PFC exemption for flights within Hawaii; Stage 2 aircraft exemption for continental-U.S. repairs), Kerry (technical changes to whistleblower protections), Lott and Stevens (increase minimum airport AIP entitlement), McCain (deletion of provision on restoration of slots withdrawn for foreign air transportation), Snowe (study on breathing hoods; study on alternative power source for flight data recorders; additional protections for disabled passengers (with Senator Wyden)), Stevens (Alaska rural aviation improvement; cargo apportionment), and Wyden and Hollings (hazmat enforcement backlog).

Chairman McCain and Senators Ashcroft and Bryan offered an amendment to add: (1) 12 slot exemptions at Reagan National Airport to the beyond-perimeter provision; (2) 12 slot exemptions within the perimeter with no restrictions on aircraft or airport size; and (3) a new criterion for beyond-perimeter exemptions. The amendment was adopted by voice vote.

ESTIMATED COSTS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 3, 1999.

Hon. JOHN MCCAIN,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 82, the Air Transportation Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The principal CBO staff contact for federal costs is Victoria Heid Hall. The staff contact for the private-sector impact

is Jean Wooster, and the contact for the state and local impact is Lisa Cash Driskill.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 82—Air Transportation Improvement Act

Summary: S. 82 would authorize funding for programs of the Federal Aviation Administration (FAA), primarily for fiscal years 1999 and 2000. CBO estimates that appropriation of the authorized amounts would result in additional outlays totaling about $8.2 billion over the 1999–2004 period. Revenues would decline by $2 million over the six-year period

Enacting S. 82 would also affect both direct spending and receipts; therefore, pay-as-you-go procedures would apply to the bill. First, the bill would provide an additional $3.7 billion in contract authority for the airport improvement program (AIP). Providing this contract authority would have no impact on outlays from direct spending because AIP outlays are subject to appropriation action. Second, S. 82 would expand a pilot program that provides for the innovative use of airport improvement grants to finance airport projects. The Joint Committee on Taxation (JCT) expects that this provision would result in an increase in tax-exempt financing and a subsequent loss of federal revenue. JCT estimates that the revenue loss would be about $2 million over the 1999–2004 period and about $5 million over the 1999–2009 period.

S. 82 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost would total about $23 million annually and thus would not exceed the threshold established by that act ($50 million in 1996, adjusted annually for inflation). Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that section 304 of S. 82, which implements provisions of the Convention on International Civil Aviation, fits within that exclusion. Overall, the bill provides significant benefits to airports managed by state and local governments.

S. 82 would impose private-sector mandates, as defined by UMRA, on owners of fixed-wing powered aircraft, air carriers, operators of commercial air tours, ticket agents, and owners and operators of cargo aircraft. The cost of these mandates would not exceed the annual threshold established by UMRA for private-sector mandates ($100 million in 1996, adjusted for inflation).

Description of the bill's major provisions: Title I would authorize the appropriation of about $15.7 billion for FAA operations, facilities, and equipment for fiscal years 1999 and 2000. To date, about $7.7 billion has been appropriated in fiscal year 1999 for those programs. The bill would authorize an additional $66 million for 1999 and about $8.9 billion for 2000.

Title I would also reauthorize funding for the FAA's airport improvement program, and would authorize the appropriation of

about $9 million per year for 1999 through 2001 for a university consortium program. Title II would expand a pilot program that provides for the innovative use of airport improvement grants to finance airport projects.

Title III would extend the authorization for the aviation insurance program to December 31, 2003. It also would prohibit the FAA from charging fees for certain services.

Title IV would authorize the appropriation of such sums as may be necessary for the Secretary of Commerce to fund international promotional activities conducted by the United States National Tourism Organization (USNTO). It also would authorize the appropriation of $6 million for the improvement of rural aviation in Alaska.

In addition, Title IV would authorize the appropriation of such sums as may be necessary to develop the Wide Area Augmentation System (WAAS) plan and to obtain contractual audit services to complete a report on FAA's costs and the allocation of such costs among different FAA services and activities.

Title IV would provide whistleblower protection for employees of air carriers or contractors for air carriers who notify authorities that their employer is violating a federal law relating to air carrier safety. The bill would set up a complaint and investigation process within the Department of Labor (DOL). In addition, the bill would establish civil penalties for individuals who interfere with or jeopardize the safety of the cabin crew or other passengers. Title IV also would establish an oversight committee to advise the FAA on ways to improve the training of flight crews and to develop a test program to improve nonprecision landing approaches for aircraft.

Title V would establish a four-year pilot program to improve access to airport facilities. This program would provide financial and technical assistance to up to 40 communities. The bill would authorize the appropriation of $80 million for the four-year period beginning in 2000.

Title V also would direct the Secretary of Transportation to study and report on federal loan guarantees for the purchase of regional jets and on options for federal financial assistance. It would, in addition, require the General Accounting Office to complete a study of the national airport network, including rural air transportation.

Title IV would make clear that the FAA has the authority to regulate aircraft overflights affecting public and tribal lands, and would establish a process for the FAA and the National Park Service (NPS) to coordinate the development and implementation of such regulations. Regulations governing overflights of national parks will likely be imposed under current law, but enacting Title VI would speed up that implementation. Title VI also would prohibit commercial air tours over the Rocky Mountain National Park.

Finally, S. 82 would require the Secretary of Transportation and the Administrator of the FAA to complete numerous studies, issue guidelines and rules, and publish various reports.

Estimated cost to the Federal Government: CBO estimates that implementing S. 82 would result in additional outlays of about $8.2 billion over the 1999–2004 period and a net loss of federal revenues of about $2 million over the same period. The estimated budgetary impact of S. 82 is shown in the following table. The costs of this

legislation fall almost entirely within budget function 400 (transportation).

	By fiscal years, in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATION						
FAA Spending Under Current Law:						
Budget Authority [1, 2]	7,654	0	0	0	0	0
Estimated Outlays	9,227	3,458	1,347	512	166	78
Proposed Changes:						
Estimated Authorization Level	75	8,090	29	20	20	20
Estimated Outlays	66	5,902	1,549	476	218	20
Total FAA Spending Under S. 82:						
Estimated Authorization Level [1, 2]	7,729	8,090	29	20	20	20
Estimated Outlays	9,293	9,360	2,896	988	384	98
DIRECT SPENDING						
Baseline Contract Authority for AIP Under Current Law:						
Budget Authority [2]	2,410	2,410	2,410	2,410	2,410	2,410
Proposed Changes:						
Budget Authority	0	65	0	0	0	0
Baseline Contract Authority for AIP Under S. 82:						
Budget Authority [2]	2,410	2,475	2,410	2,410	2,410	2,410
CHANGES IN REVENUES						
Estimated Revenues	0	([3])	([3])	([3])	−1	−1

[1] The 1999 level is the amount appropriated for that year.
[2] Budget authority for the airport improvement program is provided in contract authority, a mandatory form of budget authority, however, outlays from AIP contract authority are subject to obligation limitations contained in appropriation acts and are therefore discretionary. CBO's baseline projections assume that a full year of budget authority will be provided for AIP for fiscal year 1999 and for subsequent years. The full-year total is double the half-year amount of $1,205 million provided thus far for 1999. Other direct spending effects would be insignificant.
[3] A revenue loss of less than $500,000.

Basis of estimate: Implementing S. 82 would affect spending subject to appropriation, direct spending, and revenues. Estimates of outlays are based on historical spending patterns for the affected programs and on information provided by DOT and FAA staff.

Spending subject to appropriation

The current authorization for several FAA programs expires on March 31, 1999. For purposes of this estimate, CBO assumes that S. 82 will be enacted by that date and that the amounts authorized for aviation programs will be appropriated for each fiscal year, including a supplemental appropriation for 1999.

S. 82 would authorize the appropriation of a total of $11,415 million for FAA operations in fiscal years 1999 and 2000. The Omnibus Consolidated and Emergency Supplemental Appropriations Act for fiscal year 1999 (Public Law 105–277) provided $5,567 million in budget authority for FAA operations. S. 82 would authorize the appropriation of an additional $64 million in fiscal year 1999 and $5,784 million in fiscal year 2000 for FAA operations.

The bill would also authorize the appropriation of a total of $4,278 million for air navigation facilities and equipment in fiscal years 1999 and 2000. Public Law 105–277 provided $2,087 million in budget authority for air navigation facilities and equipment for fiscal year 1999. S. 82 would authorize the appropriation of an additional $2 million in fiscal year 1999 and $2,189 million in fiscal year 2000 for those purposes.

The bill would establish a program to expand commercial air service to small communities. This program would provide financial

and technical assistance to up to 40 communities over four years. Section 504 would authorize the appropriation of $80 million for the four-year period beginning with fiscal year 2000. Assuming appropriation of the authorized amount, CBO estimates that outlays would total $68 million over the 2000–2004 period.

Section 422 would authorize the appropriation of such sums as may be necessary for the Secretary of Commerce to fund international promotional activities conducted by USNTO. Based on appropriations provided to the U.S. Travel and Tourism Administration for fiscal years 1993–1996, CBO estimates that administering these activities through USNTO would require appropriations of about $15 million a year starting in fiscal year 2000. Assuming the annual appropriation of that amount, we estimate that outlays would be about $65 million over the 2000–2004 period.

Section 101 would authorize the appropriation of about $9 million a year for fiscal years 1999 through 2001 to support a university consortium to provide an air safety and security management certificate program. Assuming the appropriation of the authorized amount, CBO estimates outlays of $27 million over the 1999–2004 period.

Section 503 would authorize such sums as may be necessary to establish an air traffic control service pilot program. The Secretary of Transportation would be directed to contract for air traffic control services at 20 facilities not eligible to participate in the Federal Contract Tower Program. This section also would allow up to three facilities in the pilot program to participate in cost sharing with the federal government to construct air traffic control towers. Based on information from FAA, we estimate that implementing this section would cost about $26 million over the 2000–2004 period, subject to appropriation action.

Section 412 would direct FAA to install closed circuit weather surveillance equipment at not fewer than 15 rural airports in Alaska, and to implement a near-real time weather observation and reporting program in the state. This section also would authorize funding for runway lighting and weather reporting systems at remote airports in Alaska. Section 412 would authorize the appropriation of a total of $6 million for these activities in Alaska. CBO estimates that these funds would be spent at the rate of $1 million to $2 million a year over the 2000–2003 period.

Section 410 would authorize such sums as may be necessary to develop a Wide Area Augmentation System plan and to obtain contractual audit services to complete the Inspector General's report on the FAA's costs and cost allocations. Information from the FAA indicates that many of the requirements for the WAAS plan have already been completed. CBO estimates that this provision would not result in any significant additional costs. Based on information from DOT's Office of Inspector General, CBO estimates that the cost of the contractual services to complete the audit would be less than $1 million in fiscal year 2000.

Based on the current costs of operating a whistleblower protection program at the Department of Energy, CBO estimates that the administration costs of operating the new DOL program would be less than $1 million a year.

Based on information from the NPS and the FAA, CBO estimates that discretionary outlays to conduct planning and rulemaking for park overflights, complete air tour management plans (including environmental analyses), and monitor any overflight limits established in such plans would total about $29 million over the 1999–2009 period. This process is already under way, and we expect that these costs will be incurred within the next 10 years under current law, assuming appropriation of the estimated amounts. Title VI would require the NPS and the FAA to complete the air tour management plans (ATMPs) within three years of enactment. Therefore, enacting Title VI could increase discretionary outlays in the short term if the agencies completed these plans more quickly than they would under current law. If so, and if those plans limited overflights, the FAA would begin incurring monitoring costs sooner, thereby increasing total monitoring costs. However, CBO estimates that the provisions dealing with park overflights would cause no significant change in FAA or NPS spending over the next five years. We estimate that operating the joint advisory group would cost the agencies a total of about $25,000 each year. Any such spending would be subject to appropriation action.

S. 82 contains several additional provisions that would require FAA to conduct studies, complete reports, issue rulemakings, and develop test programs. CBO assumes that such costs would be funded from the authorizations provided in the bill for FAA operations, facilities, and equipment. In total, CBO estimates that these studies, rulemakings, and reports would cost about 7 million in fiscal year 2000. Of that total, the flight crew training assessment and test program would cost approximately $6 million.

Direct spending

S. 82 would provide an additional $3,680 million in contract authority (a mandatory form of budget authority) for the airport improvement program for fiscal years 1999 and 2000; it also would extend the authority of the Secretary of Transportation to incur obligations to make grants under that program.

Under current law, $1,205 million in AIP contract authority is available for obligation until March 31, 1999. S. 82 would provide an additional $1,205 million in contract authority for this year and $2,475 million of contract authority for 2000. Consistent with the Budget Enforcement Act, CBO's baseline projections assume that a full year of contract authority will be provided for AIP in fiscal year 1999 and subsequent years. Therefore, enacting S. 82 would result in no increase in contract authority in 1999 and an increase of $65 million in 2000, relative to the baseline. Expenditures from AIP contract authority are governed by obligation limitations contained in appropriation acts and thus are categorized as discretionary outlays. Enacting S. 82 would not affect obligation limitations and would have no direct effect on AIP outlays.

Section 305 would prohibit the FAA from charging fees for certain FAA certification services performed outside the United States. Based on information from the FAA, CBO estimates that the forgone receipts could total about $1 million in fiscal year 2000 and as much as $4 million per year in future years. Because the FAA has the authority to spend such fees, a reduction in such fee

collections would also reduce spending; therefore, we estimate that this provision would have no net effect on direct spending over the 2000–2004 period.

Section 307 would extend the authorization for the FAA's aviation insurance program through December 31, 2003. Under current law, the aviation insurance program will end on March 31, 1999. Enacting this provision could cause an increase in direct spending if new claims would result from extending the insurance program. Moreover, such new spending could be very large, particularly if a claim exceeded the balance of the trust fund and the FAA had to seek a supplemental appropriation. But historical experience suggests that claims under this program are very rare; therefore, extending the aviation insurance program would probably have no significant impact on the federal budget over the next five years.

Section 435 would amend the Death on the High Seas Act of 1920 (DOHSA) to allow compensation for nonpecuniary damages in a death caused by commercial aviation. The provision would increase the potential compensation that relatives could seek for the death of a family member. Based on information from the Department of Transportation, CBO estimates that it is unlikely that enacting this provision would have a significant impact on the federal budget. The bill could affect federal spending if the government becomes either a defendant or a plaintiff in a future civil action related to aviation. Since any additional compensation that might be owed by the federal government under such an action could be paid out of the Claims and Judgments Fund, the provision could affect direct spending. But CBO has no basis for estimating the likelihood or outcome of any such actions.

Section 427 would allow the Secretary of Defense to sell aircraft and aircraft parts to contractors delivering oil dispersants by air to disperse oil spills. Sales would be permitted from March 1, 1999, to September 30, 2002. The bill provides that the net proceeds of any amounts received by the Secretary of Defense from the sales be deposited as offsetting receipts (which are a form of direct spending). CBO estimates that any net proceeds would total less than $500,000 a year.

Revenues

S. 82 would expand a pilot program that provides for the use of airport improvement grants to implement innovative financing techniques for airport capital projects. These techniques include payment of interest, purchase of bond insurance, and other credit enhancement associated with airport bonds. While the first pilot program, enacted in 1996, included these provisions, the early use of the program was geared more toward changing federal/local matching ratios. In addition, the earlier authorization provided for no more than 10 projects. This provision represents an expansion to 20 pilot projects. It is designed to leverage new investment financed by additional tax-exempt debt. JCT experts that this provision would lead to an increase in tax-exempt financing and a resulting loss of federal revenue. JCT estimates a loss of revenue of about $2 million over the 2000–2004 period and totaling about $5 million over the 2000–2009 period.

S. 82 would authorize the FAA to impose a new civil penalty on individuals who interfere with the duties and responsibilities of the flight crew or cabin crew of a civil aircraft, or who pose an imminent threat to the safety of the aircraft. The bill also would impose civil penalties on air carriers that violate section 41705 of Title 19 and on violators of the whistleblower protection provisions. Based on information from the FAA, CBO estimates that the civil penalties in S. 82 would increase revenues, but that the effect is likely to be less than $500,000 annually.

S. 82 would impose a criminal penalty on individuals who knowingly and willfully serve in the capacity of an airman without an airman's certificate and on individuals who employ for service or use in any capacity an airman who does not have an airman's certificate. CBO estimates that this provision would increase revenues less than $500,000 annually. Criminal penalties are deposited in the Crime Victims Fund and spent in the following year. (Because any increase in direct spending would equal the fines collected with a one-year lag, the additional direct spending also would be insignificant.)

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending and receipts. The net changes in outlays and receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing such procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year in millions of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	0	0	0	0	0	0	0	0	0
Changes in receipts	0	0	0	0	−1	−1	−1	−1	−1	−1	−1

The only significant pay-as-you-go impact would result from expanding a pilot program that provides for the innovative use of airport improvement grants. JCT expects that this provision would result in an increase in tax-exempt financing and a subsequent loss of federal revenue. JCT estimates that the revenue loss would be about $2 million over the 1999–2004 period and about $5 million in total over the 1999–2009 period.

Estimated impact on state, local, and tribal governments: Overall S. 82 provides significant benefits to airports managed by state and local governments. However, the bill contains one intergovernmental mandate as described below.

Mandates

The bill would prohibit public airports in Alaska and Hawaii from collecting passenger facility charges (PFCs) under certain circumstances. PFCs are paid to the airport (through the airlines) for planning and capital improvement projects. UMRA defines the direct costs of a mandate to include the amounts that state, local, and tribal governments would be prohibited from raising in revenue. In the case of Alaska, S. 82 would prohibit public airports from collecting PFCs from passengers on aircraft seating less than 20. Based on information from the FAA, CBO estimates that this

prohibition would lead to a loss of revenues totaling about $3 million dollars annually.

Public airports in Hawaii would be prohibited from collecting PFCs from passengers on flights between two or more points in that state. Based on information from the FAA on the number of such flights in 1997, CBO estimates that the revenue loss in that state would total about $20 million annually. Currently, four airports in Hawaii receive all PFCs from flights subject to this provision.

Other impacts

S. 82 would authorize an additional $3.7 billion in contract authority for the airport improvement program for fiscal years 1999 and 2000, most of which would be distributed as grants to fund capital improvement projects for the nation's commercial airports and general aviation facilities. The total amount authorized for the two fiscal years is $258 million above the AIP funding authorized in the previous two years. The bill also would increase from $500,000 to $650,000 the minimum amount of money going to be nation's primary airports from the "entitlement" portion of the AIP. This increase would represent a significant benefit for the nation's smaller primary airports.

This bill also would increase the number of slots (take-offs and landings) available at Chicago's O'Hare Airport by 30 and at Ronald Reagan Washington National Airport by 48. Twenty-four of the slots at Ronald Reagan Washington National Airport would be granted to flights outside the current 1,250-mile perimeter and 24 would go to flights within that perimeter, subject to certain criteria. In addition, some of the newly allocated slots at both airports would be designated for small, undeserved communities. In general, as a condition of receiving money from the AIP, airports must agree to provide gate access, if available, to air carriers granted access to a slot. Based on information from the affected airports, CBO estimates that these changes would have an insignificant impact on their budgets.

Finally, this bill would authorize appropriations of $80 million for a four-year pilot grant program to enhance air transportation in up to 40 small communities and $6 million for improvements in rural aviation in Alaska.

Estimated impact on the private sector: S. 82 would impose new mandates by requiring safety equipment for specific aircraft, imposing consumer and employee protection provisions, and imposing new requirements for commercial air tour operations over national parks. CBO estimates that the total direct costs of the mandates would not exceed the annual threshold for private-sector mandates ($100 million in 1996, adjusted for inflation).

Owners of fixed-wing powered aircraft

Section 404 would require the installation of emergency locator transmitters on certain types of fixed-wing powered civil aircraft. It would do this by eliminating certain uses from the list of those currently excluded from that requirement. Most aircraft that would lose their exemption and currently do not have emergency locator transmitters are general aviation aircraft. According to information

from the National Air Transportation Association, the trade association representing general aviation, the cost of acquiring and installing an emergency locator transmitter would range from $2,000 to $7,000. CBO estimates that fewer than 5,000 aircraft would be affected, and that the cost of this mandate would be between $15 million and $30 million.

Air carriers

Section 306 would expand the criteria that air carriers would use to trigger a check for criminal history in the course of employment investigations for screeners of passenger, baggage, and property. The cost of this mandate would depend on the additional conditions that the FAA would require for such record checks. Based on information from the FAA and from air carriers, the cost per record check would range from $28 to $52 per person. CBO estimates that the total additional cost would be less than $5 million annually.

Section 310 would require, under certain conditions, that a dominant air carrier at a large hub airport provide services to smaller air carriers operating at that airport through interline agreements. Interline agreements would cover services such as ticketing, baggage and ground handling, and terminal and gate access. The number of required interline agreements would be small. Based on FAA data from the beginning of 1998, CBO expects that about seven carriers could be subject to this requirement. A mandate would be imposed on those carriers if three conditions are met. First, an air carrier must request service from a dominant carrier that currently offers interline agreements with other carriers. Second, the requesting air carrier must offer air service to a community that has been selected under a pilot program for small communities established under section 503 of S. 82. According to the FAA, the number of such qualifying communities could range from none to 10. Third, the requesting air carrier must meet safety, service, financial, and maintenance requirements. If either party fails to meet the standard and conditions outlined in the agreement, it may be terminated. All dominant carriers currently have interline agreements with their regional partners and other large carriers. CBO estimates that this mandate would impose no net additional costs on those dominant carriers because they would be reimbursed by the smaller carriers for the services they provide.

Section 419 would protect employees of air carriers or contractors or subcontractors if those employees provide air safety information to the United States Government. Those firms would not be able to discharge or discriminate against such employees with respect to compensation, terms, conditions, or privileges of employment. Based on information provided by one of the major air carriers and the Occupational Safety and Health Administration, the agency that would enforce those provisions. CBO estimates that neither the air carriers nor their contractors would incur any direct costs in complying with this requirement.

Section 426 would grant the FAA the authority to request from U.S. air carriers information about the stations located in the United States that they use to repair contract and noncontract aircraft and aviation components. CBO expects that the FAA would probably request such information. Based on information from the

FAA and air carriers, we anticipate that the carriers would be able to provide the information easily because it would be readily available and that any costs of doing so would be negligible.

Section 509 would make it an unfair and deceptive practice for any carrier utilizing electronically transmitted tickets to fail to notify the purchaser of such a ticket of the expiration date. The cost of notification would depend upon how the FAA would direct airlines to implement this requirement. Based on information from representatives of the air carriers, CBO estimates that the costs would be negligible if the FAA specifies the most efficient method of notification.

Ticket agents

Section 433 would strengthen current rules requiring that consumers be notified when the operator of an aircraft differs from the airline in whose name the transportation was sold. This section would require the use of the operator's own name (also known as the corporate name) rather than the network name. The requirements would be specified in final regulations that must be issued not later than 90 days after enactment of S. 82. Based on information from the Department of Transportation, CBO estimates that this mandate would not impose additional costs on either air carriers or travel agents.

Commercial air tour operations

Title VI would require operators of commercial air tours to apply for authority from the FAA before conducting tours over national parks or tribal lands within or abutting a national park. The FAA, in cooperation with the NPS, would devise air tour management plans for every park where an air tour operator flies or seeks authority to fly. The management plans would affect all commercial air tour operations up to a half-mile outside each national park boundary. The plans could prohibit commercial air tour operations in whole or in part and could establish conditions for operation, such as maximum and minimum altitudes, the maximum number of flights, and time-of-day restrictions. S. 82 would not apply to air tour operations over the Grand Canyon or Alaska. Those operations would be covered by other regulations.

CBO estimates that Title VI would impose no additional costs on the private sector beyond those that are likely to be imposed by FAA regulations under current law. Although the cost of those regulations cannot be estimated with confidence until they are published, S. 82 would not add any conditions that would significantly change the likely cost to the provate sector. CBO expects that the cost of applying to the FAA for authority to operate commercial air tours over national parks or tribal lands would be negligible.

Section 605 would prohibit commercial tours over the Rocky Mountain National Park. Information from a representative for commercial tour operators indicates that the conditions over that park are not conducive to commercial tours. Currently tours are not operated over the Rocky Mountain National Park and none are expected. Thus, this mandate would not impose any costs on commercial tour operators.

Cargo aircraft owners and operators

Section 402 would mandate that a collision avoidance system be installed on each cargo aircraft with a payload capacity of 15,000 kilograms or more by December 31, 2002. The FAA would be required to approve the equipment. Cargo industry representatives say they are currently developing a collision avoidance system using new technology and expect it to be installed in such cargo aircraft by the deadline, even if no legislation is enacted. Assuming the FAA would approve that system, CBO estimates that this bill would impose no additional costs on owners and operators of cargo aircraft.

Estimate prepared by: Federal Costs: Victoria Heid Hall, for FAA provisions and NPS overflights, Christina Hawley Sadoti, for DOL penalties; and Hester Grippando, for FAA penalties. Impact on State, Local, and Tribal Governments: Lisa Cash Driskill. Impact on the Private Sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

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

In Title I, the new authorizations for an air safety and security program (Sec. 101), and an airport security program (Sec. 105) may slightly expand the number of persons or airports subject to additional safety regulation, but only if those persons or airports choose to become involved in those programs.

In Title II, the innovative airport financing program (Sec. 202) establishes a voluntary program that may expand by 10 the number of airports subject to additional regulation, but only if those airports choose to become involved in that program.

In Title III, the provision requiring interline agreements between air carriers in certain circumstances (Sec. 310) may subject some major air carriers to additional regulation if they are required to enter into such agreements.

In Title IV, numerous operators of cargo aircraft would be subject to additional regulation by the requirement for the installation of collision avoidance systems on cargo aircraft (Sec. 402). A large number and variety of aircraft operators (primarily all air carriers and businesses with jets) would be subject to additional safety regulation by the requirement that most turbojet-powered aircraft be equipped with emergency locator transmitters (Sec. 404). All domestic and foreign air carriers operating in the U.S. would be subject to the provision that enhances the enforcement of prohibitions against the discrimination of disabled passengers (Sec. 407). Numerous federal employees would enjoy additional legal protections by (1) the restoration of authority for them to seek redress when retaliated against for whistleblowing (Sec. 415), and (2) the restoration of the right of FAA employees to submit appeals to the Merit Systems Protection Board (MSPB) (Sec. 425). Similarly, thousands

of employees of the airlines and their contractors would enjoy new statutory whistleblower protections (Sec. 419). All airlines and their contractors would be subject to the constraints of the new protections. In the provision that allows certain airports to deny access to certain air carriers, a very small number of charter operators may be prevented from operating at those airports if the prescribed conditions are met (Sec. 421). Numerous foreign aircraft repair stations that are certified by the FAA would be subjected to additional regulations requiring them to submit information regarding their activities, and domestic repair stations may also be subject to such regulations (Sec. 426). Those persons who voluntarily choose to purchase excess aircraft from the Department of Defense (DOD), for use in dispersing oil spills, would be permitted to. They would be subject to certifications by the DOT on the purchase of the aircraft (Sec. 427).

In Title V, the voluntary programs designed to improve small community air service (Secs. 502 and 503) may modestly expand the number of airports or communities subject to additional regulation, but only if those airports or communities choose to become involved in those programs.

In Title VI, commercial air tour businesses that currently operate over national parks where there are no flight restrictions would be subject to new ATMPs (Sec. 602). This requirement will affect only commercial air tour companies, which are already subject to extensive federal aviation regulations.

ECONOMIC IMPACT

Title I would authorize (for FAA operations, F&E, and AIP) total appropriations of $10.171 billion for fiscal year 1999, and $10.448 billion for fiscal year 2000. While funding for these programs is substantial, it should not have an unexpected inflationary effect on the domestic economy.

In Title II, the innovative airport financing program (Sec. 202), the flexible local matching share for small airports (Sec. 203), the flexible pavement design standards for nonprimary airports (Sec. 205(j)), and the requirement for prioritization of discretionary grant projects (Sec. 207) would lead to more efficient and effective use of federal grant monies for the airports affected by those provisions. The authority for airports to waive PFCs for small charter operations to small communities (Sec. 205(I)) may reduce consumer travel costs for the affected routes, as would the prohibitions on imposing PFCs on persons flying within Alaska on small aircraft and on persons flying between two points in Hawaii (Sec. 205(h)). Increasing the minimum AIP entitlement for the smallest airports would be of economic benefit to those airports and their local communities, many of which have few resources for infrastructure development (Sec. 205(k)). Similarly, allowing the FAA to continue providing AIP funds for small airports that temporarily lose eligibility for such funds would help sustain needed airport development in isolated and rural areas (Sec. 205(m)). Eliminating the 8 percent cap on entitlements for individual cargo airports would increase the amount of cargo entitlement funds going to one airport and reduce by a small amount the funds going to all of the other airports in the program (approximately 101), usually by a few thou-

sand dollars (Sec. 205(l)(2)); however, increasing the cargo entitlement from 2.5 percent to 3 percent of total AIP monies would mitigate any relative reduction in funds to these airports (Sec. 205(l)(1)).

In Title III, the authority for the FAA to enter into severable service contracts for periods crossing fiscal years (Sec. 301) would reduce agency administrative work and thereby result in cost savings to the government. The provision that would allow Stage 2 aircraft operating in Hawaii to return to the continental U.S. for repairs and maintenance will have a very positive impact on those carriers who otherwise would be unable to have their aircraft serviced unless they obtained a waiver from the FAA (Sec. 302).

In Title IV, the requirement that cargo aircraft install collision avoidance systems may cost the air cargo industry $160 million over 20 years, according to a very preliminary estimate by the FAA (Sec. 402); however, by helping to prevent midair collisions, many millions of dollars and human lives may be saved. The requirement for virtually all turbojet-powered aircraft to install emergency locator transmitters (Sec. 404) may cost affected operators of such aircraft approximately $36 million, according to preliminary estimates by the FAA; however, significant amounts of money and many lives may be saved by enabling rescuers and accident investigators to locate downed aircraft more quickly. Air carriers could be impacted negatively if they are subjected to increased fines or are required to pay attorneys' fees in matters involving discrimination against disabled passengers; however, disabled passengers could benefit positively if access to aircraft is improved and by the opportunity to recover attorneys' fees in litigation against airlines for discrimination (Sec. 407). Allowing the DOD to sell excess aircraft for the purpose of dispersing oil spills could be of substantial benefit to the economy and environment of any area affected by such a spill (Sec. 427). The provision that increases the allowable compensation for families of aircraft accident victims over international waters would increase the potential financial liability of any defendant sued under the Death on the High Seas Act (Sec. 435); insurance premiums could increase for potential defendants as well. The long-term capital lease demonstration program for the FAA could result in substantial cost savings for the agency (Sec. 440) and facilitate the installation of new equipment making the air traffic control system more efficient and possible saving consumers billions of dollars in delay costs.

In Title V, the programs designed to improve small community air service (Secs. 502–504) involve spending modest amounts of money that may yield substantial indirect benefits to local economies if air transportation is improved, as well as increase receipts in federal ticket tax revenues. Opportunities for air carriers to take advantage of slot and perimeter rule exemptions (Secs. 506–508) would produce economic savings to consumers and businesses, which would be enhanced if air fares are reduced as the GAO, the DOT, and certain academics have suggested will occur if slots and perimeter rules are eased.

PRIVACY

This legislation would not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

In Title I, the air safety and security program (Sec. 101), and the airport security program (Sec. 105) may generate small amounts of administrative paperwork in association with federal selection and oversight of voluntary participants. The reprogramming notification requirement (Sec. 104) would result in an insubstantial increase in paperwork because the FAA is already required to report reprogramming activities to the appropriations committees.

In Title II, the innovative airport financing program (Sec. 202) may generate relatively small amounts of administrative paperwork in association with federal selection and oversight of voluntary program participants. The requirements for the FAA to prepare one report on efforts to implement capacity enhancement (Sec. 206), and for the DOT to provide public notice before issuing an airport grant assurance waiver (Sec. 208), would result in some increase in paperwork for the government to satisfy those responsibilities.

In Title IV, small amounts of additional paperwork for the FAA would result from each of the following requirements: solicitation of comments on the need for the improvement of runway safety areas and the installation of precision approach path indicators (Sec. 403); promulgation of regulations to require emergency locator transmitters on more aircraft (Sec. 404); report on a plan to implement the Wide Area Augmentation System (Sec. 410); reissuance of the notice applicable to Alaska air guides (Sec. 411); establishment of a human factors oversight committee (Sec. 413); response to the National Research Council recommendations on air traffic control automation (Sec. 413); and conforming existing memoranda of agreement regarding aircraft situational displays with the new requirements (Sec. 428). The DOT would be subject to an increased amount of paperwork as a result of its new mandate to investigate each complaint of discrimination against disabled passengers, and related activities (Sec. 407). Small amounts of additional paperwork for the FAA would also result from each of the following required reports: modernization of the oceanic air traffic control system (Sec. 416); the air transportation oversight system (Sec. 417); adequacy of flight deck breathing hoods (Sec. 436); alternative power sources for flight data recorders and cockpit voice recorders (Sec. 437); and status of the effort to eliminate the hazmat enforcement backlog (Sec. 439). A relatively small amount of additional paperwork would be generated for the DOT Inspector General for its validation of the FAA's cost accounting system (Sec. 414). Paperwork would be significantly reduced for airports and the FAA by allowing airports to utilize completed environmental assessments or impact statements for new projects, as appropriate (Sec. 418). Additional government (Department of Labor) and private sector paperwork would be generated by any complaints filed by airline employees alleging employer retaliation for whistleblowing (Sec. 419), but the number of such complaints filed under similar

whistleblower statutes has been very low. The Secretary of Commerce and the newly-created International Visitor Assistance Task Force would be subjected to relatively modest amounts of paperwork associated with the two separate reports to Congress that each is required to submit (Sec. 422). Because thousands of FAA employees would be able to contest adverse personnel actions to the MSPB and the Office of Special Counsel (OSC), there could be substantial amounts of additional paperwork imposed on those entities as well as the FAA and its employees (Sec. 425). Foreign aircraft repair stations (and possibly domestic ones) would be subject to a modest amount of increased paperwork to comply with the mandate for information regarding their activities (Sec. 426). Those persons choosing to purchase excess aircraft from the DOD would be subject to administrative and regulatory paperwork associated with the certifications by the DOT on the purchase of the aircraft and by the FAA on the operation of the aircraft (Sec. 427). The Secretaries of Transportation and the Treasury would be subjected to small amounts of paperwork associated with reporting requirements on aviation trust fund allocations (Sec. 431).

In Title V, the programs designed to improve small community air service (Secs. 502 and 503) may result in small amounts of administrative paperwork in association with federal selection and oversight of voluntary program participants. Applications for slot exemptions and for perimeter rule exemptions (Secs. 506–508) may generate limited paperwork for the DOT and any operator seeking to take advantage of these pro-competitive opportunities. The DOT's regional jet study (Sec. 511) and the GAO's small airport study (Sec. 512) may result in modest amounts of additional government paperwork.

In Title VI, new requirements associated with regulating commercial air tours over national parks and developing air tour management plans would result in a relatively small amount of additional paperwork for the government and the affected air tour operators (Sec. 602). The FAA report on the effects of proposed park overflight fees would result in a small amount of additional paperwork (Sec. 605).

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Section 1 cites the title of the bill as the "Air Transportation Improvement Act." 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 provisions of title 49, United States Code.

TITLE I—AUTHORIZATIONS

Section 101. Federal Aviation Administration operations

Section 101 would provide authorizations for the FAA operations account for fiscal year 1999 and fiscal year 2000. In fiscal year

1999, funding for FAA operations is proposed to increase from the fiscal year 1998 level by about 5.4 percent to $5.6 billion. For fiscal year 2000, the authorization would increase at the expected rate of inflation to $5.8 billion. The FAA would be directed to make a dues payment of no more than $9.1 million from the operations account to the International Civil Aviation Organization.

In an effort to address the problem of bird ingestions into aircraft engines, this section would authorize $450,000 for wildlife mitigation programs and surveys.

Not more than $9.1 million over three years would be authorized to support a safety and security management program to provide training for aviation safety personnel, concentrating on representatives from countries that are not in compliance with international safety standards, but are trying to improve. The FAA would use open and competitive procedures to conduct the site selection. This section would also clarify that the Secretary's current slot exemption authority is not affected by the bill's other provisions dealing with slot exemptions.

The Committee expects the FAA to continue to support the General Aviation and Vertical Flight program within the agency. The FAA has begun the process of revising its policies and procedures to make more effective use of the capabilities of rotorcraft. The Committee is optimistic that the air traffic control system in the future will be able to provide dispatch reliability, or instrument flight rules (IFR) capability, for both helicopters and the newest rotorcraft technology—tiltrotor aircraft—if and when it becomes commercially viable. The Committee anticipates that the FAA will revise its existing terminal instrument procedures (TERPS) and IFR regulations and procedures to facilitate the takeoff, flight and landing of helicopters and tiltrotor aircraft, in anticipation of this new technology becoming a part of the commercial, scheduled air transportation system.

The Committee also expects the FAA to continue working with the aviation industry and community in the effort to reduce the fatal accident rate. The Committee is aware that in 1998, there were no passenger fatalities involving United States air carriers. To continue in the effort to reduce the fatal accident rate, however, the FAA should sponsor an annual summit of leaders from the government and industry to address the most critical safety issues.

Over time, the FAA has invested substantial resources in the development and maintenance of a large number of data bases. Responsibility and control over these data bases are not centralized, however. Instead they are spread among the agency's lines of business and other organizational elements that are the prime users of the data collected, and there is little agency-wide data integration. Consequently, the FAA may have become "data rich and information poor."

Accordingly, the Committee believes that change is needed. The FAA should develop a data management plan that leads to the following: optimized data sharing among organizational elements; better control over the costs of data base management; the capability to review and analyze data on a subject as well as a functional basis; and enhanced capability of senior management to resolve

time-critical questions and issues that may cut across agency organizational elements.

A report on the progress toward the development of the plan should be made to the Committee not later than six months from the date this bill is enacted into law.

The Committee is also aware that the safety inspection process is a critical component of improving safety. The process includes many facets, including inspection and enforcement. The Committee wants to ensure that the FAA has the resources needed to inspect and enforce. The GAO has noted that legal resources are a key component of the process and that those needs should be considered by the Administrator.

Section 102. Air navigation facilities and equipment

Section 102 would provide authorizations for the FAA's F&E account for fiscal year 1999 and fiscal year 2000. For fiscal year 1999, $2.13 billion is proposed for the F&E budget, with specific amounts allocated for specific programs within the F&E account. For fiscal year 2000, the authorization would increase at the expected rate of inflation to $2.189 billion. Also, there would be authorized at least $30 million annually for the FAA to purchase precision instrument landing system (ILS) equipment through its ILS inventory program.

Because of the often confusing ways in which the agency makes reference to the costs of major ATC projects, this section would also require the FAA to establish cost estimates based on the life cycle costs of projects estimated to cost more than $50 million.

Section 103. Airport planning and development and noise compatibility planning and programs

Section 103 would extend contract authority through fiscal year 2000 for AIP grants. The AIP account would be authorized at a level of $ 2.41 billion in fiscal year 1999, with an increase to $2.475 billion for fiscal year 2000 as permitted under the most recent budget resolution. Without this extension of authority, federal airport grants could not be made after March 31, 1999.

Section 104. Reprogramming notification requirement

Section 104 would require the FAA to notify the authorizing committees of the Senate and House prior to reprogramming amounts authorized for the operations, F&E, or AIP accounts.

Section 105. Airport security program

Section 105 would authorize the FAA to carry out at least one project to test and evaluate innovative airport security systems and related technology, including explosive detection systems in an airport environment. Not less than $5 million would be authorized to be spent from the AIP discretionary fund for this program. The Committee anticipates that an open competition will occur for the site selections for the program.

Section 106. Automated Surface Observation System (ASOS) Stations

Section 106 would require the FAA to maintain human weather observers for ASOS stations until 60 days after the Secretary of Transportation notifies Congress in writing of his or her determination that the system provides consistent reporting of changing meteorological conditions.

TITLE II—AIP AMENDMENTS

Section 201. Removal of the cap on discretionary fund

Section 201 would repeal the provision that imposes a $300 million "cap" on the discretionary fund. Under current law, if the amount of money in the discretionary fund exceeds $300 million, the excess funds are equally divided among small airports, noise-related programs, and the Military Airport Program (MAP). Repealing this provision would increase the amount of discretionary funds available to the FAA for grants for major airport capacity projects, which enhance the capacity of the overall system.

Section 202. Innovative use of airport grant funds

Section 202 would codify an existing innovative airport funding program, remove the program's expiration date, and expand the number of projects eligible for the program from 10 to 20. The Federal Aviation Reauthorization Act of 1996 authorized a demonstration program to permit the FAA to make grants of AIP funds for up to 10 projects to test and evaluate the following three innovative financing mechanisms or techniques: payment of interest, credit enhancements (such as municipal bond insurance), and flexible non-federal matching requirements. The Committee is encouraged by the types of projects included in the first 10 projects; however, this successful demonstration program expired on September 30, 1998. The extension is intended to provide other airports an opportunity to participate.

Section 203. Matching share

Section 203 would allow small airports to fund AIP projects utilizing a more flexible matching share ratio. Instead of the strict 90-percent federal/10-percent local matching share requirement for each project, the match requirement would be modified to one that allows not more than a 90-percent federal share for all projects at airports other than medium and large hubs.

Section 204. Increase in apportionment for noise compatibility planning and programs

Section 204 would increase the amount of AIP funds allocated to the noise set-aside. The apportionment from the discretionary fund for grants for airport noise compatibility planning, and for carrying out airport noise compatibility programs, would increase from 31 percent to 35 percent.

The Committee expects the FAA to allocate noise mitigation money based on need and appropriate merit-based criteria, such as the number of individuals impacted, the degree of noise impact, and other relevant factors, including whether an airport is high

density and would receive additional traffic as a result of this bill. The Committee also anticipates that the FAA will take into consideration longstanding projects which have awaited completion over a number of years and will give careful attention to mitigating the detrimental impact on communities affected by this negative situation. For example, DeKalb-Peachtree Airport, Georgia's second busiest airport, began a runway expansion program in 1985. Since 1993 the FAA has provided funding to buy 74 residential properties located in the Runway Protection Zone that are adversely affected by the Airport's increased operations. Ninety-eight residential homes and 61 businesses, however, still await the opportunity to relocate.

Section 205. Technical amendments

Section 205 would make numerous technical changes to improve the implementation of the AIP program, and to correct inadvertent errors due to amendments and recodification changes to title 49.

Subsection (a) would amend the entitlement fund provision (section 47114) to correct a reference to a now repealed provision of title 49 (section 47117(e)(1)(C)). The original intent was to allow the use of state-apportioned funds at certain "grandfathered" airports in Alaska and at all public airports in Puerto Rico. The revised language is more flexible in that it not only restores the intent of the statute with respect to Puerto Rico, but also allows the use of the funds for any public airport in Alaska. It also amends the section to allow state apportioned funds to Hawaii to be used on primary airports. Normally such funds are restricted to use at nonprimary airports. Unlike most states, however, Hawaii does not have a broad range of airport types and activity levels.

Subsection (b) would amend section 47114(e) to restore the meaning of the provision prior to recodification of title 49 in 1994. Section 47114(e) provides a method of apportioning funds for airports in Alaska that historically has been interpreted as authorizing a supplemental apportionment, not an alternative apportionment as the recodification characterized it. Currently the supplemental apportionment amounts to approximately $10.6 million annually and is available to nonprimary airports and certain grandfathered airports in Alaska. This section would further amend 47114(e) to provide greater flexibility by allowing the funds to be used at any public airport in Alaska.

Subsection (c) would repeal a 110 percent limitation on the supplemental apportionment to any single commercial airport in Alaska. The intent of the provision has been unclear and its implementation has caused confusion. In the interest of providing greater financial flexibility to Alaska in the use of the supplemental apportionment, the limitation is removed.

Subsection (d) would amend the definition of the discretionary fund to remove the portion of the fund known as the "small hub fund" and add the monies from that fund to the small airport fund. This change would put the small hub fund in a more appropriate place because its funds are derived from the same source (i.e., AIP funds not apportioned to large and medium hub airports because they collect PFCs) and have similar restrictions.

Subsection (e) would add a new paragraph to section 47108 that provides that a multiyear development project at a primary airport that is funded through a multiyear agreement would retain eligibility for funding to complete the project even if the airport loses its status as a primary airport. Such a project would be eligible for discretionary funds, subject to funding availability. Projects in this circumstance are relatively low-cost and few in number. This provision will nevertheless help avoid potential for default or abandonment of projects resulting from changes in airport status beyond the control of the sponsor.

The FAA reportedly plans in the near future to revise its administrative guidance for the designation of reliever airports. Such a revision would tighten the eligibility criteria. According to the agency, there are 22 privately-owned airports that now qualify for federal aid as reliever airports. Subsection (f) would grandfather these airports into the program so that they may remain eligible for federal aid and continue to play an effective role in the national airport system.

At the recommendation of the FAA, subsection (g) would remove projects at reliever airports from eligibility for letters of intent (LOI) under section 47110(e). With this change, only projects at primary airports would be eligible for LOIs.

Subsection (h) would amend current law to prohibit an airport from charging a PFC for any passenger (1) traveling in Alaska aboard an aircraft with fewer than 20 seats, or (2) traveling between two or more points within Hawaii.

Subsection (i) would codify a current regulation (14 C.F.R. 158.11) that allows public airport operators to waive PFC collections for certain classes of air carriers, such as air taxis, provided that each class constitutes no more than 1 percent of the total number of passengers enplaned annually at the airport at which the PFC is imposed. This section also provides the Secretary the authority to expand the current regulation so that primary airports can take advantage of PFCs, but not adversely affect air service to isolated communities like many in Alaska, with few or no alternatives to air travel.

Subsection (j) would amend the provisions of Subchapter II (Surplus Property for Public Airports) of chapter 471 to restore the original intent of the provisions prior to the recodification of title 49. Subchapter II is the restatement of section 13(g) of the Surplus Property Act of 1944. This section restores the use of the terms "convey" or "conveyance" instead of "gift." Also, this section expressly provides that priority consideration is given to requests from public agencies for surplus government property to be used for public airport purposes.

Subsection (k) would increase the minimum airport AIP entitlement from $500,000 to $650,000 beginning in FY 2000. This would have the effect of decreasing the amount of available discretionary funds by approximately $25 million annually. It would not affect the discretionary fund substantially, and it would help the smaller airports that do not have as much ability as the large airports to raise their own capital.

Subsection (l) would increase the cargo airport entitlement share of the AIP to 3 percent from the current 2.5 percent. The cargo en-

titlement share had been 3.5 percent prior to 1996. This subsection also would eliminate the restriction in current law that no cargo service airport is entitled to more than 8 percent of the total amount apportioned to all cargo service airports under the AIP. This provision, coupled with an AIP obligation limit of $1.95 billion for fiscal year 1999, is expected to benefit many, if not all, cargo airports.

Subsection (m) would allow small airports in rural states to continue receiving AIP entitlement money even when the level of annual enplanements temporarily dips below 10,000 in one year due to circumstances beyond merely the demand for air transportation, such as airline strikes or natural disasters. This would ensure stable funding for primary airports that can least afford a loss of federal support.

Subsection (n) would allow flexibility in pavement design standards by permitting the use of state highway specifications for airfield pavement construction at general aviation airports serving aircraft weighing less than 60,000 pounds. If airports take advantage of this provision, they would be prohibited for 10 years from subsequently seeking funds to strengthen the runway. The Committee recognizes that the lower highway standards may be less costly to meet than the FAA standards, giving the FAA the ability to spread AIP dollars further. If airports choose to overlay or build airfield pavement using the lower standards, however, the Committee does not expect the FAA later to support projects to strengthen those runways.

Subsection (o) would provide for explicit AIP funding eligibility for the installation of integrated in-pavement lighting systems, and other runway incursion prevention devices.

Section 206. Report on efforts to implement capacity enhancements

Section 206 would require the FAA to report on efforts, including the time frame, to implement air transportation system capacity enhancements through technology improvements, such as precision runway monitoring systems.

Section 207. Prioritization of discretionary projects

Section 207 would encourage airports to use their entitlement funds for their highest priority projects before proceeding to lower priority projects. Airports that fund their low priority projects with entitlement funds, yet simultaneously apply for discretionary funds for their high priority projects, would have their discretionary fund applications downgraded accordingly. This provision is based upon a recommendation made by the DOT's Office of the Inspector General in its recent report on the DOT's discretionary spending programs.

Section 208. Public notice before grant assurance requirement waived

Section 208 would require the FAA to provide 30-days public notice in its process for waiving airport grant assurances. The Committee is aware that the provision may cause unnecessary delay and increase the burdens on the FAA in responding to comments. The Committee is concerned, however, that if major grant assur-

ances are waived without an opportunity for the public to be made aware, the air transportation system could lose vital assets.

Section 209. Definition of public aircraft

Section 209 would amend the definition of public aircraft to include aircraft that are operated for the purpose of transporting prisoners. This change recognizes that transporting prisoners is a legitimate government function. Under this provision, the public aircraft designation for a prisoner transport would not be lost if law enforcement agencies shared the costs of operating such a flight.

Section 210. Terminal development costs

Section 210 would permit airports to utilize PFC funds for the construction of the shell of a terminal to enable additional air service by non-dominant carriers. Airports would be able to utilize PFC funds for the shell of such a terminal building, including the appurtenant floors, walls, heat, air conditioning, ventilation and wiring. It is important for airports that are gate-restricted, or have agreements that allow the dominant carriers to dictate construction, to have sufficient flexibility to finance the noncommercial portions of new terminal structures to the greatest extent possible to accommodate additional, competitive carriers.

Section 211. Airfield pavement conditions

Section 211 would require the FAA to evaluate options for improving the quality of information available to the agency on airfield pavement conditions for airports that are part of the national air transportation system.

Section 212. Discretionary grants

Section 212 would direct the FAA to allocate leftover AIP funds as discretionary grants for noise abatement activities.

TITLE III—AMENDMENTS TO AVIATION LAW

Section 301. Severable services contracts

Section 301 would expressly provide authority to the FAA regarding severable service contracts. With the enactment of FAA procurement reform in 1996, there is some question whether the FAA still has the flexibility it previously had under the Federal Acquisition Streamlining Act of 1994 (FASA) to enter into contracts for procurement of severable services that begin in one fiscal year and end in another. (See 41 U.S.C. 253l.) The FAA uses this authority, particularly with regard to air traffic services, to enter into numerous contracts for 12-month periods that do not necessarily coincide with the 12 months of a single fiscal year. This flexibility dramatically reduces the administrative work of having all contracts expire at the end of a fiscal year.

Section 302. Limited transportation of certain aircraft

Section 302 would allow Stage 2 aircraft to fly to and from the continental U.S. for repairs. Such aircraft are currently permitted

to remain in intrastate service in Hawaii even though they are prohibited from flying in the continental U.S.

Section 303. Government and industry consortia

Section 303 would codify a provision from the Omnibus Consolidated Appropriations Act of 1997 (P.L. 104–208, section 5501) that allows the FAA to establish consortia of government and aviation industry representatives at individual airports to provide advice on aviation security and safety. It would allow the FAA to continue and expand this successful program, which has provided local input for enhancements to aviation security.

Section 304. Implementation of Article 83 bis of the Chicago Convention

Section 304 provides the legislative authority to implement what is known as Article 83 bis of the Convention on International Civil Aviation (Chicago Convention), 7 December 1944, 61 Stat. 1180, T.I.A.S. No. 1591, 15 U.N.T.S. 295.

This section would provide implementing legislation for Article 83 bis by amending section 44701, General Requirements, to add a new subsection. It would permit the FAA, through bilateral agreement, to relinquish responsibility for the U.S.-registered aircraft for which safety oversight responsibility is transferred abroad, and accept responsibility for the foreign-registered aircraft whose oversight is transferred to the United States. The transferred aircraft would be treated, for all practical safety oversight purposes only, as if they were on the registry of the other State.

Section 305. Foreign aviation services authority

Section 305 would clarify the FAA's authority to collect fees for foreign aviation services provided by the FAA, such as those provided at foreign repair stations and for other foreign activities, by specifically authorizing the collection of fees. The FAA has collected such fees since 1995. The agency could not, however, impose fees for production-certification-related services performed outside the U.S.

Section 306. Flexibility to perform criminal history record checks; technical amendments to Pilot Records Improvement Act

Section 306 would provide broader authority to the FAA to determine what circumstances warrant a criminal history record check for persons performing security screening of passengers and cargo.

This section also would make two technical improvements to the Pilot Records Improvement Act of 1996, as amended in 1997 by P.L. 105–142. First, the section clarifies that the records that air carriers or other persons are required to provide in response to a request are those records that relate to the individual's performance as a pilot. Second, the section provides that an air carrier may permit an individual to begin service as a pilot, notwithstanding the fact that otherwise-required records from a foreign government or foreign entity have not been received, if the air carrier has made a documented good faith attempt to obtain the information.

Section 307. Extension of aviation insurance program

Section 307 would extend the authorization of the aviation insurance program (also known as war risk insurance) through December 31, 2003. The program is now authorized through March 31, 1999. It provides insurance for commercial aircraft that are operating in high risk areas, such as countries at war or on the verge of war. Commercial insurers usually will not provide coverage for such operations, which are often required to further U.S. foreign policy or national security policy. For example, commercial airlines were needed to ferry troops and equipment to the Middle East for Operations Desert Shield and Desert Storm.

Section 308. Technical corrections to civil penalty provisions

Section 308 would make several changes to the FAA's civil penalty provisions. The first would delete references in section 46301 to sections 46302 (False information) and 46303 (Carrying a weapon). Those two sections already provide for a maximum civil penalty of $10,000 for each violation, as did their predecessor sections, 901(c) and (d) of the Federal Aviation Act of 1958 (FAA Act), before the 1994 recodification project. Section 46301(a)(1)(A) sets a maximum penalty of $1,000 for a variety of violations. Deleting references to these sections would correct a recodification error.

The second change would replace a reference to "individual" with "person," a term that would include not only individuals but also entities such as air carriers or airports. Section 46301(d)(2) gives the Administrator authority to impose civil penalties for violations of the provisions specified. Paragraph (d)(2) does not limit this authority to individuals. It follows that the authority includes civil penalty cases against all persons, not just individuals. Therefore, section 46301(d)(7)(A) would be amended to include actions against entities other than individuals.

The third change would add a reference in the judicial review section to orders of the Administrator. This would be consistent with section 46301(d)(2), which gives the Administrator specific authority to assess administratively civil penalties not exceeding $50,000.

Section 309. Criminal penalty for pilots operating in air transportation without an airman's certificate

Section 309 would require the imprisonment (up to three years) or imposition of a fine upon any individual who knowingly serves as an airman without an airman's certificate from the FAA. Also, the same penalties would apply to anyone who employs as an airman an individual who does not have the applicable airman's certificate. The maximum term of imprisonment increases to five years if the violation is related to the transportation of a controlled substance.

Section 310. Nondiscriminatory interline interconnection requirements

Section 310 would require major air carriers to enter into interline agreements with other carriers under certain circumstances. A major airline that already has an interline agreement with another airline would be required to provide the same interline services

(i.e., ticketing, baggage and ground handling, and terminal and gate access) to any requesting carrier that offers service to an airport participating in the air service program for small communities established under Section 503 of this bill. The Secretary of Transportation would review any proposed agreement to determine if the requesting carrier meets operational requirements consistent with those of the major carrier. This provision would apply only to a major carrier that accounts for more than 50 percent of the enplanements at a large hub airport.

TITLE IV—MISCELLANEOUS

Section 401. Oversight of FAA response to Year 2000 problem

Section 401 would require the FAA to report to the Senate and House authorizing committees on the FAA's progress in dealing with the Year 2000 data processing issue. The reports may be verbal or written, so as not to cause the FAA to waste unnecessary time and resources on drafting lengthy reports to Congress. The Committee expects the FAA specifically to address periodic reports that the Air Transport Association (ATA) plans to craft on this issue regarding the FAA's progress on Year 2000 compliance.

Section 402. Cargo collision avoidance systems deadline

Section 402 would require all large cargo aircraft to be equipped with collision avoidance equipment by the end of 2002. This section would not require that a particular type of collision avoidance system (e.g., radar-based) be installed on such aircraft, but rather that a decision be made on the types of technologies that appear to be available in the near term. Currently, only passenger aircraft are required to be equipped with collision avoidance systems.

Section 403. Runway safety areas

Section 403 would require the FAA to solicit comments on the need for: (1) improving runway safety areas, which are essentially runway extensions that provide a landing cushion beyond the ends of runways at certificated airports; and (2) requiring the installation of precision approach path indicators (PAPI), which are visual vertical guidance systems for runways. Airline pilots have highlighted these matters as important safety issues. Existing FAA regulations call for an overrun area of 1,000 feet in length at the end of a runway. The FAA has tested materials that are expected to shorten the runway safety areas. If successful, such efforts could significantly reduce the cost of runway extensions.

Section 404. Airplane emergency locators

Section 404 would require nearly all fixed-wing aircraft in air commerce to be equipped with emergency locator transmitters by 2002. Many aircraft are currently required by statute or regulation to be equipped with emergency locator transmitters, which can help rescuers and National Transportation Safety Board investigators find a downed plane more quickly. Aircraft powered by turbojets and those used by scheduled air carriers are exempt, however. This section would narrow the exemption and require additional categories of aircraft to be equipped with emergency locator trans-

mitters after 2001. Exempted from the requirements would be aircraft used by manufacturers in development exercises, and agricultural aircraft used to spray crops.

Section 405. Counterfeit aircraft parts

Section 405 would prohibit anyone, an employee or a company, who is convicted of installing, producing, repairing, or selling counterfeit aviation parts (sometimes known as bogus parts) from having or obtaining an FAA certificate. Any person holding virtually any type of FAA certificate, including air carriers, repair stations, and manufacturers, would be prohibited from employing anyone convicted of an offense involving counterfeit parts. This section is modeled on provisions in current law that provide for the denial or revocation of an FAA certificate from a person convicted of a crime involving controlled substances.

Section 406. FAA may fine unruly passengers

Section 406 would give the FAA explicit authority to fine (up to $10,000) unruly airline passengers who interfere with the operation or safety of a civil flight.

Section 407. Higher standards for handicapped access

Section 407(a) would require the Secretary of Transportation to work with appropriate international organizations to set higher standards (similar to those in the U.S.) for the air transportation of disabled passengers, particularly in cases where a foreign air carrier code-shares with a domestic air carrier.

Section 407(b) would require the DOT's Office of Civil Rights to investigate each complaint of discrimination by a disabled passenger against an airline. Currently, complaints are merely filed in a data base at DOT and investigated only if there appears to be a pattern and practice of discrimination. The amendment would also require the DOT to publish disability-related complaint data, and to implement a plan to help air carriers and persons with disabilities to understand the rights and responsibilities established by this provision.

Section 407(c) would adjust the amount (currently $1,000) that airlines are fined for discriminating against disabled passengers. A carrier would be fined between $500 and $2500 for a first violation and between $2500 and $5000 for any subsequent violation. The fine would not apply if the airline provides the aggrieved individual with a credit or voucher for the purchase of a ticket in an amount (determined by the Secretary of Transportation) that falls within the new range of fines. This section also would clarify that disabled persons would not have their private rights of action affected by the legislation. Reasonable attorneys' fees and litigation costs would be permitted for prevailing complainants.

Section 408. Conveyances of United States Government land

Section 408 would authorize the FAA to waive deed restrictions on surplus airport property, as long as the permitted development supports and complements the development of the airport, and all revenues remain on the airport.

Section 409. Flight operations quality assurance rules

Section 409 would require the FAA to accelerate its rulemaking on Flight Operations Quality Assurance (FOQA). FOQA is a program under which airlines and their crews share operational information, including data captured by flight data recorders. Sanitized information about crew errors is shared, to focus on situations in which hardware, air traffic control procedures, or company practices create hazardous situations. Through its rulemaking, the FAA would provide assurance that information obtained from the program would not be used for enforcement purposes, other than criminal and deliberate acts that are discovered through such programs. As the National Civil Aviation Review Commission and others have pointed out, the sharing of information and data will be a crucial element in the effort to cut the fatal accident rate by 80 percent by 2005.

Section 410. Wide Area Augmentation System

Section 410 would require the FAA to identify or develop a plan to maintain a backup system to the Wide Area Augmentation System (WAAS), if one is necessary to provide satellite-based navigation and landing approach capabilities for civilian use. Within six months, the FAA would report to Congress on a specific plan and timetable for implementing WAAS, including a determination of the intended ultimate use of WAAS (i.e., whether it will be the primary or sole means of navigation). This section would authorize such sums as are necessary for this purpose.

Section 411. Regulation of Alaska air guides

Section 411 would require the FAA to reissue the notice to Alaska guide pilots on the applicability of regulations recently imposed on such guide pilot operations.

Section 412. Alaska rural aviation improvement

Section 412(a) would require 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. This section codifies a provision that was included in the Federal Aviation Reauthorization Act of 1996.

Section 412(b) would direct the FAA to install closed circuit weather surveillance at at least 15 rural airports in Alaska, and authorize $2 million for the project. Section 412(c) would direct the FAA and the National Weather Service to institute a “mike-in-hand” weather observation program in Alaska, so that pilots can get real-time weather advice before landing at an airport. Section 412(d) would authorize $4 million for runway lighting and weather reporting systems at remote airports in Alaska.

Section 413. Human Factors Program

Section 413 would require the FAA, in an effort to improve training in the human factors arena, to establish an oversight committee for the execution of Advanced Qualification Programs, which

are alternative methods of qualifying, training, certifying, and ensuring the competency of flight crews and other operations personnel. In addition, the FAA, NTSB, and the industry would establish a process to tie human factors training to accident investigations. The FAA also would be required to address the concerns and recommendations of the National Research Council (NRC) in its recent report on air traffic control automation. The FAA, working with the industry, would develop specific training curricula to address critical human factors safety concerns, including controlled flight into terrain, which is a significant cause of accidents worldwide.

Section 414. Independent validation of FAA costs and allocations

Section 414 would require the DOT Inspector General to initiate an independent validation and assessment of the cost accounting system that is currently under development by the FAA and due for partial implementation at the beginning of fiscal year 1999. The purpose of this section is to ensure that the agency's method for capturing and distributing its overall costs is appropriate and reasonable. Whether or not this system is deployed to develop fee systems to fund the FAA, it is critical to improve the performance of the FAA. The independent verification should give users more confidence in the system.

Section 415. Whistleblower protection for FAA employees

Section 415 would provide FAA whistleblowers with the authority to seek redress if they are subject to retaliation for their actions. In 1995, Congress gave the FAA the authority to reform its personnel system in order to address the unique demands of the agency's workforce. While it exempted the FAA from most of the personnel requirements under title 5, United States Code, certain enumerated provisions remained applicable to the FAA, including 5 U.S.C. 2302(b), relating to whistleblower protections. While the whistleblower protections of title 5 were maintained for FAA employees, the law did not specifically reference provisions for the enforcement of those protections. Last year, the Department of Justice's Office of Legal Counsel confirmed this and opined that an FAA employee could not file a claim alleging retaliatory action with the U.S. Office of Special Counsel and the Merit Systems Protection Board (MSPB). The DOT's Inspector General recommended that such procedures be available to FAA employees. The amendment proposed by this section would provide FAA whistleblowers with the authority to seek redress from the Office of Special Council and the MSPB.

Section 416. Report on modernization of oceanic ATC system

Section 416 would require the FAA to report on its plans to modernize the oceanic air traffic control system. Such plans would include a budget for the program, a determination of the requirements for modernization, and, if necessary, a proposal to fund the program. The Committee believes that it is critical that modernization of the oceanic system move forward. Other countries appear willing to take control over vast areas of oceanic airspace, if the U.S. cannot modernize. Modernization should open up more routes,

increase efficiency, and save consumers time and money for air travel over the oceans.

Section 417. Report on air transportation oversight system

Section 417 would require the FAA, beginning in 1999, to report biannually to the Congress on the air transportation oversight system (ATOS) program announced by the agency on May 13, 1998. The report would include details on the training of inspectors, the number of inspectors using the system, air carriers subject to the system, and the budget for the system.

Section 418. Recycling of EIS

Section 418 would allow the Secretary of Transportation to authorize the use, in whole or in part, of a completed environmental assessment or environmental impact study for a new airport project that is substantially similar in nature to the one constructed pursuant to such an environmental review. This could avoid the unnecessary duplication of expense and effort for airport sponsors.

This section is intended to provide to the Secretary discretion to utilize data contained in previously completed work for an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for a new project, if the new project is substantially similar in nature and scope to the project for which the previously completed EA or EIS was completed. For example, New Orleans International Airport has submitted drafts of an EIS report to the FAA on a parallel instrument flight rules (IFR) runway, and is in the final stage of completion of an EA for the conversion of a taxiway into a visual flight rules runway. This section would provide discretion to the Secretary to utilize data and information contained in these reports for a new EIS report that is being prepared for a proposed parallel IFR runway at the New Orleans International Airport.

Section 419. Protection of employees providing air safety information

Section 419 would provide employees of airlines, and employees of airline contractors and subcontractors, with statutory whistleblower protection. This section is a modified version of S. 100 (105th Congress), the Aviation Safety Protection Act of 1997. The language in this section is similar to whistleblower protection laws that cover employees in other industries, such as nuclear energy.

This section would provide protection to aviation employees from retaliation by their employers when reporting violations to federal authorities. It would provide a Department of Labor complaint procedure for employees who experience employer reprisal for reporting such violations, and assures that there are strong enforcement and judicial review provisions for fair implementation of the protections. The provision also would bring the Department of Labor complaint process more in line with the Federal Rules of Civil Procedure, particularly with respect to Rule 11, which permits sanctions for bad faith and frivolous claims. Also, employees who are subject to ongoing disciplinary proceedings would not be able to use the protections in this provision to their benefit.

Section 420. Improvements to air navigation facilities

Section 420 would allow the FAA to improve real property that it leases from others to house air navigation facilities, without regard to the costs of the improvements in relation to the lease if: (1) the improvements primarily benefit the government; (2) the improvements are essential for mission accomplishment; and (3) the government's interest in the improvement is protected.

Section 421. Denial of airport access to certain air carriers

Section 421 would allow certain airports to deny access to certain air carriers without such denial being considered unjust or unreasonable discrimination. The only airports that could deny access would be reliever airports that are located within 35 miles of a hub airport and do not have a Part 139 operating certificate (which allows an airport to handle scheduled commercial air service). The only carriers that could be denied access would be charter operators that essentially hold themselves out to the public as scheduled operators.

Section 422. Tourism

Section 422 would establish international visitor initiatives and an international marketing program. The Secretary of Commerce would be required to establish an Intergovernmental Task Force for International Visitor Assistance. This Task Force would examine: (1) signage at transportation facilities in the U.S.; (2) the availability of multilingual travel and tourism information; and (3) how to facilitate the establishment of a toll-free telephone number to assist international tourists coping with an emergency. Appropriations would be authorized for the funding of promotional activities by the United States National Tourism Organization. The Secretary of Commerce would be required to submit to Congress an annual report on how appropriated funds were spent and the state of international tourism in the U.S. generally.

Section 423. Equivalency of FAA and EU safety standards

Section 423 would require the FAA to determine whether the agency's safety regulations are equivalent to certain safety standards set by the European Union (EU). If they are equivalent, the FAA must work with the Department of Commerce to gain acceptance of that determination by the EU.

Section 424. Sense of the Senate on property taxes on public-use airports

Section 424 would express the Sense of the Senate that (1) property taxes on public-use airports should be assessed fairly and equitably, regardless of the location of the owner of the airport, and (2) the property tax recently assessed on the City of The Dalles, Oregon, as the owner and operator of the Columbia Gorge Regional/The Dalles Municipal Airport, located in the State of Washington, should be repealed.

Section 425. Federal Aviation Administration Personnel Management System

Section 425 would reinstate the statutory requirement for the FAA to adhere to merit system principles and restore the right of FAA employees to submit appeals to the MSPB. The FAA was exempted from these requirements when it was given extensive personnel management freedoms in the FY 1996 DOT appropriations act (P.L. 104–50; section 347).

Section 426. Aircraft and aviation component repair and maintenance advisory panel

Section 426 would establish a panel to review issues related to the use and oversight of aircraft and aviation component repair and maintenance facilities located within, or outside of, the U.S. The panel would be comprised of eight industry representatives appointed by the FAA and one representative each from the DOT, Department of State, and the FAA. To further the work of the panel, the FAA would collect relevant information from foreign and domestic repair facilities.

Section 427. Authority to sell aircraft and aircraft parts for use in responding to oil spills

Section 427 would authorize the sale of excess Department of Defense (DOD) aircraft to companies that provide dedicated aerial dispersant spraying equipment for use on offshore oil spills. The DOD could sell aircraft and aircraft parts to a person only if the DOT certifies that the person is capable of meeting the terms and conditions of a contract to deliver oil spill dispersants by air. The DOD would be required to report to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives on the DOD's exercise of authority under this section. Nothing in this section could be construed as affecting the authority of the FAA, and any aircraft sold under this provision would still be required to satisfy all applicable federal aviation regulations.

Section 428. Aircraft situational display data

Section 428 would mandate that any memorandum of understanding between the FAA and a person obtaining aircraft situational display data from the FAA require that: (1) the person demonstrates that he or she is capable of selectively blocking the display of any data related to any identified aircraft registration number; and (2) the person agrees to block selectively the aircraft registration numbers of any aircraft owner or operator upon the FAA's request.

Section 429. To express the sense of the Senate concerning a bilateral agreement between the United States and the United Kingdom regarding Charlotte-London route

Section 429 would express the Sense of the Senate that the DOT should: (1) act vigorously to ensure the enforcement of the rights of the United States under the Bermuda II Agreement; (2) intensify efforts to obtain the necessary assurances from the United Kingdom to allow an air carrier of the U.S. to operate commercially via-

ble, competitive service for the Charlotte-London (Gatwick) route; and (3) ensure that the rights of the U.S. air carriers are enforced under the Bermuda II Agreement before seeking to renegotiate a broader bilateral agreement to establish additional rights for U.S. air carriers and U.K. air carriers.

Section 430. To express the sense of the Senate concerning a bilateral agreement between the United States and the United Kingdom regarding Cleveland-London route

Section 430 would express the Sense of the Senate that the DOT should: (1) act vigorously to ensure the enforcement of the rights of the United States under the Bermuda II Agreement; (2) intensify efforts to obtain the necessary assurances from the United Kingdom to allow a U.S. air carrier to operate commercially viable, competitive service for the Cleveland-London (Gatwick) route; and (3) ensure that the rights of the U.S. air carriers are enforced under the Bermuda II Agreement before seeking to renegotiate a broader bilateral agreement to establish additional rights for U.S. air carriers and U.K. air carriers.

Section 431. Allocation of Trust Fund funding

Section 431 would require the Treasury Department to report annually to the DOT the amount of taxes collected in each state during the preceding year that were deposited into the aviation trust fund. The DOT would be required to report annually to Congress on the contribution of each state to the aviation trust fund and the amount of AIP funds that were made available to each state.

Section 432. Taos Pueblo and Blue Lakes Wilderness Area demonstration project

Section 432 would require the FAA to work with the Taos Pueblo to study the feasibility of conducting a demonstration project to require all aircraft that fly over the Taos Pueblo, New Mexico, to maintain a mandatory minimum altitude of at least 5,000 feet above ground level.

Section 433. Airline marketing disclosure

Section 433 would require the DOT to promulgate final regulations (within 90 days of enactment) to provide for improved oral and written disclosure to each consumer concerning the corporate name of the air carrier that provides the air transportation purchased by that consumer.

Section 434. Certain air traffic control towers

Section 434 would require the FAA to use such funds as necessary to contract for the operation of certain air traffic control towers (located in Salisbury, Maryland; Bozeman, Montana; and Boca Raton, Florida), provided that the FAA has made a prior determination of eligibility for such towers to be included in the contract tower program.

Section 435. Compensation under the Death on the High Seas Act

Section 435 amends the Death on the High Seas Act (DOHSA) to increase the allowable compensation for families of aircraft acci-

dent victims over international waters. Specifically, this section would allow the families of victims of plane crashes more than 3 miles off U.S. shores to sue not only for economic losses, such as the lost salary of a deceased spouse, but also for non-economic losses such as loss of companionship, loss of care, and loss of comfort. In addition to economic damages, the section would allow a court to make an award for non-economic damages that will not exceed the greater of the economic loss sustained or a total of $750,000 per victim. Illustratively, if the economic loss to an individual was $1 million, then that individual could obtain $2 million: $1 million for economic losses and $1 million for non-economic damages. But if the pecuniary damages are less than $750,000, the maximum that an individual could take would be $750,000, in addition to the amount determined to cover economic losses. This section would be retroactive to the crash of TWA Flight 800.

Section 436. FAA study of breathing hoods

Section 436 would require the FAA to conduct a study on the adequacy of currently available breathing hoods for flight crews when smoke is detected on an aircraft.

Section 437. FAA study of alternative power sources for flight data recorders and cockpit voice recorders

Section 437 would require the FAA to conduct a study on the need for alternative power sources for onboard flight data recorders and cockpit voice recorders.

Section 438. Passenger facility fee letters of intent

Section 438 would prohibit the FAA from requiring an airport to impose a PFC before the FAA would grant a letter of intent (LOI). It is the intent of Congress that the decision to impose a PFC is an entirely voluntary local decision. This provision simply clarifies that a PFC is not a prerequisite for receiving discretionary grant letters of intent.

Section 439. Elimination of HAZMAT enforcement backlog

Section 439 would direct the FAA to reduce the enforcement backlog on hazardous materials (hazmat) cases, and to inform Congress of its efforts.

Section 440. Evaluation of long-term capital leasing

Section 440 would direct the FAA to enter into a limited long-term capital leasing demonstration program. The proposal is intended to encourage the FAA to lease rather than develop complicated capital equipment.

TITLE V—AVIATION COMPETITION PROMOTION

Section 501. Purposes

Section 501 explains that the purpose of the four-year pilot program established under this title would be to facilitate incentives and projects that will help small communities improve their access to the air transportation system, through public-private partnership.

The bill is intended to overcome some of these limitations. The Committee is also aware of one instance where a small airport was able to work with the local community, assess the travel needs, determine why it was working and not working, and then work with the carrier to make adjustments. The number of passengers increased dramatically, and the carrier changed its service patterns to accomodate the new found needs. The program is intended to facilitate these types of relationships.

Section 502. Establishment of Small Community Aviation Development Program

Section 502 would require the Secretary of Transportation to establish a four-year pilot aviation development program and to designate a program director. This section lists the program director's functions.

The program director would report annually to the Secretary of Transportation and to Congress on the availability of air transportation services in small communities, comparisons of air fares in large and small communities, the factors that inhibit quality and affordable services in small communities, and policy recommendations to address these factors.

Section 503. Community-Carrier Air Service Program

Section 503 would authorize communities (a term used interchangeably with consortia of communities) to assess their air service requirements and submit their assessments and service proposals to the program director. The program director would select communities for participation. The program director would invite air carriers to offer service proposals in response to or in conjunction with the communities' air service assessments.

The program director would work with small communities and air carriers to facilitate the initiation of service. He or she would also designate an airport in the program as an Air Service Development Zone and work with the community on means to attract business to the area surrounding the airport.

The program director would be able to provide financial assistance to communities of up to $500,000 per community, but only if the community provides a matching share of 25 percent. No more than 40 communities or consortia of communities may participate in the four-year pilot program. No more than four communities within a state can participate at any given time. The community must have established a public-private partnership to facilitate service to the public. The program director could obligate up to $80 million over the life of the four-year program.

This section focuses on ways to encourage commercial service to small communities throughout the U.S. that have not benefited from airline deregulation. The section seeks to develop public-private partnerships with the local communities, air carriers, federal, state, and local officials, to find ways to increase service through local initiatives. This program is not intended to duplicate the Essential Air Service program, which provides a per person subsidy to ensure service to communities. The Committee is aware of a number of local initiatives that were created to increase ridership and to refocus service patterns for small communities. This section

would continue to encourage and facilitate those kinds of initiatives, bringing together whatever federal resources or information are available with the local commitment to work with the users of air transportation.

This section incorporates much of S. 1968 from the 105th Congress. The bill as originally introduced would have provided up to $100 million over five years for a pilot program for up to 40 communities or consortia of towns. The bill as reported provides a lower level of funding of $80 million, but retains the number of communities in the program.

One of the key elements in the section is the requirement that local communities contribute 25 percent of the funding. If communities are to increase service, it will be because of a local commitment to use the services offered. The local contribution can be either an indirect (e.g., seat guarantees) or direct funding of activities. The program would terminate in four years. It is anticipated that the federal portion of funding for a community would decline over the course of the community's involvement with the program.

This section also would establish a four-year pilot program to enable applicants to contract for Level I air traffic control services at up to 20 facilities (small airports) not eligible for participation in the federal contract tower program. The 20 airports are not currently eligible, or have been notified by the FAA that they may no longer be eligible, to participate, according to FAA guidelines in the contract tower program. With the cost sharing, however, these airports would be able to meet the FAA standards. The program also would enable up to three of the participants to cost-share in the construction of such towers, with a cap on FAA expenditures for each facility of no more than $1 million. The Committee believes that this type of program will provide additional safety measures for smaller airports.

Section 504. Funding authority

Section 504 provides that $80 million is authorized to be appropriated to the DOT to support the pilot programs in Sections 502 and 503 (except for the contract tower program).

Section 505. Marketing practices

Section 505 would require that, within 180 days of enactment, the Secretary review the marketing practices of air carriers that may inhibit the availability of quality, affordable air transportation services to small and medium-sized communities. If the Secretary finds that these practices constitute an inhibition, the Secretary would be authorized to promulgate regulations that address the problems, or take other appropriate action. The legislation clarifies that this section is not intended to expand the authority of the Department of Transportation in any way.

Section 506. Slot exemptions for nonstop regional jet service

Section 506 would allow 90 days for the Secretary to approve or deny applications for slot exemptions to provide nonstop regional jet air service between airports with fewer than two million enplanements and the high density airports already subject to ex-

emption authority (Chicago O'Hare, New York LaGuardia, and New York JFK).

The Secretary must ensure that the carrier can operate at least two daily roundtrip flights per community identified in the application, but not more than three daily roundtrip flights to that community. In making this determination, the Secretary may take into consideration the slots already used by the applicant.

After one year, if the air carrier can demonstrate unmitigable losses, the air carrier could apply to the Secretary to use the exemption to serve a different airport with fewer than two million annual enplanements.

The Secretary would also give priority consideration to applications from air carriers that, as of January 1, 1999, hold or operate fewer than 20 slots or slot exemptions at that particular airport.

Section 507. Secretary shall grant exemptions to perimeter rule

Section 507 would require the Secretary to grant 24 daily exemptions to the 1,250-mile perimeter rule at the Ronald Reagan Washington National Airport, along with the daily air carrier slot exemptions at the airport that would be necessary to implement this new long-haul service beyond the perimeter.

The new exemptions are intended to maximize domestic network options to Reagan National by allowing carriers to serve domestic hubs outside of the current perimeter of 1,250 miles. The Committee intends to implement a process that will provide numerous domestic cities, including small and medium-sized communities, with improved service.

The Secretary will make 24 new daily slot exemptions available to air carriers to operate aircraft between Reagan National and other hub airports currently beyond the perimeter, if the Secretary finds that the new service will improve competition in the airline industry and by new entrants, provide air transportation service with domestic network benefits, and result in improved access to Reagan National for communities beyond the perimeter.

In the event that applications are filed for more than 24 slot exemptions, the Secretary will award new services to achieve expanded opportunities to Reagan National, consistent with improving competition in the airline industry and increasing consumer choice.

In addition to the slots for long-haul service, 12 new daily commuter slot exemptions would be created at Reagan National, for service to airports within the perimeter that have fewer than two million annual enplanements. The Committee intends that the hub classifications under this section be determined on an airport-by-airport basis, as the statutes clearly call for. Carriers could only use stage 3 aircraft in any of the new slot exemptions at Reagan National. Thirty-six of the new daily slot exemptions at Reagan National would be divided fairly evenly among the hours of 7:00 a.m. and 9:59 p.m., so that there would be no more than three additional operations per hour.

This section would also add another 12 new slot exemptions for service within the perimeter at Reagan National. The slot exemptions would not be limited by aircraft and airport size restrictions, as are the other within-perimeter exemptions in this section.

During the first 90 days after this bill is enacted, the Secretary of Transportation would be required to assess the impact of granting new slot exemptions on the environment and safety. Assuming safety is not adversely impacted, the Secretary would be free to award the slot exemptions.

Within one year of enactment, and biannually thereafter, the Secretary would certify that noise, congestion (both in the air and on the ground), safety standards, and adequate air service to communities within the perimeter, remain at appropriate levels.

Under this section, the Metropolitan Washington Airports Authority would be required to apply for funds for noise mitigation projects around Reagan National, and priority consideration would be given to noise mitigation projects at the four slot-controlled airports.

Section 508. Additional slots at Chicago's O'Hare Airport

Section 508 would direct the Secretary of Transportation to grant 30 additional slot exemptions at the Chicago O'Hare International Airport, to be added to the airport's capacity over three years. The Secretary would be required to determine that the additional capacity is available and can be used safely, and to conduct an environmental review. All slots could be served only with stage 3 aircraft. The Secretary would also be required to conduct a study of noise levels around all of the slot-controlled airports, comparing noise levels before and after the conversion of aircraft fleets to stage 3.

Section 509. Consumer notification of E-ticket expiration dates

Section 509 would provide that it shall be an unfair or deceptive practice for any air carrier utilizing electronically transmitted tickets to fail to notify the purchaser of such a ticket of its expiration date, if any. With the growing popularity and convenience of electronic ticketing, the Committee seeks to ensure that consumers are alerted in an appropriate fashion to the expiration date associated with electronically transmitted tickets. Industry sources indicate that the most common practice among air carriers that offer electronic ticketing is to send a written confirmation of the transaction to the purchaser shortly after the transaction is completed—whether by telephone, or through an on-line connection. The written confirmation of the transaction typically includes notification of the expiration date. This existing practice is sufficient to satisfy the requirement of Section 509. If no written confirmation of the transaction is provided to the purchaser, however, the air carrier must ensure that clear notification of the expiration date is provided—whether orally, in the case of telephone transactions, or through prominent notification conveyed to purchasers making on-line purchases.

Section 510. Regional air service incentive options

Section 510 would require the DOT to study the efficacy of a program of federal loan guarantees for the purchase of regional jets by commuter air carriers. The study would include a review of options for funding, including alternatives to federal funding. The

DOT must report to the authorizing committees on the results of the study within 24 months of enactment of the bill.

The Committee is aware that regional jets may offer new opportunities for many communities. The Committee is also aware that the composition of the commuter fleet is changing, as more and more regional jets are brought into the system by air carriers. According to the FAA Aviation Forecast (1998–2009), more than 800 regional jets will be part of the domestic fleet, up from 107 in 1998. These orders and the placement of these aircraft are expected to provide many benefits to the traveling public.

Section 511. GAO study on rural air transportation needs

Section 511 would require the GAO, in conjunction with the FAA, to conduct a study to determine the effectiveness of the national airport network to meet rural air transportation needs. This study should include a way of measuring the effectiveness of the airport system with respect to placing every citizen of the U.S. within a one-hour drive of an airport with a runway of at least 5,000 feet in length.

TITLE VI—NATIONAL PARKS OVERFLIGHTS

This title is intended to reflect the recommendations made by the National Parks Overflights Working Group, a joint federal advisory committee convened from a group of private individuals with broad knowledge and experience in air tour operations, commercial air transportation, general aviation, and in the policies, resources and management of the national parks.

This title represents a process-oriented piece of legislation, which will provide a workable process whereby the affected agencies and the public can decide whether commercial air tour activity is appropriate over a particular national park unit and, if so, under what conditions such air tours may or may not take place.

The process is designed to let the affected agencies, the FAA and the NPS, work out how best to address the needs of the air tour industry, preservation of our parks, and the needs of visitors and others who enjoy or rely on our parks. Each park is different, however, and each presents unique circumstances. A plan adopted for one park may not fit the needs of another park. The process developed in this title should be broad enough to deal with these situations, while recognizing the rights and responsibilities of each of the affected agencies.

The Committee intends that the FAA and the NPS work cooperatively to develop an effective regulatory framework based on principles that apply National Park System-wide, and practices that can be applied as needed to individual park units from small cultural sites in urban areas to large natural areas. The Committee intends that the agencies work cooperatively to protect the resources and values of the national parks and the interests of all who visit and enjoy these national treasures today and in future generations, in a framework that represents and serves all interests appropriately.

With this legislation, the Committee intends that the agencies work together to preserve quiet in the national parks. The Committee agrees with the National Parks Overflights Working Group and

recognizes that the natural sounds are an inherent component of "the scenery and the natural and historic objects and the wild life" within national parks that the NPS was charged to protect in its organic legislation. As such, in a park where "natural quiet" is a concern to park managers and is recognized by those managers and the public, every ground visitor should have the opportunity to enjoy quiet and the sounds of nature "unimpaired" in at least a portion of the park, or at least a portion of the time. This principle recognizes that natural quiet is not an important attribute for all national parks, such as historic sites in urban settings. It also recognizes that for national parks where natural quiet is an expressed concern, visitors are entitled to experience it.

For some parks, the Committee recognizes that preservation of natural quiet, and the assurance that visitors can enjoy the sounds of nature, may require banning commercial air tour operations over the park altogether. For other parks, this goal may be achieved by restricting commercial air tours in some areas, or during some periods of time, while allowing air tours in other areas where a similar concern is absent.

The Committee intends that the development of ATMPs pursuant to this legislation be a fully cooperative process between the FAA and the NPS, which preserves the essential responsibilities of each agency. The Committee further intends that the FAA retains its role as the sole manager of America's airspace, and its responsibility to ensure a safe and efficient air transport system, and that the NPS retains its responsibility and authority to protect park resources and values, and visitor experiences. Operators who wish to conduct commercial air tours over a national park unit must apply to the FAA for operations specifications. The NPS determines potential impacts to the park and visitor opportunities. The FAA and the NPS jointly conduct the ATMP process, and each agency must sign the required environmental and decision documents.

The final decision to prohibit, authorize or authorize with conditions any air tour over a park is translated into regulatory specifications issued by the FAA. The Committee specifically intends that these specifications reflect the decisions and reflect the conditions recommended in the ATMP.

The Committee intends that this legislation applies solely to commercial air tour operations as defined in the text of the legislation. While other forms of aviation can and do affect natural quiet in the national parks, commercial air tours are the focus of concern for a variety of reasons. Such operations by their nature fly passengers for hire purposefully over the park units, at relatively low altitudes, at frequent intervals, and often to the very locations and attractions favored by ground-based visitors. Commercial air tour operators solicit business based on this type of service.

The Committee has used these characteristics to define air tour operations, and has provided lateral boundaries for the legislation identical to those defined by the National Parks Overflights Working Group, while leaving the minimum effective altitude to the judgment of the FAA and the NPS. Nevertheless, the Committee recognizes that the Working Group achieved near unanimity in its recommendation that the minimum altitude be set at 5,000 feet above ground level (AGL). The Committee further recognizes that

any altitude below 5,000 feet AGL would differentially affect the ability of rotor and fixed-wing air tour operators to provide commercially attractive tours, and would therefore be discriminatory.

Section 601. Findings

Section 601 sets forth six findings establishing the general basis for enactment of the provisions contained in Title VII of the bill.

Section 602. Air tour management plans for national parks

Section 602 would require that commercial air tour operators, in order to conduct air tour operations over a national park or tribal lands, conduct their tours in accordance with any ATMP that is in effect for that park or those tribal lands. The commercial air tour operator would have to apply for authority to conduct operations over a park, and the Administrator of the FAA would prescribe operating conditions and limitations (operations specifications) for each commercial air tour operator, in accordance with the appropriate ATMP.

For purposes of this section, the term "national park" means any unit of the National Park System. The term "tribal lands" means Indian Country that is within or abutting a national park (up to one-half mile beyond the boundary of the park). The term "effective" means any air tour management plan that has been agreed to by the FAA and the NPS, and has been approved and issued by the FAA.

If an ATMP limits the number of commercial air tours over a national park area during a specified time frame, the FAA Administrator and the Director of the NPS would authorize commercial air tour operators to provide the service, in accordance with an open and competitive process developed by the FAA Administrator and the NPS Director. This section sets out the factors for consideration in approving proposals for commercial air tours in situations where the capacity is limited. In considering the experience of the applicant in commercial air tour operations over other national parks or scenic areas, the Committee intends for the FAA and the NPS to consider the experience of the operator with regard to comments or complaints, and the operator's experience in dealing with ground-based concerns.

This section also would require that commercial air tour operators over national parks and tribal lands meet the FAA safety criteria codified in 14 C.F.R. Part 135 or Part 121. Certain commercial air tour operators, however, could conduct business under the standards of 14 C.F.R. Part 91. The operator would be required to secure a letter of agreement from the FAA Administrator and the park superintendent for that national park, describing the conditions for flight operations. The total number of operations under this Part 91 exception would be limited to no more than five flights in any 30-day period over a particular park.

Upon enactment of the bill, existing commercial air tour operators would have 90 days to apply to the FAA for operating authority under 14 C.F.R. Part 135 or Part 121. Any new entrant commercial air tour operator would be required to apply for the authority before it can begin commercial air tour operations over a na-

tional park or tribal lands. The FAA would have to act on these applications within 24 months.

This section would also direct the FAA Administrator, in cooperation with the Director of the NPS, to establish an ATMP for any national park or tribal land whenever a commercial air tour operator applies for the authority to conduct tours over the park or tribal land, if an ATMP is not already in place. This requirement applies automatically if commercial air tours already exist over the national park or tribal land.

This section also specifies that the development of an ATMP would be a cooperative undertaking between the FAA and the NPS. An ATMP would be developed through a public process, and the final record of decision is subject to judicial review. This subsection would establish the objective of an ATMP, which is to develop acceptable and effective measures to mitigate the significant adverse impacts, if any, of commercial air tours upon the natural and cultural resources and visitor experiences at national parks and tribal lands. Significant adverse impacts include impacts that compromise or otherwise negatively affect the abilities of ground visitors to experience the sounds of the national park unit in its intended context.

In developing an ATMP, the FAA and the NPS would conduct the environmental analysis provided for by the National Environmental Policy Act of 1969 (NEPA). Both the FAA Administrator and the NPS Director would have to sign the environmental decision document for each park before proceeding with development of the ATMP. If either agency fails to sign or refuses to sign, the ATMP will be considered premature and not in force. This section lists the possible contents of an ATMP, and requires justification and documentation for any measures adopted in the ATMP.

This section also would set out the procedure for developing an ATMP. The procedure would require at least one public meeting, publication in the Federal Register for notice and comment, and the solicitation of Indian tribe participation when the tribe's lands are, or may be, overflown by aircraft involved in commercial air tour operations over a national park. This procedure would be governed by Council on Environmental Quality (CEQ) regulations. For purposes of the CEQ regulations, the FAA would be the lead agency and the NPS would be a cooperating agency. Affected Indian tribes may participate in the ATMP development as a cooperating agency.

Amendments to ATMPs would be published in the Federal Register for notice and comment.

Existing commercial air tour operators at national parks would apply to the FAA Administrator, and the FAA Administrator would grant these operators interim operating authority until the ATMP for that national park is complete. The FAA Administrator would authorize the operator to conduct the same number of tour flights that the operator conducted over the past year (or the annual average of the past three years, whichever is higher). In order to increase operations, the commercial air tour operator would have to obtain the approval of the FAA Administrator and the NPS Director.

The interim operating authority would be published in the Federal Register to provide notice and opportunity for comment. It could be revoked by the FAA Administrator for cause, including the failure to comply with any of the terms of the interim authority, such as the failure to promote the protection of national park resources and park experiences as they relate to visitors on the ground. In any event, it would terminate 180 days after an ATMP is developed for the national park. Modifications to the interim operating authority are allowed if the modification improves the protection of national park resources and the protection of tribal lands, in the estimate of the land managers.

New entrants would not be allowed to conduct commercial air tour operations over a national park until the ATMP for that park is developed. If the agencies have not developed an ATMP for a park within 24 months of enactment, however, the Secretary of Transportation would have the authority to grant new entrants interim operating authority if the competitive circumstances warrant.

This section also contains definitions for terms used in this title. The provisions of this section would not apply to the Grand Canyon National Park, due to existing statutes addressing air tours over the Grand Canyon. For the same reason, this section would exempt flights over Lake Mead if they are part of air tours of the Grand Canyon. Specifically, this section would exempt flights over Lake Mead if they are exclusively part of air tours of the Grand Canyon. Air tours over Lake Mead that do not merely transit the lake would be subject to the Lake Mead ATMP process.

This section would prohibit the application of the new section 40125 of title 49, United States Code, anywhere in Alaska. The Committee also intends that the section exempt Alaska from the Advisory Group study on the impact of the legislation and from the overflight fee report.

In 1987, Congress mandated a study by the Secretary of the Interior, acting through the Director of the NPS, to determine the impacts that overflights of aircraft have on park unit resources. Section 1(c) of the legislation required research at six named parks and four unnamed parks to be identified at the discretion of the NPS. Section 1(c) expressly excluded all NPS units in Alaska from the research and the study.

The Committee recognizes the important role of aircraft in everyday life in Alaska and wishes to continue to ensure Alaskans are not prejudiced. The congressional preservation in Alaska of an express and affirmative right to air access to federal lands in section 1110 of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3170) is not affected by this title, and there has been no identified need since this historic statute was enacted to change course with respect to this policy. The Committee notes that the July 31, 1997, testimony of Mr. Destry Jarvis of the NPS before the Committee confirmed that the 1995 report submitted pursuant to the 1987 act did not address national parks in Alaska.

Section 603. Advisory group

Section 603 would require that, within one year of enactment, the FAA Administrator and the NPS Director establish an advisory group to provide continuing advice and counsel with respect to the

operation of commercial air tours over and near national parks. The membership would consist of a balanced group of representatives of general aviation, commercial air tour operators, environmental concerns, Indian tribes, the FAA, and the NPS. The FAA and the NPS representatives would serve alternating one-year terms as chairman of the advisory group.

Among its duties, the advisory group would provide recommendations on the designation of commonly accepted quiet aircraft technologies, which are to be given preferential treatment in the ATMPs. The FAA and the NPS are required to report back in two years on the success of this section in providing incentives for the adoption of quiet aircraft technology.

Section 604. Overflight fee report

Section 604 would require the FAA Administrator, within 180 days of enactment, to report to Congress on the effects of overflight fees on the commercial air tour industry. The report would include the viability of a tax credit for operators equal to the amount of the fee charged by the NPS, as well as the financial effects that these proposed offsets are likely to have on FAA budgets and appropriations.

Section 605. Prohibition of commercial air tours over Rocky Mountain National Park

Section 605 prohibits commercial air tours of the Rocky Mountain National Park.

TITLE VII—TITLE 49 TECHNICAL CORRECTIONS

Section 701. Restatement of 49 U.S.C. 106(g)

Section 701 would restate section 106(g) of title 49. The original enactment that created the Department of Transportation in 1966 (P.L. 89–670; October 15, 1966) contained a provision (paragraph 6(c)(1)) stating the FAA Administrator's duty to carry out aviation safety functions in certain sections and certain titles of the FAA Act. By referring to titles of the FAA Act in some cases rather than specific sections, paragraph 6(c)(1) had the effect of being a "container"—that is, whenever a new section was added to titles VI, VII, IX, and XII of the FAA Act, the new section was automatically included in the listing of the Administrator's aviation safety duties.

In 1983, paragraph 6(c)(1) of the 1966 DOT Act was replaced by 49 U.S.C. 106(g) as part of a recodification project. The new section 106(g) restated the original language closely and referred to the same list of titles of the FAA Act (and thus retained the same "containers"). In 1994, the recodification project was completed by enactment of P.L. 103–272 (July 5, 1994). As part of the project, the FAA Act was repealed in its entirety and its provisions were enacted into positive law as a portion of title 49. This meant that the 106(g) references to titles of the FAA Act no longer functioned, and the 1994 restatement took the conservative approach of restating 106(g) by listing every section found in the listed titles on the date of enactment. This ensured precision in the restated text of 49 U.S.C. 106(g).

This approach to restatement of section 106(g) without reliance on “containers” has produced an unintended anomaly. In its aviation safety enactments subsequent to July 1994, Congress has added new safety provisions to Part A of Subtitle VII of title 49 (which restates the FAA Act of 1958). As just noted, merely including a new provision in a particular title of the FAA Act (for example, title VI) would, in the past, have had the effect of also including it within the coverage of section 106(g). In contrast, inclusion in title VI’s counterpart (chapter 447) no longer does this automatically because of the changed drafting approach in 106(g). An example of a provision recently added to chapter 447 (but not included in section 106(g)’s coverage, as would have likely been the case in the past) is 49 U.S.C. 44724 (Manipulation of flight controls).

Congress intended inclusion of section 44724 and several other recently enacted safety provisions in the coverage of section 106(g). Future drafting of new safety provisions, for inclusion in selected chapters of title 49, would be simplified by returning to the “container” approach to section 106(g). Accordingly, this section of the bill contains a proposed restatement of section 106(g) to accomplish this result. Subsection (b) would ensure that the change cannot be construed to change substantive law in any respect.

Section 702. Restatement of 49 U.S.C. 44909

Section 702 would restate section 44909 of title 49, which specifies that an air carrier shall provide a “passenger manifest” (a list of passengers aboard a flight) for its international flights, and that the manifest “shall” include certain information. However, the original enactment (now repealed) provided that the manifest “should” include certain information, making explicit the flexibility afforded the Secretary of Transportation in specifying the information included in the manifest requirement (see Section 203 of P.L. 101–604, November 16, 1990). In order to make this flexibility clearer, and in recognition that the 1994 recodification expressly stated that it made no substantive change in law, the proposed technical correction would replace the word “shall” with the original word “should” in 49 U.S.C. 44909(a)(2).

ADDITIONAL VIEWS FROM MR. LOTT

Last year this committee and the full Senate overwhelmingly approved the Wendell H. Ford National Air Transportation System Improvement Act. This legislation included measures that made modest modifications at America's busiest airports including Reagan National Airport in the Washington area. These Reagan National modifications promised to bring improved air service from our Nation's capital to small and under served communities.

One of the big-ticket modifications of the Ford Act was an additional twenty-four daily flights to or from Reagan National. Twelve new daily flights would be dedicated to airports within the perimeter, and an equal number would go to flights beyond the perimeter. This figure was agreed to by key members of the Senate, including the affected state, last summer.

Unfortunately, the Senate bill did not become law, and a short six month FAA/AIP extension was signed by the Administration, a period which expires exactly one month from today. In light of the short time span that Congress has to secure a long-term reauthorization, Chairman McCain and other members of the Committee on Commerce, Science & Transportation introduced S. 82, the Air Transportation Improvement Act, which paralleled the major aviation policy changes and intentions of the Ford Act including the Reagan National provisions.

During last month's Commerce Committee executive session, one attempt to increase the number of additional daily flights to Reagan National was successful. S. 82, as amended, would push this figure from twenty-four additional flights to forty-eight additional flights. This change in this year's aviation bill has seriously strained the delicate agreement on Reagan National slots from last year.

I have spoken with several of my Colleagues on this issue and they are extremely concerned about the ramifications this change will have on S. 82's future in the Senate and on resolving differences with the House position. Many Members have expressed an interest in returning to last year's increase of twenty-four, a number that almost all of the Senate voted to approve in October.

America's airports, big and small, only have four weeks to witness the passage of legislation that will reauthorize AIP funds and implement the major aviation policy changes of this year's Senate bill. Congress has enough time to adopt an air service bill with few points of contention, namely the differences between 1998's House and Senate bills. However, if additional daily flights at Reagan National outside of last summer's agreement are kept in S. 82, then the prospects for the Senate bill becoming law appear less likely.

Chairman McCain and ranking member Hollings are to be commended for their efforts to quickly bring FAA/AIP legislation to the Senate floor. I share their interest in preventing a lapse in airport

funding. However, in light of the colossal hurdles the Senate must clear to seek passage of S. 82, I recommend that it revisit the original figure of twenty-four additional daily flights at Reagan National. After all, less than six months ago ninety-two Senators voiced approval for this figure. If the Senate can come back to this original agreement, then we can focus our attention on other important aviation policies.

TRENT LOTT.

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):

DEATH ON THE HIGH SEAS ACT

AMOUNT AND APPORTIONMENT OF RECOVERY.

SEC. 2 **[46 U.S.C. App. 762]** *(a) IN GENERAL.—*The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

(b) COMMERCIAL AVIATION.—

(1) IN GENERAL.—If the death was caused during commercial aviation, additional compensation for nonpecuniary damages for wrongful death of a decedent is recoverable in a total amount, for all beneficiaries of that decedent, that shall not exceed the greater of the pecuniary loss sustained or a sum total of $750,000 from all defendants for all claims. Punitive damages are not recoverable.

(2) INFLATION ADJUSTMENT.—The $750,000 amount shall be adjusted, beginning in calendar year 2000 by the increase, if any, in the Consumer Price Index for all urban consumers for the prior year over the Consumer Price Index for all urban consumers for the calendar year 1998.

(3) NONPECUNIARY DAMAGES.—For purposes of this subsection, the term "nonpecuniary damages" means damages for loss of care, comfort, and companionship.

TITLE 49. TRANSPORTATION

SUBTITLE I. DEPARTMENT OF TRANSPORTATION

CHAPTER 1. ORGANIZATION

§ 102. Department of Transportation

(a) The Department of Transportation is an executive department of the United States Government at the seat of Government.

(b) The head of the Department is the Secretary of Transportation. The Secretary is appointed by the President, by and with the advice and consent of the Senate.

(c) The Department has a Deputy Secretary of Transportation appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary—

(1) shall carry out duties and powers prescribed by the Secretary; and

(2) acts for the Secretary when the Secretary is absent or unable to serve or when the office of Secretary is vacant.

(d) The Department has an Associate Deputy Secretary appointed by the President, by and with the advice and consent of the Senate. The Associate Deputy Secretary shall carry out powers and duties prescribed by the Secretary.

(e) The Department has 4 Assistant Secretaries and a General Counsel appointed by the President, by and with the advice and consent of the Senate. The Department also has an Assistant Secretary of Transportation for Administration appointed in the competitive service by the Secretary, with the approval of the President. They shall carry out duties and powers prescribed by the Secretary. An Assistant Secretary or the General Counsel, in the order prescribed by the Secretary, acts for the Secretary when the Secretary and the Deputy Secretary are absent or unable to serve, or when the offices of the Secretary and Deputy Secretary are vacant.

(f) The Department shall have a seal that shall be judicially recognized.

(g) SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM.—

(1) ESTABLISHMENT.—The Secretary shall establish a 4-year pilot aviation development program to be administered by a program director designated by the Secretary.

(2) FUNCTIONS.—The program director shall—

(A) function as a facilitator between small communities and air carriers;

(B) carry out section 41743 of this title;

(C) carry out the airline service restoration program under sections 41744, 41745, and 41746 of this title;

(D) ensure that the Bureau of Transportation Statistics collects data on passenger information to assess the service needs of small communities;

(E) work with and coordinate efforts with other Federal, State, and local agencies to increase the viability of service to small communities and the creation of aviation development zones; and

(F) provide policy recommendations to the Secretary and the Congress that will ensure that small communities have access to quality, affordable air transportation services.

(3) REPORTS.—The program director shall provide an annual report to the Secretary and the Congress beginning in 2000 that—

(A) analyzes the availability of air transportation services in small communities, including, but not limited to, an assessment of the air fares charged for air transportation services in small communities compared to air fares charged for air transportation services in larger metropolitan areas and an assessment of the levels of service, measured by types of aircraft used, the availability of seats, and scheduling of flights, provided to small communities;

(B) identifies the policy, economic, geographic and marketplace factors that inhibit the availability of quality, af-

fordable air transportation services to small communities; and

(C) provides policy recommendations to address the policy, economic, geographic, and marketplace factors inhibiting the availability of quality, affordable air transportation services to small communities.

§ 106. Federal Aviation Administration

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

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

(c) The Administrator must—

(1) be a citizen of the United States;

(2) be a civilian; and

(3) have experience in a field directly related to aviation.

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

(2) An officer on active duty or a retired officer serving as Deputy Administrator is entitled to hold a rank and grade not lower than that held when appointed as Deputy Administrator. The Deputy Administrator may elect to receive (A) the pay provided by law for the Deputy Administrator, or (B) the pay and allowances or the retired pay of the military grade held. If the Deputy Administrator elects to receive the military pay and allowances or retired pay, the Administration shall reimburse the appropriate military department from funds available for the expenses of the Administration.

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

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

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

(1) AUTHORITY OF THE SECRETARY.—Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activi-

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

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

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

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

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

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

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

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

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

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

(3) REGULATIONS.—

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

(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 $100,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996) in any year, or any regulation which is significant, unless the Secretary of Transportation approves the issuance of the regulation in advance. For purposes of this paragraph, a regulation is significant if the Administrator, in consultation with the Secretary (as appropriate), determines that the regulation is likely to—

(I) have an annual effect on the economy of $100,000,000 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 the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall review any unusually burdensome regulation issued by the Administrator after such date

of enactment beginning not later than 3 years after the effective date of the regulation to determine if the cost assumptions were accurate, the benefit of the regulations, and the need to continue such regulations in force in their present form.

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

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

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

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

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

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

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

(g) DUTIES AND POWERS OF 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, sections 45302–45304,] 40113(a), (c)–(e), 40114(a), and 40119, and chapter 445 (except sections 44501(b), 44502(a)(2)–(4), 44503, 44506, 44509, 44510, 44514, and 44515), chapter 447 (except sections 44717, 44718(a) and (b), 44719, 44720,

44721(b), 44722, and 44723), chapter 449 (except sections 44903(d), 44904, 44905, 44907–44911, 44913, 44915, and 44931–44934), chapter 451, chapter 453, sections 46104, 46301(d) and (h)(2), 46303(c), 46304–46308, 46310, 46311, and 46313–46316, chapter 465, and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

(B) additional duties and powers prescribed by the Secretary of Transportation.

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

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

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

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

[(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—There is authorized to be appropriated to the Secretary of Transportation for operations of the Administration $5,158,000,000 for fiscal year 1997 and $5,344,000,000 for fiscal year 1998.]

(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation for operations of the Administration $5,631,000,000 for fiscal year 1999 and $5,784,000,000 for fiscal year 2000. Of the amounts authorized to be appropriated for fiscal year 1999, not more than $9,100,000 shall be used to support air safety efforts through payment of United States membership obligations, to be paid as soon as practicable.

(2) AUTHORIZED EXPENDITURES.—Of the amounts appropriated under paragraph (1) $450,000 may be used for wildlife hazard mitigation measures and management of the wildlife strike database of the Federal Aviation Administration.

(3) UNIVERSITY CONSORTIUM.—There are authorized to be appropriated not more than $9,100,000 for the 3 fiscal year period beginning with fiscal year 1999 to support a university consortium established to provide an air safety and security management certificate program, working cooperatively with the Federal Aviation Administration and United States air carriers. Funds authorized under this paragraph—

(A) may not be used for the construction of a building or other facility; and

(B) shall be awarded on the basis of open competition.

(l) PERSONNEL AND SERVICES.—

(1) OFFICERS AND EMPLOYEES.—Except as provided in section 40122(a) 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. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40122(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

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

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

(4) USE OF PERSONNEL FROM OTHER AGENCIES.—The Administrator is authorized to utilize the services of personnel of any other Federal agency (as such term is defined under section 551(1) of title 5).

(5) VOLUNTARY SERVICES.—

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

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

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

(6) CONTRACTS.—The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551(1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other gov-

ernmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

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

(n) ACQUISITION.—

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

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

(i) air traffic control facilities and equipment;

(ii) research and testing sites and facilities; and

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

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

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

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

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

(p) MANAGEMENT ADVISORY COUNCIL.—

(1) ESTABLISHMENT.—Within 3 months after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall establish an advisory council which shall be known as the Federal Aviation Management Advisory Council (in this subsection referred to as the "Council"). With respect to Administration management,

policy, spending, funding, and regulatory matters affecting the aviation industry, the Council may submit comments, recommended modifications, and dissenting views to the Administrator. The Administrator shall include in any submission to Congress, the Secretary, or the general public, and in any submission for publication in the Federal Register, a description of the comments, recommended modifications, and dissenting views received from the Council, together with the reasons for any differences between the views of the Council and the views or actions of the Administrator.

(2) MEMBERSHIP.—The Council shall consist of 15 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) MEETINGS.—The Council shall meet on a regular and periodic basis or at the call of the chairman or of the Administrator.

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

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

(6) ADMINISTRATIVE MATTERS.—

(A) TERMS OF MEMBERS.—

(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.

(q) AIRCRAFT NOISE OMBUDSMAN.—

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

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

(A) be appointed by the Administrator;

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

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

(3) Number of full-time equivalent employees. The appointment of an Ombudsman under this subsection shall not result in an increase in the number of full-time equivalent employees in the Administration.

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(49 U.S.C. 106, NOTE)

SEC. 347. (a) In consultation with the employees of the Federal Aviation Administration and such non-governmental experts in personnel management systems as he may employ, and notwithstanding the provisions of title 5, United States Code, and other Federal personnel laws, the Administrator of the Federal Aviation Administration shall develop and implement, not later than January 1, 1996, a personnel management system for the Federal Aviation Administration that addresses the unique demands on the agency's workforce. Such a new system shall, at a minimum, provide for greater flexibility in the hiring, training, compensation, and location of personnel.

(b) The provisions of title 5, United States Code, shall not apply to the new personnel management system developed and implemented pursuant to subsection (a), with the exception of—

(1) section 2302(b), relating to whistleblower protection;

(2) sections 3308–3320, relating to veterans' preference;

(3) section 7116(b)(7), relating to limitations on the right to strike;

(4) section 7204, relating to antidiscrimination;

(5) chapter 73, relating to suitability, security, and conduct;

(6) chapter 81, relating to compensation for work injury; [and]

(7) chapters 83–85, 87, and 89, relating to retirement, unemployment compensation, and insurance [coverage.] *coverage; and*

(8) *sections 1204, 1211–1218, 1221, and 7701–7703, relating to the Merit Systems Protection Board.*

[(c) This section shall take effect on April 1, 1996.]

(c) APPEALS TO MERIT SYSTEMS PROTECTION BOARD.—Under the new personnel management system developed and implemented under subsection (a), an employee of the Federal Aviation Administration may submit an appeal to the Merit Systems Protection Board and may seek judicial review of any resulting final orders or decisions of the Board from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996.

TITLE 49. TRANSPORTATION

SUBTITLE IV. INTERSTATE TRANSPORTATION

PART C. PIPELINE CARRIERS

CHAPTER 159. ENFORCEMENT: INVESTIGATIONS, RIGHTS, AND REMEDIES

§ 15904. Rights and remedies of persons injured by pipeline carriers

(a) ENFORCEMENT OF ORDERS.—A person injured because a pipeline carrier providing transportation or service subject to this part does not obey an order of the Board, except an order for the payment of money, may bring a civil action to enforce that order under this subsection.

(b) LIABILITY OF CARRIER.—

(1) EXCESSIVE CHARGES.—A pipeline carrier providing transportation subject to this part is liable to a person for amounts charged that exceed the applicable rate for the transportation.

(2) DAMAGES.—A pipeline carrier providing transportation subject to this part is liable for damages sustained by a person as a result of an act or omission of that carrier in violation of this part.

(c) COMPLAINTS.—

(1) FILING.—A person may file a complaint with the Board under 15901(b) or bring a civil action under subsection (b) to enforce liability against a pipeline carrier providing transportation subject to this part.

(2) PAYMENT DEADLINE.—When the Board makes an award under subsection (b), the Board shall order the carrier to pay the amount awarded by a specific date. The Board may order a carrier providing transportation subject to this part to pay damages only when the proceeding is on complaint. The person for whose benefit an order of the Board requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier does not pay the amount awarded by the date payment was ordered to be made.

(d) CIVIL ACTIONS.—

(1) COMPLAINT.—When a person begins a civil action under subsection (b) to enforce an order of the Board requiring the payment of damages by a pipeline carrier providing transportation subject to this part, the text of the order of the Board must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) ATTORNEY'S FEES.—The district court shall award a reasonable attorney's fee as a part of the damages for which a carrier is found liable under this subsection. The district court shall tax and collect that fee as a part of the costs of the action.

CHAPTER 401. GENERAL PROVISIONS

§ 40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

(1) "aeronautics" means the science and art of flight.

(2) "air carrier" means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

(3) "air commerce" means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the oper-

ation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

(4) "air navigation facility" means a facility used, available for use, or designed for use, in aid of air navigation, including—

(A) a landing area;

(B) a light;

(C) apparatus or equipment for distributing weather information, signaling, radio-directional finding, or radio or other electromagnetic communication; and

(D) another structure or mechanism for guiding or controlling flight in the air or the landing and takeoff of aircraft.

(5) "air transportation" means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.

(6) "aircraft" means any contrivance invented, used, or designed to navigate, or fly in, the air.

(7) "aircraft engine" means an engine used, or intended to be used, to propel an aircraft, including a part, appurtenance, and accessory of the engine, except a propeller.

(8) "airman" means an individual—

(A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way;

(B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or

(C) who serves as an aircraft dispatcher or air traffic control-tower operator.

(9) "airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "all-cargo air transportation" means the transportation by aircraft in interstate air transportation of only property or only mail, or both.

(11) "appliance" means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.

(12) "cargo" means property, mail, or both.

(13) "charter air carrier" means an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation.

(14) "charter air transportation" means charter trips in air transportation authorized under this part.

(15) "citizen of the United States" means—

(A) an individual who is a citizen of the United States;

(B) a partnership each of whose partners is an individual who is a citizen of the United States; or

(C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

(16) "civil aircraft" means an aircraft except a public aircraft.

(17) "civil aircraft of the United States" means an aircraft registered under chapter 441 of this title.

(18) "conditional sales contract" means a contract—

(A) for the sale of an aircraft, aircraft engine, propeller, appliance, or spare part, under which the buyer takes possession of the property but title to the property vests in the buyer at a later time on—

(i) paying any part of the purchase price;

(ii) performing another condition; or

(iii) the happening of a contingency; or

(B) to bail or lease an aircraft, aircraft engine, propeller, appliance, or spare part, under which the bailee or lessee—

(i) agrees to pay an amount substantially equal to the value of the property; and

(ii) is to become, or has the option of becoming, the owner of the property on complying with the contract.

(19) "conveyance" means an instrument, including a conditional sales contract, affecting title to, or an interest in, property.

(20) "Federal airway" means a part of the navigable airspace that the Administrator designates as a Federal airway.

(21) "foreign air carrier" means a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.

(22) "foreign air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation, between a place in the United States and a place outside the United States when any part of the transportation or operation is by aircraft.

(23) "foreign air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft, between a place in the United States and a place outside the United States when any part of the transportation is by aircraft.

(24) "interstate air commerce" means the transportation of passengers or property by aircraft for compensation, the transportation of mail by aircraft, or the operation of aircraft in furthering a business or vocation—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or an-

other State, territory, or possession of the United States;

(ii) a State and another place in the same State through the airspace over a place outside the State;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation or operation is by aircraft.

(25) "interstate air transportation" means the transportation of passengers or property by aircraft as a common carrier for compensation, or the transportation of mail by aircraft—

(A) between a place in—

(i) a State, territory, or possession of the United States and a place in the District of Columbia or another State, territory, or possession of the United States;

(ii) Hawaii and another place in Hawaii through the airspace over a place outside Hawaii;

(iii) the District of Columbia and another place in the District of Columbia; or

(iv) a territory or possession of the United States and another place in the same territory or possession; and

(B) when any part of the transportation is by aircraft.

(26) "intrastate air carrier" means a citizen of the United States undertaking by any means to provide only intrastate air transportation.

(27) "intrastate air transportation" means the transportation by a common carrier of passengers or property for compensation, entirely in the same State, by turbojet-powered aircraft capable of carrying at least 30 passengers.

(28) "landing area" means a place on land or water, including an airport or intermediate landing field, used, or intended to be used, for the takeoff and landing of aircraft, even when facilities are not provided for sheltering, servicing, or repairing aircraft, or for receiving or discharging passengers or cargo.

(28A) "limited incumbent air carrier" has the meaning given that term in subpart S of part 93 of title 14, Code of Federal Regulations, except that "20" shall be substituted for "12" in sections 93.213(a)(5), 93.223(c)(3), and 93.225(h) as such sections were in effect on August 1, 1998.

(29) "mail" means United States mail and foreign transit mail.

(30) "navigable airspace" means airspace above the minimum altitudes of flight prescribed by regulations under this subpart and subpart III of this part, including airspace needed to ensure safety in the takeoff and landing of aircraft.

(31) "navigate aircraft" and "navigation of aircraft" include piloting aircraft.

(32) "operate aircraft" and "operation of aircraft" mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

(B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft.

(33) "person", in addition to its meaning under section 1 of title 1, includes a governmental authority and a trustee, receiver, assignee, and other similar representative.

(34) "predatory" means a practice that violates the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

(35) "price" means a rate, fare, or charge.

(36) "propeller" includes a part, appurtenance, and accessory of a propeller.

(37) "public aircraft"—

(A) means an aircraft—

(i) used only for the United States Government;

(ii) owned by the United States Government and operated by any person for purposes related to crew training, equipment development, or demonstration; or

(iii) owned and operated (except for commercial purposes), or exclusively leased for at least 90 continuous days, by a government (except the United States Government), including a State, the District of Columbia, or a territory or possession of the United States, or political subdivision of that government; but

(B) does not include a government-owned aircraft—

(i) transporting property for commercial purposes; or

(ii) transporting passengers other than—

(I) transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; [or]

(II) transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United [States.] *States; or*

(III) transporting persons aboard the aircraft if the aircraft is operated for the purpose of prisoner transport.

An aircraft described in the preceding sentence shall, notwithstanding any limitation relating to use of the aircraft for commercial purposes, be considered to be a public aircraft for the purposes of this part without regard to whether the aircraft is operated by a unit of government on behalf of another unit of government, pursuant to a cost reimbursement agreement between such units of government, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

(38) "spare part" means an accessory, appurtenance, or part of an aircraft (except an aircraft engine or propeller), aircraft engine (except a propeller), propeller, or appliance, that is to be installed at a later time in an aircraft, aircraft engine, propeller, or appliance.

(39) "State authority" means an authority of a State designated under State law—

(A) to receive notice required to be given a State authority under subpart II of this part; or

(B) as the representative of the State before the Secretary of Transportation in any matter about which the Secretary is required to consult with or consider the views of a State authority under subpart II of this part.

(40) "ticket agent" means a person (except an air carrier, a foreign air carrier, or an employee of an air carrier or foreign air carrier) that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation.

(41) "United States" means the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

(b) Limited definition. In subpart II of this part, "control" means control by any means.

§ 40113. Administrative

(a) General Authority.—The Secretary of Transportation (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may take action the Secretary or Administrator, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

(b) Hazardous Material.—In carrying out this part, the Secretary has the same authority to regulate the transportation of hazardous material by air that the Secretary has under section 5103 of this title. However, this subsection does not prohibit or regulate the transportation of a firearm (as defined in section 232 of title 18) or ammunition for a firearm, when transported by an individual for personal use.

(c) Governmental Assistance.—The Secretary (or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may use the assistance of the Administrator of the National Aeronautics and Space Administration and any research or technical department, agency, or instrumentality of the United States Government on matters related to aircraft fuel and oil, and to the design, material, workmanship, construction, performance, maintenance, and operation of aircraft, aircraft engines, propellers, appliances, and air navigation facilities. Each department, agency, and instrumentality may conduct scientific and technical research, investigations, and tests necessary to assist the Secretary or Administrator of the Federal Aviation Administration in carrying out

this part. This part does not authorize duplicating laboratory research activities of a department, agency, or instrumentality.

(d) INDEMNIFICATION.—The Administrator of the Federal Aviation Administration may indemnify an officer or employee of the Administration against a claim or judgment arising out of an act that the Administrator decides was committed within the scope of the official duties of the officer or employee.

(e) ASSISTANCE TO FOREIGN AVIATION AUTHORITIES.—

(1) SAFETY-RELATED TRAINING AND OPERATIONAL SERVICES.—The Administrator may provide safety-related training and operational services to foreign aviation authorities with or without reimbursement, if the Administrator determines that providing such services promotes aviation safety. To the extent practicable, air travel reimbursed under this subsection shall be conducted on United States air carriers.

(2) REIMBURSEMENT SOUGHT.—The Administrator shall actively seek reimbursement for services provided under this subsection from foreign aviation authorities capable of providing such reimbursement.

(3) CREDITING APPROPRIATIONS.—Funds received by the Administrator pursuant to this section shall be credited to the appropriation from which the expenses were incurred in providing such services.

(4) REPORTING.—Not later than December 31, 1995, and annually thereafter, the Administrator shall transmit to Congress a list of the foreign aviation authorities to which the Administrator provided services under this subsection in the preceding fiscal year. Such list shall specify the dollar value of such services and any reimbursement received for such services.

(f) APPLICATION OF CERTAIN REGULATIONS TO ALASKA.—In amending title 14, Code of Federal Regulations, in a manner affecting intrastate aviation in Alaska, the Administrator of the Federal Aviation Administration shall consider the extent to which Alaska is not served by transportation modes other than aviation, and shall establish such regulatory distinctions as the Administrator considers appropriate.

§ 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;

(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.

(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 foreign 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 for which essential air service compensation is paid under subchapter II; ⟦and⟧

(C) 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.⟧ *payment; and*

(D) in Alaska aboard an aircraft having a seating capacity of less than 20 passengers; and

(E) on flights, including flight segments, between 2 or more points in Hawaii.

(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.

(4) Passenger facility revenues that are held by an air carrier or an agent of the carrier after collection of a passenger facility fee constitute a trust fund that is held by the air carrier or agent for the beneficial interest of the eligible agency imposing the fee. Such carrier or agent holds neither legal nor equitable interest in the passenger facility revenues except for any handling fee or retention of interest collected on unremitted proceeds as may be allowed by the Secretary.

(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 foreign 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 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.] *transportation; and*

(3) may permit a public agency to request that collection of a passenger facility fee be waived for—

(A) passengers enplaned by any class of air carrier or foreign air carrier if the number of passengers enplaned by the carriers in the class constitutes not more than one percent of the total number of passengers enplaned annually at the airport at which the fee is imposed; or

(B) passengers enplaned on a flight to an airport—

(i) that has fewer than 2,500 passenger boardings each year and receives scheduled passenger service; or

(ii) in a community which has a population of less than 10,000 and is not connected by a land highway or vehicular way to the land-connected National Highway System within a State.

(j) SHELL OF TERMINAL BUILDING.—In order to enable additional air service by an air carrier with less than 50 percent of the scheduled passenger traffic at an airport, the Secretary may consider the shell of a terminal building (including heating, ventilation, and air conditioning) and aircraft fueling facilities adjacent to an airport terminal building to be an eligible airport-related project under subsection (a)(3)(E).

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§40125. Severable services contracts for periods crossing fiscal years

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration may enter into a contract for procurement of severable services for a period that begins in one fiscal year and ends in the

next fiscal year if (without regard to any option to extend the period of the contract) the contract period does not exceed one year.

(b) OBLIGATION OF FUNDS.—Funds made available for a fiscal year may be obligated for the total amount of a contract entered into under the authority of subsection (a) of this section.

§40126. Overflights of national parks

(a) IN GENERAL.—

(1) GENERAL REQUIREMENTS.—A commercial air tour operator may not conduct commercial air tour operations over a national park or tribal lands except—

(A) in accordance with this section;

(B) in accordance with conditions and limitations prescribed for that operator by the Administrator; and

(C) in accordance with any effective air tour management plan for that park or those tribal lands.

(2) APPLICATION FOR OPERATING AUTHORITY.—

(A) APPLICATION REQUIRED.—Before commencing commercial air tour operations over a national park or tribal lands, a commercial air tour operator shall apply to the Administrator for authority to conduct the operations over that park or those tribal lands.

(B) COMPETITIVE BIDDING FOR LIMITED CAPACITY PARKS.—Whenever a commercial air tour management plan limits the number of commercial air tour flights over a national park area during a specified time frame, the Administrator, in cooperation with the Director, shall authorize commercial air tour operators to provide such service. The authorization shall specify such terms and conditions as the Administrator and the Director find necessary for management of commercial air tour operations over the national park. The Administrator, in cooperation with the Director, shall develop an open competitive process for evaluating proposals from persons interested in providing commercial air tour services over the national park. In making a selection from among various proposals submitted, the Administrator, in cooperation with the Director, shall consider relevant factors, including—

(i) the safety record of the company or pilots;

(ii) any quiet aircraft technology proposed for use;

(iii) the experience in commercial air tour operations over other national parks or scenic areas;

(iv) the financial capability of the company;

(v) any training programs for pilots; and

(vi) responsiveness to any criteria developed by the National Park Service or the affected national park.

(C) NUMBER OF OPERATIONS AUTHORIZED.—In determining the number of authorizations to issue to provide commercial air tour service over a national park, the Administrator, in cooperation with the Director, shall take into consideration the provisions of the air tour management plan, the number of existing commercial air tour operators and current level of service and equipment provided by any such

companies, and the financial viability of each commercial air tour operation.

(D) COOPERATION WITH NPS.—Before granting an application under this paragraph, the Administrator shall, in cooperation with the Director, develop an air tour management plan in accordance with subsection (b) and implement such plan.

(E) TIME LIMIT ON RESPONSE TO ATMP APPLICATIONS.—The Administrator shall act on any such application and issue a decision on the application not later than 24 months after it is received or amended.

(3) EXCEPTION.—Notwithstanding paragraph (1), commercial air tour operators may conduct commercial air tour operations over a national park under part 91 of the Federal Aviation Regulations (14 CFR 91.1 et seq.) if—

(A) such activity is permitted under part 119 (14 CFR 119.1(e)(2));

(B) the operator secures a letter of agreement from the Administrator and the national park superintendent for that national park describing the conditions under which the flight operations will be conducted; and

(C) the total number of operations under this exception is limited to not more than 5 flights in any 30-day period over a particular park.

(4) SPECIAL RULE FOR SAFETY REQUIREMENTS.—Notwithstanding subsection (c), an existing commercial air tour operator shall, not later than 90 days after the date of enactment of the Air Transportation Improvement Act, apply for operating authority under part 119, 121, or 135 of the Federal Aviation Regulations (14 CFR Pt. 119, 121, or 135). A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park or tribal lands.

(b) AIR TOUR MANAGEMENT PLANS.—

(1) ESTABLISHMENT OF ATMPS.—

(A) IN GENERAL.—The Administrator shall, in cooperation with the Director, establish an air tour management plan for any national park or tribal land for which such a plan is not already in effect whenever a person applies for authority to operate a commercial air tour over the park. The development of the air tour management plan is to be a cooperative undertaking between the Federal Aviation Administration and the National Park Service. The air tour management plan shall be developed by means of a public process, and the agencies shall develop information and analysis that explains the conclusions that the agencies make in the application of the respective criteria. Such explanations shall be included in the Record of Decision and may be subject to judicial review.

(B) OBJECTIVE.—The objective of any air tour management plan shall be to develop acceptable and effective measures to mitigate or prevent the significant adverse impacts, if any, of commercial air tours upon the natural and cultural resources and visitor experiences and tribal lands.

(2) ENVIRONMENTAL DETERMINATION.—In establishing an air tour management plan under this subsection, the Administrator and the Director shall each sign the environmental decision document required by section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) which may include a finding of no significant impact, an environmental assessment, or an environmental impact statement, and the Record of Decision for the air tour management plan.

(3) CONTENTS.—An air tour management plan for a national park—

(A) may prohibit commercial air tour operations in whole or in part;

(B) may establish conditions for the conduct of commercial air tour operations, including commercial air tour routes, maximum or minimum altitudes, time-of-day restrictions, restrictions for particular events, maximum number of flights per unit of time, intrusions on privacy on tribal lands, and mitigation of noise, visual, or other impacts;

(C) shall apply to all commercial air tours within ½ mile outside the boundary of a national park;

(D) shall include incentives (such as preferred commercial air tour routes and altitudes, relief from caps and curfews) for the adoption of quiet aircraft technology by commercial air tour operators conducting commercial air tour operations at the park;

(E) shall provide for the initial allocation of opportunities to conduct commercial air tours if the plan includes a limitation on the number of commercial air tour flights for any time period; and

(F) shall justify and document the need for measures taken pursuant to subparagraphs (A) through (E).

(4) PROCEDURE.—In establishing a commercial air tour management plan for a national park, the Administrator and the Director shall—

(A) initiate at least one public meeting with interested parties to develop a commercial air tour management plan for the park;

(B) publish the proposed plan in the Federal Register for notice and comment and make copies of the proposed plan available to the public;

(C) comply with the regulations set forth in sections 1501.3 and 1501.5 through 1501.8 of title 40, Code of Federal Regulations (for purposes of complying with those regulations, the Federal Aviation Administration is the lead agency and the National Park Service is a cooperating agency); and

(D) solicit the participation of any Indian tribe whose tribal lands are, or may be, overflown by aircraft involved in commercial air tour operations over a national park or tribal lands, as a cooperating agency under the regulations referred to in paragraph (4)(C).

(5) AMENDMENTS.—Any amendment of an air tour management plan shall be published in the Federal Register for notice

and comment. A request for amendment of an air tour management plan shall be made in such form and manner as the Administrator may prescribe.

(c) INTERIM OPERATING AUTHORITY.—

(1) IN GENERAL.—Upon application for operating authority, the Administrator shall grant interim operating authority under this paragraph to a commercial air tour operator for a national park or tribal lands for which the operator is an existing commercial air tour operator.

(2) REQUIREMENTS AND LIMITATIONS.—Interim operating authority granted under this subsection—

(A) shall provide annual authorization only for the greater of—

(i) the number of flights used by the operator to provide such tours within the 12-month period prior to the date of enactment of the Air Transportation Improvement Act; or

(ii) the average number of flights per 12-month period used by the operator to provide such tours within the 36-month period prior to such date of enactment, and, for seasonal operations, the number of flights so used during the season or seasons covered by that 12-month period;

(B) may not provide for an increase in the number of operations conducted during any time period by the commercial air tour operator to which it is granted unless the increase is agreed to by the Administrator and the Director;

(C) shall be published in the Federal Register to provide notice and opportunity for comment;

(D) may be revoked by the Administrator for cause;

(E) shall terminate 180 days after the date on which an air tour management plan is established for that park or those tribal lands; and

(F) shall—

(i) promote protection of national park resources, visitor experiences, and tribal lands;

(ii) promote safe operations of the commercial air tour;

(iii) promote the adoption of quiet technology, as appropriate; and

(iv) allow for modifications of the operation based on experience if the modification improves protection of national park resources and values and of tribal lands.

(3) NEW ENTRANT AIR TOUR OPERATORS.—

(A) IN GENERAL.—The Administrator, in cooperation with the Director, may grant interim operating authority under this paragraph to an air tour operator for a national park for which that operator is a new entrant air tour operator if the Administrator determines the authority is necessary to ensure competition in the provision of commercial air tours over that national park or those tribal lands.

(B) SAFETY LIMITATION.—The Administrator may not grant interim operating authority under subparagraph (A) if the Administrator determines that it would create a safe-

ty problem at that park or on tribal lands, or the Director determines that it would create a noise problem at that park or on tribal lands.

(C) ATMP LIMITATION.—The Administrator may grant interim operating authority under subparagraph (A) of this paragraph only if the air tour management plan for the park or tribal lands to which the application relates has not been developed within 24 months after the date of enactment of the Air Transportation Improvement Act.

(d) DEFINITIONS.—In this section, the following definitions apply:

(1) COMMERCIAL AIR TOUR.—The term "commercial air tour" means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing. If the operator of a flight asserts that the flight is not a commercial air tour, factors that can be considered by the Administrator in making a determination of whether the flight is a commercial air tour, include, but are not limited to—

(A) whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(B) whether a narrative was provided that referred to areas or points of interest on the surface;

(C) the area of operation;

(D) the frequency of flights;

(E) the route of flight;

(F) the inclusion of sightseeing flights as part of any travel arrangement package; or

(G) whether the flight or flights in question would or would not have been canceled based on poor visibility of the surface.

(2) COMMERCIAL AIR TOUR OPERATOR.—The term "commercial air tour operator" means any person who conducts a commercial air tour.

(3) EXISTING COMMERCIAL AIR TOUR OPERATOR.—The term "existing commercial air tour operator" means a commercial air tour operator that was actively engaged in the business of providing commercial air tours over a national park at any time during the 12-month period ending on the date of enactment of the Air Transportation Improvement Act.

(4) NEW ENTRANT COMMERCIAL AIR TOUR OPERATOR.—The term "new entrant commercial air tour operator" means a commercial air tour operator that—

(A) applies for operating authority as a commercial air tour operator for a national park; and

(B) has not engaged in the business of providing commercial air tours over that national park or those tribal lands in the 12-month period preceding the application.

(5) COMMERCIAL AIR TOUR OPERATIONS.—The term "commercial air tour operations" means commercial air tour flight operations conducted—

(A) over a national park or within 1/2 mile outside the boundary of any national park;

(B) below a minimum altitude, determined by the Administrator in cooperation with the Director, above ground level

(except solely for purposes of takeoff or landing, or necessary for safe operation of an aircraft as determined under the rules and regulations of the Federal Aviation Administration requiring the pilot-in-command to take action to ensure the safe operation of the aircraft); and

(C) less than 1 mile laterally from any geographic feature within the park (unless more than ½ mile outside the boundary).

(6) NATIONAL PARK.—The term "national park" means any unit of the National Park System.

(7) TRIBAL LANDS.—The term "tribal lands" means "Indian country", as defined by section 1151 of title 18, United States Code, that is within or abutting a national park.

(8) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Federal Aviation Administration.

(9) DIRECTOR.—The term "Director" means the Director of the National Park Service.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART II. ECONOMIC REGULATION

CHAPTER 417. OPERATIONS OF CARRIERS

SUBCHAPTER I. REQUIREMENTS

§ 41705. Discrimination against handicapped individuals.

(a) IN GENERAL.—In providing air transportation, an air carrier *carrier, including any foreign air carrier doing business in the United States,* may not discriminate against an otherwise qualified individual on the following grounds:

(1) the individual has a physical or mental impairment that substantially limits one or more major life activities;

(2) the individual has a record of such an impairment; and

(3) the individual is regarded as having such an impairment.

(b) EACH ACT CONSTITUTES SEPARATE OFFENSE.—Each separate act of discrimination prohibited by subsection (a) constitutes a separate violation of that subsection.

(c) INVESTIGATION OF COMPLAINTS.—

(1) IN GENERAL.—The Secretary or a person designated by the Secretary within the Office of Civil Rights shall investigate each complaint of a violation of subsection (a).

(2) PUBLICATION OF DATA.—The Secretary or a person designated by the Secretary within the Office of Civil Rights shall publish disability-related complaint data in a manner comparable to other consumer complaint data.

(3) EMPLOYMENT.—The Secretary is authorized to employ personnel necessary to enforce this section.

(4) REVIEW AND REPORT.—The Secretary or a person designated by the Secretary within the Office of Civil Rights shall regularly review all complaints received by air carriers alleging

discrimination on the basis of disability, and report annually to Congress on the results of such review.

(5) TECHNICAL ASSISTANT.—Not later than 180 days after enactment of the Air Transportation and Improvement Act, the Secretary shall—

(A) implement a plan, in consultation with the Department of Justice, United States Architectural and Transportation Barriers Compliance Board, and the National Council on Disability, to provide technical assistance to air carriers and individuals with disabilities in understanding the rights and responsibilities of this section; and

(B) ensure the availability and provision of appropriate technical assistance manuals to individuals and entities with rights or duties under this section.

§ 41712. Unfair and deceptive practices and unfair methods of competition

(a) *IN GENERAL*.—On the initiative of the Secretary of Transportation or the complaint of an air carrier, foreign air carrier, or ticket agent, and if the Secretary considers it is in the public interest, the Secretary may investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation. If the Secretary, after notice and an opportunity for a hearing, finds that an air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice or unfair method of competition, the Secretary shall order the air carrier, foreign air carrier, or ticket agent to stop the practice or method.

(b) MARKETING PRACTICES THAT ADVERSELY AFFECT SERVICE TO SMALL OR MEDIUM COMMUNITIES.—Within 180 days after the date of enactment of the Air Transportation Improvement Act, the Secretary shall review the marketing practices of air carriers that may inhibit the availability of quality, affordable air transportation services to small and medium-sized communities, including—

(1) marketing arrangements between airlines and travel agents;

(2) code-sharing partnerships;

(3) computer reservation system displays;

(4) gate arrangements at airports;

(5) exclusive dealing arrangements; and

(6) any other marketing practice that may have the same effect.

(c) REGULATIONS.—If the Secretary finds, after conducting the review required by subsection (b), that marketing practices inhibit the availability of such service to such communities, then, after public notice and an opportunity for comment, the Secretary may promulgate regulations that address the problem, or take other appropriate action. Nothing in this section expands the authority or juridiction of the Secretary to promulgate regulations under the Federal Aviation Act or under any other Act.

(d) E–TICKET EXPIRATION NOTICE.—It shall be an unfair or deceptive practice under subsection (a) for any air carrier utilizing

electronically transmitted tickets to fail to notify the purchaser of such a ticket of its expiration date, if any.

§ 41714. Availability of slots

(a) MAKING SLOTS AVAILABLE FOR ESSENTIAL AIR SERVICE.—

(1) OPERATIONAL AUTHORITY.—If basic essential air service under subchapter II of this chapter is to be provided from an eligible point to a high density airport (other than Ronald Reagan Washington National Airport), the Secretary of Transportation shall ensure that the air carrier providing or selected to provide such service has sufficient operational authority at the high density airport to provide such service. The operational authority shall allow flights at reasonable times taking into account the needs of passengers with connecting flights.

(2) EXEMPTIONS.—If necessary to carry out the objectives of paragraph (1), the Secretary shall by order grant exemptions from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to air carriers using Stage 3 aircraft or to commuter air carriers, unless such an exemption would significantly increase operational delays.

(3) ASSURANCE OF ACCESS.—If the Secretary finds that an exemption under paragraph (2) would significantly increase operational delays, the Secretary shall take such action as may be necessary to ensure that an air carrier providing or selected to provide basic essential air service is able to obtain access to a high density airport; except that the Secretary shall not be required to make slots available at O'Hare International Airport in Chicago, Illinois, if the number of slots available for basic essential air service (including slots specifically designated as essential air service slots and slots used for such purposes) to and from such airport is at least 132 slots.

(4) ACTION BY THE SECRETARY.—The Secretary shall issue a final order under this subsection on or before the 60th day after receiving a request from an air carrier for operational authority under this subsection.

(b) SLOTS FOR FOREIGN AIR TRANSPORTATION.—

(1) EXEMPTIONS.—If the Secretary finds it to be in the public interest at a high density airport (other than Ronald Reagan Washington National Airport), the Secretary may grant by order exemptions from the requirements of subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to enable air carriers and foreign air carriers to provide foreign air transportation using Stage 3 aircraft.

(2) SLOT WITHDRAWALS.—The Secretary may not withdraw a slot from an air carrier in order to allocate that slot to a carrier to provide foreign air transportation if the withdrawal of that slot would result in the withdrawal of slots from an air carrier at O'Hare International Airport under section 93.223 of title 14, Code of Federal Regulations, in excess of the total withdrawn from that air carrier as of October 31, 1993.

(3) EQUIVALENT RIGHTS OF ACCESS.—The Secretary shall not take a slot at a high density airport from an air carrier and

award such slot to a foreign air carrier if the Secretary determines that air carriers are not provided equivalent rights of access to airports in the country of which such foreign air carrier is a citizen.

(4) PERIOD OF EFFECTIVENESS.—This subsection and exemptions issued under this subsection shall cease to be in effect when the final rules issued under subsection (f) become effective.

(c) SLOTS FOR NEW ENTRANTS.—

(1) IN GENERAL.—If the Secretary finds it to be in the public interest and the circumstances to be exceptional, the Secretary may by order grant exemptions from the requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at high density airports), to enable new entrant air carriers to provide air transportation at high density airports (other than Ronald Reagan Washington National Airport).

(2) PERIOD OF EFFECTIVENESS.—Exemptions issued under this subsection shall cease to be in effect on or after the date on which the final rules issued under subsection (f) become effective.

(d) SPECIAL RULES FOR RONALD REAGAN WASHINGTON NATIONAL AIRPORT.—

(1) IN GENERAL.—Notwithstanding sections 49104(a)(5) and 49111(e) of this title, or any provision of this section, the Secretary may, only under circumstances determined by the Secretary to be exceptional, grant by order to an air carrier currently holding or operating a slot at Ronald Reagan Washington National Airport an exemption from requirements under subparts K and S of part 93 of title 14, Code of Federal Regulations (pertaining to slots at Ronald Reagan Washington National Airport), to enable that carrier to provide air transportation with Stage 3 aircraft at Ronald Reagan Washington National Airport; except that such exemption shall not—

(A) result in an increase in the total number of slots per day at Ronald Reagan Washington National Airport;

(B) result in an increase in the total number of slots at Ronald Reagan Washington National Airport from 7:00 ante meridiem to 9:59 post meridiem;

(C) increase the number of operations at Ronald Reagan Washington National Airport in any 1-hour period by more than 2 operations;

(D) result in the withdrawal or reduction of slots operated by an air carrier;

(E) result in a net increase in noise impact on surrounding communities resulting from changes in timing of operations permitted under this subsection; and

(F) continue in effect on or after the date on which the final rules issued under subsection (f) become effective.

(2) LIMITATION ON APPLICABILITY.—Nothing in this subsection shall adversely affect Exemption No. 5133, as from time-to-time amended and extended.

(e) STUDY.—

(1) MATTERS TO BE CONSIDERED.—The Secretary shall continue the Secretary's current examination of slot regulations and shall ensure that the examination includes consideration of—

(A) whether improvements in technology and procedures of the air traffic control system and the use of quieter aircraft make it possible to eliminate the limitations on hourly operations imposed by the high density rule contained in part 93 of title 14 of the Code of Federal Regulations or to increase the number of operations permitted under such rule;

(B) the effects of the elimination of limitations or an increase in the number of operations allowed on each of the following:

(i) congestion and delay in any part of the national aviation system;

(ii) the impact of noise on persons living near the airport;

(iii) competition in the air transportation system;

(iv) the profitability of operations of airlines serving the airport; and

(v) aviation safety;

(C) the impact of the current slot allocation process upon the ability of air carriers to provide essential air service under subchapter II of this chapter;

(D) the impact of such allocation process upon the ability of new entrant air carriers to obtain slots in time periods that enable them to provide service;

(E) the impact of such allocation process on the ability of foreign air carriers to obtain slots;

(F) the fairness of such process to air carriers and the extent to which air carriers are provided equivalent rights of access to the air transportation market in the countries of which foreign air carriers holding slots are citizens;

(G) the impact, on the ability of air carriers to provide domestic and international air service, of the withdrawal of slots from air carriers in order to provide slots for foreign air carriers; and

(H) the impact of the prohibition on slot withdrawals in subsections (b)(2) and (b)(3) of this section on the aviation relationship between the United States Government and foreign governments, including whether the prohibition in such subsections will require the withdrawal of slots from general and military aviation in order to meet the needs of air carriers and foreign air carriers providing foreign air transportation (and the impact of such withdrawal on general aviation and military aviation) and whether slots will become available to meet the needs of air carriers and foreign air carriers to provide foreign air transportation as a result of the planned relocation of Air Force Reserve units and the Air National Guard at O'Hare International Airport.

(2) REPORT.—Not later than January 31, 1995, the Secretary shall complete the current examination of slot regulations and

shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report containing the results of such examination.

(f) RULEMAKING.—The Secretary shall conduct a rulemaking proceeding based on the results of the study described in subsection (e). In the course of such proceeding, the Secretary shall issue a notice of proposed rulemaking not later than August 1, 1995, and shall issue a final rule not later than 90 days after public comments are due on the notice of proposed rulemaking.

(g) WEEKEND OPERATIONS.—The Secretary shall consider the advisability of revising section 93.227 of title 14, Code of Federal Regulations, so as to eliminate weekend schedules from the determination of whether the 80 percent standard of subsection (a)(1) of that section has been met.

(h) DEFINITIONS.—In this section and section 41734(h), the following definitions apply:

(1) COMMUTER AIR CARRIER.—The term "commuter air carrier" means a commuter operator as defined or applied in subpart K or S of part 93 of title 14, Code of Federal Regulations.

(2) HIGH DENSITY AIRPORT.—The term "high density airport" means an airport at which the Administrator limits the number of instrument flight rule takeoffs and landings of aircraft.

(3) NEW ENTRANT AIR CARRIER.—The term "new entrant air carrier" means an air carrier that does not hold a slot at the airport concerned and has never sold or given up a slot at that airport after December 16, 1985, and a limited incumbent carrier as defined in subpart S of part 93 of title 14, Code of Federal Regulations.

(4) SLOT.—The term "slot" means a reservation for an instrument flight rule takeoff or landing by an air carrier of an aircraft in air transportation.

§ 41716. Joint venture agreements

(a) DEFINITIONS.—In this section—

(1) JOINT VENTURE AGREEMENT.—The term "joint venture agreement" means an agreement entered into by a major air carrier on or after January 1, 1998, with regard to (A) codesharing, blocked-space arrangements, long-term wet leases (as defined in section 207.1 of title 14, Code of Federal Regulations) of a substantial number (as defined by the Secretary by regulation) of aircraft, or frequent flyer programs, or (B) any other cooperative working arrangement (as defined by the Secretary by regulation) between 2 or more major air carriers that affects more than 15 percent of the total number of available seat miles offered by the major air carriers.

(2) MAJOR AIR CARRIER.—The term "major air carrier" means a passenger air carrier that is certificated under chapter 411 of this title and included in Carrier Group III under criteria contained in section 04 of part 241 of title 14, Code of Federal Regulations.

(b) SUBMISSION OF JOINT VENTURE AGREEMENT.—At least 30 days before a joint venture agreement may take effect, each of the

major air carriers that entered into the agreement shall submit to the Secretary—

(1) a complete copy of the joint venture agreement and all related agreements; and

(2) other information and documentary material that the Secretary may require by regulation.

(c) EXTENSION OF WAITING PERIOD.—

(1) IN GENERAL.—The Secretary may extend the 30-day period referred to in subsection (b) until—

(A) in the case of a joint venture agreement with regard to code-sharing, the 150th day following the last day of such period; and

(B) in the case of any other joint venture agreement, the 60th day following the last day of such period.

(2) PUBLICATION OF REASONS FOR EXTENSION.—If the Secretary extends the 30-day period referred to in subsection (b), the Secretary shall publish in the Federal Register the reasons of the Secretary for making the extension.

(d) TERMINATION OF WAITING PERIOD.—At any time after the date of submission of a joint venture agreement under subsection (b), the Secretary may terminate the waiting periods referred to in subsections (b) and (c) with respect to the agreement.

(e) REGULATIONS.—The effectiveness of a joint venture agreement may not be delayed due to any failure of the Secretary to issue regulations to carry out this subsection.

(f) MEMORANDUM TO PREVENT DUPLICATIVE REVIEWS.—Promptly after the date of enactment of this section, the Secretary shall consult with the Assistant Attorney General of the Antitrust Division of the Department of Justice in order to establish, through a written memorandum of understanding, preclearance procedures to prevent unnecessary duplication of effort by the Secretary and the Assistant Attorney General under this section and the United States antitrust laws, respectively.

(g) PRIOR AGREEMENTS.—With respect to a joint venture agreement entered into before the date of enactment of this section as to which the Secretary finds that—

(1) the parties have submitted the agreement to the Secretary before such date of enactment; and

(2) the parties have submitted any information on the agreement requested by the Secretary,

the waiting period described in paragraphs (2) and (3) shall begin on the date, as determined by the Secretary, on which all such information was submitted and end on the last day to which the period could be extended under this section.

(h) LIMITATION ON STATUTORY CONSTRUCTION.—The authority granted to the Secretary under this subsection shall not in any way limit the authority of the Attorney General to enforce the antitrust laws as defined in the first section of the Clayton Act (15 U.S.C. 12).

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§ 41717. Interline agreements for domestic transportation

(a) NONDISCRIMINATORY REQUIREMENTS.—If a major air carrier that provides air service to an essential airport facility has any agreement involving ticketing, baggage and ground handling, and terminal and gate access with another carrier, it shall provide the same services to any requesting air carrier that offers service to a community selected for participation in the program under section 41743 under similar terms and conditions and on a nondiscriminatory basis within 30 days after receiving the request, as long as the requesting air carrier meets such safety, service, financial, and maintenance requirements, if any, as the Secretary may by regulation establish consistent with public convenience and necessity. The Secretary must review any proposed agreement to determine if the requesting carrier meets operational requirements consistent with the rules, procedures, and policies of the major carrier. This agreement may be terminated by either party in the event of failure to meet the standards and conditions outlined in the agreement.

(b) DEFINITIONS.—In this section the term "essential airport facility" means a large hub airport (as defined in section 41731(a)(3)) in the contiguous 48 States in which one carrier has more than 50 percent of such airport's total annual enplanements.

§ 41718. Slot exemptions for nonstop regional jet service.

(a) IN GENERAL.—Within 90 days after receiving an application for an exemption to provide nonstop regional jet air service between—

(1) an airport with fewer than 2,000,000 annual enplanements; and

(2) a high density airport subject to the exemption authority under section 41714(a),

the Secretary of Transportation shall grant or deny the exemption in accordance with established principles of safety and the promotion of competition.

(b) EXISTING SLOTS TAKEN INTO ACCOUNT.—In deciding to grant or deny an exemption under subsection (a), the Secretary may take into consideration the slots and slot exemptions already used by the applicant.

(c) CONDITIONS.—The Secretary may grant an exemption to an air carrier under subsection (a)—

(1) for a period of not less than 12 months;

(2) for a minimum of 2 daily roundtrip flights; and

(3) for a maximum of 3 daily roundtrip flights.

(d) CHANGE OF NONHUB, SMALL HUB, OR MEDIUM HUB AIRPORT; JET AIRCRAFT.—The Secretary may, upon application made by an air carrier operating under an exemption granted under subsection (a)—

(1) authorize the air carrier or an affiliated air carrier to upgrade service under the exemption to a larger jet aircraft; or

(2) authorize an air carrier operating under such an exemption to change the nonhub airport or small hub airport for which the exemption was granted to provide the same service to a different airport that is smaller than a large hub airport (as defined in section 47134(d)(2)) if—

(A) the air carrier has been operating under the exemption for a period of not less than 12 months; and

(B) the air carrier can demonstrate unmitigatable losses.

(e) FOREFEITURE FOR MISUSE.—Any exemption granted under subsection (a) shall be terminated immediately by the Secretary if the air carrier to which it was granted uses the slot for any purpose other than the purpose for which it was granted or in violation of the conditions under which it was granted.

(f) PRIORITY TO NEW ENTRANTS AND LIMITED INCUMBENT CARRIERS.—

(1) IN GENERAL.—In granting slot exemptions under this section the Secretary shall give priority consideration to an application from an air carrier that, as of July 1, 1998, operated or held fewer than 20 slots or slot exemptions at the high density airport for which it filed an exemption application.

(2) LIMITATION.—No priority may be given under paragraph (1) to an air carrier that, at the time of application, operates or holds 20 or more slots and slot exemptions at the airport for which the exemption application is filed.

(3) AFFILIATED CARRIERS.—The Secretary shall treat all commuter air carriers that have cooperative agreements, including code-share agreements, with other air carriers equally for determining eligibility for exemptions under this section regardless of the form of the corporate relationship between the commuter air carrier and the other air carrier.

(g) STAGE 3 AIRCRAFT REQUIRED.—An exemption may not be granted under this section with respect to any aircraft that is not a Stage 3 aircraft (as defined by the Secretary).

(h) REGIONAL JET DEFINED.—In this section, the term "regional jet" means a passenger, turbofan-powered aircraft carrying not fewer than 30 and not more than 50 passengers.

§41719. Special Rules for Ronald Reagan Washington National Airport

(a) BEYOND-PERIMETER EXEMPTIONS.—The Secretary shall by order grant exemptions from the application of sections 49104(a)(5), 49109, 49111(e), and 41714 of this title to air carriers to operate limited frequencies and aircraft on select routes between Ronald Reagan Washington National Airport and domestic hub airports of such carriers and exemptions from the requirements of subparts K and S of part 93, Code of Federal Regulations, if the Secretary finds that the exemptions will—

(1) provide air transportation service with domestic network benefits in areas beyond the perimeter described in that section;

(2) increase competition by new entrant air carriers or in multiple markets;

(3) not reduce travel options for communities served by small hub airports and medium hub airports within the perimeter described in section 49109 of title 49, United States Code; and

(4) not result in meaningfully increased travel delays.

(b) WITHIN-PERIMETER EXEMPTIONS.—The Secretary shall by order grant exemptions from the requirements of sections 49104(a)(5), 49111(e), and 41714 of this title and subparts K and S of part 93 of title 14, Code of Federal Regulations, to commuter

air carriers for service to airports with fewer than 2,000,000 annual enplanements within the perimeter established for civil aircraft operations at Ronald Reagan Washington National Airport under section 49109. The Secretary shall develop criteria for distributing slot exemptions for flights within the perimeter to such airports under this paragraph in a manner consistent with the promotion of air transportation.

(c) LIMITATIONS.—

(1) STAGE 3 AIRCRAFT REQUIRED.—An exemption may not be granted under this section with respect to any aircraft that is not a Stage 3 aircraft (as defined by the Secretary).

(2) GENERAL EXEMPTIONS.—The exemptions granted under subsections (a) and (b) may not increase the number of operations at Ronald Reagan Washington National Airport in any 1-hour period during the hours between 7:00 a.m. and 9:59 p.m. by more than 3 operations.

(3) ADDITIONAL EXEMPTIONS.—The Secretary shall grant exemptions under subsections (a) and (b) that—

(A) will result in 24 additional daily air carrier slot exemptions at such airport for long-haul service beyond the perimeter;

(B) will result in 12 additional daily commuter slot exemptions at such airport; and

(C) will not result in additional daily commuter slot exemptions for service to any within-the-perimeter airport that has 2,000,000 or fewer annual enplanements.

(4) ASSESSMENT OF SAFETY, NOISE AND ENVIRONMENTAL IMPACTS.—The Secretary shall assess the impact of granting exemptions, including the impacts of the additional slots and flights at Ronald Reagan Washington National Airport provided under subsections (a) and (b) on safety, noise levels and the environment within 90 days of the date of the enactment of this Act. The environmental assessment shall be carried out in accordance with parts 1500–1508 of title 40, Code of Federal Regulations. Such environmental assessment shall include a public meeting.

(5) APPLICABILITY WITH EXEMPTION 5133.—Nothing in this section affects Exemption No. 5133, as from time-to-time amended and extended.

(d) ADDITIONAL WITHIN-PERIMETER SLOT EXEMPTIONS AT RONALD REAGAN WASHINGTON NATIONAL AIRPORT.—The Secretary shall by order grant 12 slot exemptions from the requirements of sections 49104(a)(5), 49111(e), and 41714 of this title and subparts K and S of part 93 of title 14, Code of Federal Regulations, to air carriers for flights to airports within the perimeter established for civil aircraft operations at Ronald Reagan Washington National Airport under section 49109. The Secretary shall develop criteria for distributing slot exemptions for flights within the perimeter to such airports under this subsection in a manner consistent with the promotion of air transportation.

§ 41720. Special Rules for Chicago O'Hare International Airport

(a) IN GENERAL.—The Secretary of Transportation shall grant 30 slot exemptions over a 3-year period beginning on the date of enactment of the Air Transportation Improvement Act at Chicago O'Hare International Airport.

(b) EQUIPMENT AND SERVICE REQUIREMENTS.—

(1) STAGE 3 AIRCRAFT REQUIRED.—An exemption may not be granted under this section with respect to any aircraft that is not a Stage 3 aircraft (as defined by the Secretary).

(2) SERVICE PROVIDED.—Of the exemptions granted under subsection (a)—

(A) 18 shall be used only for service to underserved markets, of which no fewer than 6 shall be designated as commuter slot exemptions; and

(B) 12 shall be air carrier slot exemptions.

(c) PROCEDURAL REQUIREMENTS.—Before granting exemptions under subsection (a), the Secretary shall—

(1) conduct an environmental review, taking noise into account, and determine that the granting of the exemptions will not cause a significant increase in noise;

(2) determine whether capacity is available and can be used safely and, if the Secretary so determines then so certify;

(3) give 30 days notice to the public through publication in the Federal Register of the Secretary's intent to grant the exemptions; and

(4) consult with appropriate officers of the State and local government on any related noise and environmental issues.

(d) UNDERSERVED MARKET DEFINED.—In this section, the term "service to underserved markets" means passenger air transportation service to an airport that is a nonhub airport or a small hub airport (as defined in paragraphs (4) and (5), respectively, of section 41731(a)).

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART II. ECONOMIC REGULATION

CHAPTER 417. OPERATIONS OF CARRIERS

SUBCHAPTER II. SMALL COMMUNITY AIR SERVICE

§ 41736. Air transportation to noneligible places

(a) PROPOSALS AND DECISIONS.—

(1) A State or local government may propose to the Secretary of Transportation that the Secretary provide compensation to an air carrier to provide air transportation to a place that is not an eligible place under this subchapter. Not later than 90 days after receiving a proposal under this section, the Secretary shall—

(A) decide whether to designate the place as eligible to receive compensation under this section; and

(B)(i) approve the proposal if the State or local government or a person is willing and able to pay 50 percent of the compensation for providing the transportation, and notify the State or local government of the approval; or

(ii) disapprove the proposal if the Secretary decides the proposal is not reasonable under paragraph (2) of this subsection, and notify the State or local government of the disapproval and the reasons for the disapproval.

(2) In deciding whether a proposal is reasonable, the Secretary shall consider, among other factors—

(A) the traffic-generating potential of the place;

(B) the cost to the United States Government of providing the proposed transportation; and

(C) the distance of the place from the closest hub airport.

(b) APPROVAL FOR CERTAIN AIR TRANSPORTATION.—Notwithstanding subsection (a)(1)(B) of this section, the Secretary shall approve a proposal under this section to compensate an air carrier for providing air transportation to a place in the 48 contiguous States or the District of Columbia and designate the place as eligible for compensation under this section if—

(1) at any time before October 23, 1978, the place was served by a carrier holding a certificate under section 401 of the Federal Aviation Act of 1958;

(2) the place is more than 50 miles from the nearest small hub airport or an eligible place;

(3) the place is more than 150 miles from the nearest hub airport; and

(4) the State or local government submitting the proposal or a person is willing and able to pay 25 percent of the cost of providing the compensated transportation.

Paragraph (4) does not apply to any community approved for service under this section during the period beginning October 1, 1991, and ending December 31, 1997.

(c) LEVEL OF AIR TRANSPORTATION.—

(1) If the Secretary designates a place under subsection (a)(1) of this section as eligible for compensation under this section, the Secretary shall decide, not later than 6 months after the date of the designation, on the level of air transportation to be provided under this section. Before making a decision, the Secretary shall consider the views of any interested community, the appropriate State authority of the State in which the place is located, and the State or local government or person agreeing to pay compensation for the transportation under subsection (b)(4) of this section.

(2) After making the decision under paragraph (1) of this subsection, the Secretary shall provide notice that any air carrier that is willing to provide the level of air transportation established under paragraph (1) for a place may submit an application to provide the transportation. In selecting an applicant, the Secretary shall consider, among other factors—

(A) the factors listed in section 41733(c)(1) of this title; and

(B) the views of the State or local government or person agreeing to pay compensation for the transportation.

(d) COMPENSATION PAYMENTS.—

(1) The Secretary shall pay compensation under this section when and in the way the Secretary decides is appropriate. The Secretary shall continue to pay compensation under this section only as long as—

(A) the air carrier maintains the level of air transportation established by the Secretary under subsection (c)(1) of this section;

(B) the State or local government or person agreeing to pay compensation for transportation under this section continues to pay that compensation; and

(C) the Secretary decides the compensation is necessary to maintain the transportation to the place.

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make advance payments or provide other security to ensure that timely payments are made.

(e) REVIEW.—The Secretary shall review periodically the level of air transportation provided under this section. Based on the review and consultation with any interested community, the appropriate State authority of the State in which the community is located, and the State or local government or person paying compensation under this section, the Secretary may make appropriate adjustments in the level of transportation.

(f) WITHDRAWAL OF ELIGIBILITY DESIGNATIONS.—After providing notice and an opportunity for interested persons to comment, the Secretary may withdraw the designation of a place under subsection (a)(1) of this section as eligible to receive compensation under this section if the place has received air transportation under this section for at least 2 years and the Secretary decides the withdrawal would be in the public interest. The Secretary by regulation shall prescribe standards for deciding whether the withdrawal of a designation under this subsection is in the public interest. The standards shall include the factors listed in subsection (a)(2) of this section.

(g) ENDING, SUSPENDING, AND REDUCING AIR TRANSPORTATION.—An air carrier providing air transportation for compensation under this section may end, suspend, or reduce that transportation below the level of transportation established by the Secretary under this section only after giving the Secretary, the affected community, and the State or local government or person paying compensation under this section at least 30 days' notice before ending, suspending, or reducing the transportation.

§41743. Air service program for small communities

(a) COMMUNITIES PROGRAM.—Under advisory guidelines prescribed by the Secretary of Transportation, a small community or a consortia of small communities or a State may develop an assessment of its air service requirements, in such form as the program director designated by the Secretary under section 102(g) may require, and submit the assessment and service proposal to the program director.

(b) SELECTION OF PARTICIPANTS.—In selecting community programs for participation in the communities program under sub-

section (a), the program director shall apply criteria, including geographical diversity and the presentation of unique circumstances, that will demonstrate the feasibility of the program. For purposes of this subsection, the application of geographical diversity criteria means criteria that—

(1) will promote the development of a national air transportation system; and

(2) will involve the participation of communities in all regions of the country.

(c) CARRIERS PROGRAM.—The program director shall invite part 121 air carriers and regional/commuter carriers (as such terms are defined in section 41715(d) of this title) to offer service proposals in response to, or in conjunction with, community aircraft service assessments submitted to the office under subsection (a). A service proposal under this paragraph shall include—

(1) an assessment of potential daily passenger traffic, revenues, and costs necessary for the carrier to offer the service;

(2) a forecast of the minimum percentage of that traffic the carrier would require the community to garner in order for the carrier to start up and maintain the service; and

(3) the costs and benefits of providing jet service by regional or other jet aircraft.

(d) PROGRAM SUPPORT FUNCTION.—The program director shall work with small communities and air carriers, taking into account their proposals and needs, to facilitate the initiation of service. The program director—

(1) may work with communities to develop innovative means and incentives for the initiation of service;

(2) may obligate funds authorized under section 504 of the Air Transportation Improvement Act to carry out this section;

(3) shall continue to work with both the carriers and the communities to develop a combination of community incentives and carrier service levels that—

(A) are acceptable to communities and carriers; and

(B) do not conflict with other Federal or State programs to facilitate air transportation to the communities;

(4) designate an airport in the program as an Air Service Development Zone and work with the community on means to attract business to the area surrounding the airport, to develop land use options for the area, and provide data, working with the Department of Commerce and other agencies;

(5) take such other action under this chapter as may be appropriate.

(e) LIMITATIONS.—

(1) COMMUNITY SUPPORT.—The program director may not provide financial assistance under subsection (c)(2) to any community unless the program director determines that—

(A) a public-private partnership exists at the community level to carry out the community's proposal;

(B) the community will make a substantial financial contribution that is appropriate for that community's resources, but of not less than 25 percent of the cost of the project in any event;

(C) the community has established an open process for soliciting air service proposals; and

(D) the community will accord similar benefits to air carriers that are similarly situated.

(2) AMOUNT.—The program director may not obligate more than $80,000,000 of the amounts authorized under 504 of the Air Transportation Improvement Act over the 4 years of the program.

(3) NUMBER OF PARTICIPANTS.—The program established under subsection (a) shall not involve more than 40 communities or consortia of communities.

(f) REPORT.—The program director shall report through the Secretary to the Congress annually on the progress made under this section during the preceding year in expanding commercial aviation service to smaller communities.

§41744. Pilot program project authority

(a) IN GENERAL.—The program director designated by the Secretary of Transportation under section 102(g)(1) shall establish a 4-year pilot program—

(1) to assist communities and States with inadequate access to the national transportation system to improve their access to that system; and

(2) to facilitate better air service link-ups to support the improved access.

(b) PROJECT AUTHORITY.—Under the pilot program established pursuant to subsection (a), the program director may—

(1) out of amounts authorized under section 504 of the Air Transportation Improvement Act, provide financial assistance by way of grants to small communities or consortia of small communities under section 41743 of up to $500,000 per year; and

(2) take such other action as may be appropriate.

(c) OTHER ACTION.—Under the pilot program established pursuant to subsection (a), the program director may facilitate service by—

(1) working with airports and air carriers to ensure that appropriate facilities are made available at essential airports;

(2) collecting data on air carrier service to small communities; and

(3) providing policy recommendations to the Secretary to stimulate air service and competition to small communities.

(d) ADDITIONAL ACTION.—Under the pilot program established pursuant to subsection (a), the Secretary shall work with air carriers providing service to participating communities and major air carriers serving large hub airports (as defined in section 41731(a)(3)) to facilitate joint fare arrangements consistent with normal industry practice.

§41745. Assistance to communities for service

(a) IN GENERAL.—Financial assistance provided under section 41743 during any fiscal year as part of the pilot program established under section 41744(a) shall be implemented for not more than—

(1) 4 communities within any State at any given time; and

(2) 40 communities in the entire program at any time.

For purposes of this subsection, a consortium of communities shall be treated as a single community.

(b) ELIGIBILITY.—In order to participate in a pilot project under this subchapter, a State, community, or group of communities shall apply to the Secretary in such form and at such time, and shall supply such information, as the Secretary may require, and shall demonstrate to the satisfaction of the Secretary that—

(1) the applicant has an identifiable need for access, or improved access, to the national air transportation system that would benefit the public;

(2) the pilot project will provide material benefits to a broad section of the travelling public, businesses, educational institutions, and other enterprises whose access to the national air transportation system is limited;

(3) the pilot project will not impede competition; and

(4) the applicant has established, or will establish, public-private partnerships in connection with the pilot project to facilitate service to the public.

(c) COORDINATION WITH OTHER PROVISIONS OF SUBCHAPTER.—The Secretary shall carry out the 4-year pilot program authorized by this subchapter in such a manner as to complement action taken under the other provisions of this subchapter. To the extent the Secretary determines to be appropriate, the Secretary may adopt criteria for implementation of the 4-year pilot program that are the same as, or similar to, the criteria developed under the preceding sections of this subchapter for determining which airports are eligible under those sections. The Secretary shall also, to the extent possible, provide incentives where no direct, viable, and feasible alternative service exists, taking into account geographical diversity and appropriate market definitions.

(d) MAXIMIZATION OF PARTICIPATION.—The Secretary shall structure the program established pursuant to section 41744(a) in a way designed to—

(1) permit the participation of the maximum feasible number of communities and States over a 4-year period by limiting the number of years of participation or otherwise; and

(2) obtain the greatest possible leverage from the financial resources available to the Secretary and the applicant by—

(A) progressively decreasing, on a project-by-project basis, any Federal financial incentives provided under this chapter over the 4-year period; and

(B) terminating as early as feasible Federal financial incentives for any project determined by the Secretary after its implementation to be—

(i) viable without further support under this subchapter; or

(ii) failing to meet the purposes of this chapter or criteria established by the Secretary under the pilot program.

(e) SUCCESS BONUS.—If Federal financial incentives to a community are terminated under subsection (d)(2)(B) because of the success of the program in that community, then that community may re-

ceive a one-time incentive grant to ensure the continued success of that program.

(f) PROGRAM TO TERMINATE IN 4 YEARS.—No new financial assistance may be provided under this subchapter for any fiscal year beginning more than 4 years after the date of enactment of the Air Transportation Improvement Act.

§41746. Additional authority

In carrying out this chapter, the Secretary—

(1) may provide assistance to States and communities in the design and application phase of any project under this chapter, and oversee the implementation of any such project;

(2) may assist States and communities in putting together projects under this chapter to utilize private sector resources, other Federal resources, or a combination of public and private resources;

(3) may accord priority to service by jet aircraft;

(4) take such action as may be necessary to ensure that financial resources, facilities, and administrative arrangements made under this chapter are used to carry out the purposes of title V of the Air Transportation Improvement Act; and

(5) shall work with the Federal Aviation Administration on airport and air traffic control needs of communities in the program.

§41747. Air traffic control services pilot program

(a) IN GENERAL.—To further facilitate the use of, and improve the safety at, small airports, the Administrator of the Federal Aviation Administration shall establish a pilot program to contract for Level I air traffic control services at 20 facilities not eligible for participation in the Federal Contract Tower Program.

(b) PROGRAM COMPONENTS.—In carrying out the pilot program established under subsection (a), the Administrator may—

(1) utilize current, actual, site-specific data, forecast estimates, or airport system plan data provided by a facility owner or operator;

(2) take into consideration unique aviation safety, weather, strategic national interest, disaster relief, medical and other emergency management relief services, status of regional airline service, and related factors at the facility;

(3) approve for participation any facility willing to fund a pro rata share of the operating costs used by the Federal Aviation Administration to calculate, and, as necessary, a 1:1 benefit-to-cost ratio, as required for eligibility under the Federal Contract Tower Program; and

(4) approve for participation no more than 3 facilities willing to fund a pro rata share of construction costs for an air traffic control tower so as to achieve, at a minimum, a 1:1 benefit-to-cost ratio, as required for eligibility under the Federal Contract Tower Program, and for each of such facilities the Federal share of construction costs does not exceed $1,000,000.

(c) REPORT.—One year before the pilot program established under subsection (a) terminates, the Administrator shall report to the Congress on the effectiveness of the program, with particular emphasis

on the safety and economic benefits provided to program participants and the national air transportation system.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART II. ECONOMIC REGULATION

CHAPTER 421. EMPLOYEE PROTECTION PROGRAM

SUBCHAPTER III—WHISTLEBLOWER PROTECTION PROGRAM

§42121. Protection of employees providing air safety information

(a) DISCRIMINATION AGAINST AIRLINE EMPLOYEES.—No air carrier or contractor or subcontractor of an air carrier may discharge an employee of the air carrier or the contractor or subcontractor of an air carrier or otherwise discriminate against any such employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) provided, caused to be provided, or is about to provide or cause to be provided to the Federal Government information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(2) has filed, caused to be filed, or is about to file or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under this subtitle or any other law of the United States;

(3) testified or will testify in such a proceeding; or

(4) assisted or participated or is about to assist or participate in such a proceeding.

(b) DEPARTMENT OF LABOR COMPLAINT PROCEDURE.—

(1) FILING AND NOTIFICATION.—

(A) IN GENERAL.—In accordance with this paragraph, a person may file (or have a person file on behalf of that person) a complaint with the Secretary of Labor if that person believes that an air carrier or contractor or subcontractor of an air carrier discharged or otherwise discriminated against that person in violation of subsection (a).

(B) REQUIREMENTS FOR FILING COMPLAINTS.—A complaint referred to in subparagraph (A) may be filed not later than 90 days after an alleged violation occurs. The complaint shall state the alleged violation.

(C) NOTIFICATION.—Upon receipt of a complaint submitted under subparagraph (A), the Secretary of Labor shall notify the air carrier, contractor, or subcontractor named in

the complaint and the Administrator of the Federal Aviation Administration of the—

(i) filing of the complaint;

(ii) allegations contained in the complaint;

(iii) substance of evidence supporting the complaint; and

(iv) opportunities that are afforded to the air carrier, contractor, or subcontractor under paragraph (2).

(2) INVESTIGATION; PRELIMINARY ORDER.—

(A) IN GENERAL.—

(i) INVESTIGATION.—Not later than 60 days after receipt of a complaint filed under paragraph (1) and after affording the person named in the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary of Labor shall conduct an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify in writing the complainant and the person alleged to have committed a violation of subsection (a) of the Secretary's findings.

(ii) ORDER.—Except as provided in subparagraph (B), if the Secretary of Labor concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the findings referred to in clause (i) with a preliminary order providing the relief prescribed under paragraph (3)(B).

(iii) OBJECTIONS.—Not later than 30 days after the date of notification of findings under this paragraph, the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order and request a hearing on the record.

(iv) EFFECT OF FILING.—The filing of objections under clause (iii) shall not operate to stay any reinstatement remedy contained in the preliminary order.

(v) HEARINGS.—Hearings conducted pursuant to a request made under clause (iii) shall be conducted expeditiously and governed by the Federal Rules of Civil Procedure. If a hearing is not requested during the 30-day period prescribed in clause (iii), the preliminary order shall be deemed a final order that is not subject to judicial review.

(B) REQUIREMENTS.—

(i) REQUIRED SHOWING BY COMPLAINANT.—The Secretary of Labor shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(ii) SHOWING BY EMPLOYER.—Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under subparagraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(iii) CRITERIA FOR DETERMINATION BY SECRETARY.—The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(iv) PROHIBITION.—Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

(3) FINAL ORDER.—

(A) DEADLINE FOR ISSUANCE; SETTLEMENT AGREEMENTS.—

(i) IN GENERAL.—Not later than 120 days after conclusion of a hearing under paragraph (2), the Secretary of Labor shall issue a final order that—

(I) provides relief in accordance with this paragraph; or

(II) denies the complaint.

(ii) SETTLEMENT AGREEMENT.—At any time before issuance of a final order under this paragraph, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the air carrier, contractor, or subcontractor alleged to have committed the violation.

(B) REMEDY.—If, in response to a complaint filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the air carrier, contractor, or subcontractor that the Secretary of Labor determines to have committed the violation to—

(i) take action to abate the violation;

(ii) reinstate the complainant to the former position of the complainant and ensure the payment of compensation (including back pay) and the restoration of terms, conditions, and privileges associated with the employment; and

(iii) provide compensatory damages to the complainant.

(C) COSTS OF COMPLAINT.—If the Secretary of Labor issues a final order that provides for relief in accordance with this paragraph, the Secretary of Labor, at the request of the complainant, shall assess against the air carrier,

contractor, or subcontractor named in the order an amount equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant (as determined by the Secretary of Labor) for, or in connection with, the bringing of the complaint that resulted in the issuance of the order.

(4) FRIVOLOUS COMPLAINTS.—Rule 11 of the Federal Rules of Civil Procedure applies to any complaint brought under this section that the Secretary finds to be frivolous or to have been brought in bad faith.

(5) REVIEW.—

(A) APPEAL TO COURT OF APPEALS.—

(i) IN GENERAL.—Not later than 60 days after a final order is issued under paragraph (3), a person adversely affected or aggrieved by that order may obtain review of the order in the United States court of appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of that violation.

(ii) REQUIREMENTS FOR JUDICIAL REVIEW.—A review conducted under this paragraph shall be conducted in accordance with chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order that is the subject of the review.

(B) LIMITATION ON COLLATERAL ATTACK.—An order referred to in subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(6) ENFORCEMENT OF ORDER BY SECRETARY OF LABOR.—

(A) IN GENERAL.—If an air carrier, contractor, or subcontractor named in an order issued under paragraph (3) fails to comply with the order, the Secretary of Labor may file a civil action in the United States district court for the district in which the violation occurred to enforce that order.

(B) RELIEF.—In any action brought under this paragraph, the district court shall have jurisdiction to grant any appropriate form of relief, including injunctive relief and compensatory damages.

(7) ENFORCEMENT OF ORDER BY PARTIES.—

(A) COMMENCEMENT OF ACTION.—A person on whose behalf an order is issued under paragraph (3) may commence a civil action against the air carrier, contractor, or subcontractor named in the order to require compliance with the order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the order.

(B) ATTORNEY FEES.—In issuing any final order under this paragraph, the court may award costs of litigation (including reasonable attorney and expert witness fees) to any party if the court determines that the awarding of those costs is appropriate.

(c) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(d) NONAPPLICABILITY TO DELIBERATE VIOLATIONS.—Subsection (a) shall not apply with respect to an employee of an air carrier, or contractor or subcontractor of an air carrier who, acting without direction from the air carrier (or an agent, contractor, or subcontractor of the air carrier), deliberately causes a violation of any requirement relating to air carrier safety under this subtitle or any other law of the United States.

(e) CONTRACTOR DEFINED.—In this section, the term "contractor" means a company that performs safety-sensitive functions by contract for an air carrier.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 443. INSURANCE

§ 44309. Civil actions

(a) LOSSES.—

(1) ACTIONS AGAINST UNITED STATES.—A person may bring a civil action in a district court of the United States or in the United States Court of Federal Claims against the United States Government when—

(A) a loss insured under this chapter is in dispute; or

(B)(i) the person is subrogated under a contract between the person and a party insured under this chapter (other than section 44305(b)) to the rights of the insured party against the United States Government; and

(ii) the person has paid to the insured party, with the approval of the Secretary of Transportation, an amount for a physical damage loss that the Secretary has determined is a loss covered by insurance issued under this chapter (other than section 44305(b)).

(2) LIMITATION.—A civil action involving the same matter (except the action authorized by this subsection) may not be brought against an agent, officer, or employee of the government carrying out this chapter.

(3) PROCEDURE.—To the extent applicable, the procedure in an action brought under section 1346(a)(2) of title 28, United States Code, applies to an action under this subsection.

(b) VENUE AND JOINDER.—

(1) A civil action under subsection (a) of this section may be brought in the judicial district for the District of Columbia or in the judicial district in which the plaintiff or the agent of the plaintiff resides if the plaintiff resides in the United States. If the plaintiff does not reside in the United States, the action may be brought in the judicial district for the District of Columbia or in the judicial district in which the Attorney General agrees to accept service.

(2) An interested person may be joined as a party to a civil action brought under subsection (a) of this section initially or on motion of either party to the action.

(c) TIME REQUIREMENTS.—When an insurance claim is made under this chapter, the period during which, under section 2401 of title 28, a civil action must be brought under subsection (a) of this section is suspended until 60 days after the Secretary of Transportation denies the claim. The claim is deemed to be administratively denied if the Secretary does not act on the claim not later than 6 months after filing, unless the Secretary makes a different agreement with the claimant when there is good cause for an agreement.

(d) INTERPLEADER.—

(1) If the Secretary admits the Government owes money under an insurance claim under this chapter and there is a dispute about the person that is entitled to payment, the Government may bring a civil action of interpleader in a district court of the United States against the persons that may be entitled to payment. The action may be brought in the judicial district for the District of Columbia or in the judicial district in which any party resides.

(2) The district court may order a party not residing or found in the judicial district in which the action is brought to appear in a civil action under this subsection. The order shall be served in a reasonable manner decided by the district court. If the court decides an unknown person might assert a claim under the insurance that is the subject of the action, the court may order service on that person by publication in the Federal Register.

(3) Judgment in a civil action under this subsection discharges the Government from further liability to the parties to the action and to all other persons served by publication under paragraph (2) of this subsection.

§ 44310. Ending effective date

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter is not effective after ⟦March 31, 1999.⟧ *December 31, 2003.*

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 445. FACILITIES, PERSONNEL, AND RESEARCH

§ 44502. General facilities and personnel authority

(a) GENERAL AUTHORITY.—

(1) The Administrator of the Federal Aviation Administration may—

(A) acquire, establish, improve, operate, and maintain air navigation facilities; and

(B) provide facilities and personnel to regulate and protect air traffic.

(2) The cost of site preparation work associated with acquiring, establishing, or improving an air navigation facility under paragraph (1)(A) of this subsection shall be charged to amounts available for that purpose appropriated under section 48101(a) of this title. The Secretary of Transportation may make an agreement with an airport owner or sponsor (as defined in section 47102 of this title) so that the owner or sponsor will provide the work and be paid or reimbursed by the Secretary from the appropriated amounts.

(3) The Secretary of Transportation may authorize a department, agency, or instrumentality of the United States Government to carry out any duty or power under this subsection with the consent of the head of the department, agency, or instrumentality.

(4) PURCHASE OF INSTRUMENT LANDING SYSTEM.—

(A) ESTABLISHMENT OF PROGRAM.—The Secretary shall purchase precision approach instrument landing system equipment for installation at airports on an expedited basis.

(B) AUTHORIZATION.—No less than $30,000,000 of the amounts appropriated under section 48101(a) for each of [fiscal years 1995 and 1996] *fiscal years 1999 and 2000* shall be used for the purpose of carrying out this paragraph, including [acquisition,] *acquisition under new or existing contracts,* site preparation work, installation, and related expenditures.

(5) The Administrator may improve real property leased for air navigation facilities without regard to the costs of the improvements in relation to the cost of the lease if—

(A) the improvements primarily benefit the government;

(B) are essential for mission accomplishment; and

(C) the government's interest in the improvements is protected.

(b) CERTIFICATION OF NECESSITY.—Except for Government money expended under this part or for a military purpose, Government money may be expended to acquire, establish, construct, operate, repair, alter, or maintain an air navigation facility only if the Administrator of the Federal Aviation Administration certifies in writing that the facility is reasonably necessary for use in air commerce or for the national defense. An interested person may apply for a certificate for a facility to be acquired, established, constructed, operated, repaired, altered, or maintained by or for the person.

(c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—

(1) To ensure conformity with plans and policies for, and allocation of, airspace by the Administrator of the Federal Aviation Administration under section 40103(b)(1) of this title, a military airport, military landing area, or missile or rocket site may be acquired, established, or constructed, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator of the Federal Aviation Administration may advise the appropriate committees of Congress and interested departments, agencies, and instrumentalities of the Government on the effect of the acquisition, establishment, con-

struction, or alteration on the use of airspace by aircraft. A disagreement between the Administrator of the Federal Aviation Administration and the Secretary of Defense or the Administrator of the National Aeronautics and Space Administration may be appealed to the President for a final decision.

(2) To ensure conformity, an airport or landing area not involving the expenditure of Government money may be established or constructed, or a runway may be altered substantially, only if the Administrator of the Federal Aviation Administration is given reasonable prior notice so that the Administrator may provide advice on the effects of the establishment, construction, or alteration on the use of airspace by aircraft.

(d) PUBLIC USE AND EMERGENCY ASSISTANCE.—

(1) The head of a department, agency, or instrumentality of the Government having jurisdiction over an air navigation facility owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for public use of the facility.

(2) The head of a department, agency, or instrumentality of the Government having jurisdiction over an airport or emergency landing field owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for assistance, and the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when necessary, because of an emergency, to allow the aircraft to continue to the nearest airport operated by private enterprise. The head of the department, agency, or instrumentality shall provide for the assistance and sale at the prevailing local fair market value as determined by the head of the department, agency, or instrumentality. An amount that the head decides is equal to the cost of the assistance provided and the fuel, oil, equipment, and supplies sold shall be credited to the appropriation from which the cost was paid. The balance shall be credited to miscellaneous receipts.

(e) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—An airport may transfer, without consideration, to the Administrator of the Federal Aviation Administration an instrument landing system (and associated approach lighting equipment and runway visual range equipment) that conforms to performance specifications of the Administrator if a Government airport aid program, airport development aid program, or airport improvement project grant was used to assist in purchasing the system. The Administrator shall accept the system and operate and maintain it under criteria of the Administrator.

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§44516. Human factors program

(a) OVERSIGHT COMMITTEE.—The Administrator of the Federal Aviation Administration shall establish an advanced qualification program oversight committee to advise the Administrator on the development and execution of Advanced Qualification Programs for air carriers under this section, and to encourage their adoption and implementation.

(b) HUMAN FACTORS TRAINING.—

(1) AIR TRAFFIC CONTROLLERS.—The Administrator shall—

(A) address the problems and concerns raised by the National Research Council in its report "The Future of Air Traffic Control" on air traffic control automation; and

(B) respond to the recommendations made by the National Research Council.

(2) PILOTS AND FLIGHT CREWS.—The Administrator shall work with the aviation industry to develop specific training curricula, within 12 months after the date of enactment of the Air Transportation Improvement Act, to address critical safety problems, including problems of pilots—

(A) in recovering from loss of control of the aircraft, including handling unusual attitudes and mechanical malfunctions;

(B) in deviating from standard operating procedures, including inappropriate responses to emergencies and hazardous weather;

(C) in awareness of altitude and location relative to terrain to prevent controlled flight into terrain; and

(D) in landing and approaches, including nonprecision approaches and go-around procedures.

(c) ACCIDENT INVESTIGATIONS.—The Administrator, working with the National Transportation Safety Board and representatives of the aviation industry, shall establish a process to assess human factors training as part of accident and incident investigations.

(d) TEST PROGRAM.—The Administrator shall establish a test program in cooperation with United States air carriers to use model Jeppesen approach plates or other similar tools to improve nonprecision landing approaches for aircraft.

(e) ADVANCED QUALIFICATION PROGRAM DEFINED.—For purposes of this section, the term "advanced qualification program" means an alternative method for qualifying, training, certifying, and ensuring the competency of flight crews and other commercial aviation operations personnel subject to the training and evaluation requirements of Parts 121 and 135 of title 14, Code of Federal Regulations.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 447. SAFETY REGULATION

§ 44701. General requirements

(a) PROMOTING SAFETY.—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

(b) PRESCRIBING MINIMUM SAFETY STANDARDS. The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) REDUCING AND ELIMINATING ACCIDENTS.—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STANDARDS.—When prescribing a regulation or standard under subsection (a) or (b) of this section or any of sections 44702–44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) BILATERAL EXCHANGES OF SAFETY OVERSIGHT RESPONSIBILITIES.—

(1) Notwithstanding the provisions of this chapter, and pursuant to Article 83 bis of the Convention on International Civil Aviation, the Administrator may, by a bilateral agreement with the aeronautical authorities of another country, exchange with that country all or part of their respective functions and duties with respect to aircraft described in subparagraphs (A) and (B), under the following articles of the Convention:

(A) Article 12 (Rules of the Air).

(B) Article 31 (Certificates of Airworthiness).

(C) Article 32a (Licenses of Personnel).

(2) The agreement under paragraph (1) may apply to—

(A) aircraft registered in the United States operated pursuant to an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business, or, if it has no such place of business, its permanent residence, in another country; or

(B) aircraft registered in a foreign country operated under an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business, or, if it has no such place of business, its permanent residence, in the United States.

(3) The Administrator relinquishes responsibility with respect to the functions and duties transferred by the Administrator as specified in the bilateral agreement, under the Articles listed in paragraph (1) of this subsection for United States-registered aircraft transferred abroad as described in subparagraph (A) of that paragraph, and accepts responsibility with respect to the functions and duties under those Articles for aircraft registered abroad that are transferred to the United States as described in subparagraph (B) of that paragraph.

(4) The Administrator may, in the agreement under paragraph (1), predicate the transfer of these functions and duties on any conditions the Administrator deems necessary and prudent.

【(e)】 (f) EXEMPTIONS.—The Administrator may grant an exemption from a requirement of a regulation prescribed under subsection (a) or (b) of this section or any of sections 44702–44716 of this title if the Administrator finds the exemption is in the public interest.

§ 44703. Airman certificates

(a) GENERAL.—The Administrator of the Federal Aviation Administration shall issue an airman certificate to an individual when the Administrator finds, after investigation, that the individual is qualified for, and physically able to perform the duties related to, the position to be authorized by the certificate.

(b) CONTENTS.—

(1) An airman certificate shall—

(A) be numbered and recorded by the Administrator of the Federal Aviation Administration;

(B) contain the name, address, and description of the individual to whom the certificate is issued;

(C) contain terms the Administrator decides are necessary to ensure safety in air commerce, including terms on the duration of the certificate, periodic or special examinations, and tests of physical fitness;

(D) specify the capacity in which the holder of the certificate may serve as an airman with respect to an aircraft; and

(E) designate the class the certificate covers.

(2) A certificate issued to a pilot serving in scheduled air transportation shall have the designation "airline transport pilot" of the appropriate class.

(c) APPEALS.—

(1) An individual whose application for the issuance or renewal of an airman certificate has been denied may appeal the denial to the National Transportation Safety Board, except if the individual holds a certificate that—

(A) is suspended at the time of denial; or

(B) was revoked within one year from the date of the denial.

(2) The Board shall conduct a hearing on the appeal at a place convenient to the place of residence or employment of the applicant. The Board is not bound by findings of fact of the Administrator of the Federal Aviation Administration but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law. At the end of the hearing, the Board shall decide whether the individual meets the applicable regulations and standards. The Administrator is bound by that decision.

(d) RESTRICTIONS AND PROHIBITIONS.—The Administrator of the Federal Aviation Administration may—

(1) restrict or prohibit issuing an airman certificate to an alien; or

(2) make issuing the certificate to an alien dependent on a reciprocal agreement with the government of a foreign country.

(e) CONTROLLED SUBSTANCE VIOLATIONS.—The Administrator of the Federal Aviation Administration may not issue an airman certificate to an individual whose certificate is revoked under section 44710 of this title except—

(1) when the Administrator decides that issuing the certificate will facilitate law enforcement efforts; and

(2) as provided in section 44710(e)(2) of this title.

(f) MODIFICATIONS IN SYSTEM.—

(1) The Administrator of the Federal Aviation Administration shall make modifications in the system for issuing airman certificates necessary to make the system more effective in serving the needs of pilots and officials responsible for enforcing laws related to the regulation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)). The modifications shall ensure positive and verifiable identification of each individual applying for or holding a certificate and shall address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the use of fictitious names and addresses by applicants for those certificates.

(B) the use of stolen or fraudulent identification in applying for those certificates.

(C) the use by an applicant of a post office box or "mail drop" as a return address to evade identification of the applicant's address.

(D) the use of counterfeit and stolen airman certificates by pilots.

(E) the absence of information about physical characteristics of holders of those certificates.

(2) The Administrator of the Federal Aviation Administration shall prescribe regulations to carry out paragraph (1) of this subsection and provide a written explanation of how the regulations address each of the deficiencies and abuses described in paragraph (1). In prescribing the regulations, the Administrator of the Federal Aviation Administration shall consult with the Administrator of Drug Enforcement, the Commissioner of Customs, other law enforcement officials of the United States Government, representatives of State and local law enforcement officials, representatives of the general aviation aircraft industry, representatives of users of general aviation aircraft, and other interested persons.

§ 44710. Revocations of airman certificates for controlled substance violations

(a) DEFINITION.—In this section, "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(b) REVOCATION.—

(1) The Administrator of the Federal Aviation Administration shall issue an order revoking a certificate issued to an individual under section 44703 of this title after the individual is convicted, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), of an offense punishable by death or imprisonment for more than one year if the Administrator finds that—

(A) an aircraft was used to commit, or facilitate the commission of, the offense; and

(B) the individual served as an airman, or was on the aircraft, in connection with committing, or facilitating the commission of, the offense.

(2) The Administrator shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the Administrator finds that—

(A) the individual knowingly carried out an activity punishable, under a law of the United States or a State related to a controlled substance (except a law related to simple possession of a controlled substance), by death or imprisonment for more than one year;

(B) an aircraft was used to carry out or facilitate the activity; and

(C) the individual served as an airman, or was on the aircraft, in connection with carrying out, or facilitating the carrying out of, the activity.

(3) The Administrator has no authority under paragraph (1) of this subsection to review whether an airman violated a law of the United States or a State related to a controlled substance.

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the Administrator revokes a certificate under subsection (b) of this section, the Administrator must—

(1) advise the holder of the certificate of the charges or reasons on which the Administrator relies for the proposed revocation; and

(2) provide the holder of the certificate an opportunity to answer the charges and be heard why the certificate should not be revoked.

(d) APPEALS.—

(1) An individual whose certificate is revoked by the Administrator under subsection (b) of this section may appeal the revocation order to the National Transportation Safety Board. The Board shall affirm or reverse the order after providing notice and an opportunity for a hearing on the record. When conducting the hearing, the Board is not bound by findings of fact of the Administrator but shall be bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(2) When an individual files an appeal with the Board under this subsection, the order of the Administrator revoking the certificate is stayed. However, if the Administrator advises the Board that safety in air transportation or air commerce requires the immediate effectiveness of the order—

(A) the order remains effective; and

(B) the Board shall make a final disposition of the appeal not later than 60 days after the Administrator so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection, or the Administrator when the Administrator decides that an order of the Board will have a significant adverse effect on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(e) ACQUITTAL.—

(1) The Administrator may not revoke, and the Board may not affirm a revocation of, an airman certificate under subsection (b)(2) of this section on the basis of an activity described in subsection (b)(2)(A) if the holder of the certificate is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity.

(2) If the Administrator has revoked an airman certificate under this section because of an activity described in subsection (b)(2)(A) of this section, the Administrator shall reissue a certificate to the individual if—

(A) the individual otherwise satisfies the requirements for a certificate under section 44703 of this title; and

(B)(i) the individual subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; or

(ii) the conviction on which a revocation under subsection (b)(1) of this section is based is reversed.

(f) WAIVERS.—The Administrator may waive the requirement of subsection (b) of this section that an airman certificate of an individual be revoked if—

(1) a law enforcement official of the United States Government or of a State requests a waiver; and

(2) the Administrator decides that the waiver will facilitate law enforcement efforts.

§ 44711. Prohibitions and exemption

(a) PROHIBITIONS.—A person may not—

(1) operate a civil aircraft in air commerce without an airworthiness certificate in effect or in violation of a term of the certificate;

(2) serve in any capacity as an airman with respect to a civil aircraft, aircraft engine, propeller, or appliance used, or intended for use, in air commerce—

(A) without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued; or

(B) in violation of a term of the certificate or a regulation prescribed or order issued under section 44701(a) or (b) or any of sections 44702–44716 of this title;

(3) employ for service related to civil aircraft used in air commerce an airman who does not have an airman certificate authorizing the airman to serve in the capacity for which the airman is employed;

(4) operate as an air carrier without an air carrier operating certificate or in violation of a term of the certificate;

(5) operate aircraft in air commerce in violation of a regulation prescribed or certificate issued under section 44701(a) or (b) or any of sections 44702–44716 of this title;

(6) operate a seaplane or other aircraft of United States registry on the high seas in violation of a regulation under section 3 of the International Navigational Rules Act of 1977 (33 U.S.C. 1602);

(7) violate a term of an air agency or production certificate or a regulation prescribed or order issued under section 44701(a) or (b) or any of sections 44702–44716 of this title related to the holder of the certificate;

(8) operate an airport without an airport operating certificate required under section 44706 of this title or in violation of a term of the certificate; or

(9) manufacture, deliver, sell, or offer for sale any aviation fuel or additive in violation of a regulation prescribed under section 44714 of this title.

(b) EXEMPTION.—On terms the Administrator of the Federal Aviation Administration prescribes as being in the public interest, the Administrator may exempt a foreign aircraft and airmen serving on the aircraft from subsection (a) of this section. However, an

exemption from observing air traffic regulations may not be granted.

(c) PROHIBITION ON EMPLOYMENT OF CONVICTED COUNTERFEIT PART DEALERS.—No person subject to this chapter may employ anyone to perform a function related to the procurement, sale, production, or repair of a part or material, or the installation of a part into a civil aircraft, who has been convicted of a violation of any Federal or State law relating to the installation, production, repair, or sale of a counterfeit or falsely-represented aviation part or material.

§ 44712. Emergency locator transmitters

(a) INSTALLATION.—An emergency locator transmitter must be installed on a fixed-wing powered civil aircraft for use in air commerce.

⟦(b) NONAPPLICATION.—Subsection (a) of this section does not apply to—

⟦(1) turbojet-powered aircraft;

⟦(2) aircraft when used in scheduled flights by scheduled air carriers holding certificates issued by the Secretary of Transportation under subpart II of this part;

⟦(3) aircraft when used in training operations conducted entirely within a 50 mile radius of the airport from which the training operations begin;

⟦(4) aircraft when used in flight operations related to design and testing, the manufacture, preparation, and delivery of the aircraft, or the aerial application of a substance for an agricultural purpose;

⟦(5) aircraft holding certificates from the Administrator of the Federal Aviation Administration for research and development;

⟦(6) aircraft when used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys; and

⟦(7) aircraft equipped to carry only one individual.⟧

(b) NONAPPLICATION.—Subsection (a) does not apply to aircraft when used in—

(1) scheduled flights by scheduled air carriers holding certificates issued by the Secretary of Transportation under subpart II of this part;

(2) training operations conducted entirely within a 50-mile radius of the airport from which the training operations begin;

(3) flight operations related to the design and testing, manufacture, preparation, and delivery of aircraft;

(4) showing compliance with regulations, exhibition, or air racing; or

(5) the aerial application of a substance for an agricultural purpose.

(c) COMPLIANCE.—An aircraft is deemed to meet the requirement of subsection (a) if it is equipped with an emergency locator transmitter that transmits on the 121.5/243 megahertz frequency or the 406 megahertz frequency, or with other equipment approved by the Secretary for meeting the requirement of subsection (a).

[(c)] (d) REMOVAL.—The Administrator shall prescribe regulations specifying the conditions under which an aircraft subject to subsection (a) of this section may operate when its emergency locator transmitter has been removed for inspection, repair, alteration, or replacement.

* * * * * * *

§44725. Denial and revocation of certificate for counterfeit parts violations

(a) DENIAL OF CERTIFICATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection and subsection (e)(2) of this section, the Administrator may not issue a certificate under this chapter to any person—

(A) convicted of a violation of a law of the United States or of a State relating to the installation, production, repair, or sale of a counterfeit or falsely-represented aviation part or material; or

(B) subject to a controlling or ownership interest of an individual convicted of such a violation.

(2) EXCEPTION.—Notwithstanding paragraph (1), the Administrator may issue a certificate under this chapter to a person described in paragraph (1) if issuance of the certificate will facilitate law enforcement efforts.

(b) REVOCATION OF CERTIFICATE.—

(1) IN GENERAL.—Except as provided in subsections (f) and (g) of this section, the Administrator shall issue an order revoking a certificate issued under this chapter if the Administrator finds that the holder of the certificate, or an individual who has a controlling or ownership interest in the holder—

(A) was convicted of a violation of a law of the United States or of a State relating to the installation, production, repair, or sale of a counterfeit or falsely-represented aviation part or material; or

(B) knowingly carried out or facilitated an activity punishable under such a law.

(2) NO AUTHORITY TO REVIEW VIOLATION.—In carrying out paragraph (1) of this subsection, the Administrator may not review whether a person violated such a law.

(c) NOTICE REQUIREMENT.—Before the Administrator revokes a certificate under subsection (b), the Administrator shall—

(1) advise the holder of the certificate of the reason for the revocation; and

(2) provide the holder of the certificate an opportunity to be heard on why the certificate should not be revoked.

(d) APPEAL.—The provisions of section 44710(d) apply to the appeal of a revocation order under subsection (b). For the purpose of applying that section to such an appeal, "person" shall be substituted for "individual" each place it appears.

(e) AQUITTAL OR REVERSAL.—

(1) IN GENERAL.—The Administrator may not revoke, and the Board may not affirm a revocation of, a certificate under subsection (b)(1)(B) of this section if the holder of the certificate, or

the individual, is acquitted of all charges related to the violation.

(2) REISSUANCE.—The Administrator may reissue a certificate revoked under subsection (b) of this section to the former holder if—

(A) the former holder otherwise satisfies the requirements of this chapter for the certificate;

(B) the former holder, or individual, is acquitted of all charges related to the violation on which the revocation was based; or

(C) the conviction of the former holder, or individual, of the violation on which the revocation was based is reversed.

(f) WAIVER.—The Administrator may waive revocation of a certificate under subsection (b) of this section if—

(1) a law enforcement official of the United States Government, or of a State (with respect to violations of State law), requests a waiver; or

(2) the waiver will facilitate law enforcement efforts.

(g) AMENDMENT OF CERTIFICATE.—If the holder of a certificate issued under this chapter is other than an individual and the Administrator finds that—

(1) an individual who had a controlling or ownership interest in the holder committed a violation of a law for the violation of which a certificate may be revoked under this section, or knowingly carried out or facilitated an activity punishable under such a law; and

(2) the holder satisfies the requirements for the certificate without regard to that individual,

then the Administrator may amend the certificate to impose a limitation that the certificate will not be valid if that individual has a controlling or ownership interest in the holder. A decision by the Administrator under this subsection is not reviewable by the Board.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 449. SECURITY

SUBCHAPTER I. REQUIREMENTS

§ 44903. Air transportation security

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

(1) authorized to carry and use firearms;

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

(3) identifiable by appropriate indicia of authority.

(b) PROTECTION AGAINST VIOLENCE AND PIRACY.—The Administrator shall prescribe regulations to protect passengers and property on an aircraft operating in air transportation or intrastate air

transportation against an act of criminal violence or aircraft piracy. When prescribing a regulation under this subsection, the Administrator shall—

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

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

(A) protecting passengers; and

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

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

(A) their safety; and

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

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

(c) SECURITY PROGRAMS.—

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

(2) (A) The Administrator may approve a security program of an airport operator, or an amendment in an existing program, that incorporates a security program of an airport tenant (except an air carrier separately complying with part 108 or 129 of title 14, Code of Federal Regulations) having access to a secured area of the airport, if the program or amendment incorporates—

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

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

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

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

(1) to carry firearms; and

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

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

(f) GOVERNMENT AND INDUSTRY CONSORTIA.—The Administrator may establish at airports such consortia of government and aviation industry representatives as the Administrator may designate to provide advice on matters related to aviation security and safety. Such consortia shall not be considered federal advisory committees for purposes of the Federal Advisory Committee Act (5 U.S.C. App.).

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 449. SECURITY

SUBCHAPTER I. REQUIREMENTS

§ 44909. Passenger manifests

(a) AIR CARRIER REQUIREMENTS.—

(1) Not later than March 16, 1991, the Secretary of Transportation shall require each air carrier to provide a passenger manifest for a flight to an appropriate representative of the Secretary of State—

(A) not later than one hour after that carrier is notified of an aviation disaster outside the United States involving that flight; or

(B) if it is not technologically feasible or reasonable to comply with clause (A) of this paragraph, then as expeditiously as possible, but not later than 3 hours after the carrier is so notified.

(2) The passenger manifest [shall] *should* include the following information:

(A) the full name of each passenger.

(B) the passport number of each passenger, if required for travel.

(C) the name and telephone number of a contact for each passenger.

(3) In carrying out this subsection, the Secretary of Transportation shall consider the necessity and feasibility of requiring air carriers to collect passenger manifest information as a condition for passengers boarding a flight of the carrier.

(b) FOREIGN AIR CARRIER REQUIREMENTS.—The Secretary of Transportation shall consider imposing a requirement on foreign air carriers comparable to that imposed on air carriers under subsection (a)(1) and (2) of this section.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 449. SECURITY

SUBCHAPTER II. ADMINISTRATION AND PERSONNEL

§ 44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—

(1) (A) The Administrator of the Federal Aviation Administration shall require by regulation that an employment investigation, including a criminal history record check, shall be

conducted, as the Administrator decides is necessary to ensure air transportation security, of each individual employed in, or applying for, a position in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

(i) aircraft of an air carrier or foreign air carrier; or

(ii) a secured area of an airport in the United States the Administrator designates that serves an air carrier or foreign air carrier.

(B) The Administrator shall require by regulation that an employment investigation (including a criminal history record check in any case described in [subparagraph (C))] *subparagraph (C), or in the case of passenger, baggage, or property screening at airports, the Administrator decides it is necessary to ensure air transportation security)* be conducted for—

(i) individuals who will be responsible for screening passengers or property under section 44901 of this title;

(ii) supervisors of the individuals described in clause (i); and

(iii) such other individuals who exercise security functions associated with baggage or cargo, as the Administrator determines is necessary to ensure air transportation security.

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

(i) an employment investigation reveals a gap in employment of 12 months or more that the individual who is the subject of the investigation does not satisfactorily account for;

(ii) such individual is unable to support statements made on the application of such individual;

(iii) there are significant inconsistencies in the information provided on the application of such individual; or

(iv) information becomes available during the employment investigation indicating a possible conviction for one of the crimes listed in subsection (b)(1)(B).

(D) If an individual requires a criminal history record check under subparagraph (C), the individual may be employed as a screener until the check is completed if the individual is subject to supervision.

(2) An air carrier, foreign air carrier, or airport operator that employs, or authorizes or makes a contract for the services of, an individual in a position described in paragraph (1) of this subsection shall ensure that the investigation the Administrator requires is conducted.

(3) The Administrator shall provide for the periodic audit of the effectiveness of criminal history record checks conducted under paragraph (1) of this subsection.

(b) PROHIBITED EMPLOYMENT.—

(1) Except as provided in paragraph (3) of this subsection, an air carrier, foreign air carrier, or airport operator may not employ, or authorize or make a contract for the services of, an in-

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

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

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

(ii) summaries of legal enforcement actions resulting in a finding by the Administrator of a violation of this title or a regulation prescribed or order issued under this title that was not subsequently overturned.

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

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

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

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

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

(IV) section 125.401 of such title; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) inform the individual of—

(I) the request; and

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

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

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

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

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

(A) recommendations by the Administrator concerning proposed changes to Federal Aviation Administration

records, air carrier records, and other records required to be furnished under subparagraphs (A) and (B) of paragraph (1); or

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

(13) REGULATIONS.—The Administrator 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).

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

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

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

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

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

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

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

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

(D) an agent or employee of a person described in subparagraph (A) or (B);

In the nature of an action for defamation, invasion of privacy, negligence, interference with contract, or otherwise, or under any Federal or State law with respect to the furnishing or use of such records in accordance with subsection (f).

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

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

(A) the person knows is false; and

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

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

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART III. SAFETY

CHAPTER 453. FEES

§ 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 military and civilian aircraft of the United States government or of a foreign government that neither take off from, nor land in, the United States.

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

(2) Services provided to a foreign government or to any entity obtaining services outside the United States other than—

(A) air traffic control services; and

(B) fees for production-certification-related service (as defined in Appendix C of part 187 of title 14, Code of Federal Regulations) performed outside the United States.

(b) LIMITATIONS.—

(1) Authorization and impact considerations. In establishing fees under subsection (a), the Administrator—

(A) is authorized to recover in fiscal year 1997 $100,000,000; and

(B) shall ensure that each of the fees required by subsection (a) is directly related to the Administration's costs

of providing the service rendered. Services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off nor land in the United States.

(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 experts 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.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART A. AIR COMMERCE AND SAFETY

SUBPART IV. ENFORCEMENT AND PENALTIES

CHAPTER 463. PENALTIES

§ 46301. Civil penalties

(a) GENERAL PENALTY.—

(1) A person is liable to the United States Government for a civil penalty of not more than $1,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, *41705,* 41710, 41713, and 41714), chapter 419, [subchapter II of chapter 421,] *subchapter II or III of chapter 421,* chapter 441 (except section 44109), 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), and 44908), or section [46302, 46303, or] 47107(b) (including any assurance made under such section) of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part .

(2) A person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman) is liable to the Government for a civil penalty of not more than $10,000 for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502(b) or (c), chapter 447 (except sections 44717-44723), or chapter 449 (except sections 44902, 44903(d), 44904, and 44907-44909) of this title; or

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(3) A civil penalty of not more than $10,000 may be imposed for each violation under paragraph (1) of this subsection related to—

(A) the transportation of hazardous material; or

(B) the registration or recordation under chapter 441 of this title of an aircraft not used to provide air transportation.

(4) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41715) continues or, if applicable, for each flight involving the violation (other than a violation of section 41715).

(5) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(6) Notwithstanding paragraph (1), the maximum civil penalty for violating section 41715 shall be $5,000 instead of $1,000.

(7) VIOLATION OF SECTION 41705.—

(A) CREDIT; VOUCHER; CIVIL PENALTY.— Unless an individual accepts a credit or voucher for the purchase of a ticket on an air carrier or any affiliated air carrier for a violation of subsection (a) in an amount (determined by the Secretary) of—

(i) not less than $500 and not more than $2,500 for the first violation; or

(ii) not less than $2,500 and not more than $5,000 for any subsequent violation,

then that air carrier is liable to the United States Government for a civil penalty, determined by the Secretary, of not more than 100 percent of the amount of the credit or voucher so determined.

(B) REMEDY NOT EXCLUSIVE.—Nothing in subparagraph (A) precludes or affects the right of persons with disabilities to file private rights of action under section 41705 or to limit claims for compensatory or punitive damages asserted in such cases.

(C) ATTORNEY'S FEES.—In addition to the penalty provided by subparagraph (A), an individual who—

(i) brings a civil action against an air carrier to enforce this section; and

(ii) who is awarded damages by the court in which the action is brought,

may be awarded reasonable attorneys' fees and costs of litigation reasonably incurred in bringing the action if the court deems it appropriate.

(b) SMOKE ALARM DEVICE PENALTY.—

(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than $2,000.

(c) PROCEDURAL REQUIREMENTS.—

(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, or section 44909 of this title .

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—

(1) In this subsection—

(A) "flight engineer" means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) "mechanic" means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) "pilot" means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) "repairman" means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chap-

ter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), 44908, and 44909), or section 46302, 46303, or 47107(b) (as further defined by the Secretary under section 47107(l) and including any assurance made under section 47107(b)) of this title or a regulation prescribed or order issued under any of those provisions. The Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Administrator initiates if—

(A) the amount in controversy is more than $50,000;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5) (A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7) (A) The Administrator may impose a penalty on [an individual] *a person* (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

(i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(ii) each conclusion of law is made according to applicable law, precedent, and public policy; and

(iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

(i) a civil penalty shall not be assessed against an individual;

(ii) a civil penalty may be compromised as provided under subsection (f); and

(iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Administrator or Board may impose under this subsection is $50,000.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—

(1) (A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except 44717 and 44719-44723), or chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), 44908, and 44909) of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the Secretary *or the Administrator* imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—

(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

* * * * * * *

§46317. Criminal penalty for pilots operating in air transportation without an airman's certificate

(a) APPLICATION.—This section applies only to aircraft used to provide air transportation.

(b) GENERAL CRIMINAL PENALTY.—An individual shall be fined under title 18, imprisoned for not more than 3 years, or both, if that individual—

(1) knowingly and willfully serves or attempts to serve in any capacity as an airman without an airman's certificate authorizing the individual to serve in that capacity; or

(2) knowingly and willfully employs for service or uses in any capacity as an airman an individual who does not have an airman's certificate authorizing the individual to serve in that capacity.

(c) CONTROLLED SUBSTANCE CRIMINAL PENALTY.—(1) In this subsection, the term "controlled substance" has the same meaning given that term in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802).

(2) An individual violating subsection (b) shall be fined under title 18, imprisoned for not more than 5 years, or both, if the violation is related to transporting a controlled substance by aircraft or aiding or facilitating a controlled substance violation and that transporting, aiding, or facilitating—

(A) is punishable by death or imprisonment of more than 1 year under a Federal or State law; or

(B) is related to an act punishable by death or imprisonment for more than 1 year under a Federal or State law related to a controlled substance (except a law related to simple possession (as that term is used in section 46306(c)) of a controlled substance).

(3) A term of imprisonment imposed under paragraph (2) shall be served in addition to, and not concurrently with, any other term of imprisonment imposed on the individual subject to the imprisonment.

§ 46318. Interference with cabin or flight crew

(a) IN GENERAL.—An individual who interferes with the duties or responsibilities of the flight crew or cabin crew of a civil aircraft, or who poses an imminent threat to the safety of the aircraft or other individuals on the aircraft, is liable to the United States Government for a civil penalty of not more than $10,000, which shall be paid to the Federal Aviation Administration and deposited in the account established by section 45303(c).

(b) COMPROMISE AND SETOFF.—

(1) The Secretary of Transportation or the Administrator may compromise the amount of a civil penalty imposed under subsection (a).

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the individual liable for the penalty.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART B. AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471. AIRPORT DEVELOPMENT

SUBCHAPTER I. AIRPORT IMPROVEMENT

§ 47101. Policies.

(a) GENERAL.—It is the policy of the United States—

(1) that the safe operation of the airport and airway system is the highest aviation priority;

(2) that aviation facilities be constructed and operated to minimize current and projected noise impact on nearby communities;

(3) to give special emphasis to developing reliever airports;

(4) that appropriate provisions should be made to make the development and enhancement of cargo hub airports easier;

(5) to encourage the development of transportation systems that use various modes of transportation in a way that will serve the States and local communities efficiently and effectively;

(6) that airport development projects under this subchapter provide for the protection and enhancement of natural resources and the quality of the environment of the United States;

(7) that airport construction and improvement projects that increase the capacity of facilities to accommodate passenger and cargo traffic be undertaken to the maximum feasible extent so that safety and efficiency increase and delays decrease;

(8) to ensure that nonaviation usage of the navigable airspace be accommodated but not allowed to decrease the safety and capacity of the airspace and airport system;

(9) that artificial restrictions on airport capacity—

(A) are not in the public interest;

(B) should be imposed to alleviate air traffic delays only after other reasonably available and less burdensome alternatives have been tried; and

(C) should not discriminate unjustly between categories and classes of aircraft;

(10) that special emphasis should be placed on converting appropriate former military air bases to civil use and identifying and improving additional joint-use facilities;

(11) that the airport improvement program should be administered to encourage projects that employ innovative technology, concepts, and approaches that will promote safety, capacity, and efficiency improvements in the construction of airports and in the air transportation system (including the development and use of innovative concrete and other materials in the construction of airport facilities to minimize initial laydown costs, minimize time out of service, and maximize lifecycle durability) and to encourage and solicit innovative technology proposals and activities (including integrated in-pavement lighting systems for runways and taxiways and other runway and taxiway incursion prevention devices) in the expenditure of funding pursuant to this subchapter;

(12) that airport fees, rates, and charges must be reasonable and may only be used for purposes not prohibited by this subchapter; and

(13) that airports should be as self-sustaining as possible under the circumstances existing at each particular airport and in establishing new fees, rates, and charges, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system purposes and for other purposes for which airport revenues may be spent under section 47107(b)(1) of this title, including reasonable reserves and other funds to facilitate financing and cover contingencies.

(b) NATIONAL TRANSPORTATION POLICY.—

(1) It is a goal of the United States to develop a national intermodal transportation system that transports passengers and property in an efficient manner. The future economic direction of the United States depends on its ability to confront directly the enormous challenges of the global economy, declining productivity growth, energy vulnerability, air pollution, and the need to rebuild the infrastructure of the United States.

(2) United States leadership in the world economy, the expanding wealth of the United States, the competitiveness of the industry of the United States, the standard of living, and the quality of life are at stake.

(3) A national intermodal transportation system is a coordinated, flexible network of diverse but complementary forms of transportation that transports passengers and property in the most efficient manner. By reducing transportation costs, these intermodal systems will enhance the ability of the industry of the United States to compete in the global marketplace.

(4) All forms of transportation, including aviation and other transportation systems of the future, will be full partners in the effort to reduce energy consumption and air pollution while promoting economic development.

(5) An intermodal transportation system consists of transportation hubs that connect different forms of appropriate trans-

portation and provides users with the most efficient means of transportation and with access to commercial centers, business locations, population centers, and the vast rural areas of the United States, as well as providing links to other forms of transportation and to intercity connections.

(6) Intermodality and flexibility are paramount issues in the process of developing an integrated system that will obtain the optimum yield of United States resources.

(7) The United States transportation infrastructure must be reshaped to provide the economic underpinnings for the United States to compete in the 21st century global economy. The United States can no longer rely on the sheer size of its economy to dominate international economic rivals and must recognize fully that its economy is no longer a separate entity but is part of the global marketplace. The future economic prosperity of the United States depends on its ability to compete in an international marketplace that is teeming with competitors but in which a full one-quarter of the economic activity of the United States takes place.

(8) The United States must make a national commitment to rebuild its infrastructure through development of a national intermodal transportation system. The United States must provide the foundation for its industries to improve productivity and their ability to compete in the global economy with a system that will transport passengers and property in an efficient manner.

(c) CAPACITY EXPANSION AND NOISE ABATEMENT.—It is in the public interest to recognize the effects of airport capacity expansion projects on aircraft noise. Efforts to increase capacity through any means can have an impact on surrounding communities. Noncompatible land uses around airports must be reduced and efforts to mitigate noise must be given a high priority.

(d) CONSISTENCY WITH AIR COMMERCE AND SAFETY POLICIES.—Each airport and airway program should be carried out consistently with section 40101(a), (b), (d), and (f) of this title to foster competition, prevent unfair methods of competition in air transportation, maintain essential air transportation, and prevent unjust and discriminatory practices, including as the practices may be applied between categories and classes of aircraft.

(e) ADEQUACY OF NAVIGATION AIDS AND AIRPORT FACILITIES.—This subchapter should be carried out to provide adequate navigation aids and airport facilities for places at which scheduled commercial air service is provided. The facilities provided may include—

(1) reliever airports; and

(2) heliports designated by the Secretary of Transportation to relieve congestion at commercial service airports by diverting aircraft passengers from fixed-wing aircraft to helicopter carriers.

(f) MAXIMUM USE OF SAFETY FACILITIES.—This subchapter should be carried out consistently with a comprehensive airspace system plan, giving highest priority to commercial service airports, to maximize the use of safety facilities, including installing, operat-

ing, and maintaining, to the extent possible with available money and considering other safety needs—

(1) electronic or visual vertical guidance on each runway;

(2) grooving or friction treatment of each primary and secondary runway;

(3) distance-to-go signs for each primary and secondary runway;

(4) a precision approach system, a vertical visual guidance system, and a full approach light system for each primary runway;

(5) a nonprecision instrument approach for each secondary runway;

(6) runway end identifier lights on each runway that does not have an approach light system;

(7) a surface movement radar system at each category III airport;

(8) a taxiway lighting and sign system;

(9) runway edge lighting and marking; [and]

(10) radar approach coverage for each airport terminal [area.] area; and

(11) runway and taxiway incursion prevention devices, including integrated in-pavement lighting systems for runways and taxiways.

(g) INTERMODAL PLANNING.—To carry out the policy of subsection (a)(5) of this section, the Secretary of Transportation shall take each of the following actions:

(1) COORDINATION IN DEVELOPMENT OF AIRPORT PLANS AND PROGRAMS.—Cooperate with State and local officials in developing airport plans and programs that are based on overall transportation needs. The airport plans and programs shall be developed in coordination with other transportation planning and considering comprehensive long-range land-use plans and overall social, economic, environmental, system performance, and energy conservation objectives. The process of developing airport plans and programs shall be continuing, cooperative, and comprehensive to the degree appropriate to the complexity of the transportation problems.

(2) GOALS FOR AIRPORT MASTER AND SYSTEM PLANS.—Encourage airport sponsors and State and local officials to develop airport master plans and airport system plans that—

(A) foster effective coordination between aviation planning and metropolitan planning;

(B) include an evaluation of aviation needs within the context of multimodal planning; and

(C) are integrated with metropolitan plans to ensure that airport development proposals include adequate consideration of land use and ground transportation access.

(3) REPRESENTATION OF AIRPORT OPERATORS ON MPO'S.—Encourage metropolitan planning organizations, particularly in areas with populations greater than 200,000, to establish membership positions for airport operators.

(h) CONSULTATION.—To carry out the policy of subsection (a)(6) of this section, the Secretary of Transportation shall consult with the Secretary of the Interior and the Administrator of the Environ-

mental Protection Agency about any project included in a project grant application involving the location of an airport or runway, or a major runway extension, that may have a significant effect on—

(1) natural resources, including fish and wildlife;

(2) natural, scenic, and recreation assets;

(3) water and air quality; or

(4) another factor affecting the environment.

§ 47102. Definitions

In this subchapter—

(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 and including integrated in-pavement lighting systems for runways and taxiways and other runway and taxiway incursion prevention devices;

(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 or under section 40117.

(F) constructing, reconstructing, repairing, or improving an airport, or purchasing capital equipment for an airport, if 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 needed 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) a privately-owned airport that, as a reliever airport, received Federal aid for airport development prior to October 9, 1996, but only if the Administrator issues revised administrative guidance after July 1, 1998, for the designation of reliever airports; or

[(ii)] *(iii)* 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 an application for financial assistance; and

(B) a private owner of a public-use airport that submits to the Secretary under this subchapter 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 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 [March 31, 1999,] *September 30, 2000,* 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 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 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 air-

craft 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 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;

(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; 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 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 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 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 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.

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

(1) The Secretary of Transportation may approve a project grant application under this subchapter 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) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act.

(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 or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act.

(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 or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) 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 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, 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 Transportation and Infrastructure 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 [note to this section].

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

(1) IN GENERAL.—Not later than 90 days after August 23, 1994, 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 sub-

section (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.

(5) STATUTE OF LIMITATIONS.—In addition to the statute of limitations specified in subsection (n)(7), with respect to project grants made under this chapter—

(A) any request by a sponsor to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) any amount of airport funds that are used to make a payment or reimbursement as described in subparagraph (A) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (n).

(m) AUDIT CERTIFICATION.—

(1) IN GENERAL.—The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administra-

tion, shall promulgate regulations that require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 through 7505 of title 31, a review and opinion of the review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.

(2) CONTENT OF REVIEW.—A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).

(3) REQUIREMENTS FOR AUDIT REPORT.—The report submitted to the Secretary under this subsection shall include a specific determination and opinion regarding the appropriateness of the disposition of airport funds paid or transferred to a sponsor.

(n) RECOVERY OF ILLEGALLY DIVERTED FUNDS.—

(1) IN GENERAL.—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (l) and section 47133), the Secretary, acting through the Administrator, shall—

(A) review the audit or report;

(B) perform appropriate fact finding; and

(C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.

(2) NOTIFICATION.—Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of—

(A) the finding; and

(B) the obligations of the sponsor to reimburse the airport involved under this paragraph.

(3) ADMINISTRATIVE ACTION.—The Secretary may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor—

(A) receives notification that the sponsor is required to reimburse an airport; and

(B) has had an opportunity to reimburse the airport, but has failed to do so.

(4) CIVIL ACTION.—If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action

under which the sponsor shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection(o)).

(5) DISPOSITION OF PENALTIES.—

(A) AMOUNTS WITHHELD.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) CIVIL PENALTIES.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) REIMBURSEMENT.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (o)).

(7) STATUTE OF LIMITATIONS.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (l)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

(o) INTEREST.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (n) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) ADJUSTMENT OF INTEREST RATES.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) ACCRUAL.—Interest assessed under subsection (n) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (n).

(4) DETERMINATION OF APPLICABLE RATE.—The applicable rate of interest charged under paragraph (1) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(p) PAYMENT BY AIRPORT TO SPONSOR.—If, in the course of an audit or other review conducted under this section, the Secretary

or the Administrator determines that an airport owes a sponsor funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (o), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(q) DENIAL OF ACCESS.—

(1) EFFECT OF DENIAL.—If an owner or operator of an airport described in paragraph (2) denies access to an air carrier described in paragraph (3), that denial shall not be considered to be unreasonable or unjust discrimination or a violation of this section.

(2) AIRPORTS TO WHICH SUBSECTION APPLIES.—An airport is described in this paragraph if it—

(A) is designated as a reliever airport by the Administrator of the Federal Aviation Administration;

(B) does not have an operating certificate issued under part 139 of title 14, Code of Federal Regulations (or any subsequent similar regulations); and

(C) is located within a 35-mile radius of an airport that has—

(i) at least 0.05 percent of the total annual boardings in the United States; and

(ii) current gate capacity to handle the demands of a public charter operation.

(3) AIR CARRIERS DESCRIBED.—An air carrier is described in this paragraph if it conducts operations as a public charter under part 380 of title 14, Code of Federal Regulations (or any subsequent similar regulations) with aircraft that is designed to carry more than 9 passengers per flight.

(4) DEFINITIONS.—In this subsection:

(A) AIR CARRIER; AIR TRANSPORTATION; AIRCRAFT; AIRPORT.—The terms "air carrier", "air transportation", "aircraft", and "airport" have the meanings given those terms in section 40102 of this title.

(B) PUBLIC CHARTER.—The term "public charter" means charter air transportation for which the general public is provided in advance a schedule containing the departure location, departure time, and arrival location of the flights.

§ 47108. Project grant agreements

(a) OFFER AND ACCEPTANCE.—On approving a project grant application under this subchapter, the Secretary of Transportation shall offer the sponsor a grant to pay the United States Government's share of the project costs allowable under section 47110 of this title. The Secretary may impose terms on the offer that the Secretary considers necessary to carry out this subchapter and regulations prescribed under this subchapter. An offer shall state the obligations to be assumed by the sponsor and the maximum amount the Government will pay for the project from the amounts authorized under chapter 481 of this title (except sections 48102(e), 48106, 48107, and 48110). At the request of the sponsor, an offer

of a grant for a project that will not be completed in one fiscal year shall provide for the obligation of amounts apportioned or to be apportioned to a sponsor under section 47114(c) of this title for the fiscal years necessary to pay the Government's share of the cost of the project. An offer that is accepted in writing by the sponsor is an agreement binding on the Government and the sponsor. The Government may pay or be obligated to pay a project cost only after a grant agreement for the project is signed.

(b) INCREASING GOVERNMENT'S SHARE UNDER THIS SUBCHAPTER OR CHAPTER 475.—

(1) When an offer has been accepted in writing, the amount stated in the offer as the maximum amount the Government will pay may be increased only as provided in paragraphs (2) and (3) of this subsection.

(2)(A) For a project receiving assistance under a grant approved under the Airport and Airway Improvement Act of 1982 before October 1, 1987, the amount may be increased by not more than—

(i) 10 percent for an airport development project, except a project for acquiring an interest in land; and

(ii) 50 percent of the total increase in allowable project costs attributable to acquiring an interest in land, based on current creditable appraisals.

(B) An increase under subparagraph (A) of this paragraph may be paid only from amounts the Government recovers from other grants made under this subchapter.

(3) For a project receiving assistance under a grant approved under the Act, this subchapter, or chapter 475 of this title after September 30, 1987, the amount may be increased—

(A) for an airport development project, by not more than 15 percent; and

(B) for a grant after September 30, 1992, to acquire an interest in land for an airport (except a primary airport), by not more than the greater of the following, based on current creditable appraisals or a court award in a condemnation proceeding:

(i) 15 percent; or

(ii) 25 percent of the total increase in allowable project costs attributable to acquiring an interest in land.

(c) INCREASING GOVERNMENT'S SHARE UNDER AIRPORT AND AIRWAY DEVELOPMENT ACT OF 1970.—For a project receiving assistance under a grant made under the Airport and Airway Development Act of 1970, the maximum amount the Government will pay may be increased by not more than 10 percent. An increase under this subsection may be paid only from amounts the Government recovers from other grants made under the Act.

(d) CHANGING WORKSCOPE.—With the consent of the sponsor, the Secretary may amend a grant agreement made under this subchapter to change the workscope of a project financed under the grant if the amendment does not result in an increase in the maximum amount the Government may pay under subsection (b) of this section.

(e) CHANGE IN AIRPORT STATUS.—If the status of a primary airport changes to a nonprimary airport at a time when a development project under a multiyear agreement under subsection (a) is not yet completed, the project shall remain eligible for funding from discretionary funds under section 47115 of this title at the funding level and under the terms provided by the agreement, subject to the availability of funds.

§ 47109. United States Government's share of project costs

(a) GENERAL.—Except as provided in subsection (b) of this section, the United States Government's share of allowable project costs is—

(1) 75 percent for a project at a primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports;

(2) *not more than* 90 percent for a project at any other airport; and

(3) 40 percent for a project funded by the Administrator from the discretionary fund under section 47115 at an airport receiving an exemption under section 47134.

(b) INCREASED GOVERNMENT SHARE.—If, under subsection (a) of this section, the Government's share of allowable costs of a project in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970, the Government's share under subsection (a) of this section shall be increased by the lesser of—

(1) 25 percent;

(2) one-half of the percentage that the area of unappropriated and unreserved public lands and nontaxable Indian lands in the State is of the total area of the State; or

(3) the percentage necessary to increase the Government's share to the percentage that applied on June 30, 1975, under section 17(b) of the Act.

(c) SPECIAL RULE FOR PRIVATELY OWNED RELIEVER AIRPORTS.—If a privately owned reliever airport contributes any lands, easements, or rights-of-way to carry out a project under this subchapter, the current fair market value of such lands, easements, or rights-of-way shall be credited toward the non-Federal share of allowable project costs.

§ 47110. Allowable project costs

(a) GENERAL AUTHORITY.—Except as provided in section 47111 of this title, the United States Government may pay or be obligated to pay, from amounts appropriated to carry out this subchapter, a cost incurred in carrying out a project under this subchapter only if the Secretary of Transportation decides the cost is allowable.

(b) ALLOWABLE COST STANDARDS.—A project cost is allowable—

(1) if the cost necessarily is incurred in carrying out the project in compliance with the grant agreement made for the project under this subchapter, including any cost a sponsor in-

curs related to an audit the Secretary requires under section 47121(b) or (d) of this title;

(2)(A) if the cost is incurred after the grant agreement is executed and is for airport development or airport planning carried out after the grant agreement is executed;

(B) if the cost is incurred after June 1, 1989, by the airport operator (regardless of when the grant agreement is executed) as part of a Government-approved noise compatability program (including project formulation costs) and is consistent with all applicable statutory and administrative requirements; or

(C) if the Government's share is paid only with amounts apportioned under paragraphs (1) and (2) of section 47114(c) of this title and if the cost is incurred—

(i) after September 30, 1996;

(ii) before a grant agreement is executed for the project; and

(iii) in accordance with an airport layout plan approved by the Secretary and with all statutory and administrative requirements that would have been applicable to the project if the project had been carried out after the grant agreement had been executed;

(3) to the extent the cost is reasonable in amount;

(4) if the cost is not incurred in a project for airport development or airport planning for which other Government assistance has been granted; and

(5) if the total costs allowed for the project are not more than the amount stated in the grant agreement as the maximum the Government will pay (except as provided in section 47108(b) of this title).

(c) CERTAIN PRIOR COSTS AS ALLOWABLE COSTS.—The Secretary may decide that a project cost under subsection (b)(2)(A) of this section incurred after May 13, 1946, and before the date the grant agreement is executed is allowable if it is—

(1) necessarily incurred in formulating an airport development project, including costs incurred for field surveys, plans and specifications, property interests in land or airspace, and administration or other incidental items that would not have been incurred except for the project; or

(2) necessarily and directly incurred in developing the work scope of an airport planning project.

(d) TERMINAL DEVELOPMENT COSTS.—

(1) The Secretary may decide that the cost of terminal development (including multi-modal terminal development) in a nonrevenue-producing public-use area of a commercial service airport is allowable for an airport development project at the airport—

(A) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(i) all the safety equipment required for certification of the airport under section 44706 of this title;

(ii) all the security equipment required by regulation; and

(iii) provided for access, to the area of the airport for passengers for boarding or exiting aircraft, to those

passengers boarding or exiting aircraft, except air carrier aircraft;

(B) if the cost is directly related to moving passengers and baggage in air commerce within the airport, including vehicles for moving passengers between terminal facilities and between terminal facilities and aircraft; and

(C) under terms necessary to protect the interests of the Government.

(2) In making a decision under paragraph (1) of this subsection, the Secretary may approve as allowable costs the expenses of terminal development in a revenue-producing area and construction, reconstruction, repair, and improvement in a nonrevenue-producing parking lot if—

(A) the airport does not have more than .05 percent of the total annual passenger boardings in the United States; and

(B) the sponsor certifies that any needed airport development project affecting safety, security, or capacity will not be deferred because of the Secretary's approval.

(e) LETTERS OF INTENT.—

(1) The Secretary may issue a letter of intent to the sponsor stating an intention to obligate from future budget authority an amount, not more than the Government's share of allowable project costs, for an airport development project (including costs of formulating the project) at a primary [or reliever] airport. The letter shall establish a schedule under which the Secretary will reimburse the sponsor for the Government's share of allowable project costs, as amounts become available, if the sponsor, after the Secretary issues the letter, carries out the project without receiving amounts under this subchapter.

(2) Paragraph (1) of this subsection applies to a project—

(A) about which the sponsor notifies the Secretary, before the project begins, of the sponsor's intent to carry out the project;

(B) that will comply with all statutory and administrative requirements that would apply to the project if it were carried out with amounts made available under this subchapter; and

(C) the Secretary decides will enhance system-wide airport capacity significantly and meets the criteria of section 47115(d) of this title.

(3) A letter of intent issued under paragraph (1) of this subsection is not an obligation of the Government under section 1501 of title 31, and the letter is not deemed to be an administrative commitment for financing. An obligation or administrative commitment may be made only as amounts are provided in authorization and appropriation laws.

(4) The total estimated amount of future Government obligations covered by all outstanding letters of intent under paragraph (1) of this subsection may not be more than the amount authorized to carry out section 48103 of this title, less an amount reasonably estimated by the Secretary to be needed for grants under section 48103 that are not covered by a letter.

(5) A letter of intent issued under paragraph (1) of this subsection may not condition the obligation of amounts on the imposition of a passenger facility fee.

(6) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to prohibit the obligation of amounts pursuant to a letter of intent under this subsection in the same fiscal year as the letter of intent is issued.

(f) NONALLOWABLE COSTS.—Except as provided in subsection (d) of this section and section 47118(f) of this title, a cost is not an allowable airport development project cost if it is for—

(1) constructing a public parking facility for passenger automobiles;

(2) constructing, altering, or repairing part of an airport building, except to the extent the building will be used for facilities or activities directly related to the safety of individuals at the airport;

(3) decorative landscaping; or

(4) providing or installing sculpture or art works.

(g) USE OF DISCRETIONARY FUNDS.—A project for which cost reimbursement is provided under subsection (b)(2)(C) shall not receive priority consideration with respect to the use of discretionary funds made available under section 47115 of this title even if the amounts made available under paragraphs (1) and (2) of section 47114(c) are not sufficient to cover the Government's share of the cost of project.

§ 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;

(iv) $.65 for each of the next 500,000 passenger boardings at the airport during the prior calendar year.

(v) $.50 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. For fiscal years beginning after fiscal year 1999, the preceding sentence shall be applied by substituting "$650,000" for "$500,000".

(C) The Secretary may, notwithstanding subparagraph (A), apportion to an airport sponsor in a fiscal year an amount

equal to the amount apportioned to that sponsor in the previous fiscal year if the Secretary finds that—

(i) passenger boardings at the airport fell below 10,000 in the calendar year used to calculate the apportionment;

(ii) the airport had at least 10,000 passenger boardings in the calendar year prior to the calendar year used to calculate apportionments to airport sponsors in a fiscal year; and

(iii) the cause of the shortfall in passenger boardings was a temporary but significant interruption in service by an air carrier to that airport due to an employment action, natural disaster, or other event unrelated to the demand for air transportation at the affected airport.

(2) CARGO ONLY AIRPORTS.—

(A) APPORTIONMENT.—Subject to subparagraph (D), the Secretary shall apportion an amount equal to [2.5 percent] 3 percent of the amount subject to apportionment each fiscal year 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.

(B) SUBALLOCATION FORMULA.—Any funds apportioned under subparagraph (A) to sponsors of airports described in subparagraph (A) shall be allocated among those airports in the proportion that the total annual landed weight of aircraft described in subparagraph (A) landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports.

[(C) LIMITATION.—Not more than 8 percent of the amount apportioned under subparagraph (A) may be apportioned for any one airport.]

[(D)] (C) DISTRIBUTION TO OTHER AIRPORTS.—Before apportioning amounts to the sponsors of airports under subparagraph (A) for a fiscal year, the Secretary may set-aside a portion of such amounts for distribution to the sponsors of other airports, selected by the Secretary, that the Secretary finds will be served primarily by aircraft providing air transportation of only cargo.

(E) DETERMINATION OF LANDED WEIGHT.—Landed weight under this paragraph is the landed weight of aircraft landing at each airport described in subparagraph (A) during the prior calendar year.

(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 18.5 percent of the amount subject to apportionment for each fiscal year as follows:

(A) 0.66 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, 49.67 percent of the apportioned amount for air-

ports, excluding primary airports but including reliever and nonprimary commercial service airports, 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, 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, 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.❳

(3) An amount apportioned under paragraph (2) of this subsection for airports in Alaska, Hawaii, or Puerto Rico may be made available by the Secretary for any public airport in those respective jurisdictions.

(4) The Secretary may permit the use of State highway specifications for airfield pavement construction using funds made available under this subsection at nonprimary airports with runways of 5,000 feet or shorter serving aircraft that do not exceed 60,000 pounds gross weight, if the Secretary determines that—

(A) safety will not be negatively affected; and

(B) the life of the pavement will not be shorter than it would be if constructed using Administration standards.

An airport may not seek funds under this subchapter for runway rehabilitation or reconstruction of any such airfield pavement constructed using State highway specifications for a period of 10 years after construction is completed.

(e) ❲ALTERNATIVE❳ *SUPPLEMENTAL* APPORTIONMENT FOR ALASKA.—

(1) ❲Instead of apportioning amounts for airports in Alaska under❳ Notwithstanding subsections (c) and (d) of this section, the Secretary may apportion amounts for ❲those airports❳ airports in Alaska 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.】

(3) An amount apportioned under this subsection may be used for any public airport in Alaska.

(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.

§ 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】 *12.5* 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. 【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, including, in the case of a project at a reliever airport, the number of operations projected

to be diverted from a primary airport to the reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system;

(3) the financial commitment from non-United States Government sources to preserve or enhance airport capacity;

(4) the airport improvement priorities of the States, and regional offices of the Administration, to the extent such priorities are not in conflict with paragraphs (1) and (2);

(5) the projected growth in the number of passengers that will be using the airport at which the project will be carried out; and

(6) any increase in the number of passenger boardings in the preceding 12-month period at the airport at which the project will be carried out, with priority consideration to be given to projects at airports at which the number of passenger boardings increased by at least 20 percent as compared to the number of passenger boardings in the 12-month period preceding such period.

(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 airports 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 August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(g) MINIMUM AMOUNT TO BE CREDITED.—

(1) GENERAL RULE.—In a fiscal year, there shall be credited to the fund, out of amounts made available under section 48103 of this title, an amount that is at least equal to the sum of—

(A) $148,000,000; plus

(B) the total amount required from the fund to carry out in the fiscal year letters of intent issued before January 1, 1996, under section 47110(e) of this title or the Airport and Airway Improvement Act of 1982.

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) REDUCTION OF APPORTIONMENTS.—In a fiscal year in which the amount credited under subsection (a) is less than the minimum amount to be credited under paragraph (1), the total amount calculated under paragraph (3) shall be reduced by an amount that, when credited to the fund, together with the amount credited under subsection (a), equals such minimum amount.

(3) AMOUNT OF REDUCTION.—For a fiscal year, the total amount available to make a reduction to carry out paragraph (2) is the total of the amounts determined under sections 47114(c)(1)(A), 47114(c)(2), 47114(d), and 47117(e) of this title. Each amount shall be reduced by an equal percentage to achieve the reduction.

(4) SPECIAL RULE.—For a fiscal year in which the amount credited to the fund under this subsection exceeds $300,000,000, the Secretary shall allocate the amount of such excess as follows:

(A) 1⁄3 shall be made available to airports for which apportionments are made under section 47114(d) of this title.

(B) 1⁄3 shall be made available 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) 1⁄3 shall be made available to current or former military airports for which grants may be made under section 47117(e)(1)(B) of this title.

(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).

§ 47116. Small airport fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a small airport fund. The fund consists of ⟦75⟧ *87.5* percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) DISTRIBUTION OF AMOUNTS.—The Secretary may distribute amounts in the fund in each fiscal year for any purpose for which amounts are made available under section 48103 of this title as follows:

(1) one-seventh for grants for projects at small hub airports (as defined in section 41731 of this title); and

(2) the remaining amounts based on the following:

⟦(1)⟧ *(A)* one-third for grants to sponsors of public-use airports (except commercial service airports).

⟦(2)⟧ *(B)* two-thirds for grants to sponsors of each commercial service airport that each year has less than .05

percent of the total boardings in the United States in that year.

(c) AUTHORITY TO RECEIVE GRANT NOT DEPENDENT ON PARTICIPATION IN BLOCK GRANT PILOT PROGRAM.—An airport in a State participating in the State block grant pilot program under section 47128 of this title may receive a grant under this section to the same extent the airport may receive a grant if the State were not participating in the program.

(d) PRIORITY CONSIDERATION FOR CERTAIN PROJECTS.—In making grants to sponsors described in subsection (b)(2), the Secretary shall give priority consideration to multi-year projects for construction of new runways that the Secretary finds are cost beneficial and would increase capacity in a region of the United States.

§ 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 or the 3 fiscal years immediately following that year in the case of a primary airport that had less than .05 percent of the total boardings in the United States in the preceding calendar 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 available to the discretionary fund under section 47115 of this title for each fiscal year as follows:

(A) At least ⟦31⟧ *35* 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) of this title. The Secretary may count the amount of grants made for such planning and

programs with funds apportioned under section 47114 in that fiscal year in determining whether or not such ❲31❳ *35* percent requirement is being met in that fiscal year.

(B) [At] at least 4 percent for each of fiscal years 1997 and 1998 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 and to sponsors of noncommercial service airports for grants for operational and maintenance expenses at any such airport if the amount of such grants to the sponsor of the airport does not exceed $30,000 in that fiscal year, if the Secretary determines that the airport is adversely affected by the closure or realignment of a military base, and if the sponsor of the airport certifies that the airport would otherwise close if the airport does not receive the grant.

(2) 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.

(3) The Secretary shall give priority in making grants under paragraph (1)(A) to applications for airport noise compatibility planning and programs at and around airports where operations increase under title V of the Air Transportation Improvement Act and the amendments made by that 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)❳ *(f)* 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(f) 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)] *(g)* 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.

§ 47120. Grant priority

*(a) IN GENERAL.—*In making a grant under this subchapter, the Secretary of Transportation may give priority to a project that is consistent with an integrated airport system plan.

(b) DISCRETIONARY FUNDING TO BE USED FOR HIGHER PRIORITY PROJECTS.—The Administrator of the Federal Aviation Administration shall discourage airport sponsors and airports from using entitlement funds for lower priority projects by giving lower priority to discretionary projects submitted by airport sponsors and airports that have used entitlement funds for projects that have a lower priority than the projects for which discretionary funds are being requested.

§ 47125. Conveyances of United States Government land

[(a) CONVEYANCES TO PUBLIC AGENCIES.—Except as provided in subsection (b) of this section, the Secretary of Transportation shall request the head of the department, agency, or instrumentality of the United States Government owning or controlling land or airspace to convey a property interest in the land or airspace to the public agency sponsoring the project or owning or controlling the airport when necessary to carry out a project under this subchapter at a public airport, to operate a public airport, or for the future development of an airport under the national plan of integrated airport systems. The head of the department, agency, or instrumentality shall decide whether the requested conveyance is consistent with the needs of the department, agency, or instrumentality and shall notify the Secretary of that decision not later than 4 months after receiving the request. If the head of the department, agency, or instrumentality decides that the requested conveyance is consistent with its needs, the head of the department, agency, or instrumentality, with the approval of the Attorney General and without cost to the Government, shall make the conveyance. A conveyance may be made only on the condition that the property interest conveyed reverts to the Government, at the option of the Secretary, to the extent it is not developed for an airport purpose or used consistently with the conveyance.]

(a) CONVEYANCES TO PUBLIC AGENCIES.—

(1) REQUEST FOR CONVEYANCE.—Except as provided in subsection (b) of this section, the Secretary of Transportation—

(A) shall request the head of the department, agency, or instrumentality of the United States Government owning or controlling land or airspace to convey a property interest in the land or airspace to the public agency sponsoring the project or owning or controlling the airport when necessary to carry out a project under this subchapter at a public airport, to operate a public airport, or for the future develop-

ment of an airport under the national plan of integrated airport systems; and

(B) may request the head of such a department, agency, or instrumentality to convey a property interest in the land or airspace to such a public agency for a use that will complement, facilitate, or augment airport development, including the development of additional revenue from both aviation and nonaviation sources.

(2) RESPONSE TO REQUEST FOR CERTAIN CONVEYANCES.—Within 4 months after receiving a request from the Secretary under paragraph (1), the head of the department, agency, or instrumentality shall—

(A) decide whether the requested conveyance is consistent with the needs of the department, agency, or instrumentality;

(B) notify the Secretary of the decision; and

(C) make the requested conveyance if—

(i) the requested conveyance is consistent with the needs of the department, agency, or instrumentality;

(ii) the Attorney General approves the conveyance; and

(iii) the conveyance can be made without cost to the United States Government.

(3) REVERSION.—Except as provided in subsection (b), a conveyance under this subsection may only be made on the condition that the property interest conveyed reverts to the Government, at the option of the Secretary, to the extent it is not developed for an airport purpose or used consistently with the conveyance.

(b) RELEASE OF CERTAIN CONDITIONS.—The Secretary may grant a release from any term, condition, reservation, or restriction contained in any conveyance executed under this section, section 16 of the Federal Airport Act, section 23 of the Airport and Airway Development Act of 1970, or section 516 of the Airport and Airway Improvement Act of 1982, to facilitate the development of additional revenue from aeronautical and nonaeronautical sources if the Secretary—

(1) determines that the property is no longer needed for aeronautical purposes;

(2) determines that the property will be used solely to generate revenue for the public airport;

(3) provides preliminary notice to the head of the department, agency, or instrumentality that conveyed the property interest at least 30 days before executing the release;

(4) provides notice to the public of the requested release;

(5) includes in the release a written justification for the release of the property; and

(6) determines that release of the property will advance civil aviation in the United States.

[(b)] (c) NONAPPLICATION.—Except as specifically provided by law, subsection (a) of this section does not apply to land or airspace owned or controlled by the Government within—

(1) a national park, national monument, national recreation area, or similar area under the administration of the National Park Service;

(2) a unit of the National Wildlife Refuge System or similar area under the jurisdiction of the United States Fish and Wildlife Service; or

(3) a national forest or Indian reservation.—

§47135. Innovative financing techniques

(a) IN GENERAL.—The Secretary of Transportation is authorized to carry out a demonstration program under which the Secretary may approve applications under this subchapter for not more than 20 projects for which grants received under the subchapter may be used to implement innovative financing techniques.

(b) PURPOSE.—The purpose of the demonstration program shall be to provide information on the use of innovative financing techniques for airport development projects.

(c) LIMITATION—In no case shall the implementation of an innovative financing technique under this section be used in a manner giving rise to a direct or indirect guarantee of any airport debt instrument by the United States Government.

(d) INNOVATIVE FINANCING TECHNIQUE DEFINED.—In this section, the term "innovative financing technique" includes methods of financing projects that the Secretary determines may be beneficial to airport development, including—

(1) payment of interest;

(2) commercial bond insurance and other credit enhancement associated with airport bonds for eligible airport development; and

(3) flexible non-Federal matching requirements.

§47136. Airport security program

(a) GENERAL AUTHORITY.—To improve security at public airports in the United States, the Secretary of Transportation shall carry out not less than 1 project to test and evaluate innovative airport security systems and related technology.

(b) PRIORITY.—In carrying out this section, the Secretary shall give the highest priority to a request from an eligible sponsor for a grant to undertake a project that—

(1) evaluates and tests the benefits of innovative airport security systems or related technology, including explosives detection systems, for the purpose of improving airport and aircraft physical security and access control; and

(2) provides testing and evaluation of airport security systems and technology in an operational, testbed environment.

(c) MATCHING SHARE.—Notwithstanding section 47109, the United States Government's share of allowable project costs for a project under this section is 100 percent.

(d) TERMS AND CONDITIONS.—The Secretary may establish such terms and conditions as the Secretary determines appropriate for carrying out a project under this section, including terms and conditions relating to the form and content of a proposal for a project, project assurances, and schedule of payments.

(e) ELIGIBLE SPONSOR DEFINED.—In this section, the term "eligible sponsor" means a nonprofit corporation composed of a consortium of public and private persons, including a sponsor of a primary airport, with the necessary engineering and technical expertise to successfully conduct the testing and evaluation of airport and aircraft related security systems.

(f) AUTHORIZATION OF APPROPRIATIONS.—Of the amounts made available to the Secretary under section 47115 in a fiscal year, the Secretary shall make available not less than $5,000,000 for the purpose of carrying out this section.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART B. AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471. AIRPORT DEVELOPMENT

SUBCHAPTER II. SURPLUS PROPERTY FOR PUBLIC AIRPORTS

§ 47151. Authority to transfer an interest in surplus property

(a) GENERAL AUTHORITY.—Subject to sections 47152 and 47153 of this title, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may [give] convey to a State, political subdivision of a State, or tax-supported organization any interest in surplus property—

(1) that the Secretary of Transportation decides is—

(A) desirable for developing, improving, operating, or maintaining a public airport (as defined in section 47102 of this title);

(B) reasonably necessary to fulfill the immediate and foreseeable future requirements for developing, improving, operating, or maintaining a public airport; or

(C) needed for developing sources of revenue from non-aviation businesses at a public airport; and

(2) if the Administrator of General Services approves the [gift] conveyance and decides the interest is not best suited for industrial use.

(b) ENSURING COMPLIANCE.—Only the Secretary may ensure compliance with an instrument [giving] conveying an interest in surplus property under this subchapter . The Secretary may amend the instrument to correct the instrument or to make the [gift] conveyance comply with law.

(c) DISPOSING OF INTERESTS NOT GIVEN UNDER THIS SUBCHAPTER.—An interest in surplus property that could be used at a public airport but that is not given under this subchapter shall be disposed of under other applicable law.

(d) PRIORITY FOR PUBLIC AIRPORTS.—Except for requests from another Federal agency, a department, agency, or instrumentality of the Executive Branch of the United States Government shall give priority to a request by a public agency (as defined in section 47102 of this title) for surplus property described in subsection (a) of this section for use at a public airport.

§ 47152. Terms of [gifts] conveyances

Except as provided in section 47153 of this title, the following terms apply to a [gift] conveyance of an interest in surplus property under this subchapter:

(1) A State, political subdivision of a State, or tax-supported organization receiving the interest may use, lease, salvage, or dispose of the interest for other than airport purposes only after the Secretary of Transportation gives written consent that the interest can be used, leased, salvaged, or disposed of without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which the property is located.

(2) The interest shall be used and maintained for public use and benefit without unreasonable discrimination.

(3) A right may not be vested in a person, excluding others in the same class from using the airport at which the property is located—

(A) to conduct an aeronautical activity requiring the operation of aircraft; or

(B) to engage in selling or supplying aircraft, aircraft accessories, equipment, or supplies (except gasoline and oil), or aircraft services necessary to operate aircraft (including maintaining and repairing aircraft, aircraft engines, propellers, and appliances).

(4) The State, political subdivision, or tax-supported organization accepting the interest shall clear and protect the aerial approaches to the airport by mitigating existing, and preventing future, airport hazards.

(5) During a national emergency declared by the President or Congress, the United States Government is entitled to use, control, or possess, without charge, any part of the public airport at which the property is located. However, the Government shall—

(A) pay the entire cost of maintaining the part of the airport it exclusively uses, controls, or possesses during the emergency;

(B) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining the property it uses nonexclusively, or over which the Government has nonexclusive control or possession, during the emergency; and

(C) pay a fair rental for use, control, or possession of improvements to the airport made without Government assistance.

(6) The Government is entitled to the nonexclusive use, without charge, of the landing area of an airport at which the property is located. The Secretary may limit the use of the landing area if necessary to prevent unreasonable interference with use by other authorized aircraft. However, the Government shall—

(A) contribute a reasonable share, consistent with the Government's use, of the cost of maintaining and operating the landing area; and

(B) pay for damages caused by its use of the landing area if its use of the landing area is substantial.

(7) The State, political subdivision, or tax-supported organization accepting the interest shall release the Government from all liability for damages arising under an agreement that provides for Government use of any part of an airport owned, controlled, or operated by the State, political subdivision, or tax-supported organization on which, adjacent to which, or in connection with which, the property is located.

(8) When a term under this section is not satisfied, any part of the interest in the property reverts to the Government, at the option of the Government, as the property then exists.

§ 47153. Waiving and adding terms

(a) GENERAL AUTHORITY.—

(1) The Secretary of Transportation may waive, without charge, a term of a [gift] conveyance of an interest in property under this subchapter if the Secretary decides that—

(A) the property no longer serves the purpose for which it was [given;] conveyed; or

(B) the waiver will not prevent carrying out the purpose for which the [gift] conveyance was made and is necessary to advance the civil aviation interests of the United States.

(2) The Secretary of Transportation shall waive a term under paragraph (1) of this subsection on terms the Secretary considers necessary to protect or advance the civil aviation interests of the United States.

(b) Waivers and inclusion of additional terms on request.—On request of the Secretary of Transportation or the Secretary of a military department, a department, agency, or instrumentality of the executive branch of the United States Government or a wholly owned Government corporation may waive a term required by section 47152 of this title or add another term if the appropriate Secretary decides it is necessary to protect or advance the interests of the United States in civil aviation or for national defense.

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART B. AIRPORT DEVELOPMENT AND NOISE

CHAPTER 475. NOISE

SUBCHAPTER II. NATIONAL AVIATION NOISE POLICY

§ 47528. Prohibition on operating certain aircraft not complying with stage 3 noise levels

(a) PROHIBITION.—Except as provided in subsection (b) of this section and section 47530 of this title, a person may operate after December 31, 1999, a civil subsonic turbojet with a maximum weight of more than 75,000 pounds to or from an airport in the United States only if the Secretary of Transportation finds that the aircraft complies with the stage 3 noise levels.

(b) WAIVERS.—

(1) If, not later than July 1, 1999, at least 85 percent of the aircraft used by an air carrier to provide air transportation comply with the stage 3 noise levels, the carrier may apply for

a waiver of subsection (a) of this section for the remaining aircraft used by the carrier to provide air transportation. The application must be filed with the Secretary not later than January 1, 1999, and must include a plan with firm orders for making all aircraft used by the carrier to provide air transportation comply with the noise levels not later than December 31, 2003.

(2) The Secretary may grant a waiver under this subsection if the Secretary finds it would be in the public interest. In making the finding, the Secretary shall consider the effect of granting the waiver on competition in the air carrier industry and on small community air service.

(3) A waiver granted under this subsection may not permit the operation of stage 2 aircraft in the United States after December 31, 2003.

(c) SCHEDULE FOR PHASED-IN COMPLIANCE.—The Secretary shall establish by regulation a schedule for phased-in compliance with subsection (a) of this section. The phase-in period shall begin on November 5, 1990, and end before December 31, 1999. The regulations shall establish interim compliance dates. The schedule for phased-in compliance shall be based on—

(1) a detailed economic analysis of the impact of the phaseout date for stage 2 aircraft on competition in the airline industry, including—

(A) the ability of air carriers to achieve capacity growth consistent with the projected rate of growth for the airline industry;

(B) the impact of competition in the airline and air cargo industries;

(C) the impact on nonhub and small community air service; and

(D) the impact on new entry into the airline industry; and

(2) an analysis of the impact of aircraft noise on individuals residing near airports.

(d) ANNUAL REPORT.—Beginning with calendar year 1992—

(1) each air carrier shall submit to the Secretary an annual report on the progress the carrier is making toward complying with the requirements of this section and regulations prescribed under this section; and

(2) the Secretary shall submit to Congress an annual report on the progress being made toward that compliance.

(e) HAWAIIAN OPERATIONS.—

(1) In this subsection, “turnaround service” means a flight between places only in Hawaii.

(2) (A) An air carrier or foreign air carrier may not operate in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, a greater number of stage 2 aircraft with a maximum weight of more than 75,000 pounds than it operated in Hawaii, or between a place in Hawaii and a place outside the 48 contiguous States, on November 5, 1990.

(B) An air carrier that provided turnaround service in Hawaii on November 5, 1990, using stage 2 aircraft with a maximum weight of more than 75,000 pounds may include in the number of aircraft authorized under subparagraph (A) of this

paragraph all stage 2 aircraft with a maximum weight of more than 75,000 pounds that were owned or leased by that carrier on that date, whether or not the aircraft were operated by the carrier on that date.

(3) An air carrier may provide turnaround service in Hawaii using stage 2 aircraft with a maximum weight of more than 75,000 pounds only if the carrier provided the service on November 5, 1990.

(4) An air carrier operating Stage 2 aircraft under this subsection may transport Stage 2 aircraft to or from the 48 contiguous States on a non-revenue basis in order to—

(A) perform maintenance (including major alterations) or preventative maintenance on aircraft operated, or to be operated, within the limitations of paragraph (2)(B); or

(B) conduct operations within the limitations of paragraph (2)(B).

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART C. FINANCING

CHAPTER 481. AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

§ 48101. Air navigation facilities and equipment

(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) $2,068,000,000 for fiscal year 1997.

[(2) $2,129,000,000 for fiscal year 1998.]

(1) for fiscal year 1999—

(A) $222,800,000 for engineering, development, test, and evaluation: en route programs;

(B) $74,700,000 for engineering, development, test, and evaluation: terminal programs;

(C) $108,000,000 for engineering, development, test, and evaluation: landing and navigational aids;

(D) $17,790,000 for engineering, development, test, and evaluation: research, test, and evaluation equipment and facilities programs;

(E) $391,358,300 for air traffic control facilities and equipment: en route programs;

(F) $492,315,500 for air traffic control facilities and equipment: terminal programs;

(G) $38,764,400 for air traffic control facilities and equipment: flight services programs;

(H) $50,500,000 for air traffic control facilities and equipment: other ATC facilities programs;

(I) $162,400,000 for non-ATC facilities and equipment programs;

(J) $14,500,000 for training and equipment facilities programs;

(K) $280,800,000 for mission support programs;

(L) $235,210,000 for personnel and related expenses; and

(2) $2,189,000,000 for fiscal year 2000.

(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.

§ 48103. Airport planning and development and noise compatibility planning and programs

The total amounts which shall be available after September 30, 1998, 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 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 ⟦$1,205,000,000 for the six-month period beginning October 1, 1998.⟧ *$2,410,000,000 for fiscal years ending before October 1, 1999, and $4,885,000,000 for fiscal years ending before October 1, 2000.*

TITLE 49. TRANSPORTATION

SUBTITLE VII. AVIATION PROGRAMS

PART D. PUBLIC AIRPORTS

CHAPTER 491. METROPOLITAN WASHINGTON AIRPORTS

§ 49104. Lease of Metropolitan Washington Airports.

(a) IN GENERAL.—The lease between the Secretary of Transportation and the Metropolitan Washington Airports Authority under section 6005(a) of the Metropolitan Washington Airports Act of 1986 (Public Law 99–500; 100 Stat.1783–375; Public Law 99–591; 100 Stat. 3341–378), for the Metropolitan Washington Airports must provide during its 50-year term at least the following:

(1) The Airports Authority shall operate, maintain, protect, promote, and develop the Metropolitan Washington Airports as a unit and as primary airports serving the Metropolitan Washington area.

(2)(A) In this paragraph, "airport purposes" means a use of property interests (except a sale) for—

(i) aviation business or activities;

(ii) activities necessary or appropriate to serve passengers or cargo in air commerce; or

(iii) nonprofit, public use facilities that are not inconsistent with the needs of aviation.

(B) During the period of the lease, the real property constituting the Metropolitan Washington Airports shall be used only for airport purposes.

(C) If the Secretary decides that any part of the real property leased to the Airports Authority under this chapter is used for other than airport purposes, the Secretary shall—

(i) direct that the Airports Authority take appropriate measures to have that part of the property be used for airport purposes; and

(ii) retake possession of the property if the Airports Authority fails to have that part of the property be used for airport purposes within a reasonable period of time, as the Secretary decides.

(3) The Airports Authority is subject to section 47107(a)–(c) and (e) of this title and to the assurances and conditions required of grant recipients under the Airport and Airway Improvement Act of 1982 (Public Law 97–248; 96 Stat. 671) as in effect on June 7, 1987. Notwithstanding section 47107(b) of this title, all revenues generated by the Metropolitan Washington Airports shall be expended for the capital and operating costs of the Metropolitan Washington Airports.

(4) In acquiring by contract supplies or services for an amount estimated to be more than $200,000, or awarding concession contracts, the Airports Authority to the maximum extent practicable shall obtain complete and open competition through the use of published competitive procedures. By a vote of 7 members, the Airports Authority may grant exceptions to the requirements of this paragraph.

(5)(A) Except as provided in subparagraph (B) of this paragraph, all regulations of the Metropolitan Washington Airports (14 CFR part 159) become regulations of the Airports Authority as of June 7, 1987, and remain in effect until modified or revoked by the Airports Authority under procedures of the Airports Authority.

(B) Sections 159.59(a) and 159.191 of title 14, Code of Federal Regulations, do not become regulations of the Airports Authority.

(C) The Airports Authority may not increase or decrease the number of instrument flight rule takeoffs and landings authorized by the High Density Rule (14 CFR 93.121 et seq.) at Ronald Reagan Washington National Airport on October 18, 1986, and may not impose a limitation on the number of passengers taking off or landing at Ronald Reagan Washington National Airport.

(D) Subparagraph (C) does not apply to any increase in the number of instrument flight rule takeoffs and landings necessary to implement exemptions granted by the Secretary under section 41719.

(6)(A) Except as specified in subparagraph (B) of this paragraph, the Airports Authority shall assume all rights, liabilities, and obligations of the Metropolitan Washington Airports on June 7, 1987, including leases, permits, licenses, contracts, agreements, claims, tariffs, accounts receivable, accounts payable, and litigation related to those rights and obligations, re-

gardless whether judgment has been entered, damages awarded, or appeal taken. The Airports Authority must cooperate in allowing representatives of the Attorney General and the Secretary adequate access to employees and records when needed for the performance of duties and powers related to the period before June 7, 1987. The Airports Authority shall assume responsibility for the Federal Aviation Administration's Master Plans for the Metropolitan Washington Airports.

(B) The procedure for disputes resolution contained in any contract entered into on behalf of the United States Government before June 7, 1987, continues to govern the performance of the contract unless otherwise agreed to by the parties to the contract. Claims for monetary damages founded in tort, by or against the Government as the owner and operator of the Metropolitan Washington Airports, arising before June 7, 1987, shall be adjudicated as if the lease had not been entered into.

(C) The Administration is responsible for reimbursing the Employees' Compensation Fund, as provided in section 8147 of title 5, for compensation paid or payable after June 7, 1987, in accordance with chapter 81 of title 5 for any injury, disability, or death due to events arising before June 7, 1987, whether or not a claim was filed or was final on that date.

(D) The Airports Authority shall continue all collective bargaining rights enjoyed by employees of the Metropolitan Washington Airports before June 7, 1987.

(7) The Comptroller General may conduct periodic audits of the activities and transactions of the Airports Authority in accordance with generally accepted management principles, and under regulations the Comptroller General may prescribe. An audit shall be conducted where the Comptroller General considers it appropriate. All records and property of the Airports Authority shall remain in possession and custody of the Airports Authority.

(8) The Airports Authority shall develop a code of ethics and financial disclosure to ensure the integrity of all decisions made by its board of directors and employees. The code shall include standards by which members of the board will decide, for purposes of section 49106(d) of this title, what constitutes a substantial financial interest and the circumstances under which an exception to the conflict of interest prohibition may be granted.

(9) A landing fee imposed for operating an aircraft or revenues derived from parking automobiles—

(A) at Washington Dulles International Airport may not be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Ronald Reagan Washington National Airport; and

(B) at Ronald Reagan Washington National Airport may not be used for maintenance or operating expenses (excluding debt service, depreciation, and amortization) at Washington Dulles International Airport.

(10) The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees

for air carrier aircraft, except that the Airports Authority may require a minimum landing fee that is not more than the landing fee for aircraft weighing 12,500 pounds.

(11) The Secretary shall include other terms applicable to the parties to the lease that are consistent with, and carry out, this chapter.

(b) PAYMENTS.—Under the lease, the Airports Authority must pay to the general fund of the Treasury annually an amount, computed using the GNP Price Deflator,equal to $ 3,000,000 in 1987 dollars. The Secretary and the Airports Authority may renegotiate the level of lease payments attributable to inflation costs every 10 years.

(c) ENFORCEMENT OF LEASE PROVISIONS.—The district courts of the United States have jurisdiction to compel the Airports Authority and its officers and employees to comply with the terms of the lease. The Attorney General or an aggrieved party may bring an action on behalf of the Government.

(d) EXTENSION OF LEASE.—The Secretary and the Airports Authority may at anytime negotiate an extension of the lease.

§ 49106. Metropolitan Washington Airports Authority

(a) STATUS.—The Metropolitan Washington Airports Authority shall be—

(1) a public body corporate and politic with the powers and jurisdiction—

(A) conferred upon it jointly by the legislative authority of Virginia and the District of Columbia or by either of them and concurred in by the legislative authority of the other jurisdiction; and

(B) that at least meet the specifications of this section and section 49108 of this title;

(2) independent of Virginia and its local governments, the District of Columbia, and the United States Government; and

(3) a political subdivision constituted only to operate and improve the Metropolitan Washington Airports as primary airports serving the Metropolitan Washington area.

(b) GENERAL AUTHORITY.—

(1) The Airports Authority shall be authorized—

(A) to acquire, maintain, improve, operate, protect, and promote the Metropolitan Washington Airports for public purposes;

(B) to issue bonds from time to time in its discretion for public purposes, including paying any part of the cost of airport improvements, construction, and rehabilitation and the acquisition of real and personal property, including operating equipment for the airports;

(C) to acquire real and personal property by purchase, lease, transfer, or exchange;

(D) to exercise the powers of eminent domain in Virginia that are conferred on it by Virginia;

(E) to levy fees or other charges; and

(F) to make and maintain agreements with employee organizations to the extent that the Federal Aviation Administration was authorized to do so on October 18, 1996.

(2) Bonds issued under paragraph (1)(B) of this subsection—

(A) are not a debt of Virginia, the District of Columbia, or a political subdivision of Virginia or the District of Columbia; and

(B) may be secured by the Airports Authority's revenues generally, or exclusively from the income and revenues of certain designated projects whether or not any part of the projects are financed from the proceeds of the bonds.

(c) BOARD OF DIRECTORS.—

(1) The Airports Authority shall be governed by a board of directors composed of the following 13 members:

(A) 5 members appointed by the Governor of Virginia;

(B) 3 members appointed by the Mayor of the District of Columbia;

(C) 2 members appointed by the Governor of Maryland; and

(D) 3 members appointed by the President with the advice and consent of the Senate.

(2) The chairman of the board shall be appointed from among the members by majority vote of the members and shall serve until replaced by majority vote of the members.

(3) Members of the board shall be appointed by the board for 6 years, except that of the members first appointed by the President after October 9, 1996, one shall be appointed for 4 years. A member may serve after the expiration of that member's term until a successor has taken office.

(4) A member of the board—

(A) may not hold elective or appointive political office;

(B) serves without compensation except for reasonable expenses incident to board functions; and

(C) must reside within the Washington Standard Metropolitan Statistical Area, except that a member of the board appointed by the President must be a registered voter of a State other than Maryland, Virginia, or the District of Columbia.

(5) A vacancy in the board shall be filled in the manner in which the original appointment was made. A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

(6) (A) Not more than 2 of the members of the board appointed by the President may be of the same political party.

(B) In carrying out their duties on the board, members appointed by the President shall ensure that adequate consideration is given to the national interest.

(C) The members to be appointed under paragraph (1)(D) of this subsection must be appointed before October 1, 1997. If the deadline is not met, the Secretary of Transportation and the Airports Authority are subject to the limitations of section 49108 of this title until all members referred to in paragraph (1)(D) are appointed.

(D) A member appointed by the President may be removed by the President for cause.

(7) Eight votes are required to approve bond issues and the annual budget.

(d) CONFLICTS OF INTEREST.—Members of the board and their immediate families may not be employed by or otherwise hold a substantial financial interest in any enterprise that has or is seeking a contract or agreement with the Airports Authority or is an aeronautical, aviation services, or airport services enterprise that otherwise has interests that can be directly affected by the Airports Authority. The official appointing a member may make an exception if the financial interest is completely disclosed when the member is appointed and the member does not participate in board decisions that directly affect the interest.

(e) CERTAIN ACTIONS TO BE TAKEN BY REGULATION.—An action of the Airports Authority changing, or having the effect of changing, the hours of operation of, or the type of aircraft serving, either of the Metropolitan Washington Airports may be taken only by regulation of the Airports Authority.

(f) ADMINISTRATIVE.—To assist the Secretary in carrying out this chapter, the Secretary may hire 2 staff individuals to be paid by the Airports Authority. The Airports Authority shall provide clerical and support staff that the Secretary may require.

(g) REVIEW OF CONTRACTING PROCEDURES.—The Comptroller General shall review contracts of the Airports Authority to decide whether the contracts were awarded by procedures that follow sound Government contracting principles and comply with section 49104(a)(4) of this title. The Comptroller General shall submit periodic reports of the conclusions reached as a result of the review to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

§ 49107. Federal employees at Metropolitan Washington Airports

(a) LABOR AGREEMENTS.—

(1) The Metropolitan Washington Airports Authority shall adopt all labor agreements that were in effect on June 7, 1987. Unless the parties otherwise agree, the agreements must be renegotiated before June 7, 1992.

(2) Employee protection arrangements made under this section shall ensure, during the 50-year lease term, the continuation of all collective bargaining rights enjoyed by transferred employees retained by the Airports Authority.

(b) CIVIL SERVICE RETIREMENT.—Any Federal employee who transferred to the Airports Authority and who on June 6, 1987, was subject to subchapter III of chapter 83 or chapter 84 of title 5, is subject to subchapter II of chapter 83 or chapter 84 for so long as continually employed by the Airports Authority without a break in service. For purposes of subchapter III of chapter 83 and chapter 84, employment by the Airports Authority without a break in continuity of service is deemed to be employment by the United States Government. The Airports Authority is the employing agency for purposes of subchapter III of chapter 83 and chapter 84 and shall contribute to the Civil Service Retirement and Disability Fund amounts required by subchapter III of chapter 83 and chapter 84.

(c) ACCESS TO RECORDS.—The Airports Authority shall allow representatives of the Secretary of Transportation adequate access to employees and employee records of the Airports Authority when needed to carry out a duty or power related to the period before June 7, 1987. The Secretary shall provide the Airports Authority access to employee records of transferring employees for appropriate purposes.

§ 49111. Relationship to and effect of other laws

(a) SAME POWERS AND RESTRICTIONS UNDER OTHER LAWS.—To ensure that the Metropolitan Washington Airports Authority has the same proprietary powers and is subject to the same restrictions under United States law as any other airport except as otherwise provided in this chapter, during the period that the lease authorized by section 6005 of the Metropolitan Washington Airports Act of 1986 (Public Law 99-500; 100 Stat. 1783-375; Public Law 99-591; 100 Stat. 3341-378) is in effect—

(1) the Metropolitan Washington Airports are deemed to be public airports for purposes of chapter 471 of this title; and (2) the Act of June 29, 1940 (ch. 444, 54 Stat. 686), the First Supplemental Civil Functions Appropriations Act, 1941 (ch. 780, 54 Stat. 1030), and the Act of September 7, 1950 (ch. 905, 64 Stat. 770), do not apply to the operation of the Metropolitan Washington Airports, and the Secretary of Transportation is relieved of all responsibility under those Acts.

(b) INAPPLICABILITY OF CERTAIN LAWS.—The Metropolitan Washington Airports and the Airports Authority are not subject to the requirements of any law solely by reason of the retention of the United States Government of the fee simple title to those airports.

(c) POLICE POWER.—Virginia shall have concurrent police power authority over the Metropolitan Washington Airports, and the courts of Virginia may exercise jurisdiction over Ronald Reagan Washington National Airport.

(d) PLANNING.—

(1) The authority of the National Capital Planning Commission under section 5 of the Act of June 6, 1924 (40 U.S.C. 71d), does not apply to the Airports Authority.

(2) The Airports Authority shall consult with—

(A) the Commission and the Advisory Council on Historic Preservation before undertaking any major alterations to the exterior of the main terminal at Washington Dulles International Airport; and

(B) the Commission before undertaking development that would alter the skyline of Ronald Reagan Washington National Airport when viewed from the opposing shoreline of the Potomac River or from the George Washington Parkway.

[(e) OPERATION LIMITATIONS.—The Administrator of the Federal Aviation Administration may not increase the number of instrument flight rule takeoffs and landings authorized for air carriers by the High Density Rule (14 CFR 93.121 et seq.) at Ronald Reagan Washington National Airport on October 18, 1986, and may not decrease the number of those takeoffs and landings except for reasons of safety.]