

FEDERAL AVIATION ADMINISTRATION REVITALIZATION
ACT OF 1995

MARCH 7, 1996.—Ordered to be printed

Mr. SHUSTER, from the Committee on Transportation and
Infrastructure, submitted the following

REPORT

[To accompany H.R. 2276]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2276) to establish the Federal Aviation Administration as an independent establishment in the executive branch, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Aviation Administration Revitalization Act of 1995”.

SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. ESTABLISHMENT OF FEDERAL AVIATION ADMINISTRATION.

Subtitle II is amended by adding at the end the following:

“CHAPTER 13—FEDERAL AVIATION ADMINISTRATION

“SUBCHAPTER I—GENERAL PROVISIONS

“1301. Definitions.

“SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

“1311. Establishment.

“1312. Federal Aviation Board.

“1313. Officers.

“1314. Personnel management program.

"1315. Management Advisory Committee.

"1316. Authority to carry out certain transferred functions, duties, and powers.

"SUBCHAPTER III—AUTHORITY

"1331. Functions.

"1332. Regulations.

"1333. Finality of decisions; appeals.

"1334. Procurement program.

"1335. Judicial review of actions in carrying out certain transferred duties and powers.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 1301. Definitions

"In this chapter, the following definitions apply:

"(1) ADMINISTRATION.—The term 'Administration' means the Federal Aviation Administration established by section 1311.

"(2) AERONAUTICS, AIR COMMERCE, AND AIR NAVIGATION FACILITY.—The terms 'aeronautics', 'air commerce', and 'air navigation facility' have the same meanings given those terms in section 40102(a) of this title.

"(3) AIRPORT AND AIRWAY TRUST FUND.—The term 'Airport and Airway Trust Fund' means the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986.

"(4) BOARD.—The term 'Board' means the Federal Aviation Board established by section 1312.

"(5) CHIEF EXECUTIVE OFFICER.—The term 'Chief Executive Officer' means the Chief Executive Officer of the Federal Aviation Administration.

"SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

"§ 1311. Establishment

"There is established in the executive branch as an independent establishment the Federal Aviation Administration. The Administration shall succeed the Federal Aviation Administration of the Department of Transportation in existence on the day before the effective date of this section.

"§ 1312. Federal Aviation Board

"(a) IN GENERAL.—There is established a Federal Aviation Board which shall serve as the head of the Administration.

"(b) FUNCTIONS.—

"(1) IN GENERAL.—The Board shall be responsible for the major policy functions of the Administration, including the following:

"(A) The appointment and removal of the Chief Executive Officer and the approval of other senior officers of the Administration under section 1313.

"(B) The approval and submission to Congress of major contracts under section 1334(d).

"(C) The approval of major regulatory actions under section 1332(b).

"(D) The issuance of letters of intent under section 47110(e).

"(E) The approval and submission to Congress of the Administration's plans for personnel management and acquisition management programs under sections 1314 and 1334.

"(F) The approval of the agency's annual budget submission.

"(G) Long-range and strategic planning for the Administration.

"(H) The representation of the Administration at public events to the extent practicable.

"(I) Such other significant actions as the Board considers appropriate.

"(2) NONDELEGABLE FUNCTIONS.—The Board may not delegate the functions described in subparagraphs (A) through (F) of paragraph (1).

"(3) NOT SUBJECT TO ENTITIES CREATED BY EXECUTIVE ORDER.—The Administration shall not submit decisions for the approval of, and shall not be bound by the decisions or recommendations of, any committee, board, or other organization established by Executive order.

"(c) MEMBERSHIP.—

"(1) VOTING MEMBERS.—The Board shall be composed of 3 voting members to be appointed by the President, by and with the advice and consent of the Senate. The initial members of the Board shall be appointed as soon as practicable after the date of the enactment of the Federal Aviation Administration Revitalization Act of 1995.

"(2) NON-VOTING MEMBERS.—The Secretary of Transportation (or the Secretary's designee) and the Secretary of Defense (or the Secretary's designee) shall serve as non-voting members of the Board.

“(d) QUALIFICATIONS.—

“(1) IN GENERAL.—Members appointed to the Board under subsection (c)(1) shall represent the public interest and shall be selected from individuals who are knowledgeable in aviation. Members of the Board may not—

“(A) have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise;

“(B) engage in another business, vocation, or employment; and

“(C) be a member of any organization a substantial part of whose activities are for the purpose of influencing aviation-related legislation.

“(2) DEFINITION.—In this subsection, the term ‘influencing legislation’ has the meaning such term has under section 4911(d) of the Internal Revenue Code of 1986 (26 U.S.C. 4911(d)).

“(e) TERMS.—

“(1) IN GENERAL.—Subject to paragraphs (2) and (3), each member of the Board appointed under subsection (c)(1) shall be appointed for a term of 7 years.

“(2) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed under subsection (c)(1)—

“(A) 1 shall be appointed for a term of 3 years;

“(B) 1 shall be appointed for a term of 5 years; and

“(C) 1 shall be appointed for a term of 7 years.

“(3) VACANCIES.—Any member appointed under subsection (c)(1) 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. A member may serve after the expiration of that member’s term until a successor has taken office.

“(f) REMOVAL.—Members of the Board appointed under subsection (c)(1) may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

“(g) CHAIRPERSON.—The Chairperson of the Board shall be appointed by the President, by and with the advice and consent of the Senate. At the time of such appointment, the President shall establish the term of the Chairperson. Such term may not exceed the term of the Chairperson’s appointment to the Board.

“(h) QUORUM.—Two members of the Board appointed under subsection (c)(1) shall constitute a quorum for carrying out the duties and powers of the Board.

“(i) BASIC PAY.—

“(1) CHAIRPERSON.—The Chairperson of the Board shall be paid at a rate equal to the rate of basic pay payable for level II of the Executive Schedule.

“(2) OTHER MEMBERS.—The other voting members of the Board shall be paid at a rate equal to the rate of basic pay payable for level III of the Executive Schedule.

“§ 1313. Officers

“(a) CHIEF EXECUTIVE OFFICERS.—

“(1) APPOINTMENT.—The Board shall appoint a Chief Executive Officer.

“(2) DUTIES.—The Board shall delegate to the Chief Executive Officer the responsibility for managing the day-to-day operation of the Administration, including (except as provided in section 1312(b)) the hiring and firing of employees, acquisition of facilities and equipment, issuance of rules, airworthiness directives, and advisory circulars, preparation of the annual budget submission, the awarding of grants, and such other functions as the Board considers appropriate.

“(3) REMOVAL.—The Chief Executive Officer shall serve at the pleasure of the Board; except that the Board shall make every effort to ensure stability and continuity in the leadership of the Administration.

“(4) BASIC PAY.—Subject to section 1314(f), the Chief Executive Officer shall be paid at a rate to be determined by the Board.

“(b) OTHER OFFICERS.—Subject to the approval of the Board, the Chief Executive Officer shall appoint other senior officers who shall each have such duties as the Chief Executive Officer may prescribe.

“(c) CHIEF COUNSEL.—Subject to the approval of the Board, the Chief Executive Officer shall appoint a Chief Counsel who shall be the chief legal officer for all legal matters arising from the activities of the Administration.

“(d) INSPECTOR GENERAL.—There shall be in the Administration an Inspector General who shall be appointed in accordance with the Inspector General Act of 1978 (5 U.S.C. App.).

“(e) AIRCRAFT NOISE OMBUDSMAN.—

“(1) ESTABLISHMENT.—There shall be in the Administration an Aircraft Noise Ombudsman who shall be appointed by the Board.

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

- “(A) serve as a liaison with the public on issues regarding aircraft noise; and
- “(B) be consulted when the Administration proposes changes in aircraft routes so as to minimize any increases in aircraft noise over populated areas.

“§ 1314. Personnel management program

- “(a) EXEMPTION FROM CERTAIN PROVISIONS OF TITLE 5, UNITED STATES CODE.—
 - “(1) IN GENERAL.—Except as otherwise provided in this Act, the Administration shall be exempt from parts II and III of title 5.
 - “(2) EFFECTIVE DATE.—The exemption provided by paragraph (1) shall not take effect until the expiration of the 180-period described in subsection (d)(2).
- “(b) DEVELOPMENT OF PERSONNEL MANAGEMENT SYSTEM.—
 - “(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the Federal Aviation Administration Revitalization Act of 1995, the Board shall develop a personnel management system for the Administration.
 - “(2) CONSULTATION AND NEGOTIATION.—In developing the personnel management system, the Board shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and other employees of the Administration and shall consult with nongovernmental experts in personnel management systems. The negotiation with the exclusive bargaining representatives shall be completed on or before the 90th day after the date of enactment referred to in paragraph (1).
 - “(3) MEDIATION.—If the Board does not reach an agreement under paragraph (2) with the exclusive bargaining representatives on any provision of the personnel management system, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Board shall include in the plan to be submitted to Congress under subsection (d) the objections of the exclusive bargaining representatives and the reasons for the objections.
 - “(4) CONTINUATION OF AGREEMENTS.—Collective bargaining agreements and labor management relations under chapter 71 of title 5 shall remain in effect for the Administration until amended or modified under the personnel management system.
 - “(5) GOALS.—The goal of the personnel management system to be developed by the Board under paragraph (1) shall be to provide, consistent with the requirements of this section, the Administration with the ability—
 - “(A) to hire and fire employees as in the private sector;
 - “(B) to promote and pay employees based on merit;
 - “(C) to provide market-based salaries (designed to attract the best qualified employees) within available resources;
 - “(D) to provide pay increases and other incentives to staff facilities that are difficult to staff;
 - “(E) to move personnel to those facilities where they are most needed; and
 - “(F) to provide an opportunity for collective bargaining and other consultation with employees concerning terms and conditions of employment.
 - “(6) SAFEGUARDS.—The personnel management system shall include safeguards to ensure that travel expenses of employees of the Administration (including meal and lodging expenses) are not excessive.
- “(c) EXPERTS EVALUATION.—The arrangements entered into by the Board with the experts consulted by the Board under subsection (b) shall provide for those experts to evaluate the personnel management system developed by the Board and submit to Congress the results of such evaluation before the last day of the 180-day period referred to in subsection (b)(1).
- “(d) NOTICE TO CONGRESS.—
 - “(1) IN GENERAL.—Upon development of the personnel management system under subsection (b), the Board shall submit to Congress a comprehensive plan describing the personnel management system, along with all existing or proposed rules or regulations relevant to the system.
 - “(2) IMPLEMENTATION.—The Board may begin to implement the personnel management system only after the expiration of the 180-day period that begins on the date of submission of the plan to Congress under paragraph (1).
- “(e) EMPLOYEE RIGHTS AND BENEFITS.—Nothing in this section shall be construed as exempting the Administration and employees of the Administration from any of the following provisions of title 5:

“(1) Section 2302(b)(8) (relating to whistleblower protection) and related enforcement provisions.

“(2) Sections 7311(3) and 7311(4) (relating to limitations on the right to strike).

“(3) Sections 2302(b)(1) and 7204 (relating to antidiscrimination) and related enforcement provisions and provisions of law referred to in section 2302(b)(1).

“(4) Chapter 71 (relating to labor-management relations).

“(5) Chapter 73 (relating to suitability, security, and conduct).

“(6) Chapter 81 (relating to compensation for work injuries).

“(7) Chapter 83 (relating to retirement).

“(8) Chapter 84 (relating to the Federal Employees’ Retirement System).

“(9) Chapter 85 (relating to unemployment compensation).

“(10) Chapter 87 (relating to life insurance).

“(11) Chapter 89 (relating to health insurance).

“(f) PAY RESTRICTIONS.—

“(1) MAXIMUM RATE OF PAY.—No officer (including the Chief Executive Officer) or employee of the Administration may receive annual pay in excess of the annual rate of basic pay payable for level II of the Executive Schedule unless the Board provides written notification to Congress of such higher rate of pay and 30 days (excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) have elapsed since the date of such notification.

“(2) PERCENTAGE OF EMPLOYEES ABOVE LEVEL ES-1 OF SENIOR EXECUTIVE SERVICE.—Not more than 0.35 percent of the officers (including members of the Board and the Chief Executive Officer) and employees of the Administration may be paid at a rate which equals or exceeds the rate payable for level ES-1 of the Senior Executive Service.

“(3) RAISES AND BONUSES.—No officer (including the Chief Executive Officer) or employee of the Administration who is paid at a rate which exceeds the rate payable for level ES-1 of the Senior Executive Service may receive in a calendar year raises or bonuses (excluding cost-of-living increases and increases that are the results of a promotion) that total more than 15 percent of the annual rate of pay of the officer or employee on the day before the first day of such calendar year.

“(g) CONTRACTS BETWEEN FAA AND FORMER FAA EMPLOYEES.—Before the Administration may enter into a contract with an individual who has been employed by the Administration at any time during the 2-year period preceding the expected date of entry into the contract or with a corporation, partnership, or other entity in which such a former employee is a partner, principal officer, or majority stockholder or which is otherwise controlled or predominantly staffed by 1 or more of such former employees, the Board must first approve of the entry into the contract as being essential to the mission of the Administration.

“§ 1315. Management Advisory Committee

“(a) ESTABLISHMENT.—There is established an advisory committee which shall be known as the Federal Aviation Management Advisory Committee (hereinafter in this section referred to as the ‘Management Advisory Committee’).

“(b) MEMBERSHIP.—The Management Advisory Committee shall consist of 17 members, who shall be appointed as follows:

“(1) 1 member appointed by the Speaker of the House of Representatives;

“(2) 1 member appointed by the minority leader of the House of Representatives;

“(3) 1 member appointed by the majority leader of the Senate;

“(4) 1 member appointed by the minority leader of the Senate;

“(5) 13 members appointed by the Board 12 of whom shall represent 1 of the following interests:

“(A) Airline passengers.

“(B) General aviation and sport aviation.

“(C) Business aviation.

“(D) Hub airports.

“(E) Non-hub and general aviation airports.

“(F) Major airlines and national airlines.

“(G) Regional airlines and air taxis.

“(H) Cargo airlines and charter airlines.

“(I) Aircraft manufacturers.

“(J) Airline employees.

“(K) Federal Aviation Administration employees.

“(L) State aviation officials.

“(c) FUNCTIONS.—The Management Advisory Committee shall provide advice and counsel to the Administration on issues which affect or are affected by the operations of the Administration. The Management Advisory Committee shall hold quarterly meetings. The Administration shall give the Management Advisory Committee access to internal documents (other than proprietary information and documents relating to on-going litigation) and personnel of the Administration. The Management Advisory Committee shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

“(d) CHAIRMAN.—The Management Advisory Committee shall elect a chairman of the Management Advisory Committee from among its members.

“(e) TERMS OF MEMBERS.—

“(1) MEMBERS APPOINTED BY CONGRESS.—Members appointed under subsections (b)(1) through (b)(4) shall be appointed for a term of 2 years.

“(2) MEMBERS APPOINTED BY THE BOARD.—Members appointed under subsection (b)(5) shall be appointed for a term of 3 years.

“(f) TRAVEL AND PER DIEM.—Each member of the Management Advisory Committee 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.

“(g) UTILIZATION OF PERSONNEL FROM FAA.—The Administration shall make available to the Management Advisory Committee such staff, information, and administrative services and assistance as may reasonably be required to enable the Management Advisory Committee to carry out its responsibilities under this section.

“(h) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The Management Advisory Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.); except that section 14(a)(2)(B) of such Act (relating to the termination of advisory committees) shall not apply to the Committee.

“§ 1316. Authority to carry out certain transferred functions, duties, and powers

“Except as otherwise provided in this chapter, in carrying out a function, duty, or power transferred under the Federal Aviation Administration Revitalization Act of 1995 (including the amendments made by such Act), the Administration has the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the function, duty, or power immediately before the transfer. An action of the Administration in carrying out the function, duty, or power has the same effect as when carried out by the department, agency, or instrumentality.

“SUBCHAPTER III—AUTHORITY

“§ 1331. Functions

“(a) IN GENERAL.—The functions of the Federal Aviation Administration shall be all functions vested in the Board, the Chief Executive Officer, or the Federal Aviation Administration by this title or by law enacted after the date of the enactment of this chapter. Such functions include functions of the Administration, the Board, and the Chief Executive Officer under the following provisions of this title:

- “(1) Section 308(b).
- “(2) Section 353.
- “(3) Section 1114(d).
- “(4) Section 1131(c).
- “(5) Subsections (c) and (d) of section 1132.
- “(6) Section 1135.
- “(7) Section 1153(c).
- “(8) Subsections (a), (c), and (d) of section 40101.
- “(9) Section 40102(a)(8).
- “(10) Section 40103(b).
- “(11) Section 40104.
- “(12) Section 40105.
- “(13) Section 40106(a).
- “(14) Section 40107.
- “(15) Section 40108.
- “(16) Section 40109(b).
- “(17) Subsections (a) and (b) of section 40110.
- “(18) Section 40111.
- “(19) Section 40112.
- “(20) Section 40113.

- “(21) Section 40114.
- “(22) Section 40115.
- “(23) Section 40117.
- “(24) Section 40119.
- “(25) Section 41714.
- “(26) Chapter 441.
- “(27) Chapter 443.
- “(28) Chapter 445.
- “(29) Chapter 447.
- “(30) Chapter 449.
- “(31) Chapter 451.
- “(32) Chapter 453.
- “(33) Chapter 461.
- “(34) Section 46301.
- “(35) Section 46302.
- “(36) Section 46303.
- “(37) Section 46304.
- “(38) Section 46306.
- “(39) Section 46308.
- “(40) Section 46311.
- “(41) Section 46313.
- “(42) Section 46315.
- “(43) Section 46316.
- “(44) Chapter 465.
- “(45) Chapter 471.
- “(46) Chapter 473.
- “(47) Chapter 475.
- “(48) Chapter 481.
- “(49) Chapter 491.

“(b) INCIDENTAL FUNCTIONS.—In addition, the functions of the Administration shall include all functions of the Department of Transportation on the effective date of this section which the Administration determines are incidental to, helpful to, or necessary for the performance of the functions referred to in subsection (a) or which relate primarily to those functions.

“§ 1332. Regulations

“(a) GENERAL AUTHORITY.—The Administration may issue, rescind, and amend such regulations as are necessary to carry out its functions.

“(b) APPROVAL OF BOARD.—

“(1) GENERAL RULE.—The Administration may only issue a proposed regulation, final regulation, airworthiness directive, or advisory circular that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$10,000,000 or more (adjusted annually for inflation) in any 1 year if the Board first approves of the issuance of such regulation, directive, or circular.

“(2) EMERGENCY ACTION.—In an emergency, the Chief Executive Officer may issue a regulation, directive, or circular described in paragraph (1) without prior Board approval but subject to Board ratification following issuance.

“(c) REVIEW BY DOT.—

“(1) SUBMISSION.—Before the Administration issues any proposed or final regulation—

“(A) the Administration shall submit a copy of the regulation to the Secretary of Transportation;

“(B) the Administration shall provide the Secretary with a period of 5 days (excluding Saturdays, Sundays, and holidays) beginning on the date of such submission to determine whether or not the regulation is likely to have a significant effect on other modes of transportation in the national transportation system or the Secretary’s aviation responsibilities, including national defense responsibilities; and

“(C) if the Secretary determines, before the last day of such 5-day period, that the regulation is likely to have such a significant effect, the Administration shall provide the Secretary with an additional period of 45 days to assess the effect of the regulation on other modes of transportation in the national transportation system and the Secretary’s aviation responsibilities, including national defense responsibilities.

“(2) RECOMMENDATIONS.—The Secretary may recommend to the Administration modifications of a proposed or final regulation necessary to minimize the adverse effect of such regulation on other modes of transportation in the na-

tional transportation system or the Secretary's aviation responsibilities, including national defense responsibilities. The Administration may make any modifications recommended by the Secretary. If the Administration does not make a modification recommended by the Secretary, the Administration shall include in the publication of the proposed or final regulation a description of the recommended modification and the reasons for not making the modification.

“(3) EXCEPTIONS.—This subsection shall not apply to the following types of regulations:

- “(A) Regulations pertaining to agency organization, procedure, or practice.
- “(B) Regulations pertaining solely to navigational aids.
- “(C) Regulations pertaining solely to airspace designations and configurations.
- “(D) Regulations pertaining solely to standard instrument approach procedures.
- “(E) Regulations pertaining solely to aircraft design.
- “(F) Regulations pertaining to the personnel management system developed under section 1314.
- “(G) Regulations pertaining to the acquisition management system developed under section 1334.

“(4) EMERGENCY ACTION.—In an emergency, a regulation may take effect for the duration of the emergency and before the Secretary completes review of the regulation under this subsection, as determined necessary by the Chief Executive Officer or the Board.

“(d) AUTOMATIC TERMINATION DATE.—Any regulation issued by the Administration after the effective date of this section which is likely to result 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) in any 1 year must contain an automatic termination date. The termination date shall also apply to any advisory circular issued by the Administration and pertaining solely to such regulation.

“(e) EMERGENCY DEFINED.—In this section, the term ‘emergency’ means a situation where there is good cause for finding that consideration by the Board or by the Department of Transportation is impracticable or contrary to the public interest.

“§ 1333. Finality of decisions; appeals

“Decisions of the Administration made pursuant to the exercise of the functions enumerated in subtitle VII of this title shall be administratively final, and appeals as currently authorized by law shall be taken directly to the National Transportation Safety Board or to any court of competent jurisdiction, as appropriate.

“§ 1334. Procurement program

“(a) EXEMPTION FROM PROCUREMENT LAWS.—

“(1) IN GENERAL.—The following laws and regulations shall not apply to the Federal Aviation Administration:

- “(A) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251–266).
- “(B) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).
- “(C) The Federal Acquisition Streamlining Act of 1994 (Public Law 103–355).
- “(D) The Small Business Act (15 U.S.C. 631 et seq.); except that the Administration shall provide reasonable opportunities to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to be awarded contracts.
- “(E) Subchapter V of chapter 35 of title 31 (relating to the procurement protest system).
- “(F) The Brooks Automatic Data Processing Act (40 U.S.C. 759).
- “(G) Section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).
- “(H) The Federal Acquisition Regulation and any laws not listed in subparagraphs (A) through (G) providing authority to promulgate regulations in the Federal Acquisition Regulation.

“(2) EFFECTIVE DATE.—The exemption provided by paragraph (1) shall not take effect until the expiration of the 180-day period referred to in subsection (c)(2).

“(b) DEVELOPMENT OF ACQUISITION MANAGEMENT SYSTEM.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of the Federal Aviation Administration Revitalization Act of 1995, the Federal Aviation Board, in consultation with such nongovernmental experts in acquisi-

tion management systems as the Board may employ, shall develop an acquisition management system for the Administration.

“(2) CONSULTATION.—In developing the acquisition management system, the Board shall consult nongovernmental experts in acquisition management systems.

“(3) GOALS.—The acquisition management system to be developed by the Board under paragraph (1) shall be designed—

“(A) to ensure that services are procured and new equipment is installed and certified as quickly as possible without sacrificing principles of fairness and protection against waste, fraud, and abuse; and

“(B) to ensure a common interoperable air traffic control system with the military.

“(4) EXPERTS EVALUATION.—The arrangements entered into by the Board with the experts consulted by the Board under paragraph (2) shall provide for those experts to evaluate the acquisition management system developed by the Board and submit to Congress the results of such evaluation before the last day of the 180-day period referred to in paragraph (1).

“(c) NOTICE TO CONGRESS.—

“(1) IN GENERAL.—Upon the development of the acquisition management system, the Board shall submit a comprehensive plan describing the acquisition management system to Congress, along with all existing or proposed rules or regulations relevant to the system.

“(2) IMPLEMENTATION.—The Administration may begin to implement the acquisition management system only after the expiration of the 180-day period that begins on the date on which the plan is submitted to Congress under paragraph (1). The acquisition management system shall apply to contracts entered into after the expiration of such 180-day period.

“(d) CONTRACTS.—

“(1) APPROVAL OF CERTAIN CONTRACTS.—The Administration may only enter into a contract that has a total contract value, including all options, of an amount greater than \$100,000,000 if the Board first approves of the entry into the contract.

“(2) NOTICE TO CONGRESS OF CERTAIN CONTRACTS.—In addition to complying with paragraph (1), the Administration may only enter into a contract that has a total contract value, including all options, of an amount greater than \$250,000,000 if the Board provides written notice to Congress of the proposed entry into the contract, together with a description of the contract and at least 30 calendar days elapse after the date of such notification.

“§ 1335. Judicial review of actions in carrying out certain transferred duties and powers

“(a) JUDICIAL REVIEW.—An action of the Administration in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670) and under the Federal Aviation Administration Revitalization Act of 1995 and an action of the Administrator of the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by the Department of Transportation Act and transferred to the Administration by the Federal Aviation Administration Revitalization Act of 1995 may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer.

“(b) APPLICATION OF PROCEDURAL REQUIREMENTS.—A statutory requirement related to notice, an opportunity for a hearing, action on the record, or administrative review that applied to a duty or power transferred by the Acts referred to in subsection (a) applies to the Administration when carrying out the duty or power.”.

SEC. 4. BUDGET OF ADMINISTRATION.

(a) IN GENERAL.—Section 48109 of title 49, United States Code, is amended to read as follows:

“§ 48109. Budget information and legislative recommendations and comments

“(a) PREPARATION.—Subject to approval of the Federal Aviation Board, the Chief Executive Officer shall prepare an annual budget for the Administration.

“(b) SUBMISSION OF BUDGET TO DOT.—

“(1) IN GENERAL.—At the same time that agencies of the Department of Transportation having jurisdiction over other modes of transportation are required to submit their budgets to the Secretary of Transportation, the Administration shall submit to the Secretary the budget prepared by the Administration

and approved by the Board. The Secretary shall review the budget and may recommend to the Administration modifications in the budget necessary to ensure that the budget is consistent with the needs of the national transportation system and the Secretary's aviation responsibilities. The Administration may modify the budget to adopt any recommendation made by the Secretary.

"(2) OPPORTUNITY FOR COMMENT.—At least 30 days before submitting a budget to the Secretary under paragraph (1), the Administration shall submit a draft of the budget to the Management Advisory Committee established by section 1315 for comment.

"(c) SUBMISSION OF BUDGET TO CONGRESS.—

"(1) IN GENERAL.—When the Board submits to the President or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or section 48102, the Board concurrently shall submit a copy of the information, recommendation, or comment to the Speaker of the House of Representatives, the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

"(2) SPECIAL RULE WITH RESPECT TO ANNUAL BUDGETS.—The annual budget of the Administration submitted to Congress shall include—

"(A) budget requests and Airport and Airway Trust Fund estimates for the ensuing 4 fiscal years;

"(B) a numerical ranking, by degree of importance to the national airspace system, of the Administration's requests for funding of air traffic control modernization projects under section 48101;

"(C) the total number of man-years of direct effort the Administration estimates it will use under support service contracts (including professional, technical, engineering, site preparation, and installation and other services comparable to those performed by Government employees, but not including maintenance as part of a supply contract, janitorial, research and development, or construction services or services incidental to supply contracts) during the fiscal year for which the budget is being submitted;

"(D) any modifications made by the Administration under subsection (b) with respect to the budget; and

"(E) if the Administration does not adopt a recommendation made by the Secretary under subsection (b), a description of the recommendation and the reasons for not adopting the recommendation.

Subparagraph (C) shall take effect with the budget submission for fiscal year 1997. The estimate under subparagraph (C) for such budget submission shall include for comparison the estimated total number of man-years of direct effort the Administration used under such support service contracts in each of fiscal years 1992 and 1995."

(b) CONFORMING AMENDMENT.—The analysis for chapter 481 is amended by striking the item relating to section 48109 and inserting the following:

"48109. Budget information and legislative recommendations and comments."

SEC. 5. COST-BENEFIT ANALYSIS FOR MINIMUM SAFETY STANDARDS.

Section 44701 is amended by adding at the end the following:

"(f) COST-BENEFIT ANALYSIS.—

"(1) IN GENERAL.—For any regulation or standard to be issued under subsection (a) or (b) that is likely to result in annualized compliance costs in excess of \$25,000,000, the Administration shall, in addition to other requirements in law, identify and publish together with such regulation or standard the following:

"(A) The benefits of the regulation or standard, quantified where appropriate and feasible, and otherwise qualitatively described, including in appropriate cases, the nature and number of deaths or injuries that the regulation or standard is designed to prevent.

"(B) The approximate number of aircraft, airports, airmen, or cabin crew affected by the regulation or standard.

"(C) The probable cost of fulfilling the requirements of the regulation or standard, quantified where appropriate and feasible, and otherwise qualitatively described, including in appropriate cases any adverse effects on competition or disruption or dislocation of air service or other commercial practices engaged in by the entities affected by such requirements.

"(D) Alternative means of achieving the objective of the regulation or standard while minimizing the costs, adverse effects on competition, and

the disruption or dislocation of air service or the commercial practices affected by the regulation or standard and a statement as to why the Administration chose the regulation or standard adopted in preference to the alternatives considered.

“(2) EMERGENCY.—In the case of an emergency, the Chief Executive Officer or the Board may suspend the application of this subsection for the duration of the emergency.

“(3) NONAPPLICABILITY TO ADVISORY CIRCULARS.—This subsection shall not apply to advisory circulars.”.

SEC. 6. BUDGETARY TREATMENT OF TRUST FUND.

(a) IN GENERAL.—Chapter 481 is amended by adding at the end the following:

“§ 48111. Budgetary treatment of Airport and Airway Trust Fund

“The receipts and disbursements of the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502)—

“(1) shall not be included in the totals of—

“(A) the budget of the United States Government as submitted by the President, or

“(B) the congressional budget (including allocations of budget authority and outlays provided therein),

“(2) shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, and

“(3) shall be exempt from any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

“§ 48112. Safeguards against deficit spending

“(a) ESTIMATES OF UNFUNDED AVIATION AUTHORIZATIONS AND NET AVIATION RECEIPTS.—Not later than March 31 of each year, the Federal Aviation Administration, in consultation with the Secretary of the Treasury, shall estimate—

“(1) the amount which would (but for this section) be the unfunded aviation authorizations at the close of the first fiscal year that begins after that March 31, and

“(2) the net aviation receipts at the close of such fiscal year.

“(b) PROCEDURE OF EXCESS UNFUNDED AVIATION AUTHORIZATIONS.—If the Administration determines for any fiscal year that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Board shall determine the amount of such excess.

“(c) ADJUSTMENT OF AUTHORIZATIONS IF UNFUNDED AUTHORIZATIONS EXCEED RECEIPTS.—

“(1) DETERMINATION OF PERCENTAGE.—If the Administration determines that there is an excess referred to in subsection (b) for a fiscal year, the Administration shall determine the percentage which—

“(A) such excess, is of

“(B) the total of the amounts authorized to be appropriated from the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) for the next fiscal year.

“(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Administration determines a percentage under paragraph (1), each amount authorized to be appropriated from the Airport and Airway Trust Fund for the next fiscal year shall be reduced by such percentage.

“(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—

“(1) ADJUSTMENT OF AUTHORIZATIONS.—If, after a reduction has been made under subsection (c)(2), the Administration determines that the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2) or that the excess referred to in subsection (b) is less than the amount previously determined, each amount authorized to be appropriated that was reduced under subsection (c)(2) shall be increased, by an equal percentage, to the extent the Administration determines that it may be so increased without causing the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2) (but not by more than the amount of the reduction).

“(2) APPORTIONMENT.—The Administration shall apportion amounts made available for apportionment by paragraph (1).

“(3) PERIOD OF AVAILABILITY.—Any funds apportioned under paragraph (2) shall remain available for the period for which they would be available if such apportionment took effect with the fiscal year in which they are apportioned under paragraph (2).

“(e) REPORTS.—Any estimate under subsection (a) and any determination under subsection (b), (c), or (d) shall be reported by the Administration to Congress.

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

“(1) NET AVIATION RECEIPTS.—The term ‘net aviation receipts’ means, with respect to any period, the excess of—

“(A) the receipts (including interest) of the Airport and Airway Trust Fund during such period, over

“(B) the amounts to be transferred during such period from the Airport and Airway Trust Fund under section 9502(d) of the Internal Revenue Code of 1986 (other than paragraph (1) thereof).

“(2) UNFUNDED AVIATION AUTHORIZATIONS.—The term ‘unfunded aviation authorization’ means, at any time, the excess (if any) of—

“(A) the total amount authorized to be appropriated from the Airport and Airway Trust Fund which has not been appropriated, over

“(B) the amount available in the Airport and Airway Trust Fund at such time to make such appropriation (after all other unliquidated obligations at such time which are payable from the Airport and Airway Trust Fund have been liquidated).”.

(b) CONFORMING AMENDMENT.—The analysis for chapter 481 of title 49, United States Code, is amended by adding at the end the following:

“48111. Budgetary treatment of Airport and Airway Trust Fund.

“48112. Safeguards against deficit spending.”.

(c) APPLICABILITY.—This section (including the amendments made by this section) shall apply to fiscal years beginning after September 30, 1995.

SEC. 7. AMENDMENT TO INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1) by inserting “or Federal Aviation Administration” after “Community Service”; and

(2) in paragraph (2) by inserting “the Federal Aviation Administration,” after “United States Information Agency,”.

SEC. 8. PASSENGER FACILITY CHARGES.

(a) FEE RETAINED BY AIRLINES.—

(1) DEADLINE FOR RESPONSE TO PETITION.—Not later than 75 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall issue a notice of a proposed rulemaking or a denial of the petition in Docket 27791 of the Federal Aviation Administration (relating to increasing the fee that airlines retain in collecting passenger facility charges).

(2) EFFECT OF FAILURE TO RESPOND.—If the Administrator does not respond to the petition in the docket referred to in paragraph (1) as required by paragraph (1), the fee increase sought by the petitioner in such docket shall become effective after the 75th day referred to in paragraph (1) until such date as the Administrator responds to such petition.

(b) REVIEW OF PROGRAM.—The Secretary of Transportation shall complete the review required by section 121 of the Federal Aviation Administration Reauthorization Act of 1994 (108 Stat. 1581) not later than the 75th day following the date of the enactment of this Act.

SEC. 9. SELECT PANEL TO REVIEW INNOVATIVE FUNDING MECHANISMS.

(a) ESTABLISHMENT.—The Federal Aviation Board shall establish a select panel to review and report to Congress regarding innovative financing mechanisms for ensuring adequate funding for existing and future aviation infrastructure needs and for funding the operations of the Federal Aviation Administration in a manner that would provide for future growth in the Nation's air traffic system, improve the management and performance of the air traffic control system, and make the Administration more efficient and effective. The financing mechanisms to be reviewed shall include, but not be limited to, loan guarantees, financial partnerships with for-profit private sector entities, multi-year appropriations, revolving loan funds, mandatory spending authority, authority to borrow, and restructured grant programs.

(b) APPOINTMENT OF MEMBERS.—Not later than 90 days after the date of the appointment of at least 2 members of the Board, the Board shall appoint members to the panel established under this section. Such members shall consist of appropriate Federal Government officials and representatives of the aviation industry, Administration employees, the financial community, and State and local governments.

(c) TRAVEL AND PER DIEM.—Each member of the panel established under this section shall be paid actual travel expenses, and per diem in lieu of subsistence ex-

penses when away from his or her usual place of residence, in accordance with section 5703 of title 5, United States Code.

(d) **APPLICABILITY OF FEDERAL ADVISORY COMMITTEES ACT.**—The select panel established under this section shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(e) **REPORT.**—Not later than 1 year after the date of the appointment of the last member to the panel under subsection (b), the panel shall submit to Congress and the Federal Aviation Administration a report on the results of the review conducted under this section.

SEC. 10. TRANSFER OF PERSONNEL, PROPERTY, RECORDS, AND FUNDS.

So much of the personnel, property, records, funds, accounts, and unexpended balances of appropriations, allocations, and other funds of the Department of Transportation and the Federal Aviation Administration as are employed, used, held, available, or to be made available, in connection with the functions which under this Act (including the amendments made by this Act) are made functions of the Federal Aviation Administration established by section 1311 of title 49, United States Code, are transferred to the Federal Aviation Administration.

SEC. 11. SAVINGS PROVISIONS.

(a) **ORDERS, REGULATIONS, CONTRACTS, AND CERTIFICATES.**—All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President or any Federal department or agency or official thereof or by a court of competent jurisdiction, on or after the effective date of this section in regard to functions which under this Act (including the amendments made by this Act) are made functions of the Federal Aviation Administration established by section 1311 of title 49, United States Code; and

(2) which are in effect on the effective date of this section, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Federal Aviation Board, or other authorized officials, by a court of competent jurisdiction, or by operation of law.

(b) **PROCEEDINGS AND APPLICATIONS.**—The provisions of this Act (including the amendments made by this Act) shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending on the effective date of this section, and such proceedings and applications, to the extent that they relate to functions under this Act that are made functions of the Administration, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(c) **SUITS.**—

(1) **EFFECT ON PENDING SUITS.**—The provisions of this Act (including the amendments made by this Act) shall not affect suits commenced prior to the effective date of this section.

(2) **PROCEDURES.**—In all suits commenced prior to the effective date of this section, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) **ADMINISTRATOR.**—If the Chief Executive Officer of the Federal Aviation Administration is not appointed by the Federal Aviation Board on the effective date of this section, the person serving as the Administrator of the Federal Aviation Administration on the day before such effective date shall act as the Chief Executive Officer until the Chief Executive Officer is appointed as provided in section 1313 of title 49, United States Code. While so acting, such person shall receive compensation at the rate such person was receiving on the day before such effective date.

(e) **AGREEMENTS WITH DEPARTMENT OF DEFENSE.**—Any agreement between the Federal Aviation Administration and the Department of Defense in effect on the day before the date of the enactment of this Act shall remain in effect until terminated in accordance with the terms of such agreement.

SEC. 12. LAWS AND REGULATIONS.

Except to the extent otherwise provided in this Act (including the amendments made by this Act), all laws, rules, regulations, and executive orders in effect and applicable to the Federal Aviation Administration of the Department of Transportation and to the Administrator of such Administration on the day before the effective date of this Act shall, on and after such effective date, be applicable to the Federal Aviation Administration and the Federal Aviation Board established by this Act (including the amendments made by this Act), until such law, rule, regulation, or executive order is repealed or otherwise modified or amended.

SEC. 13. TERMINATION OF FAA OF DOT.

The Federal Aviation Administration of the Department of Transportation is terminated.

SEC. 14. CORRESPONDING REDUCTIONS IN OFFICE OF SECRETARY.

The Secretary of Transportation shall terminate 200 employee positions in the Office of the Secretary to reflect reductions in the aviation responsibilities in the Office of the Secretary by enactment of this Act.

SEC. 15. CONFORMING AMENDMENTS.

(a) **FEDERAL AVIATION ADMINISTRATION IN DOT.**—

(1) **IN GENERAL.**—Subject to paragraph (2), subsections (a) through (j) of section 106 are repealed.

(2) **TECHNICAL ADJUSTMENTS.**—

(A) **IN GENERAL.**—Subchapter II of chapter 13 (as inserted by section 3 of this Act) is amended—

(i) by adding at the end the following new section heading:

“§ 1317. Civil Aeromedical Institute”; and

(ii) by inserting the text of section 106(j) as an undesignated paragraph under such section heading.

(B) **CHAPTER ANALYSIS AMENDMENT.**—The analysis for such chapter is amended by adding after the item relating to section 1316 the following:

“1317. Civil Aeromedical Institute.”.

(3) **AUTHORIZATION OF APPROPRIATIONS FOR FAA OPERATIONS.**—

(A) **FISCAL YEAR 1996.**—Section 106(k) is amended by—

(i) striking “(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—”; and

(ii) by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”.

(B) **CONFORMING AMENDMENT.**—Effective September 30, 1996, section 106, as amended by this subsection, and the item relating to section 106 in the analysis for chapter 1 are repealed.

(b) **GENERAL DUTIES AND POWERS OF THE DEPARTMENT OF TRANSPORTATION.**—

(1) **LEADERSHIP, CONSULTATION, AND COOPERATION.**—Section 301(6) is amended by striking “, with particular attention to aircraft noise, and including” and inserting “and”.

(2) **POLICY ON LANDS, WILDLIFE AND WATERFOWL REFUGES, AND HISTORIC SITES.**—Section 303 is amended—

(A) in subsection (b) by inserting “and the Federal Aviation Administration” after “of Transportation”; and

(B) in subsection (c) by inserting “and Administration” after “Secretary”.

(3) **REPORTS.**—Section 308(b) is amended—

(A) by striking “Secretary” the 1st place it appears and inserting “Federal Aviation Board”;

(B) by striking “Department” and inserting “Federal Aviation Administration”; and

(C) by striking “Secretary” the 2nd and 3rd places it appears and inserting “Board”.

(4) **MEMBERS OF THE ARMED FORCES.**—Section 324 is amended—

(A) by striking subsection (a) and inserting the following:

“(a) **IN GENERAL.**—

“(1) **FAA.**—The Federal Aviation Administration, to ensure that national defense interests are safeguarded properly and that the Administration is advised properly about the needs and special problems of the armed forces, shall provide for participation of members of the armed forces in carrying out the duties and powers of the Administration related to the regulation and protection of air traf-

fic, including providing for, and research and development of, air navigation facilities, and the allocation of airspace.

“(2) SECRETARY OF TRANSPORTATION.—The Secretary of Transportation may provide for participation of members of the armed forces in carrying out other duties and powers of the Secretary.”; and

(B) in subsection (d) by inserting after “Transportation” each place it appears the following: “or Federal Aviation Administration”.

(5) JUDICIAL REVIEW.—Section 351(a) is amended—

(A) by striking “An” and inserting “Subject to section 1335, an”; and

(B) by striking “, the Federal Highway Administration, or the Federal Aviation Administration” and inserting “or the Federal Highway Administration”.

(6) AUTHORITY TO CARRY OUT CERTAIN TRANSFERRED DUTIES AND POWERS.—Section 352 is amended by striking “, the Federal Highway Administration, and the Federal Aviation Administration” and inserting “and the Federal Highway Administration”.

(7) TOXICOLOGICAL TESTING.—Section 353(a) is amended—

(A) by inserting before “conducts” the following: “or the Federal Aviation Administration”;

(B) by inserting after “Department” the second place it appears “or Administration”; and

(C) by inserting before “shall” each place it appears “or Chief Executive Officer of the Administration”.

(c) FUNCTIONS OF FAA.—

(1) NATIONAL TRANSPORTATION SAFETY BOARD.—

(A) DISCLOSURE OF DRUG TEST INFORMATION TO NTSB.—Section 1114(d)(1) is amended—

(i) by inserting before “shall” the following: “and the Federal Aviation Administration”;

(ii) in subparagraph (A) by inserting before “under post-accident” the following: “or the Administration”; and

(iii) in subparagraph (A) by inserting before “, when” the following: “or the Administration”.

(B) INVESTIGATION OF CERTAIN ACCIDENTS.—Section 1131(c)(1) is amended by inserting “or the Federal Aviation Administration, as the case may be,” after “Transportation”.

(C) CIVIL AIRCRAFT ACCIDENT INVESTIGATIONS.—Section 1132 is amended—

(i) in the heading to subsection (c) by striking “SECRETARY” and inserting “FEDERAL AVIATION ADMINISTRATION”;

(ii) in subsection (c) by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”;

(iii) in subsection (c) by striking “Secretary” the 2nd and 3rd places it appears and inserting “Administration”; and

(iv) in subsection (d) by striking “Secretary” each place it appears and inserting “Administration”.

(D) REVIEW OF OTHER AGENCY ACTION.—Section 1133(1) is amended by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”.

(E) RESPONSES TO SAFETY RECOMMENDATIONS.—Section 1135 is amended—

(i) by striking the section heading and inserting the following:

“§ 1135. DOT’s and FAA’s responses to safety recommendations”;

(ii) in subsection (a) by inserting after “Secretary of Transportation” the following: “or the Federal Aviation Administration”;

(iii) in subsection (a) by inserting “or the Administration” after “Secretary” the 2nd and 3rd places it appears;

(iv) in subsection (d) by striking “shall” and inserting “and the Administration shall each”;

(v) in subsection (d) by inserting before “during” the following: “or Administration”; and

(vi) in subsection (d) by inserting after “Secretary’s” the following: “or Administration’s”.

(F) JUDICIAL REVIEW.—Section 1153(c) is amended—

(i) in the subsection heading by striking “ADMINISTRATOR” and inserting “ADMINISTRATION”;

(ii) by striking “the Administrator of”; and

(iii) by striking “Administrator” the second and third places it appears and inserting “Administration”.

(G) CONFORMING AMENDMENT.—The analysis to chapter 11 is amended by striking the item relating to section 1135 and inserting the following:

“1135. DOT’s and FAA’s responses to safety recommendations.”.

(2) INTERMODAL TRANSPORTATION ADVISORY BOARD.—Section 5502(b) is amended to read as follows:

“(b) MEMBERSHIP.—The Board consists of—

“(1) the Secretary, who serves as chairman;

“(2) the Chief Executive Officer of the Federal Aviation Administration or the Chief Executive Officer’s designee; and

“(3) the Administrator, or the Administrator’s designee, of—

“(A) the Federal Highway Administration;

“(B) the Maritime Administration;

“(C) the Federal Railroad Administration; and

“(D) the Federal Transit Administration.”.

(3) GENERAL PROVISIONS RELATING TO AIR COMMERCE AND SAFETY.—

(A) POLICY.—Section 40101 is amended—

(i) in subsection (a) by inserting after “Secretary of Transportation” the following: “and the Federal Aviation Administration”;

(ii) in subsection (c) by striking “Administrator of the”; and

(iii) in subsection (d) by striking “Administrator” and inserting “Administration”.

(B) DEFINITIONS.—Section 40102(a) is amended—

(i) in paragraphs (8)(B) and (37) by striking “the Administrator of”;

(ii) in paragraph (20) by striking “Administrator” and inserting “Federal Aviation Administration”; and

(iii) by moving the second sentence of paragraph (37) 2 ems to the left.

(C) SOVEREIGNTY AND USE OF AIR SPACE.—Section 40103 is amended—

(i) in subsection (a)(2) by inserting after “Secretary of Transportation” the following: “and the Federal Aviation Administration”; and

(ii) in subsection (b)—

(I) by striking “Administrator of the”; and

(II) by striking “Administrator” each place it appears after the first and inserting “Administration”.

(D) PROMOTION OF CIVIL AERONAUTICS AND AIR COMMERCE.—Section 40104 is amended—

(i) in subsection (a) by striking “Administrator of the”;

(ii) in subsection (a) by striking “Administrator” each place it appears after the first and inserting “Administration”; and

(iii) in subsection (b) by striking “Secretary of Transportation” and inserting “Administration”.

(E) INTERNATIONAL NEGOTIATIONS, AGREEMENTS, AND OBLIGATIONS.—Section 40105 is amended—

(i) in subsection (a) by striking “Administrator of the”;

(ii) in the heading to subsection (b) by striking “ADMINISTRATOR” and inserting “ADMINISTRATION”;

(iii) in subsection (b)(1) by striking “Administrator” and inserting “Administration”; and

(iv) in subsection (c)(1) by inserting before the semicolon “and the Federal Aviation Administration”.

(F) EMERGENCY POWERS.—Section 40106 is amended—

(i) in subsection (a)—

(I) in paragraph (1) by striking “Administrator of the”; and

(II) in paragraph (2) by striking “Administrator” and inserting “Administration”; and

(ii) in subsection (b)(2) by inserting after “Secretary of Transportation” the following: “or the Federal Aviation Administration”.

(G) PRESIDENTIAL TRANSFERS.—Section 40107 is amended—

(i) in subsection (a) by striking “Administrator of the”; and

(ii) by striking “Administrator” each place it appears after the first and inserting “Administration”.

(H) TRAINING SCHOOLS.—Section 40108 is amended—

(i) in subsection (a) by striking “Administrator of the”; and

(ii) by striking “Administrator” each place it appears after the first and inserting “Administration”.

- (I) AUTHORITY TO EXEMPT.—Section 40109(b) is amended—
- (i) by striking “Administrator of the”; and
 - (ii) by striking “Administrator” the second place it appears and inserting “Administration”.
- (J) GENERAL PROCUREMENT AUTHORITY.—Section 40110 is amended—
- (i) in subsection (a) by striking “Administrator of the”;
 - (ii) in subsection (a)(1) by striking “Administrator” and inserting “Administration”;
 - (iii) in subsection (b) by striking “Administrator of” the first place it appears and inserting “Chief Executive Officer of”;
 - (iv) in subsection (b)(2)(E) by striking “Administrator of the”; and
 - (v) in subsection (b)(2)(E) by striking “Administrator;” and inserting “Administration;”.
- (K) MULTIYEAR PROCUREMENT CONTRACTS FOR SERVICES AND RELATED ITEMS.—Section 40111 is amended—
- (i) in subsection (a) by striking “Administrator of the”; and
 - (ii) in subsections (b) and (c) by striking “Administrator” each place it appears and inserting “Administration”.
- (L) MULTIYEAR PROCUREMENT CONTRACTS FOR PROPERTY.—Section 40112 is amended—
- (i) in subsection (a) by striking “Administrator of the”;
 - (ii) in subsections (b), (c), and (e)(2) by striking “Administrator” each place it appears and inserting “Administration”; and
 - (iii) by adding at the end the following:
- “(g) LIMITATION.—This section and section 40111 shall not be effective to the extent they are inconsistent with the acquisition management system being implemented under section 1334.”.
- (M) ADMINISTRATIVE.—Section 40113 is amended—
- (i) in subsection (a) by striking “(or the Administrator of” and inserting “and”;
 - (ii) in subsection (a) by striking “Administrator)” and inserting “Administration”;
 - (iii) in subsection (a) by striking “Administrator” the last place it appears and inserting “Administration”;
 - (iv) in subsection (b) by striking “has” the 1st place it appears and inserting “and the Administration have”;
 - (v) in subsection (c) by striking “The Secretary” and all that follows through “Administrator)” and inserting “In carrying out aviation safety functions, duties, and powers, the Federal Aviation Administration”;
 - (vi) in subsection (c) by striking “to assist the Secretary or Administrator of” and inserting “to assist”;
 - (vii) in subsection (d) by striking “Administrator of the”;
 - (viii) in subsection (d) by striking “Administrator” the last place it appears and inserting “Administration”;
 - (ix) in subsection (e) by striking “Administrator” each place it appears and inserting “Administration”; and
 - (x) by adding at the end the following:
- “(f) EXEMPTIONS.—
- “(1) FAA REVIEW OF REGULATIONS.—Prior to issuing any regulation or granting any exemption to a regulation issued under this chapter that affects the transportation of hazardous materials by air, the Secretary shall provide the Administration an opportunity for review, and the Administration may disapprove such action if the Administration determines that there would be an adverse effect on aviation safety.
- “(2) PROPOSED CHANGES.—The Administration may, in the interest of aviation safety, propose to the Secretary regulatory changes affecting the transportation of hazardous materials by air.
- “(3) ENFORCEMENT.—Enforcement actions for violations of this chapter or of any regulations issued under this chapter that affect the transportation of hazardous materials by air shall be brought by the Administration.”.
- (N) REPORTS AND RECORDS.—Section 40114 is amended—
- (i) in subsection (a)(1) by striking “(or the Administrator of” and inserting “and”;
 - (ii) in subsection (a)(1) by striking “Administrator)” and inserting “Administration”;
 - (iii) in subsection (a)(1) by striking “Administrator” the last place it appears and inserting “Administration”;

- (iv) in subsection (a)(2) by striking “(or the Administrator” and inserting “and the Administration”;
- (v) in subsection (a)(2) by striking “Administrator” and inserting “Administration”; and
- (vi) in subsection (a)(2) by striking “Administrator” the last 2 places it appears and inserting “Administration”.
- (O) WITHHOLDING INFORMATION.—Section 40115(a) is amended by inserting after “Secretary of Transportation” each place it appears the following: “or Federal Aviation Administration”.
- (P) PASSENGER FACILITY FEES.—Section 40117 is amended—
 - (i) in subsection (b)(1) by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”; and
 - (ii) in subsections (c) through (i) by striking “Secretary” each place it appears and inserting “Administration”.
- (Q) SECURITY AND RESEARCH AND DEVELOPMENT ACTIVITIES.—Section 40119 is amended—
 - (i) in subsection (a) by striking “Administrator of the”; and
 - (ii) in subsections (b) and (c) by striking “Administrator” each place it appears and inserting “Administration”.
- (4) NAVIGATION OF FOREIGN CIVIL AIRCRAFT.—Section 41703 is amended—
 - (A) in subsection (a)(3) by inserting “, after consultation with the Federal Aviation Administration,” after “Secretary of Transportation”; and
 - (B) in subsection (b) by inserting “, after consultation with the Federal Aviation Administration,” after “Secretary” the 2nd place it appears.
- (5) SLOTS.—Section 41714 is amended—
 - (A) in subsection (a)(1) by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”;
 - (B) in subsections (a)(2), (a)(3), (a)(4), (b)(1), (b)(2), (c), (d), (f), and (g) by striking “Secretary” and “SECRETARY” each place they appear and inserting “Administration” and “ADMINISTRATION”, respectively;
 - (C) in subsection (b)(3) by striking “Secretary” the first place it appears and inserting “Administration”;
 - (D) in subsection (b)(3) by inserting after “Secretary” the second place it appears the following: “of Transportation”;
 - (E) in subsection (h)(2) by striking “Administrator” and inserting “Administration”; and
 - (F) by adding at the end the following:
 - “(i) CONSULTATION WITH DOT.—In making determinations with respect to essential air service, exceptional circumstances, and the public interest, the Administration shall consult with the Secretary of Transportation.”.
- (6) REGISTRATION AND RECORDATION OF AIRCRAFT.—Chapter 441 (other than section 44109) is amended—
 - (A) by striking “Administrator of the” each place it appears;
 - (B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies and the 3rd place it appears in section 44111(d)) and inserting “Administration”; and
 - (C) in section 44102(b) by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”.
- (7) INSURANCE.—Chapter 443 is amended—
 - (A) by striking “Secretary of Transportation” each place it appears and inserting “Federal Aviation Administration”; and
 - (B) by striking “Secretary” each place it appears (other than a place to which subparagraph (A) applies, the 2nd, 3rd, and 5th places it appears in section 44305(b), the 1st place it appears in section 44307(a)(1), the 2nd place it appears in section 44307(b), and the 3rd place it appears in section 44307(d)) and inserting “Administration”.
- (8) FACILITIES, PERSONNEL, AND RESEARCH.—Chapter 445 is amended—
 - (A) by striking “Administrator of the” each place it appears (other than the 1st place it appears in section 44501(c)(2)(B) and the last place it appears in section 44502(c)(1));
 - (B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies, the 1st place it appears in section 44501(c)(2)(B), the last place it appears in section 44502(c), and in section 44507(3)) and inserting “Administration”;
 - (C) in section 44506(b) by striking “Administrators of the Federal Aviation Administration and” and inserting “Federal Aviation Administration and the Administrator of the”;

(D) in section 44506(c) by striking “Department of Transportation” and inserting “Administration”;

(E) in section 44506(d) by striking “Public Works and Transportation” and inserting “Transportation and Infrastructure”;

(F) in section 44507—

(i) by striking “106(j)” and inserting “1317”; and

(ii) by striking “the Administrator” in paragraph (3) and inserting “the Federal Aviation Board”;

(G) in section 44514(b) by striking “Secretary and the”;

(H) by striking “Secretary of Transportation” each place it appears and inserting “Federal Aviation Administration”; and

(I) by striking “Secretary” each place it appears (other than in sections 44501(b)(1)(B), 44502(c)(1), and 44505(a)(3) and a place to which subparagraphs (G) and (H) apply) and inserting “Administration”.

(9) SAFETY REGULATION.—Chapter 447 is amended—

(A) by striking “Administrator of the” each place it appears (other than the 2nd place it appears in section 44714, the 2nd place it appears in section 44715(a)(2), the 1st, 4th, 7th, 9th, 10th, and 11th places it appears in section 44715(c), the 1st and 3rd places it appears in section 44715(d)(1), the 2nd place it appears in section 44715(d)(2), the 1st, 3rd, and 5th places it appears in section 44715(e), and the 2nd, 4th, and 6th places it appears in section 44715(f));

(B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies, the 3rd place it appears in section 44703(f)(2), the 3rd place it appears in section 44713(d)(2), the 2nd place it appears in section 44714, the 2nd place it appears in section 44715(a)(2), the 1st, 4th, 7th, 9th, 10th, and 11th places it appears in section 44715(c), the 1st and 3rd places it appears in section 44715(d)(1), the 2nd place it appears in section 44715(d)(2), the 1st, 3rd, and 5th places it appears in section 44715(e), the 2nd, 4th, and 6th places it appears in section 44715(f), and in section 44720(b)(2)) and inserting “Administration”;

(C) in section 44702(d)(3) by striking “Administrator’s” and inserting “Administration’s”;

(D) in the subsection heading to section 44709(b) by striking “ADMINISTRATOR” and inserting “ADMINISTRATION”;

(E) in section 44720(b)(2) by striking “Administrator” each place it appears and inserting “Federal Aviation Administration”;

(F) by striking “Secretary of Transportation” each place it appears (other than in sections 44712(b)(2) and 44723) and inserting “Federal Aviation Administration”;

(G) in section 44723 by striking “Secretary of Transportation” and inserting “Federal Aviation Board”; and

(H) by striking “Secretary” each place it appears (other than in sections 44712(b)(2) and 44720 and a place to which subparagraph (F) or (G) applies) and inserting “Administration”.

(10) SECURITY.—Chapter 449 is amended—

(A) by striking “Administrator of the” each place it appears;

(B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies, the 1st two places it appears in section 44932(a), the 1st place it appears in section 44932(b), the 1st place it appears in section 44932(c), the 5th place it appears in section 44933(a), and each place it appears in section 44934(b)) and inserting “Administration”;

(C) in section 44933(b)(4) by striking “Administrator’s” and inserting “Administration’s”;

(D) by striking the heading for section 44932 and inserting “**Civil aviation security**”;

(E) by striking subsection (a) of section 44932 and redesignating subsections (b) and (c) as subsections (a) and (b), respectively;

(F) in section 44932(a), as redesignated by subparagraph (E), by striking “Assistant Administrator” and inserting “officer designated by the Chief Executive Officer of the Federal Aviation Administration”;

(G) in section 44932(b), as redesignated by subparagraph (E), by striking “Assistant Administrator” and inserting “Administration”;

(H) in sections 44933(a) and 44934(b) by striking “Assistant Administrator for Civil Aviation Security” and inserting “officer designated by the Chief Executive Officer of the Administration”;

(I) in section 44934(b)(1) by striking “Assistant Administrator” and inserting “Administration”;

(J) by striking “Secretary of Transportation” each place it appears (other than in sections 44903(b)(1), 44907(d)(1)(C), 44907(d)(3), 44907(e), 44907(f), 44911(b), 44912(a)(3), 44931, and 44938(a)) and inserting “Federal Aviation Administration”;

(K) by striking “Secretary” each place it appears (other than a place to which subparagraph (J) applies, the 1st place it appears in section 44903(d), in section 44903(b)(1), the 2nd place it appears in section 44907(b), the 3rd place it appears in section 44907(c), in section 44907(d)(1)(C), the 3rd place it appears in section 44907(d)(2)(A)(ii), the 2nd and 3rd places it appears in section 44907(d)(2)(B), in section 44907(d)(3), the 2nd place it appears in section 44907(d)(4), in sections 44907(e) and 44907(f), the 4th place it appears in section 44908(a), the 1st place it appears in section 44908(b), the 2nd place it appears in section 44909(a), and in sections 44910, 44911, 44912(a)(3), 44931, 44934, and 44938(a)) and inserting “Administration”;

(L) in section 44905(g) by striking “Department of Transportation” and inserting “Federal Aviation Administration”;

(M) in sections 44907(d)(1)(C), 44907(d)(3), 44907(e), and 44907(f) by inserting “or Federal Aviation Administration” after “of Transportation”;

(N) in section 44907(d)(3) by inserting “or Administration” after “Secretary” the 2nd place it appears; and

(O) in the chapter analysis by striking the item relating to section 44932 and inserting the following:

“44932. Civil aviation security.”.

(11) ALCOHOL AND CONTROLLED SUBSTANCES TESTING.—Chapter 451 is amended—

(A) by striking “Administrator of the” each place it appears; and

(B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies) and inserting “Administration”.

(12) FEES.—Chapter 453 is amended—

(A) by striking “Administrator of the” each place it appears;

(B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies) and inserting “Administration”;

(C) in section 45301(a) by inserting after “Secretary of Transportation” the following: “and the Federal Aviation Administration, as the case may be,”; and

(D) in section 45301(c)(4) by striking “Administrator’s” and inserting “Administration’s”.

(13) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 is amended—

(A) in sections 46101(a)(1), 46102(a), 46103(a)(1), and 46104(a)—

(i) by striking “(or the Administrator of” and inserting “(or”; and

(ii) by striking “Administrator)” and inserting “Administration)”;

(B) by striking “Administrator of the” each place it appears (other than a place to which subparagraph (A)(i) applies and in section 46101(b));

(C) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) or (B) applies) and inserting “Administration”;

(D) in section 46109 by inserting “or the Federal Aviation Administration” after “Transportation”; and

(E) in the subsection heading to section 46107(c) by striking “ADMINISTRATOR” and inserting “ADMINISTRATION”.

(14) PENALTIES.—Chapter 463 is amended—

(A) in section 46301(c)—

(i) by inserting “by other than air” after “transportation” in paragraph (1)(D);

(ii) by redesignating paragraph (2) as paragraph (3);

(iii) by inserting after paragraph (1) the following:

“(2) FAA NOTICE AND HEARING.—The Federal Aviation Administration may impose a civil penalty for violations under subsection (a)(1) of this section related to the transportation by air of hazardous material only after notice and an opportunity for a hearing.”;

(iv) by inserting “or Administration, as appropriate,” after “Secretary” in paragraph (3), as so redesignated; and

(v) by striking “paragraph (1) of” in such paragraph (3).

(B) in section 46301(d)(2) by striking “Administrator of the”;

(C) in subsections (d) and (e) of section 46301—

- (i) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies) and inserting “Administration”; and
- (ii) by striking “Secretary” each place it appears and inserting “Administration”;
- (D) in section 46301(f) by inserting “or Administration, as the case may be,” after “Secretary”;
- (E) in section 46301(g) by inserting “and an order of the Administration” before “imposing”;
- (F) in section 46301(h)(2) by striking the parenthetical phrase and inserting “or Administration, as appropriate.”;
- (G) in section 46302(b) by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”;
- (H) in section 46303—
 - (i) by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”; and
 - (ii) by striking “Administrator of the”;
- (I) in section 46304—
 - (i) by striking “Administrator of the”; and
 - (ii) by striking “Administrator” each place it appears (other than a place to which clause (i) applies) and inserting “Administration”;
- (J) in section 46306 by striking “Administrator of the” each place it appears;
- (K) in section 46308(2) by striking “Administrator of the”;
- (L) in section 46311—
 - (i) by striking “Administrator of the”; and
 - (ii) by striking “Administrator” each place it appears (other than a place to which clause (i) applies) and inserting “Administration”;
- (M) in section 46313—
 - (i) by striking “Administrator of the”; and
 - (ii) by striking “Administrator” the 2nd place it appears and inserting “Administration”;
- (N) in section 46315(b)(1) by striking “Administrator of the”; and
- (O) in section 46316(a)—
 - (i) by striking “Administrator of the”; and
 - (ii) by striking “Administrator” the 2nd place it appears and inserting “Administration”.
- (15) SPECIAL AIRCRAFT JURISDICTION OF UNITED STATES.—Section 46505(d)(2) is amended by striking “Administrator of the”.
- (16) AIRPORT DEVELOPMENT.—Chapter 471 is amended—
 - (A) by striking “Secretary of Transportation” each place it appears (other than in section 47102(1)(A)) and inserting “Federal Aviation Administration”;
 - (B) by striking “Secretary” each place it appears (other than a place to which subparagraph (A) applies, in sections 47101(h), 47102(1)(A), 47102(1)(B)(i), 47103(a), 47103(c), 47106(c)(2), 47107(j)(4), 47110(e), and 47112(b), and the 2nd and 3rd places it appears in section 47153(b)) and inserting “Administration”;
 - (C) in section 47106(c)(1)(B)(ii) by inserting “of the Environmental Protection Agency” after “Administrator”;
 - (D) in section 47106(c)(2) by striking “Secretary” and inserting “Federal Aviation Administration”;
 - (E) in sections 47106(c)(3) and 47110(d)(2)(B) by striking “Secretary’s” and inserting “Administration’s”;
 - (F) in section 47107(k) by striking “Public Works and Transportation” and inserting “Transportation and Infrastructure”;
 - (G) in section 47110(e)—
 - (i) by striking “Secretary” each place (other than the 2nd and 6th places) it appears and inserting “Federal Aviation Board”; and
 - (ii) by striking “Secretary” the 2nd and 6th places it appears and inserting “Federal Aviation Administration”;
 - (H) in the heading for each of sections 47117(h), 47129(a)(3), and 47129(c) by striking “SECRETARY” and inserting “ADMINISTRATION”;
 - (I) in the subsection heading for section 47129(a) by striking “SECRETARY’S” and inserting “ADMINISTRATION’S”; and
 - (J) in section 47130 by striking “Administrator of the”.
- (17) INTERNATIONAL AIRPORT FACILITIES.—Chapter 473 is amended—
 - (A) in section 47302—

- (i) by striking “Secretary of Transportation” in subsection (a)(1) and inserting “Federal Aviation Administration”; and
- (ii) by striking “Secretary of Transportation or” in subsection (c) and inserting “Federal Aviation Administration or the Secretary of”;
- (B) in section 47303—
 - (i) by striking “Secretary of Transportation or” and inserting “Federal Aviation Administration or the Secretary of”; and
 - (ii) in paragraph (1) by striking “Secretary” and inserting “agency head”;
- (C) in section 47304—
 - (i) by striking “Secretary of Transportation or” in subsection (a) and inserting “Federal Aviation Administration or the Secretary of”;
 - (ii) by striking “Secretary” the 2nd and 3rd places it appears in subsection (a) and inserting “agency head”;
 - (iii) by striking “Secretary of Transportation” the 1st place it appears in subsection (b) and inserting “Federal Aviation Administration”;
 - (iv) by striking “Secretary of Transportation or” in subsection (b)(2) and inserting “Chief Executive Officer of the Federal Aviation Administration or the Secretary of”;
 - (v) by striking “Secretary of Transportation” each place it appears in subsection (c) and inserting “Federal Aviation Administration”; and
 - (vi) by striking “Secretary of Transportation or” in subsection (d)(2) and inserting “Chief Executive Officer of the Federal Aviation Administration or the Secretary of”;
- (D) in section 47305—
 - (i) by striking “Secretary of Transportation” in subsection (a) and inserting “Federal Aviation Administration”;
 - (ii) by striking “Secretary” the 3rd and 4th places it appears in subsection (a) and inserting “agency head”; and
 - (iii) by striking “Secretary of Transportation or” in subsection (b) and inserting “Chief Executive Officer of the Federal Aviation Administration or the Secretary of”; and
- (E) in section 47306 by striking “Secretary of Transportation” and inserting “Federal Aviation Administration”.
- (18) NOISE.—Chapter 475 is amended—
 - (A) by striking “Administrator of the” each place it appears (other than the 1st place it appears in section 47502, the 2nd place it appears in section 47509(a), the 2nd place it appears in section 47509(c), the 2nd place it appears in section 47509(d), and the 2nd place it appears in section 47509(e));
 - (B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies, the 1st place it appears in section 47502, the 2nd place it appears in section 47509(a), the 2nd place it appears in section 47509(c), the 2nd place it appears in section 47509(d), and the 2nd place it appears in section 47509(e)) and inserting “Administration”;
 - (C) by striking “Secretary of Transportation” each place it appears and inserting “Federal Aviation Administration”; and
 - (D) by striking “Secretary” each place it appears (other than a place to which subparagraph (C) applies) and inserting “Administration”.
- (19) FINANCING.—Chapter 481 (other than section 48109) is amended—
 - (A) by striking “Administrator of the” each place it appears;
 - (B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies) and inserting “Administration”;
 - (C) by striking “Secretary of Transportation” each place it appears and inserting “Federal Aviation Administration”;
 - (D) by striking “Secretary” each place it appears (other than a place to which subparagraph (C) applies and the 1st place it appears in section 48105) and inserting “Administration”;
 - (E) in section 48102(d)(2) by striking “Public Works and Transportation” and inserting “Transportation and Infrastructure”; and
 - (F) in section 48108(b)(2) by striking “Department of Transportation” and inserting “Federal Aviation Administration”.
- (20) MISCELLANEOUS.—Chapter 491 is amended—
 - (A) by striking “Administrator of the” each place it appears;
 - (B) by striking “Administrator” each place it appears (other than a place to which subparagraph (A) applies) and inserting “Administration”;
 - (C) by striking “Secretary of Transportation” each place it appears and inserting “Federal Aviation Administration”; and

- (D) by striking “Secretary” each place it appears (other than a place to which subparagraph (C) applies and in section 49103(b)(1)) and inserting “Administration”.
- (21) COMMERCIAL SPACE LAUNCH ACTIVITIES.—Subtitle IX is amended—
- (A) by striking “Secretary of Transportation” each place it appears and inserting “Federal Aviation Administration”;
- (B) by striking “Secretary” each place it appears (other than a place to which subparagraph (A) applies, the 1st place it appears in section 70109(a), the 2nd place it appears in each of sections 70109(b), 70109(c), 70112(a)(2), and 70112(b)(2), the 2nd and 3rd places it appears in each of sections 70116(a) and 70116(b), in section 70117(b)(2), and the 2nd place it appears in each of sections 70303(b)(2) and 70304(a)) and inserting “Administration”; and
- (C) in the subsection heading to section 70111(c) by striking “SECRETARY” and inserting “ADMINISTRATION”.
- (d) TITLE 5, UNITED STATES CODE.—
- (1) EXECUTIVE SCHEDULE PAY RATES.—
- (A) ADMINISTRATOR.—Section 5313 of title 5, United States Code, is amended by striking “Administrator, Federal Aviation Administration.”.
- (B) DEPUTY ADMINISTRATOR.—Section 5315 of such title is amended by striking “Deputy Administrator, Federal Aviation Administration.”.
- (2) DEFINITIONS.—Section 2109 of title 5, United States Code, is amended—
- (A) by striking “Department of Transportation” each place it appears and inserting “Federal Aviation Administration”; and
- (B) by striking “Secretary of Transportation” and inserting “Chief Executive Officer of the Federal Aviation Administration”.
- (3) EXPENSE OF TRAINING.—Section 4109(c) of title 5, United States Code, is amended by striking “Administrator, Federal Aviation Administration,” and inserting “Federal Aviation Administration”.
- (4) REDUCTION IN RETIREMENT PAY FOR FORMER MEMBERS OF UNIFORM SERVICES.—Section 5532(f) of title 5, United States Code, is repealed.
- (5) DIFFERENTIAL PAY.—Chapter 55 of title 5, United States Code, is amended—
- (A) in the heading to section 5546a by striking “**the Federal Aviation Administration and**”;
- (B) in section 5546a(a) by striking “Administrator of the Federal Aviation Administration (hereafter in this section referred to as the ‘Administrator’) and the”;
- (C) in subsections (a)(1), (a)(2), (c), (d), (e), and (f)(1) of section 5546a—
- (i) by striking “Administrator or the” each place it appears; and
- (ii) by striking “the Federal Aviation Administration or” each place it appears;
- (D) by striking “; and” at the end of section 5546a(a)(2) and inserting a period;
- (E) by striking paragraph (3) of section 5546a(a);
- (F) in section 5546a(f)—
- (i) by striking “(1)”; and
- (ii) by striking paragraph (2); and
- (G) in the item relating to section 5546a of the analysis for such chapter by striking “the Federal Aviation Administration and”.
- (e) COAST GUARD COOPERATION.—Chapter 5 of title 14, United States Code, is amended—
- (1) in the heading to section 82 by striking “**Administrator of**”;
- (2) in sections 81, 82, and 90(b) by striking “the Administrator of” each place it appears;
- (3) in section 90(b) by striking “Administrator may” and inserting “Administration may”; and
- (4) in the item relating to section 82 of the analysis for such chapter by striking “Administrator of”.
- (f) ACCESS TO NATIONAL DRIVER REGISTER.—Section 30305(b)(3) of title 49, United States Code, is amended—
- (1) by striking “the Administrator of”; and
- (2) by striking “Administrator” each place it appears after the first and inserting “Administration”.
- (g) WOLF TRAP FARM PARK.—The Wolf Trap Farm Park Act (16 U.S.C. 284–284j) is amended—
- (1) in section 4(e)—
- (A) by striking “Administrator of the”; and

- (B) by striking "Administrator" each place it appears after the first and inserting "Administration"; and
- (2) in section 8(b) by striking "Administrator of the" each place it appears.
- (h) CERTIFICATION OF FIREARMS.—Section 922(p)(5)(A) of title 18, United States Code, is amended by striking "the Administrator of".
- (i) NATIONAL AIR AND SPACE MUSEUM ADVISORY BOARD.—Section 1(a) of the Act entitled "An Act to establish a national air museum, and for other purposes", approved August 12, 1946 (20 U.S.C. 77(a)), is amended by striking "Administrator of the Federal" and all that follows through the first succeeding comma and inserting "Chief Executive Officer of the Federal Aviation Administration,".
- (j) FEDERAL PROPERTY.—Section 602(d)(14) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474(d)(14)) is amended by striking "Administrator of the" and all that follows through "or" and inserting "Federal Aviation Administration or".
- (k) NOISE CONTROL.—The Noise Control Act of 1972 (42 U.S.C. 4901–4918) is amended—
- (1) in section 12(a)(2)(B) (42 U.S.C. 4911(a)(2)(B))—
 - (A) by striking "Administrator of the";
 - (B) by striking "611 of the Federal Aviation Act of 1958" and inserting "44709(b)(1)(B) or 44715 of title 49, United States Code,"; and
 - (C) by striking "such Administrator" each place it appears and inserting "such Administration";
 - (2) in the last sentence of section 12(a) by striking "such Administrator" and inserting "the agency";
 - (3) in section 12(b)(1)(A) by striking "Administrator" the 2nd place it appears and inserting "Administration";
 - (4) in sections 12(b)(1)(B) and 12(e) by striking "Administrator" and inserting "agency";
 - (5) in section 12(c)—
 - (A) by striking "Administrator of the" the 2nd place it appears; and
 - (B) by striking "611 of the Federal Aviation Act of 1958," and inserting "44715 of title 49, United States Code,";
 - (6) in section 16(a) (42 U.S.C. 4915(a))—
 - (A) by striking "Administrator of the" the 2nd place it appears;
 - (B) by striking "611 of the Federal Aviation Act of 1958" and inserting "44715 of title 49, United States Code,"; and
 - (C) by striking "Administrator" the 3rd place it appears and inserting "agency";
 - (7) in section 16(b)—
 - (A) by inserting "the Federal Aviation" before "Administration"; and
 - (B) by striking "Administrator" each place it appears after the 1st and inserting "agency"; and
 - (8) in section 16(c) by striking "Administrator" and inserting "agency".
- (l) PHASE-OUT OF HALON.—Section 604(d)(3) of the Clean Air Act (42 U.S.C. 7671c(d)(3)) is amended by striking "Administrator of the" each place it appears.

SEC. 16. REFERENCES.

A reference in any law, regulation, document, record, map, or other paper of the United States to the Secretary of Transportation (and any reference to the Administrator of the Federal Aviation Administration) with respect to a function which under this Act (including the amendments made by this Act) is made a function of the Federal Aviation Administration established by section 1311 of title 49, United States Code, shall be deemed to be a reference to the Federal Aviation Administration established by such section.

SEC. 17. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in subsection (b), this Act (including the amendments made by this Act) shall take effect on the 90th day following the date of the enactment of this Act.

(b) EXCEPTIONS.—Section 1312 of title 49, United States Code, and section 8 of this Act shall take effect on the date of the enactment of this Act. The amendments made by section 15(d)(5) of this Act, relating to differential pay, shall take effect on the date the Federal Aviation Board begins implementation of the personnel management system for the Federal Aviation Administration under section 1314(d)(2) of title 49, United States Code.

REPORT

The reported bill (H.R. 2276) removes the Federal Aviation Administration (FAA) from the Department of Transportation (DOT) and makes it an independent establishment within the executive branch. The agency would be governed by a three-member Board appointed by the President and confirmed by the Senate. This Board would select a Chief Executive Officer to manage the day-to-day operation of the agency. In addition, the Secretaries of Transportation and Defense would serve as non-voting members of the Board.

The bill would also give the FAA dramatic new flexibility in the areas of personnel, procurement, and financing. This would be accomplished by exempting the agency from most personnel and procurement laws that apply to other government entities and permitting the FAA to develop its own personnel and procurement systems, subject to Congressional review. Financing is addressed by taking the aviation trust fund off-budget in order to ensure that the money aviation users pay is actually spent to improve the system they use. Finally, H.R. 2276 includes new regulatory provisions to ensure that the agency's rule-making actions are fully justified.

BACKGROUND

The regulation of civil aviation began with the Air Commerce Act of 1926. That Act placed responsibility for aviation regulation within the Department of Commerce.

In the late thirties and early forties, the government's role in civil aviation was transferred to the Civil Aeronautics Board (CAB) and the Civil Aeronautics Administration (CAA). The CAA, which was still part of the Department of Commerce, handled many of the duties now controlled by the FAA such as air traffic control, airman and aircraft certification, safety enforcement, and airway development. Some safety matters, such as safety rulemaking and accident investigation, were handled by the CAB. Other governmental entities also had a role in civil aviation. These included the Department of Defense, the Air Coordinating Committee, the Air Navigation Development Board, and the Airways Modernization Board.

The current FAA did not begin to take shape until the late 1950s. Growing concern about aviation safety, heightened by a series of midair collisions, led to efforts to separate the CAA from the Department of Commerce.

Proponents of an independent CAA argued that the CAA's aviation professionals were being stymied by the "ground-minded" businessmen overseeing them at Commerce.¹ The Commerce Department hierarchy resisted the independence movement, first by giving the agency a higher priority within the Department and then by arguing that removing it from a cabinet-level agency would make it difficult for aviation to have its problems considered at the highest level.² The Bureau of the Budget (predecessor to the Office

¹ S. Rochester, "Takeoff at Mid-Century," at 84 and 191 (1976).

² Id., at 191 and 199.

of Management and Budget) also weighed in against an independent agency. It was opposed to independent agencies generally preferring, in this case, the placement of all transportation activities in a single agency, either Commerce or a new Department of Transportation.

In the end, those favoring independence prevailed. One of the most important reasons for their success was concern about a growing airways crisis. The crisis began after World War II with the rapid growth in civil aviation. Studies were undertaken and reports were issued all calling for an increase in navigation aids, improved communications, and modern air traffic control procedures. Timetables were offered for accomplishing these projects but by the mid-fifties, it was apparent that the CAA was woefully behind schedule. The CAA was subject to some harsh criticism for its failure to modernize the airways system. But many considered this criticism unfair blaming instead the dictates of an imperious Commerce Department.³

The failure to modernize meant that controllers were using systems and procedures that were almost 20 years old.⁴ As a result, harried controllers could ensure safety only by delaying some flights on the ground. The system actually set a safety record in 1954 but this record was achieved at the expense of chronic delays that were a nuisance to passengers and costly to airlines. The crisis began to be featured in popular magazines with such graphic titles as "The Shrinking Air" and "Russian Roulette on our Airways?"⁵ It came to a head with mid-air collisions over the Grand Canyon in 1956 and over Las Vegas and Brunswick, Maryland in 1958.

As a result, on August 23, 1958, the Federal Aviation Act was signed by President Eisenhower and the Federal Aviation Agency was born. This new independent agency was given the responsibility for aviation safety, air traffic control, and airways modernization.

The new FAA remained independent for eight years. By all accounts it worked well during that period. The Administrator for much of that time described the independent FAA as "a very vital, very vibrant, entrepreneurial, pioneering organization."⁶

Nevertheless, in 1966, the effort to consolidate all transportation functions in one government department was renewed. The Johnson Administration argued that this would improve transportation safety and efficiency.⁷ However, the aviation industry had grown and prospered since aviation regulation had been removed from the Commerce Department and many feared that the creation of a Transportation Department would dismantle FAA and the achievements it had gained for the industry.⁸ They sought assurances that the operational integrity of the agency and powers of the Administrator would be maintained.⁹ This assurance was embodied in the

³Id., at 67.

⁴Id., at 59.

⁵Id., at 63.

⁶"Restructuring Air Traffic Control as a Private or Government Corporation": Hearings Before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 104-17, 104th Congress, 1st Session, 327 (February 1995) (statement of Najeeb Halaby) [Hereinafter cited as Corporation Hearing].

⁷R. Kent, "Safe, Separated, and Soaring," at 175 (1980).

⁸Id., at 177.

⁹Id., at 178 and 181.

provision (now codified at 49 U.S.C. 106(g)) stating that the FAA “Administrator shall carry out duties and powers of the Secretary of Transportation * * * related to aviation safety.” As the legislation was going through Congress, it was believed that those words meant what they said, and the Administrator’s decisions on safety would be final.

Senator Randolph, manager of the bill in the Senate, pointed out that, while the House bill transferred all functions to DOT “the Senate version would transfer all FAA functions to the Secretary, with the specific proviso that certain basic aviation safety responsibilities which are specifically identified in the bill would be exercised by the FAA Administrator. The Administrator’s decisions in the safety areas would be administratively final.”¹⁰

Senator Randolph stated that:

The Senate course is preferable since it would place in one identifiable official, the Administrator of the Federal Aviation Agency, the responsibility for aviation safety regulation. This preserves a fundamental safety principle recognized in the Federal Aviation Act of 1958, which required the Administrator to have aviation experience and an aviation background. Aviation safety regulation is the field in which FAA has had long and broad experience and about which it has developed a high level of expertise. Lodging this responsibility with the Secretary, as the House bill does, would involve him unduly in technical aviation safety regulation. Although the Secretary could redelegate his duties, he could not redelegate his responsibility. Confusion and uncertainty might exist as to the locus of responsibility for aviation safety.¹¹

The Conference report adopted the Senate language and it was signed into law (P.L. 86-670). There was every reason to believe FAA would be autonomous and have authority over safety, but the Department didn’t follow that approach.

On October 17, 1968, DOT issued a memorandum through its General Counsel’s office stating:

With the exception of the NTSB, there are no independently-administered programs or activities in the Department of Transportation. The power and authority of the Secretary is complete and supreme. It is superior to the power of all other officers of the Department * * * No operating unit, subdivision, or officer of the Department (with the exception of the NTSB) has any independent power of any kind or nature. All are subject in all respects to supervision by the Secretary and must carry out their functions, powers, duties, authorizations, and responsibilities in accordance with the Secretary’s guidance.

Under these circumstances, the Federal Aviation Agency became the Federal Aviation Administration, one of several modal units within the new Department of Transportation.

¹⁰ 112 Congressional Record 24422 (October 6, 1966).

¹¹ Id.

Despite the FAA's inability to achieve the expected degree of independence, the aviation industry continued to grow. As a result of the Airline Deregulation Act of 1978 (P.L. 95-504), passenger traffic has doubled and is now over 500 million passengers per year. It is expected to top 800 million by 2002. According to DOT, the 10 largest U.S. airlines now conduct 14,650 flights per day.¹² If you add in commuter, military, general aviation, and other flights, there are 107,500 per day. This is expected to increase 18 percent by 2002.

In recent years, there has been growing concern that the FAA's existing structure does not give it the flexibility to cope with the current situation, let alone with future growth. In the early eighties, the FAA launched a \$16 billion program to upgrade and modernize the nation's air traffic control equipment. Unfortunately, that program is now years behind schedule and billions over budget.

The result has been that air traffic controllers must use computers and other equipment that is often more than 20 years old. Approximately, 500 FAA air traffic control facilities still use vacuum tubes which most private businesses replaced years ago. Not surprisingly, this equipment has been breaking down at air traffic control facilities across the nation. While FAA has managed to maintain a high level of safety, it has often done so by holding flights on the ground. This has meant airlines and their passengers must endure annoying and costly delays.

The equipment breakdowns have shaken public confidence in the aviation system. These worries have been exacerbated by articles with dramatic titles such as "Flying Blind" and "How Safe Is This Flight?"¹³

At our Aviation Subcommittee hearings on this problem, witnesses cited continued DOT interference with FAA operations and cumbersome personnel and procurement laws as being primarily responsible.¹⁴ This was not the first time these problems had been raised. Indeed, over the past 10 years, similar concerns have been raised by numerous studies and several pieces of legislation.¹⁵

The Administration and DOT attempted to address these concerns by proposing legislation to separate FAA's air traffic control function from the rest of the agency and forming a government corporation to manage the nation's airways.¹⁶ Under this proposal, the remaining FAA would stay within DOT and regulate the safety of the corporation as well as other aviation businesses.

The corporation proposal received very little support.¹⁷ Many were concerned that dividing up the agency in this way would undermine safety. Others were concerned about who would be ac-

¹² "Reasons For, and Reporting of, Airline Flight Delays": Hearings before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 104-29, 104th Congress, 1st Session, (July 27, 1995) 194.

¹³ "U.S. News and World Report," June 26, 1995 and "Newsweek," April 24, 1995.

¹⁴ Corporation Hearing, Supra Note 6. See also "Field Hearing on Computer Outages at the Federal Aviation Administration Air Traffic Control Center in Aurora, Illinois": Hearings Before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 104-32, 104th Congress, 1st Session (September 1995).

¹⁵ See generally Executive Oversight Committee, U.S. Department of Transportation, Air Traffic Control Corporation Study 155-166. [Hereinafter cited as Corporation Study]; S. 1600, 100th Congress, 1st Session (1987); H.R. 4650, 100th Congress, 2nd Session (1988).

¹⁶ H.R. 1441, 104th Congress, 1st Session (1995).

¹⁷ Corporation Hearing, Supra Note 6.

countable if something went wrong. There was a sense on the Committee that the public would continue to hold Congress responsible even though it would have much less control over a corporation than a government agency. Questions were also raised within various segments of the aviation community over their representation on the corporate Board and what this would mean for their access to the airways. Doubts were also expressed about the financing of the corporation and the remaining FAA. It was feared, and subsequent events tended to confirm, that the corporation proposal was an attempt to pass governmental costs on to the users leaving them with the Hobbesian choice of either raising fees on themselves or trying to continue to operate under an old and inefficient air traffic control system.

In order to address the problems of our aviation system, without creating the sorts of new ones described above, the Committee has developed the reported bill (H.R. 2276). Hearings were held on this bill on September 28, 1995 and October 11, 1995.¹⁸ This legislation reforms and revitalizes the FAA by addressing problems in four areas—procurement and personnel, management, financing, and regulatory relief.

REFORM LEGISLATION

PROCUREMENT AND PERSONNEL REFORM

The FAA's air traffic control system includes 402 towers at airports, 167 terminal radar approach control (TRACON) facilities that control airspace near busy airports, 21 air route traffic control centers that control aircraft flying at higher altitudes between airports, and 61 automated flight service stations that primarily serve general aviation.¹⁹ These facilities depend on 29,284 assets such as radar, communications, and automation equipment. About 40,000 FAA employees operate, maintain, and develop the air traffic control equipment. An additional 8,000 FAA employees are responsible for aviation safety, regulation, and security. The agency's budget is more than \$8 billion per year.

In 1981, the FAA launched a \$16 billion program to modernize its air traffic control facilities and equipment. This was originally called the National Airspace (NAS) plan but is now known as the Capital Investment Plan (CIP). Currently, the CIP is estimated to cost \$37.3 billion through 2003.²⁰ While some of the cost growth can be attributed to new projects being added to the plan, many of the original projects are way behind schedule and well over budget. For example, the total cost of the Advanced Automation System (AAS), the centerpiece of the modernization program, grew from \$2.5 billion in 1983 to an estimated \$7.6 billion in 1994 and the project has slipped 8 years from its original schedule. As a result, the project has had to be restructured and its capabilities scaled back. At our September 26, 1995 Aviation Subcommittee's hearing at an FAA facility near Chicago, there was dramatic testi-

¹⁸Federal Aviation Administration Revitalization Act of 1995: Hearings before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 104th Congress, 1st Session (1995) [Hereinafter cited as Revitalization Act Hearing].

¹⁹Corporation Study, *Supra* Note 15, at 17, 18.

²⁰U.S. General Accounting Office, "Air Traffic Control: Status of FAA's Modernization Program" 2 (May 1995).

mony on the deleterious effect that the delays in modernization have had on the nation's airways.

These problems have been attributed, in part, to the 10,500 pages of statutes and regulations under which FAA and other government agencies acquire things. These laws and regulations, although designed with good intentions, result in a procurement process that is too rigid, takes too long, and results in the inefficient use of time, people, and money.

For example, DOT has described how it usually takes four years to award a contract even in a simple acquisition.²¹ Time is taken getting the equipment request approved by the FAA, DOT, and OMB bureaucracies. Then more time is required to prepare the formal procurement request, advertise the proposal, conduct technical evaluations of the offers, negotiate with potential vendors, and award the contract. In total, this usually takes four years. After the contract award, more time is taken defending against the almost inevitable protest from the losing bidder. Add to that another 3 years or so to develop and actually produce the equipment and it is not hard to see why the FAA is often fielding equipment that is already technically obsolete.

Several statutes have been cited as being responsible for the slow procurement process. One is the Brooks Act which permits the losing bidder to protest the award. The FAA faces about 10 protests per year and wins about 90 percent of them. However, these protests take time and often stop the contract until the protest is resolved. Moreover, they create significant perverse incentives for FAA procurement officials. Rather than moving expeditiously to place new technology in the field, FAA officials must act slowly and carefully to ensure that they do not lose the bid protest.

Another statute that has been cited as a problem is the Competition in Contracting Act of 1984 (P.L. 98-369, 98 Stat. 1175). This was passed as Title VII of the Deficit Reduction Act of 1984 and amends various sections of the Federal Property and Administrative Services Act (40 U.S.C. 759 and 41 U.S.C. 252, 253, 254), the Office the Federal Procurement Policy Act (41 U.S.C. 403), and the Procurement Protest System (31 U.S.C. 35). The Competition in Contracting Act requires FAA to seek and evaluate bids from all interested firms. This applies even to specialized technology that FAA is often seeking. In many cases, there are only a few firms that can supply this technology. Nevertheless, this act requires FAA to use valuable time and resources dealing with other firms even though they may lack the qualifications or expertise needed to supply the required product.

Many more examples were described in the August 1993 report (p. 10) of the National Commission to Ensure a Strong Competitive Airline Industry.

The problems with the personnel system are much the same. FAA managers and employees must deal with 47,200 pages of personnel laws and regulations. The restrictions contained therein create an environment where it is impossible to recruit, pay, and reward employees properly. The result is that some FAA facilities have too many employees while others have too few. For example,

²¹ Corporation Study, Supra Note 15, at 100.

it was reported that in recent bids for open controller positions, the Phoenix TRACON received 450 bids for four openings, while New York received 13 bids for 68 openings.²²

Attempts have been made to deal with these problems by creating pay demonstration programs or providing incentives to employees through pay differentials. However, these programs are often too small. Those that have been adequate have either been eliminated or are threatened with elimination. Morale and productivity suffer as the pay demonstrations and differentials come under attack.

The reported bill would deal with these problems by giving the agency the flexibility to develop its own procurement and personnel systems best suited to its unique mission. It would do this by exempting the agency from current procurement and personnel laws that hinder its flexibility. The FAA would have 180 days to develop its new systems. The new programs would then have to be submitted Congress and there would be an 180-day period for Congress to review them before they could be implemented.

The reported bill gives the FAA dramatic new flexibility in the procurement and personnel areas. The Committee believes that those who work day-to-day under the current procurement and personnel rules should have the freedom in the first instance to design the new systems.

However, this freedom is not without limitations. In addition to the Congressional review the reported bill also establishes procedures for consulting with private sector experts in procurement and personnel systems and for gaining input from its employees in developing the new personnel system. In addition, there are safeguards in the bill to prevent FAA managers from using their new flexibility to pay exorbitant salaries, bonuses, or per diem expenses.²³ Thus, the bill strikes the proper balance between management flexibility and protection of the taxpayer's money.

The Committee envisions FAA setting up systems that will allow it to operate in a more efficient and business-like manner. It should have the flexibility to hire and fire as in the private sector, to provide incentives for personnel to move to where they are most needed, and to provide them with the equipment they need to do the job. There should no longer be a need for separate statutory pay differentials that stand out as a target for budget cutters. Rather FAA should be able to pay employees in accordance with the job they do and the cost of living in the area that they do it. The procurement reforms alone should save the agency about \$2.4 billion over 7 years.

MANAGEMENT REFORM

In the Committee's view, simply reforming procurement and personnel laws is not sufficient. Indeed, the General Accounting Office has testified that the primary reason for the cost overruns and

²² "Federal Times," October 23, 1995, at 8.

²³ This seems especially important in light of recent revelations. See, for example, "Washington Post," February 1, 1996, at A19, and "Voluntary Separation Incentive Payments," Audit Report, Office of Inspector General, Department of Transportation, R6-FA-6-009, February 9, 1996.

delays is not those laws but rather inadequate management.²⁴ We do not view this as a criticism of any particular manager at the FAA but rather as an indictment of the current structure under which they must operate. Accordingly, the reported bill reforms the management structure of the agency in two ways. First, it makes the FAA independent of DOT. Secondly, it replaces the Administrator with a Board and a Chief Executive Officer (CEO).

As noted above, the agency worked quite well during its previous period of independence. Almost all the former FAA Administrators, both from the independence and post-independence eras, support an independent FAA now. The Committee's support for an independent FAA is not a matter of nostalgia. As former Administrator Halaby, on behalf of all living Administrators but one, stated:

We are not saying, like ghosts of the FAA, we want to go back to the past. Please don't understand our testimony to mean that. We're saying it needs fixing very badly, and that includes its culture. The best way to improve that culture is to give it some additional surge of flexibility, if not freedom. That enables the Administrator to act like he was in charge of something and make him feel he is responsible for something. Now he has got overlords, he has got all kinds of Lilliputian restraints on him that are standard for every place else that doesn't have the unique features of the FAA.²⁵

What the former Administrators and others in the aviation community complain about is micro-management by DOT, often allegedly politically motivated. Making the FAA independent would eliminate this additional layer of bureaucratic review at DOT. That would give the FAA more responsibility and flexibility. It would streamline the administrative and regulatory process. And it would reduce bureaucracy by allowing DOT to eliminate the employee positions that are now devoted to overseeing FAA.

While in theory, DOT was created to develop a coordinated transportation system, there is no evidence that it has actually fulfilled that role. Despite the sincere efforts of many DOT Secretaries, it is not clear that being part of DOT has provided much benefit to the aviation system.

To the extent that a continued DOT role in aviation is important, the reported bill provides for that in several ways. The legislation would require FAA to submit its annual budget and certain rules to DOT so that the Department could analyze their impact on the national transportation system. If DOT found a problem, the FAA would have to respond to that. Moreover, the bill gives the DOT Secretary a seat on the Federal Aviation Board to ensure that the overall transportation perspective is considered in the FAA's deliberations.

The Federal Aviation Board plays an important role in the legislative scheme of the bill. Three members of this Board would be appointed by the President and confirmed by the Senate for staggered seven-year terms. The Secretaries of Defense and Transportation would also serve on this Board as non-voting members. The Board

²⁴ Corporation Hearing, *Supra* Note 6, at 340.

²⁵ *Id.*, at 336.

would hire a CEO who would have the authority to run the day-to-day operations of the agency.

The reported bill clearly delineates the responsibilities of the Board and the CEO. The Board is to be responsible for the major decisions and policy direction of the agency. It is not to micro-manage the day-to-day operations. The CEO, freed from many of the Administrator's current responsibilities by the Board, should be able to focus on the day-to-day operations including issuing rules in a timely fashion, getting the airway modernization program back on track, and ensuring that other decisions are made and that needed actions do not languish in the bureaucracy.

The Board and CEO approach has several advantages over the current single Administrator structure. One of the key benefits is that it would provide agency continuity. Currently, FAA Administrators stay only about two years on average. By the time that person understands the agency and its problems, he or she tends to leave. In part, this problem would be solved by making the FAA independent thereby relieving the Administrator of the frustration of being second-guessed by the DOT bureaucracy. However, this does not prevent Administrators from leaving each time the presidency changes.

Current law (49 U.S.C. 106(b)) provides a 5-year term for the Administrator. This is probably the minimum necessary.²⁶ However, the problem with this approach is that there is no assurance that the Administrator will do a good job. If an Administrator turns out to be a disappointment, it will be very hard to replace him under current law.

The reported bill provides the proper balance. It permits the Board to hire the CEO for an indefinite period and it is expected that a CEO would stay for more than the current 2-year average or the 5 years provided in current law if he or she was doing a good job. However, if the CEO does a poor job, that person could easily be replaced by the Board. The staggered 7-year terms of Board members and the appointment of the CEO for the long-term provide the needed agency continuity without sacrificing the ability to make changes at the top when necessary.

Another advantage of the Board is that it provides the proper measure of political accountability. The current structure is often criticized because of the political interference by the DOT Secretary in the technical affairs of FAA. A politically appointed Board will make sure that FAA officials are accountable to the public. However, the fact that the Board members are appointed for seven years by different Presidents will ensure that the agency is not unreasonably buffeted by the political winds of the moment.

Finally, the Board provides the proper level of oversight. The bill gives FAA important new freedoms. It is being made independent and being given significant flexibility in the areas of personnel, procurement, and funding. To ensure that the agency does not abuse this new freedom, it is important to have some degree of oversight. An agency that has allowed its modernization program to go billions over budget and way behind schedule, that has been unable to make important safety decisions in a timely fashion, and that

²⁶Id., at 339, 340 (statement of former FAA Administrator James Busey).

has engaged in questionable training methods of its own employees,²⁷ should not lightly be made independent without some oversight that is answerable to the American people. A politically appointed Board fulfills that role. DOT has not been able to do so.

The Committee is confident that the management reforms described above will give the agency a more business-like structure and are both workable and constitutional. Today, there are about 30 independent agencies that are successfully managed by Boards.

The Justice Department has nevertheless challenged this approach as an improper erosion of the President's ability to set policy and oversee decision-making with respect to critical areas of national concern. Citing *Morrison v. Olson*, 487 U.S. 654 (1988), it is alleged that the fact that the Board members can only be removed for cause raises significant constitutional concerns if it were to preclude the President from dismissing the Board members for failure to carry out the President's policies.

In *Morrison*, at 691, the Supreme Court stated that restrictions on the President's authority to remove are unconstitutional if they "impeded the President ability to perform his constitutional duty" to ensure that the laws are faithfully executed. However, it should be noted that, in the *Morrison* case, the Court found that the restrictions on removal of the independent counsel were, in fact, constitutional. This indicates that the President does not have absolute discretion to discharge at will subordinate officials whose functions include executive tasks.

Indeed, there appears to be broad congressional authority over agency structure, *Mistretta v. U.S.*, 488 U.S. 361 (1989). The *Morrison* and *Mistretta* cases establish a strong basis for the independent Board structure in the reported bill where, as here, the Board's functions are not part of the President's core constitutional responsibilities over defense and foreign relations. This view is buttressed by recent scholarship on the issue.²⁸

For example, a recent article in the Columbia Law Review concluded that recent Supreme Court rulings "allow certain officials exercising important governmental responsibilities to be immunized from plenary presidential control."²⁹ This could include, the article states, "not merely the heads of such traditionally 'independent' agencies as the FCC, FTC, and SEC, but also those of (for example) the EPA and some Cabinet departments as well."³⁰ Only those instances where the functions are clearly committed by the Constitution to the President would an independent Board be improper. The two principal examples would be the State Department and the Defense Department.³¹ They could not be independent agencies run by a Board.

However, the independent FAA and its governing Board under the reported bill are not similar to the State or Defense Departments. They are not responsible for foreign affairs or military pol-

²⁷ *Id.*, at 326, 327.

²⁸ M. Rosenberg, "Constitutionality of Establishing the Social Security Administration as an Independent Agency Headed By a Commissioner Who May Be Removed By the President Only for Cause" (July 27, 1994), (Memorandum of the American Law Division, Congressional Research Service, Library of Congress). See Revitalization Act Hearing, *Supra* Note 18, at 315.

²⁹ Lawrence Lessig and Cass R. Sunstein, "The President and Administration", 94 *Columbia L. Rev.* 1 (1994).

³⁰ *Id.*, at 118.

³¹ *Id.*, at 117.

icy. While some of FAA's actions may sometimes affect areas of concern to the State or Defense Departments, it must consult with those agencies to ensure that its actions are consistent with Administration policy. Indeed, where issues of foreign or military policy arise, the reported bill retains responsibility for those in a Cabinet Department where officials can be removed at will by the President. See for example 49 U.S.C. 40103(d) as well as section 15(f)(4) of the reported bill dealing with navigation of foreign aircraft in the U.S.

FINANCING

The reported bill addresses the financing issue by taking the airport and airway trust fund (26 U.S.C. 9502) off budget. This trust fund, usually known as the aviation trust fund, was established in 1970. It is financed primarily by excise taxes on air passenger tickets, air cargo, and general aviation fuel. Its income is about \$6 billion per year (plus about \$770 million in interest) and its cash balance as of January 1996 was about \$11 billion, \$5 billion of which was uncommitted.

The aviation trust fund fully finances the capital programs of the FAA, including airport improvement grants, modernization of air traffic control facilities and equipment, and research and development of this equipment. The trust fund is also permitted to finance about half of the FAA's salaries and expenses.

The Committee strongly believes that the money airline passengers, shippers, aircraft owners, and other aviation users pay into the Trust Fund should be returned to them in the form of aviation infrastructure improvements. This was the promise to them when the trust fund was created. Failure to keep this promise is unfair to them now.

Unfortunately, the current on-budget status of the trust fund provides no assurance that the money will be spent as promised. Under the present system, the trust funds are viewed by many as merely an accounting mechanism. Overall budget caps are imposed with no regard for the aviation revenue the trust fund receives or the pressing needs of the airport and airway system. This provides perverse incentives to spend less than is taken in so as to stay within the budget caps, make the general fund deficit appear smaller, or spend more on non-aviation projects. This has occurred in the past and has resulted in the large balances now in the fund.

Taking the trust fund off budget would remove those incentives. It would remove trust fund spending from the budget caps and permit additional funding for aviation improvements as long as there were adequate balances in the fund. This should create a closer match between the income to the trust fund and the spending from the fund, which the Committee views as the most equitable outcome.

Equally important, taking the trust fund off budget would provide a reliable stream of revenue to purchase the new equipment air traffic controllers need to do their job safely and efficiently. It could also provide the basis for meeting future infrastructure needs by leveraging the fund or creating other innovative financing mechanisms.

The Committee has decided not to impose additional aviation user fees at this time. The argument for additional user fees is based on the assumptions that (1) FAA will need \$59 billion between 1997 and 2002, (2) the trust fund will provide only \$47 billion, (3) there will be no general fund contribution, and (4) there is therefore a \$12 billion funding shortfall that needs to be addressed.

The Committee does not doubt that the FAA will need additional resources in future years. However, the extent of that need is not clear at this time. Indeed, only a few months before claiming it needed \$59 billion, the FAA had suggested, in the context of its Federal Corporation proposal, that \$50.3 billion would be sufficient. We expect the personnel and procurement reforms in the reported bill will achieve significant savings. The Department of Transportation estimates the savings from the procurement reform at \$2.4 billion over 7 years.

The Committee also believes that a continued general fund contribution is necessary and appropriate. Currently, the Trust Fund covers 70 percent of FAA's budget (100 percent of its capital budget and about 50 percent of its operating budget). The rest comes from the general fund. The general fund contribution to FAA's budget is justified by the services the agency provides to military and other government aircraft. The aviation industry contributes to the general fund through a 4.3 cents per gallon fuel tax as well as personal and corporate income taxes. Moreover, given the important contributions that a safe and efficient air transportation system makes to our nation and its economy, it seems only fair that the general taxpayer bear some of the regulatory costs.

Some of the concern about future FAA funding arises because the congressional budget resolution indicates that such funding will decrease. There are two reasons why this concern is unfounded: (1) when the aviation trust fund is taken off-budget and outside of the budget caps, trust fund revenues will primarily fund FAA, irrespective of the budget resolution constraints; and (2) the budget resolution is only a blueprint for future spending decisions. One cannot draw any firm conclusions from it as to the course of future appropriations for any particular agency. Indeed, given the importance of aviation to our nation, FAA funding may not be subject to the cuts imposed on other modes.

However, even if a funding shortfall can be demonstrated, the Committee is reluctant to raise taxes or fees on aviation users while there are still billions of dollars in the aviation trust fund that are uncommitted and available to meet the needs. Also, any new fee structure could have a disproportionate impact on certain segments of the aviation industry. Such impacts are not well understood at this time and have great potential for economic dislocation.

REGULATORY RELIEF

On April 7, 1993, in response to the financial crisis in the airline industry, Public Law 103-13 created the National Commission to Ensure a Strong Competitive Airline Industry. This Commission was bipartisan and chaired by former Virginia Governor Gerald Baliles.

The Commission issued its report in August 1993.³² Among other things, it found that “federal regulations impose a massive cumulative burden on airlines” and “have a direct and adverse impact on airlines’ financial condition and the air transportation system.”³³ The Commission estimated the airlines’ burden at \$3.5 billion since 1984 plus \$900 million to comply with airworthiness directives (which are similar to regulations) and \$200 million to comply with security directives during the Persian Gulf crisis.

The Commission was critical of the fact that neither Congress nor Federal agencies know the magnitude of the total costs they impose on airlines and, indirectly, on air travelers. It noted that special interest groups create pressure to adopt regulatory measures which may be driven by the perceived “crisis du jour” without regard to the cumulative impact of such costs.³⁴

Following the Commission’s report, the Subcommittee on Aviation held a hearing on this problem.³⁵ The Subcommittee heard many specific examples from airports, airlines, and small aviation businesses about the burden imposed by excessive regulation. For example, one witness testified about a security access rule that the FAA had estimated would cost \$100 million but has, in fact, already cost more than \$800 million.³⁶

In aviation, the issue of safety is always paramount. Despite the publicity surrounding several crashes in 1994, air travel remains remarkably safe. In 1994, the fatal accident rate for major airlines was 0.053 per 100,000 departures and 0.0008 per million miles flown. For commuters, the fatal accident rate was 0.097 per 100,000 departures and 0.006 per million miles flown.

In no small measure, this excellent safety record is due to the strict Federal regulation to which airlines and other aviation businesses are subjected. However, trying to achieve even small additional improvements in aviation safety from now on could lead to very expensive new regulations. The Committee wants to ensure that the new independent FAA carefully considers both the costs and benefits of any major new regulations.

Accordingly, the final element of the reported bill includes a provision requiring a cost-benefit analysis of new regulations that are likely to have compliance costs over \$25 million. There are already cost-benefit requirements in law or actively being considered by Congress that apply to all agencies. The cost-benefit provision in the reported bill is in addition to those and is designed specifically for aviation. It requires the FAA to consider factors that are peculiar to the aviation industry such as the impact of the regulation on air service. Expensive regulations could have a disproportionate effect on air service to small communities that are already complaining about service cutbacks and higher air fares.

In addition to the required cost-benefit analysis, the reported bill also includes procedural requirements to ensure that regulatory ac-

³² “The National Commission to Ensure a Strong Competitive Airline Industry”, *Change, Challenge and Competition* (1993).

³³ *Id.*, at 10, 11.

³⁴ *Id.*, at 11.

³⁵ “Ways to Reduce Unfunded Federal Mandates and Regulatory Burdens on the Aviation Industry Without Affecting the Safety of the Traveling Public”: Hearings Before the Subcommittee on Aviation of the House Committee on Transportation and Infrastructure, 104–4, 104th Congress, 1st Session (February 1, 1995).

³⁶ *Id.*, at 13.

tions are reasonable. These include requirements that (1) rules costing more than \$10 million be submitted to the new Federal Aviation Board for review and (2) rules costing more than \$25 million have an automatic termination date. A precise termination date is not specified in the legislation in recognition of the individual characteristics of each regulatory action. Obviously, however, the Committee would take a dim view of any FAA attempt to take advantage of this flexibility by establishing unreasonably long periods before a rule had to be reauthorized.

SECTION-BY-SECTION SUMMARY

Section 1. Short title

Provides that the Act may be cited as the “Federal Aviation Administration Revitalization Act of 1995”.

Section 2. Amendment of title 49

States that the amendments are to Title 49 of the U.S. code.

Section 3. Establishment of Federal Aviation Administration

Adds a new Chapter 13 to Subtitle II of Title 49 creating the new FAA.

CHAPTER 13—FEDERAL AVIATION ADMINISTRATION

Section 1301

Defines the key terms in the legislation.

Section 1311

Establishes the FAA as an independent agency.

Section 1312

Establishes the new Federal Aviation Board and describes its functions. The functions of the Board as follows:

- Hiring the Chief Executive Officer and approving the hiring of other senior officers of the agency;
- Approval of large contracts;
- Approval of major rules;
- Issuance of AIP letters of intent;
- Approval of the agency’s new personnel and procurement systems;
- Approval of the agency’s annual budget;
- Long-range and strategic planning;
- Representation of the agency at public events to the extent practicable; and
- Other significant actions that the Board considers appropriate.

Paragraph (2) states which of the above functions the Board cannot delegate.

Paragraph (3) continues current law (49 U.S.C. 106(f)) stating that the FAA shall not submit decisions for the approval of, and shall not be bound by, organizations established by executive order.

Subsection (c) describes the members of the Board. There shall be 3 members appointed by the President and confirmed by the

Senate. The DOT and DOD Secretaries shall be non-voting members of the Board.

Subsection (d) sets forth the qualifications for membership on the Board and includes a conflict of interest provision. Members must represent the public interest and be knowledgeable in aviation. When they become members, they would have to divest any aviation business and leave any aviation lobbying organization to which they may have previously belonged.

Subsection (e) gives the Board members a 7-year term and states that those terms shall be staggered.

Subsection (f) sets forth the standards for removal of a Board member. They are the same as those for other Board members in the government. See for example 49 U.S.C. 1111(c) governing the NTSB.

Subsection (g) states that the President selects the Chairman of the Board, subject to Senate confirmation, and sets the length of the Chairman's term except that it cannot be longer than the person's term as a Board member.

Subsection (h) states that 2 members of the Board are a quorum. To avoid bringing the agency to a standstill in the event of two vacancies, the Board could follow the arrangement upheld in *Railroad Yardmasters of America v. Harris*, 721 F.2d 1332 (D.C. Cir. 1983). In that case, anticipating the resignation of one of the two remaining members of the National Mediation Board, the two members delegated authority to act to the member who would remain. This approach would not be inconsistent with section 1312(b)(2) of the reported bill since that is only intended to restrict delegations from the Board to the staff, not delegations within the Board.

Subsection (i) sets the pay of the Chairman at a level that now is about \$133 thousand per year and of the other Members at a level that is now about \$123 thousand per year.

Section 1313

Describes the officers of the agency. The Chief Executive Officer (CEO) is appointed by the Board. The CEO is responsible for the day-to-day operation of the agency including hiring and firing employees, buying equipment, issuing rules, preparing the budget, awarding AIP grants, and other functions the Board considers appropriate. The CEO can be removed by the Board although the Board is discouraged from doing so. The Board shall set the salary of the CEO which could be higher or lower than that of the Board members. The CEO may hire other senior agency officials (who report directly to the CEO) and a chief counsel subject to the approval of the Board. In addition, the agency shall have an Inspector General. Also, the position of aircraft noise ombudsman is established within the agency. This person would be appointed by the Board and would serve as a liaison with the public on noise issues and must be consulted by the agency before it changes aircraft routes.

Section 1314

Exempts the agency from existing personnel laws and requires it to develop a new personnel system within 6 months. This exemp-

tion and the new personnel system cannot take effect until 180 days after the new personnel plan is submitted to Congress. In developing this system, the agency is directed to consult with private sector management experts and to negotiate with its employees. The negotiations must be completed within 90 days. Any disagreements between the agency and its employees over the new personnel management system must be submitted for mediation. If mediation does not resolve the disagreements, the agency shall submit its new personnel system to Congress together with any objections of its employees for Congress to resolve during the 180-day review period. All employee rights and union contracts are to remain in effect while the new personnel system is being developed. The new personnel system should permit the FAA to do the following:

- (A) Hire and fire as in the private sector;
- (B) Promote and pay employees based on merit;
- (C) Provide market-based salaries to the extent possible under available budgets;
- (D) Provide incentives in order to staff facilities that are difficult to staff;
- (E) Move personnel where they are most needed; and
- (F) Permit collective bargaining over the terms and conditions of employment.

Private sector experts are to evaluate the agency's plan and submit that evaluation to Congress.

To ensure that the freedom provided by this section is not abused, the new personnel management system must include safeguards to ensure that travel, meal, lodging, and other incidental expenses of FAA employees are not excessive. In addition, although there is no cap on wages, before any agency employee is paid more than \$133 thousand, Congress must be notified and 30 legislative days must have elapsed. Also, limits are placed on the percentage of employees that can be paid (excluding overtime) at or above the SES level and on the amount of raises or bonuses that the agency's top employees can receive in a year. Finally, before the agency contracts with a former agency employee, the Board must approve that contract as being essential to the agency's mission.

Although the FAA is exempted from most personnel laws, it is specifically not exempted from existing laws on whistle-blower protection, prohibiting strikes, prohibiting discrimination, and those laws relating to suitability, security, conduct, workmen's compensation, unemployment compensation, retirement, labor-management relations, life insurance, and health insurance.

Section 1315

Describes the Management Advisory Committee. There will be 17 members, four appointed by Congress and 13 appointed by the Board. Of the 13 appointed by the Board, 12 will represent specific interests such as passengers, employees, airlines, airports, and general aviation. The four Congressional appointees and one Board appointee need not represent any specific interest or could represent interests not otherwise specified in the law. Desirable selections for these open positions would include a military person, a representative of a small aviation business, or an additional FAA employee. The Committee members appointed by Congress serve two years

and those appointed by the Board serve for 3 years. The Committee would meet quarterly and provide advice to the FAA. The Committee would be entitled to receive internal FAA documents other than those containing proprietary information or documents relating to on-going litigation such as enforcement actions. The Committee members may receive per diem. The Federal Advisory Committee Act applies except for the provision that would terminate the Committee after 2 years.

Section 1316

States that all the functions, duties, and powers of the current FAA are carried forward to the new independent agency.

Section 1331

Sets forth those functions that are to be transferred to the independent FAA. Basically all aviation functions are transferred except those that DOT got when CAB sunset, those relating to international aviation, and those exercised by the DOT Director of Intelligence and Security. Also states that FAA can perform those DOT functions that are incidental or helpful to it in carrying out the transferred functions. That would include, for example, many of the functions in 49 U.S.C. Chapter 3.

Specifically, this section gives the FAA the responsibility for the following:

- (1) The annual report on its aviation activities;
- (2) Drug testing of its own employees;
- (3) Providing drug test results to the National Transportation Safety Board (NTSB) when requested;
- (4) Investigating certain aviation accidents;
- (5) Participating in accident investigations;
- (6) Responding to safety recommendations of the NTSB;
- (7) Appealing certain orders of the NTSB;
- (8) Being responsible for aviation safety;
- (9) Overseeing airmen such as pilots and mechanics;
- (10) Overseeing the safe use of airspace;
- (11) Promoting civil aeronautics;
- (12) Being involved in the certain aspects of international negotiations;
- (13) Being consulted by the military about military deviation from air traffic regulations;
- (14) Receiving air traffic responsibilities and transferring them to the Defense Department during a war;
- (15) Operating schools to train aviation personnel for both itself and for other Departments and nations;
- (16) Issuing certain exemptions;
- (17) Acquiring goods and services;
- (18) Undertaking certain special procurements;
- (19) Entering into certain multi-year procurements;
- (20) Providing assistance to foreign aviation authorities and undertaking certain other administrative matters;
- (21) Issuing certain reports;
- (22) Withholding information in certain cases;
- (23) Authorizing airports to assess a passenger facility charge (PFC);

- (24) Performing research to improve security;
- (25) Administering slots at the four high-density airports;
- (26) Registering and recording aircraft ownership;
- (27) Administering the war risk insurance program;
- (28) Administering air traffic control facilities and equipment;
- (29) Issuing and revoking certificates to airmen, aircraft, and airports and taking other actions to promote safety;
- (30) Acting to improve aviation security;
- (31) Overseeing aviation drug and alcohol testing programs;
- (32) Imposing certain fees;
- (33) Taking enforcement actions;
- (34) Imposing civil penalties;
- (35) Imposing penalties on someone who threatens an aircraft;
- (36) Imposing penalties for carrying a gun on an aircraft;
- (37) Subjecting aircraft to liens and seizures;
- (38) Imposing penalties for general aviation aircraft registration violations and for drug smuggling;
- (39) Imposing penalties for interfering with air navigation;
- (40) Being subject to penalties for the unlawful disclosure of information;
- (41) Requiring persons to testify or produce records with respect to its aviation safety duties;
- (42) Imposing penalties for operating an aircraft without lights while smuggling drugs;
- (43) Imposing criminal penalties in certain cases;
- (44) Preventing aircraft piracy;
- (45) Administering the Airport Improvement Program (AIP);
- (46) Overseeing certain facilities in foreign nations;
- (47) Overseeing efforts to reduce aircraft noise;
- (48) Funding aviation facilities and research; and
- (49) Overseeing the buy-American program.

Section 1332

Addresses the issuance of regulations. It requires that the Board approve significant rules (those with an impact over \$10 million) except that, in an emergency, the Chief Executive Officer can issue these rules subject to later Board approval. DOT review of FAA rules is strictly limited. FAA must send a proposed or final rule to DOT for review for a 5-day period to determine whether it might have an impact on other modes of transportation or on DOT's remaining aviation responsibilities including its national defense responsibilities. If it would, DOT would have an additional 45 days to assess the impact. DOT may make recommendations to FAA to minimize the adverse impact. If FAA does not accept the recommendation, it must explain why. The above procedure would not apply to rules pertaining solely to navigational aids, airspace designations, approach procedures, or to rules required to implement the new personnel and procurement systems. DOT review may be suspended in an emergency. Emergency is defined using language similar to the "good cause" exception in section 553 of the Administrative Procedure Act. Finally, the section states that any rule with an impact of more than \$25 million, and any advisory circular tied

to that rule, must contain a sunset date. This does not prevent the rule or advisory circular from being reissued.

Section 1333

States that agency actions are legally final.

Section 1334

Lists the procurement laws from which the agency is exempted and directs the FAA to develop its own procurement system within 6 months. These exemptions and the new procurement system would not take effect until the 180 days after the new system is submitted to Congress for review. If a dispute over a contract arises, the date the contract is signed will govern whether the dispute is resolved under the old law or under the new procurement system. The FAA must consult with private sector procurement experts in developing the new system. The private sector experts that help develop the system should also evaluate that system and submit that evaluation to Congress. The goals of the new system are (1) ensuring that services are procured and new equipment is installed quickly without sacrificing fairness and protection against waste and fraud and (2) ensuring that the civilian and military air traffic control equipment can work together.

The section also states that contracts over \$100 million must be approved by the Board. For contracts over \$250 million, Congress must be notified and 30 days must elapse before the agency can sign it. This would not require the agency to delay the award of a contract but merely to anticipate the approximate date of the award and notify Congress at least 30 days in advance.

Section 1335

Continues the same judicial review and procedural requirements as currently exist.

Section 4. Budget

Requires the agency to prepare a budget which must be approved by the Board. FAA must submit its budget to DOT and DOT may make recommendations to ensure consistency with the national transportation system and DOT's aviation responsibilities. Thirty days before submitting the budget to DOT, the FAA must give a draft copy to the management advisory committee for comment. The FAA must submit its budget to Congress at the same time that it submits it to the President or OMB. It also requires the budget to include the following:

(A) Budget requests and Aviation Trust Fund estimates for the next 4 years;

(B) A numerical ranking, by degree of importance, of the agency's facilities and equipment projects so that Congress will know where to concentrate funding if budgets are tight. In ranking the importance of projects, the FAA should consider both the needs of air carriers and general aviation;

(C) The number of man-years worked by contractors for the agency with a comparison to previous years;

(D) Any modifications made to the budget that were requested by DOT; and

(E) If the DOT recommendations were not accepted, an explanation why.

Section 5. Regulations

This section requires that for rules with annualized compliance costs of more than \$25 million, the FAA must, in addition to other requirements, do an analysis of the following:

- (A) The benefits of the rule and the number of deaths and nature and number of injuries it will prevent;
- (B) The number of aircraft, airports, or employees affected by the rule;
- (C) The cost of the rule including effects on competition or disruption of air service; and
- (D) Alternative means of achieving the rule's objectives.

The analysis required by this section can be waived in an emergency. This section does not apply to advisory circulars.

Section 6. Funding

Takes the aviation trust fund off-budget and includes safeguards against deficit spending, consistent with H.R. 842. The language of this section tracks the language used to take the Social Security Trust Funds off-budget in section 13301 of the Omnibus Budget Reconciliation Act of 1990. Specifically, the language provides that all receipts and disbursements of the aviation trust fund shall not be included in (1) the budget of the U.S. government as submitted by the President, or (2) the congressional budget (including allocations of budget authority and outlays provided therein). Additionally, the receipts and disbursements are exempted from any general budget limitations imposed by statute. The effect of this language is to remove the trust fund from (1) calculations of the on-budget deficit, (2) congressional budget resolutions, including spending allocations provided to committees, and (3) spending points of order under the Budget Act.

This section also duplicates the automatic spending safeguards provided by the so-called Byrd Rule in the Highway Trust Fund. Specifically, if the FAA, in consultation with the Secretary of Treasury, determines that fund balances and expected receipts do not cover unfunded aviation authorizations, those authorizations are reduced on a pro-rata basis to cover the shortfall.

The intent of this provision is to allow the FAA to spend the revenues taken in plus any uncommitted surplus.

Section 7. Inspector General

Brings the new agency under the Inspector General Act.

Section 8. Passenger facility charge

Deals with two matters involving the passenger facility charge (PFC). Subsection (a) requires FAA to answer, within 75 days of enactment, the petition seeking an increase in the fee airlines retain when collecting PFCs. The section provides a prod for action but takes no position on the merits. Subsection (b) requires FAA to complete the review of the PFC program which was required in 1994 within 75 days of enactment. This section is designed to high-

light the frustration of the aviation community with FAA's often slow response to industry concerns.

Section 9. Innovative financing

Requires the Federal Aviation Board to establish a panel to review and report on innovative financing mechanisms for funding infrastructure development and the operations of the FAA.

Section 10. Transfers

Transfers personnel and property from the old agency to the new one.

Section 11. Savings provision

Provides that all orders, rules, contracts, certificates, licenses, applications, proceedings, etc. shall continue in effect at the new FAA. This section also provides that the Administrator becomes the Chief Executive Officer on the effective date if the Board has not appointed one by that date.

Section 12. Laws and regulations

Continues all laws and rules and makes them applicable to the new FAA.

Section 13. Termination

Terminates the old FAA.

Section 14. Personnel reductions

Terminates the 200 employee positions in DOT that were responsible for overseeing FAA.

Section 15. Conforming changes

Contains the conforming amendments needed to reflect the separation of FAA from DOT and the replacement of the FAA Administrator with the Federal Aviation Board and Chief Executive Officer (CEO).

Specifically—

Subsection (a) removes provisions from section 106(k) of existing law but retains the current Civil Aeromedical Institute.

Subsection (b) revises the duties and powers of DOT to reflect FAA's assumption of many of those responsibilities in aviation matters.

Paragraph (b)(1) removes aircraft noise from DOT's purview. Responsibility for that will rest solely with the FAA.

Paragraph (b)(2) gives FAA responsibility for considering the impact on wildlife and historic sites when developing or approving aviation programs and projects.

Paragraph (b)(3) requires FAA to file the annual report on aviation activities formerly submitted by DOT.

Paragraph (b)(4) requires the FAA to continue to cooperate with the military as DOT has done.

Paragraph (b)(5) removes FAA from the coverage of this section on judicial review. FAA will be covered in this regard by new section 1335.

Paragraph (b)(6) deletes the reference to the FAA in current section 352. New section 1316 takes the place and serves the same purpose.

Paragraph (b)(7) gives FAA responsibility for drug testing of its own employees.

Subsection (c) set forth the functions of FAA.

Paragraph (c)(1) revises the law governing the relationship between the National Transportation Safety Board (NTSB) and DOT involving such matters as providing information to the Board, participation in accident investigations, response to safety recommendations, and judicial review to reflect the fact that FAA supplants DOT where aviation accidents or certificates are involved.

Paragraph (c)(2) places the new FAA's CEO on the Intermodal Transportation Advisory Board in place of the current FAA Administrator.

Paragraph (c)(3) revises the provisions in current law on air commerce and safety. The FAA is directed to consider the policies set forth in current section 40101 in making decisions and to consult with the Architectural and Transportation Barriers Compliance Board before taking action that will affect accessibility. State and DOT are directed to consult with FAA on international air transportation matters. This paragraph clarifies the division of responsibilities with respect to the transportation of hazardous materials by air. DOT would still issue rules and exemptions but only if the FAA does not disapprove. FAA would be responsible for enforcement actions. This paragraph also makes clear that the FAA is responsible for the passenger facility charge (PFC) program.

Paragraph (c)(4) requires the DOT to consult with FAA, at least informally, before authorizing the navigation of foreign civil aircraft in this country.

Paragraph (c)(5) gives FAA responsibility for managing slots at the four slot-controlled airports. However, to the extent that this would involve matters involving the jurisdiction or expertise of DOT, such as issues affecting essential air service at small communities or questions of exceptional circumstances or the public interest, the FAA should look to DOT for guidance.

Paragraph (c)(6) makes conforming changes to the chapter on registering and recording aircraft.

Paragraph (c)(7) gives the FAA responsibility for the war risk insurance program.

Paragraph (c)(8) revises the chapter on facilities, personnel, and research.

Paragraph (c)(9) revises the chapter on safety regulation. Responsibility for submission of the annual safety enforcement report is transferred from DOT to the Federal Aviation Board.

Paragraph (c)(10) assigns responsibility for aviation security to the FAA. The deletion of the reference to the Assistant Administrator for Civil Aviation Security in subparagraph (c)(10)(E) of this section should not be misconstrued as a lack of concern for aviation security issues. Rather, it is designed to conform to section 1313(b) above governing the appointment of senior officers of the agency. The Committee would expect one of those officers to have civil aviation security duties similar to, or the same as, the current Assistant Administrator.

Paragraph (c)(11) makes conforming changes to the chapter on alcohol and drug testing.

Paragraph (c)(12) makes conforming changes in the chapter authorizing the collection of fees in certain cases.

Paragraph (c)(13) revises the chapter on investigations. Basically, DOT will continue to handle complaints in aviation matters within its areas of responsibility and FAA will handle matters involving aviation safety and other areas for which it has been assigned responsibility.

Paragraph (c)(14) deals with penalties. FAA may impose penalties in its areas of jurisdiction and DOT may impose penalties in its areas. Only FAA, not DOT, may impose penalties for a hazardous material violation related to transportation by air.

Paragraph (c)(15) makes a conforming change in section 46505.

Paragraph (c)(16) places responsibility for the Airport Improvement Program (AIP) in the hands of the FAA. Letters of Intent (LOIs) under this program could be issued only by the Federal Aviation Board. This is necessary to ensure strict financial oversight of the LOI portion of the program.

Paragraph (c)(17) gives the FAA the responsibility for international airport facilities that was formerly held by DOT.

Paragraph (c)(18) places responsibility for aircraft noise abatement with the FAA.

Paragraph (c)(19) makes conforming changes in Chapter 481.

Paragraph (c)(20) gives FAA responsibility under the Buy-American program.

Paragraph (c)(21) provides that FAA, rather than DOT, will oversee commercial space launch activities. This is in furtherance of the transfer made by Public Law 104-50 (109 Stat. 440, November 15, 1995).

Subsections (d) through (l) make conforming changes in non-aviation statutes where references to FAA, FAA officials, or responsibilities of the new FAA appear.

Section 16. References

States that any reference in law or other official document to a function of DOT, that will now be performed by FAA, shall now be considered a reference to the new FAA.

Section 17. Effective date

Makes this legislation effective 90 days after enactment except the Board should be appointed as soon as possible and section 8 takes effect in accordance with the deadlines in that section. Also, FAA employees now receiving differential pay would continue to receive that pay until the new personnel system takes effect. At that time, the Committee anticipates that the new salary structure developed by the FAA would compensate employees fairly without the need for separate statutory pay differential categories.

HEARINGS AND LEGISLATIVE HISTORY

The Subcommittee on Aviation held hearings on H.R. 2276 on September 28 and October 11, 1995.

H.R. 2276 was introduced on September 7, 1995. On October 26, 1995 the Subcommittee reported the bill, with amendments, to the

full Committee on Transportation and Infrastructure. On November 1, 1995, the Committee on Transportation and Infrastructure ordered the bill reported, with amendments, by voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of the rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2276 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COSTS OF THE LEGISLATION

Clause 7 of rule XIII of the rules of the House of Representatives does not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974 has been timely submitted prior to the filing of the report and is included in the report. Such a cost estimate is included in this report.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule I of the Rules of the House of Representatives, and section 308(a) of the Congressional Budget Act of 1974, the Committee references the report of the Congressional Budget Office included below.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2276.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2276 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 22, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2276, the Federal Aviation Administration Revitalization Act of 1995.

Enacting H.R. 2276 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

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

Sincerely,

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

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 2276.
2. Bill title: Federal Aviation Administration Revitalization Act of 1995.
3. Bill status: As ordered reported by the House Committee on Transportation and Infrastructure on November 1, 1995.
4. Bill purpose: H.R. 2276 would make the Federal Aviation Administration (FAA) an independent agency rather than an agency within the Department of Transportation (DOT). The FAA would be run by a board of directors and a chief executive officer. Specifically, the bill would: take the Airport and Airway Trust Fund off-budget; direct the FAA to develop and run new personnel and procurement systems that would be exempted from many federal regulations and requirements; create a Management Advisory Committee to provide advice and counsel to the FAA on management issues; establish a select panel to review innovative funding mechanisms for the FAA, including financial partnerships with private entities, the authority to spend funds outside the appropriations process, and the authority to borrow funds; revise the FAA's regulatory procedures and require all rulemaking proceedings for safety regulations that have an annual compliance cost of greater than \$25 million to include a cost-benefit analysis; and direct the Secretary of Transportation to terminate 200 employee positions within the Office of the Secretary to reflect the reduced responsibilities of the office.
5. Estimated cost to the Federal Government: Taking the Airport and Airway Trust Fund off-budget would not directly affect the federal budget in total; aggregate spending and revenues of the government would not be changed by this reclassification. However, taking the trust fund off-budget could lead to additional federal spending by weakening the budgetary constraints that apply to spending from the trust fund. CBO cannot estimate the amount of this possible impact, largely because it would be determined by future legislation.

Other provisions in the bill could affect the amounts of future appropriations for the FAA. Additional costs of less than \$5 million could be incurred for the administrative tasks of developing new personnel and procurement procedures, running the Management Advisory Committee and the innovative financing panel, and carrying out additional rulemaking activities. The FAA may also incur added costs by paying higher wages than permitted under the current personnel system, but could achieve some savings from procurement reforms and from a reduction in the number of personnel. Because the potential impact of these provisions is very uncertain and some of the changes would occur under current law, CBO can-

not estimate the overall impact on FAA spending. Any change in total FAA spending would be subject to future appropriation action.

Taking the trust fund off-budget: This bill would take the Airport and Airway Trust Fund off-budget and may exempt trust fund spending from the discretionary caps, pay-as-you-go procedures, and other Congressional budget controls (including the budget resolution, 602 allocations, and reconciliation instructions). However, it is unclear whether the bill would exempt the spending from these budgetary enforcement procedures. Even though the language that classifies Social Security spending off-budget is much more specific than the provisions in H.R. 2276, the administrative expenses of the Social Security Administration are still subject to pay-as-you-go procedures and other budgetary controls.

By itself, taking programs off-budget does not change total spending of the federal government and does not affect spending or revenue estimates for Congressional scorekeeping purposes. However, if this provision does exempt aviation trust fund spending from the budgetary control and enforcement procedures that apply to most other programs, aviation spending could increase significantly. The amount of any such increase is very uncertain because it would depend on future actions by both authorizing and appropriations committees. Competing factors would come into play. On the one hand, the Congress would be free to spend more money because the current budgetary controls would no longer apply. On the other hand, the Congress plans on balancing the overall federal budget 2002, and spending for these programs would still count in determining whether the budget is balanced. CBO has no basis for predicting the likely path of spending actions under H.R. 2276.

At the end of fiscal year 1995, the cash balance of the Airport and Airway Trust Fund was about \$11 billion, of which about \$5 billion was uncommitted. In addition, under CBO's baseline assumptions, the trust fund's cash balance would continue to grow. Because the FAA is in great need for additional funding to modernize the air traffic control system, it is possible that the Congress would decide to make some of all of the \$5 billion available for obligation.

The bill also would establish a rule similar to the Highway Trust Fund's Byrd rule for the Airport and Airway Trust Fund. The Byrd rule is an attempt to preserve the solvency of the highway account of the Highway Trust Fund by comparing unexpended budget authority to the fund's cash balance and two years of future revenue. If the unexpended budget authority is greater than the cash balance plus projected revenues, the budget authority is reduced. The rule that H.R. 2276 would establish compares the amount of appropriations that has been authorized but not yet appropriated to the fund's unobligated cash balance plus one year of revenue. If the estimated balances do not pass this proposed test, the authorizations of appropriations from the Airport and Airway Trust Fund would be reduced. Such a rule would be ineffective in preserving the trust fund's solvency, however, because unlike authorizations for the Highway Trust Fund, an authorization of appropriations from the Airport and Airway Trust Fund does not constitute budget authority.

Personnel and procurement reform: The process of developing the new personnel and procurement systems would cost the federal government less than \$5 million over the next year. In addition, exempting the FAA from personnel requirements and allowing the agency to offer wages that are competitive in the private market, in order to retain its most qualified employees, could significantly increase the FAA's personnel costs. However, H.R. 2276 could reduce the FAA's costs by streamlining the agency's acquisition process through procurement reform. Streamlining the process could lead to savings in administrative, operation, and maintenance costs. CBO cannot estimate the budgetary impact of these reforms because we do not know how they would be carried out or if they would achieve their goals. For example, the General Accounting Office has reported that the FAA's acquisition problems have less to do with the procurement process than with the extremely complex systems that it has tried to acquire. Finally, personnel and procurement reforms have already been passed by the Congress; the 1996 transportation appropriations bill recently enacted (Public Law 104-50) includes essentially the same reforms as contained in H.R. 2276.

H.R. 2276 would provide for the development of the personnel management system for the FAA, in consultation and negotiation with representatives of the administration's employees. The bill would require these negotiations to be completed 90 days after enactment. If no agreement is reached within 90 days, the amendment would require the use of the Federal Mediation and Conciliation Service (FMCS) to reach an agreement. The FMCS is an independent agency of the federal government which performs mediation, arbitration, and alternative dispute resolution services for both federal and private disputes. In fiscal year 1995, \$31 million was appropriated to this agency, and the agency conducted over 22,000 mediation conferences. CBO estimates that the additional mediation required by H.R. 2276 would cost less than \$500,000.

Administrative costs: H.R. 2276 would require that FAA to establish a Management Advisory Committee and an innovative financing panel and to carry out additional rulemaking activities. These requirements would cost about \$1 million annually.

Termination of employee positions at DOT: The bill would require the Secretary of Transportation to terminate 200 employee positions within the Office of the Secretary to reflect reductions in the office's aviation responsibilities, primarily oversight of the FAA. The Office of the Secretary is already planning on reducing the number of its employees by almost 300 positions in fiscal year 1996 as part of a DOT reorganization effort. The department believes that it can incorporate the 200-position reduction required by H.R. 2276 into the planned reduction and would not have to lay off any additional employees. In addition, the FAA—as an independent agency—may need additional employees to carry out activities previously conducted by the department, such as activities required by the Inspector General Act. If DOT were to eliminate additional positions, the government would save about \$60,000 annually per employee because of reduced salary, benefits, and overhead costs. However, in the first year, these savings would be offset by sever-

ance, annual leave, and other costs of about \$25,000 for each employee laid off.

6. Pay-as-you-go considerations: None.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: John Patterson and Christi Hawley.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 26, 1996.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In accordance with the Unfunded Mandates Reform Act of 1995, the Congressional Budget Office has reviewed H.R. 2276, the Federal Aviation Administration Revitalization Act of 1995, as ordered reported by the House Committee on Transportation and Infrastructure on November 1, 1995.

H.R. 2276 would make the Federal Aviation Administration (FAA) an independent agency rather than an agency within the Department of Transportation. The bill would direct the FAA to develop and run new personnel and procurement systems that would be exempted from many federal regulations and requirements. H.R. 2276 would also take the Airport and Airway Trust Fund off-budget.

H.R. 2276 contains no intergovernmental or private sector mandates as defined in Public Law 104-4 and would have no direct budget impact on state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for state, local, and tribal issues is Karen McVey. The contact for private sector issues is Jean Wooster.

Sincerely,

JUNE E. O'NEILL, *Director.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

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SUBTITLE I—DEPARTMENT OF TRANSPORTATION

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CHAPTER 1—ORGANIZATION

[Effective September 30, 1996.]

Sec.

101. Purpose.

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【106. Federal Aviation Administration.】

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[The following amendments take effect on the date of enactment of the
Act.]

§ 106. Federal Aviation Administration

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

【(b) The head of the Administration is the Administrator. The Administration has a Deputy Administrator. They are appointed by the President, by and with the advice and consent of the Senate. When making an appointment, the President shall consider the fitness of the individual to carry out efficiently the duties and powers of the office. The Administrator reports directly to the Secretary of Transportation. The term of office for any individual appointed as Administrator after the date of the enactment of this sentence shall be 5 years.

【(c) the Administrator must—

【(1) be a citizen of the United States;

【(2) be a civilian; and

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

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

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

【(3) The appointment and service of a member of the armed forces as a Deputy Administrator does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from the status, office, rank, or grade. The Secretary of a military

department does not control the member when the member is carrying out duties and powers of the Deputy Administrator.

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

[(f) The Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activities, of the Administration. The Secretary may not submit decisions for the approval of, nor be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

[(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, 45303, 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] *Federal Aviation Administration* for operations of the Administration \$4,088,000,000 for fiscal year 1991, \$4,412,600,000

for fiscal year 1992, \$4,716,500,000 for fiscal year 1993, \$4,576,000,000 for fiscal year 1994, \$4,674,000,000 for fiscal year 1995, and \$4,810,000,000 for fiscal year 1996.

[Effective September 30, 1996, section 106 (as amended above), is repealed:]

[§ 106. Federal Aviation Administration

[There is authorized to be appropriated to the Federal Aviation Administration for operations of the Administration \$4,088,000,000 for fiscal year 1991, \$4,412,600,000 for fiscal year 1992, \$4,716,500,000 for fiscal year 1993, \$4,576,000,000 for fiscal year 1994, \$4,674,000,000 for fiscal year 1995, and \$4,810,000,000 for fiscal year 1996.]

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CHAPTER 3—GENERAL DUTIES AND POWERS

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SUBCHAPTER I—DUTIES OF THE SECRETARY OF TRANSPORTATION

§ 301. Leadership, consultation, and cooperation

The Secretary of Transportation shall—

(1) * * *

* * * * *

(6) promote and undertake research and development related to transportation, including noise abatement[, with particular attention to aircraft noise, and including] *and* basic highway vehicle science;

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§ 303. Policy on lands, wildlife and waterfowl refuges, and historic sites

(a) * * *

(b) The Secretary of Transportation *and the Federal Aviation Administration* shall cooperate and consult with the Secretaries of the Interior, Housing and Urban Development, and Agriculture, and with the States, in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of lands crossed by transportation activities or facilities.

(c) The Secretary *and Administration* may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State, or local significance, or land of a historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if—

(1) * * *

* * * * *

§ 308. Reports

(a) * * *

(b) The **【Secretary】** *Federal Aviation Board* shall submit to the President and Congress each year a report on the aviation activities of the **【Department】** *Federal Aviation Administration*. The report shall include—

(1) collected information the **【Secretary】** *Board* considers valuable in deciding questions about—

(A) the development and regulation of civil aeronautics;

(B) the use of airspace of the United States; and

(C) the improvement of the air navigation and traffic control system; and

(2) recommendations for additional legislation and other action the **【Secretary】** *Board* considers necessary.

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SUBCHAPTER II—ADMINISTRATIVE

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§ 324. Members of the armed forces

【(a) The Secretary of Transportation—

【(1) to ensure that national defense interests are safeguarded properly and that the Secretary is advised properly about the needs and special problems of the armed forces, shall provide for participation of members of the armed forces in carrying out the duties and powers of the Secretary related to the regulation and protection of air traffic, including providing for, and research and development of, air navigation facilities, and the allocation of airspace; and

【(2) may provide for participation of members of the armed forces in carrying out other duties and powers of the Secretary.】

(a) *IN GENERAL.*—

(1) FAA.—The Federal Aviation Administration, to ensure that national defense interests are safeguarded properly and that the Administration is advised properly about the needs and special problems of the armed forces, shall provide for participation of members of the armed forces in carrying out the duties and powers of the Administration related to the regulation and protection of air traffic, including providing for, and research and development of, air navigation facilities, and the allocation of airspace.

(2) SECRETARY OF TRANSPORTATION.—The Secretary of Transportation may provide for participation of members of the armed forces in carrying out other duties and powers of the Secretary.

* * * * *

(d) The Secretary of a military department does not control the duties and powers of a member of the armed forces appointed, detailed, or assigned under this section when those duties and powers pertain to the Department of Transportation or *Federal Aviation Administration*. A member of the armed forces appointed, detailed,

or assigned under subsection (a)(2) of this section may not be charged against a statutory limitation on grades or strengths of the armed forces. The appointment, detail, or assignment and service of a member under this section to a position in the Department of Transportation *or Federal Aviation Administration* does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from that status, office, rank, or grade.

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SUBCHAPTER III—MISCELLANEOUS

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

(a) JUDICIAL REVIEW.—[An] *Subject to section 1335*, an action of the Secretary of Transportation in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89–670, 80 Stat. 931), or an action of the Administrator of the Federal Railroad Administration[, the Federal Highway Administration, or the Federal Aviation Administration] *or the Federal Highway Administration* in carrying out a duty or power specifically assigned to the Administrator by that Act, may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer or assignment.

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

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

§ 353. Toxicological testing of officers and employees

(a) COLLECTING SPECIMENS.—When the Secretary of Transportation or the head of a component of the Department of Transportation *or the Federal Aviation Administration* conducts post-accident or post-incident toxicological testing of an officer or employee of the Department *or Administration*, the Secretary or head *or Chief Executive Officer of the Administration* shall collect the specimen from the officer or employee as soon as practicable after the accident or incident. The Secretary or head *or Chief Executive Officer of the Administration* shall try to collect the specimen not later than 4 hours after the accident or incident.

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SUBTITLE II—OTHER GOVERNMENT AGENCIES

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CHAPTER 11—NATIONAL TRANSPORTATION SAFETY BOARD

Sec.

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SUBCHAPTER III—AUTHORITY

1131. General authority.

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[1135. Secretary of Transportation's responses to safety recommendations.]
1135. DOT's and FAA's responses to safety recommendations.

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SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

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§ 1114. Disclosure, availability, and use of information

(a) * * *

* * * * *

(d) **DRUG TESTS.**—(1) Notwithstanding section 503(e) of the Supplemental Appropriations Act, 1987 (Public Law 100–71, 101 Stat. 471), the Secretary of Transportation *and the Federal Aviation Administration* shall provide the following information to the Board when requested in writing by the Board:

(A) any report of a confirmed positive toxicological test, verified as positive by a medical review officer, conducted on an officer or employee of the Department of Transportation *or the Administration* under post-accident, unsafe practice, or reasonable suspicion toxicological testing requirements of the Department *or the Administration*, when the officer or employee is reasonably associated with the circumstances of an accident or incident under the investigative jurisdiction of the Board.

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SUBCHAPTER III—AUTHORITY

§ 1131. General authority

(a) * * *

* * * * *

(c) **ACCIDENTS NOT INVOLVING GOVERNMENT MISFEASANCE OR NONFEASANCE.**—(1) When asked by the Board, the Secretary of Transportation *or the Federal Aviation Administration, as the case may be*, may—

(A) * * *

* * * * *

§ 1132. Civil aircraft accident investigations

(a) * * *

* * * * *

(c) PARTICIPATION OF [SECRETARY] *FEDERAL AVIATION ADMINISTRATION*.—The Board shall provide for the participation of the [Secretary of Transportation] *Federal Aviation Administration* in the investigation of an aircraft accident under this chapter when participation is necessary to carry out the duties and powers of the [Secretary] *Administration*. However, the [Secretary] *Administration* may not participate in establishing probable cause.

(d) ACCIDENTS INVOLVING ONLY MILITARY AIRCRAFT.—If an accident involves only military aircraft and a duty of the [Secretary] *Administration* is or may be involved, the military authorities shall provide for the participation of the [Secretary] *Administration*. In any other accident involving only military aircraft, the military authorities shall give the Board or [Secretary] *Administration* information the military authorities decide would contribute to the promotion of air safety.

§ 1133. Review of other agency action

The National Transportation Safety Board shall review on appeal—

(1) the denial, amendment, modification, suspension, or revocation of a certificate issued by the [Secretary of Transportation] *Federal Aviation Administration* under section 44703, 44709, or 44710 of this title;

* * * * *

[§ 1135. Secretary of Transportation's responses to safety recommendations]

§ 1135. DOT's and FAA's responses to safety recommendations

(a) GENERAL.—When the National Transportation Safety Board submits a recommendation about transportation safety to the Secretary of Transportation *or the Federal Aviation Administration*, the Secretary *or the Administration* shall give a formal written response to each recommendation not later than 90 days after receiving the recommendation. The response shall indicate whether the Secretary *or the Administration* intends—

(1) * * *

* * * * *

(d) REPORTS TO CONGRESS.—The Secretary [shall] *and the Administration shall each* submit to Congress on January 1 of each year a report containing each recommendation on transportation safety made by the Board to the Secretary *or Administration* during the prior year and a copy of the Secretary's *or Administration's* response to each recommendation.

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SUBCHAPTER IV—ENFORCEMENT AND PENALTIES

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§ 1153. Judicial review

(a) * * *

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(c) **[ADMINISTRATOR]** *ADMINISTRATION* SEEKING JUDICIAL REVIEW OF AVIATION MATTERS.—When **[the Administrator of]** the Federal Aviation Administration decides that an order of the Board under section 44709 or 46301(d)(5) of this title will have a significant adverse impact on carrying out this chapter related to an aviation matter, the **[Administrator]** *Administration* may obtain judicial review of the order under section 46110 of this title. The **[Administrator]** *Administration* shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

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CHAPTER 13—FEDERAL AVIATION ADMINISTRATION*SUBCHAPTER I—GENERAL PROVISIONS**1301. Definitions.**SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE**1311. Establishment.**1312. Federal Aviation Board.**1313. Officers.**1314. Personnel management program.**1315. Management Advisory Committee.**1316. Authority to carry out certain transferred functions, duties, and powers.**1317. Civil Aeromedical Institute.**SUBCHAPTER III—AUTHORITY**1331. Functions.**1332. Regulations.**1333. Finality of decisions; appeals.**1334. Procurement program.**1335. Judicial review of actions in carrying out certain transferred duties and powers.**SUBCHAPTER I—GENERAL PROVISIONS***§ 1301. Definitions***In this chapter, the following definitions apply:*

(1) *ADMINISTRATION.*—The term “Administration” means the Federal Aviation Administration established by section 1311.

(2) *AERONAUTICS, AIR COMMERCE, AND AIR NAVIGATION FACILITY.*—The terms “aeronautics”, “air commerce”, and “air navigation facility” have the same meanings given those terms in section 40102(a) of this title.

(3) *AIRPORT AND AIRWAY TRUST FUND.*—The term “Airport and Airway Trust Fund” means the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986.

(4) *BOARD.*—The term “Board” means the Federal Aviation Board established by section 1312.

(5) *CHIEF EXECUTIVE OFFICER.*—The term “Chief Executive Officer” means the Chief Executive Officer of the Federal Aviation Administration.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATIVE

§ 1311. Establishment

There is established in the executive branch as an independent establishment the Federal Aviation Administration. The Administration shall succeed the Federal Aviation Administration of the Department of Transportation in existence on the day before the effective date of this section.

§ 1312. Federal Aviation Board

(a) IN GENERAL.—There is established a Federal Aviation Board which shall serve as the head of the Administration.

(b) FUNCTIONS.—

(1) IN GENERAL.—The Board shall be responsible for the major policy functions of the Administration, including the following:

(A) The appointment and removal of the Chief Executive Officer and the approval of other senior officers of the Administration under section 1313.

(B) The approval and submission to Congress of major contracts under section 1334(d).

(C) The approval of major regulatory actions under section 1332(b).

(D) The issuance of letters of intent under section 47110(e).

(E) The approval and submission to Congress of the Administration's plans for personnel management and acquisition management programs under sections 1314 and 1334.

(F) The approval of the agency's annual budget submission.

(G) Long-range and strategic planning for the Administration.

(H) The representation of the Administration at public events to the extent practicable.

(I) Such other significant actions as the Board considers appropriate.

(2) NONDELEGABLE FUNCTIONS.—The Board may not delegate the functions described in subparagraphs (A) through (F) of paragraph (1).

(3) NOT SUBJECT TO ENTITIES CREATED BY EXECUTIVE ORDER.—The Administration shall not submit decisions for the approval of, and shall not be bound by the decisions or recommendations of, any committee, board, or other organization established by Executive order.

(c) MEMBERSHIP.—

(1) VOTING MEMBERS.—The Board shall be composed of 3 voting members to be appointed by the President, by and with the advice and consent of the Senate. The initial members of the Board shall be appointed as soon as practicable after the date of the enactment of the Federal Aviation Administration Revitalization Act of 1995.

(2) NON-VOTING MEMBERS.—The Secretary of Transportation (or the Secretary's designee) and the Secretary of Defense (or the

Secretary's designee) shall serve as non-voting members of the Board.

(d) QUALIFICATIONS.—

(1) IN GENERAL.—Members appointed to the Board under subsection (c)(1) shall represent the public interest and shall be selected from individuals who are knowledgeable in aviation. Members of the Board may not—

(A) have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise;

(B) engage in another business, vocation, or employment; and

(C) be a member of any organization a substantial part of whose activities are for the purpose of influencing aviation-related legislation.

(2) DEFINITION.—In this subsection, the term “influencing legislation” has the meaning such term has under section 4911(d) of the Internal Revenue Code of 1986 (26 U.S.C. 4911(d)).

(e) TERMS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), each member of the Board appointed under subsection (c)(1) shall be appointed for a term of 7 years.

(2) TERMS OF INITIAL APPOINTEES.—As designated by the President at the time of appointment, of the members first appointed under subsection (c)(1)—

(A) 1 shall be appointed for a term of 3 years;

(B) 1 shall be appointed for a term of 5 years; and

(C) 1 shall be appointed for a term of 7 years.

(3) VACANCIES.—Any member appointed under subsection (c)(1) 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. A member may serve after the expiration of that member's term until a successor has taken office.

(f) REMOVAL.—Members of the Board appointed under subsection (c)(1) may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(g) CHAIRPERSON.—The Chairperson of the Board shall be appointed by the President, by and with the advice and consent of the Senate. At the time of such appointment, the President shall establish the term of the Chairperson. Such term may not exceed the term of the Chairperson's appointment to the Board.

(h) QUORUM.—Two members of the Board appointed under subsection (c)(1) shall constitute a quorum for carrying out the duties and powers of the Board.

(i) BASIC PAY.—

(1) CHAIRPERSON.—The Chairperson of the Board shall be paid at a rate equal to the rate of basic pay payable for level II of the Executive Schedule.

(2) OTHER MEMBERS.—The other voting members of the Board shall be paid at a rate equal to the rate of basic pay payable for level III of the Executive Schedule.

§ 1313. Officers

(a) CHIEF EXECUTIVE OFFICERS.—

(1) *APPOINTMENT.*—The Board shall appoint a Chief Executive Officer.

(2) *DUTIES.*—The Board shall delegate to the Chief Executive Officer the responsibility for managing the day-to-day operation of the Administration, including (except as provided in section 1312(b)) the hiring and firing of employees, acquisition of facilities and equipment, issuance of rules, airworthiness directives, and advisory circulars, preparation of the annual budget submission, the awarding of grants, and such other functions as the Board considers appropriate.

(3) *REMOVAL.*—The Chief Executive Officer shall serve at the pleasure of the Board; except that the Board shall make every effort to ensure stability and continuity in the leadership of the Administration.

(4) *BASIC PAY.*—Subject to section 1314(f), the Chief Executive Officer shall be paid at a rate to be determined by the Board.

(b) *OTHER OFFICERS.*—Subject to the approval of the Board, the Chief Executive Officer shall appoint other senior officers who shall each have such duties as the Chief Executive Officer may prescribe.

(c) *CHIEF COUNSEL.*—Subject to the approval of the Board, the Chief Executive Officer shall appoint a Chief Counsel who shall be the chief legal officer for all legal matters arising from the activities of the Administration.

(d) *INSPECTOR GENERAL.*—There shall be in the Administration an Inspector General who shall be appointed in accordance with the Inspector General Act of 1978 (5 U.S.C. App.).

(e) *AIRCRAFT NOISE OMBUDSMAN.*—

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

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

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

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

§ 1314. Personnel management program

(a) *EXEMPTION FROM CERTAIN PROVISIONS OF TITLE 5, UNITED STATES CODE.*—

(1) *IN GENERAL.*—Except as otherwise provided in this Act, the Administration shall be exempt from parts II and III of title 5.

(2) *EFFECTIVE DATE.*—The exemption provided by paragraph (1) shall not take effect until the expiration of the 180-period described in subsection (d)(2).

(b) *DEVELOPMENT OF PERSONNEL MANAGEMENT SYSTEM.*—

(1) *IN GENERAL.*—Not later than 180 days after the date of the enactment of the Federal Aviation Administration Revitalization Act of 1995, the Board shall develop a personnel management system for the Administration.

(2) *CONSULTATION AND NEGOTIATION.*—In developing the personnel management system, the Board shall negotiate with the exclusive bargaining representatives of employees of the Admin-

istration certified under section 7111 of title 5 and other employees of the Administration and shall consult with nongovernmental experts in personnel management systems. The negotiation with the exclusive bargaining representatives shall be completed on or before the 90th day after the date of enactment referred to in paragraph (1).

(3) *MEDIATION.*—If the Board does not reach an agreement under paragraph (2) with the exclusive bargaining representatives on any provision of the personnel management system, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Board shall include in the plan to be submitted to Congress under subsection (d) the objections of the exclusive bargaining representatives and the reasons for the objections.

(4) *CONTINUATION OF AGREEMENTS.*—Collective bargaining agreements and labor management relations under chapter 71 of title 5 shall remain in effect for the Administration until amended or modified under the personnel management system.

(5) *GOALS.*—The goal of the personnel management system to be developed by the Board under paragraph (1) shall be to provide, consistent with the requirements of this section, the Administration with the ability—

(A) to hire and fire employees as in the private sector;

(B) to promote and pay employees based on merit;

(C) to provide market-based salaries (designed to attract the best qualified employees) within available resources;

(D) to provide pay increases and other incentives to staff facilities that are difficult to staff;

(E) to move personnel to those facilities where they are most needed; and

(F) to provide an opportunity for collective bargaining and other consultation with employees concerning terms and conditions of employment.

(6) *SAFEGUARDS.*—The personnel management system shall include safeguards to ensure that travel expenses of employees of the Administration (including meal and lodging expenses) are not excessive.

(c) *EXPERTS EVALUATION.*—The arrangements entered into by the Board with the experts consulted by the Board under subsection (b) shall provide for those experts to evaluate the personnel management system developed by the Board and submit to Congress the results of such evaluation before the last day of the 180-day period referred to in subsection (b)(1).

(d) *NOTICE TO CONGRESS.*—

(1) *IN GENERAL.*—Upon development of the personnel management system under subsection (b), the Board shall submit to Congress a comprehensive plan describing the personnel management system, along with all existing or proposed rules or regulations relevant to the system.

(2) *IMPLEMENTATION.*—The Board may begin to implement the personnel management system only after the expiration of

the 180-day period that begins on the date of submission of the plan to Congress under paragraph (1).

(e) *EMPLOYEE RIGHTS AND BENEFITS.—Nothing in this section shall be construed as exempting the Administration and employees of the Administration from any of the following provisions of title 5:*

(1) Section 2302(b)(8) (relating to whistleblower protection) and related enforcement provisions.

(2) Sections 7311(3) and 7311(4) (relating to limitations on the right to strike).

(3) Sections 2302(b)(1) and 7204 (relating to antidiscrimination) and related enforcement provisions and provisions of law referred to in section 2302(b)(1).

(4) Chapter 71 (relating to labor-management relations).

(5) Chapter 73 (relating to suitability, security, and conduct).

(6) Chapter 81 (relating to compensation for work injuries).

(7) Chapter 83 (relating to retirement).

(8) Chapter 84 (relating to the Federal Employees' Retirement System).

(9) Chapter 85 (relating to unemployment compensation).

(10) Chapter 87 (relating to life insurance).

(11) Chapter 89 (relating to health insurance).

(f) *PAY RESTRICTIONS.—*

(1) MAXIMUM RATE OF PAY.—No officer (including the Chief Executive Officer) or employee of the Administration may receive annual pay in excess of the annual rate of basic pay payable for level II of the Executive Schedule unless the Board provides written notification to Congress of such higher rate of pay and 30 days (excluding Saturdays, Sundays, and holidays, and any day on which neither House of Congress is in session because of an adjournment sine die, a recess of more than 3 days, or an adjournment of more than 3 days) have elapsed since the date of such notification.

(2) PERCENTAGE OF EMPLOYEES ABOVE LEVEL ES-1 OF SENIOR EXECUTIVE SERVICE.—Not more than 0.35 percent of the officers (including members of the Board and the Chief Executive Officer) and employees of the Administration may be paid at a rate which equals or exceeds the rate payable for level ES-1 of the Senior Executive Service.

(3) RAISES AND BONUSES.—No officer (including the Chief Executive Officer) or employee of the Administration who is paid at a rate which exceeds the rate payable for level ES-1 of the Senior Executive Service may receive in a calendar year raises or bonuses (excluding cost-of-living increases and increases that are the results of a promotion) that total more than 15 percent of the annual rate of pay of the officer or employee on the day before the first day of such calendar year.

(g) *CONTRACTS BETWEEN FAA AND FORMER FAA EMPLOYEES.—Before the Administration may enter into a contract with an individual who has been employed by the Administration at any time during the 2-year period preceding the expected date of entry into the contract or with a corporation, partnership, or other entity in which such a former employee is a partner, principal officer, or majority stockholder or which is otherwise controlled or predominantly*

staffed by 1 or more of such former employees, the Board must first approve of the entry into the contract as being essential to the mission of the Administration.

§ 1315. Management Advisory Committee

(a) *ESTABLISHMENT.*—There is established an advisory committee which shall be known as the Federal Aviation Management Advisory Committee (hereinafter in this section referred to as the “Management Advisory Committee”).

(b) *MEMBERSHIP.*—The Management Advisory Committee shall consist of 17 members, who shall be appointed as follows:

- (1) 1 member appointed by the Speaker of the House of Representatives;
- (2) 1 member appointed by the minority leader of the House of Representatives;
- (3) 1 member appointed by the majority leader of the Senate;
- (4) 1 member appointed by the minority leader of the Senate;
- (5) 13 members appointed by the Board 12 of whom shall represent 1 of the following interests:
 - (A) Airline passengers.
 - (B) General aviation and sport aviation.
 - (C) Business aviation.
 - (D) Hub airports.
 - (E) Non-hub and general aviation airports.
 - (F) Major airlines and national airlines.
 - (G) Regional airlines and air taxis.
 - (H) Cargo airlines and charter airlines.
 - (I) Aircraft manufacturers.
 - (J) Airline employees.
 - (K) Federal Aviation Administration employees.
 - (L) State aviation officials.

(c) *FUNCTIONS.*—The Management Advisory Committee shall provide advice and counsel to the Administration on issues which affect or are affected by the operations of the Administration. The Management Advisory Committee shall hold quarterly meetings. The Administration shall give the Management Advisory Committee access to internal documents (other than proprietary information and documents relating to on-going litigation) and personnel of the Administration. The Management Advisory Committee shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

(d) *CHAIRMAN.*—The Management Advisory Committee shall elect a chairman of the Management Advisory Committee from among its members.

(e) *TERMS OF MEMBERS.*—

(1) *MEMBERS APPOINTED BY CONGRESS.*—Members appointed under subsections (b)(1) through (b)(4) shall be appointed for a term of 2 years.

(2) *MEMBERS APPOINTED BY THE BOARD.*—Members appointed under subsection (b)(5) shall be appointed for a term of 3 years.

(f) *TRAVEL AND PER DIEM.*—Each member of the Management Advisory Committee 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.

(g) *UTILIZATION OF PERSONNEL FROM FAA.*—The Administration shall make available to the Management Advisory Committee such staff, information, and administrative services and assistance as may reasonably be required to enable the Management Advisory Committee to carry out its responsibilities under this section.

(h) *APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.*—The Management Advisory Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.); except that section 14(a)(2)(B) of such Act (relating to the termination of advisory committees) shall not apply to the Committee.

§1316. Authority to carry out certain transferred functions, duties, and powers

Except as otherwise provided in this chapter, in carrying out a function, duty, or power transferred under the Federal Aviation Administration Revitalization Act of 1995 (including the amendments made by such Act), the Administration has the same authority that was vested in the department, agency, or instrumentality of the United States Government carrying out the function, duty, or power immediately before the transfer. An action of the Administration in carrying out the function, duty, or power has the same effect as when carried out by the department, agency, or instrumentality.

§1317. Civil Aeromedical Institute

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.

SUBCHAPTER III—AUTHORITY

§1331. Functions

(a) *IN GENERAL.*—The functions of the Federal Aviation Administration shall be all functions vested in the Board, the Chief Executive Officer, or the Federal Aviation Administration by this title or by law enacted after the date of the enactment of this chapter. Such functions include functions of the Administration, the Board, and the Chief Executive Officer under the following provisions of this title:

- (1) Section 308(b).
- (2) Section 353.
- (3) Section 1114(d).
- (4) Section 1131(c).
- (5) Subsections (c) and (d) of section 1132.
- (6) Section 1135.
- (7) Section 1153(c).
- (8) Subsections (a), (c), and (d) of section 40101.
- (9) Section 40102(a)(8).
- (10) Section 40103(b).
- (11) Section 40104.
- (12) Section 40105.
- (13) Section 40106(a).

- (14) Section 40107.
- (15) Section 40108.
- (16) Section 40109(b).
- (17) Subsections (a) and (b) of section 40110.
- (18) Section 40111.
- (19) Section 40112.
- (20) Section 40113.
- (21) Section 40114.
- (22) Section 40115.
- (23) Section 40117.
- (24) Section 40119.
- (25) Section 41714.
- (26) Chapter 441.
- (27) Chapter 443.
- (28) Chapter 445.
- (29) Chapter 447.
- (30) Chapter 449.
- (31) Chapter 451.
- (32) Chapter 453.
- (33) Chapter 461.
- (34) Section 46301.
- (35) Section 46302.
- (36) Section 46303.
- (37) Section 46304.
- (38) Section 46306.
- (39) Section 46308.
- (40) Section 46311.
- (41) Section 46313.
- (42) Section 46315.
- (43) Section 46316.
- (44) Chapter 465.
- (45) Chapter 471.
- (46) Chapter 473.
- (47) Chapter 475.
- (48) Chapter 481.
- (49) Chapter 491.

(b) *INCIDENTAL FUNCTIONS.*—In addition, the functions of the Administration shall include all functions of the Department of Transportation on the effective date of this section which the Administration determines are incidental to, helpful to, or necessary for the performance of the functions referred to in subsection (a) or which relate primarily to those functions.

§1332. Regulations

(a) *GENERAL AUTHORITY.*—The Administration may issue, rescind, and amend such regulations as are necessary to carry out its functions.

(b) *APPROVAL OF BOARD.*—

(1) *GENERAL RULE.*—The Administration may only issue a proposed regulation, final regulation, airworthiness directive, or advisory circular that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$10,000,000 or more (adjusted annually for inflation)

in any 1 year if the Board first approves of the issuance of such regulation, directive, or circular.

(2) EMERGENCY ACTION.—In an emergency, the Chief Executive Officer may issue a regulation, directive, or circular described in paragraph (1) without prior Board approval but subject to Board ratification following issuance.

(c) REVIEW BY DOT.—

(1) SUBMISSION.—Before the Administration issues any proposed or final regulation—

(A) the Administration shall submit a copy of the regulation to the Secretary of Transportation;

(B) the Administration shall provide the Secretary with a period of 5 days (excluding Saturdays, Sundays, and holidays) beginning on the date of such submission to determine whether or not the regulation is likely to have a significant effect on other modes of transportation in the national transportation system or the Secretary's aviation responsibilities, including national defense responsibilities; and

(C) if the Secretary determines, before the last day of such 5-day period, that the regulation is likely to have such a significant effect, the Administration shall provide the Secretary with an additional period of 45 days to assess the effect of the regulation on other modes of transportation in the national transportation system and the Secretary's aviation responsibilities, including national defense responsibilities.

(2) RECOMMENDATIONS.—The Secretary may recommend to the Administration modifications of a proposed or final regulation necessary to minimize the adverse effect of such regulation on other modes of transportation in the national transportation system or the Secretary's aviation responsibilities, including national defense responsibilities. The Administration may make any modifications recommended by the Secretary. If the Administration does not make a modification recommended by the Secretary, the Administration shall include in the publication of the proposed or final regulation a description of the recommended modification and the reasons for not making the modification.

(3) EXCEPTIONS.—This subsection shall not apply to the following types of regulations:

(A) Regulations pertaining to agency organization, procedure, or practice.

(B) Regulations pertaining solely to navigational aids.

(C) Regulations pertaining solely to airspace designations and configurations.

(D) Regulations pertaining solely to standard instrument approach procedures.

(E) Regulations pertaining solely to aircraft design.

(F) Regulations pertaining to the personnel management system developed under section 1314.

(G) Regulations pertaining to the acquisition management system developed under section 1334.

(4) *EMERGENCY ACTION.*—In an emergency, a regulation may take effect for the duration of the emergency and before the Secretary completes review of the regulation under this subsection, as determined necessary by the Chief Executive Officer or the Board.

(d) *AUTOMATIC TERMINATION DATE.*—Any regulation issued by the Administration after the effective date of this section which is likely to result 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) in any 1 year must contain an automatic termination date. The termination date shall also apply to any advisory circular issued by the Administration and pertaining solely to such regulation.

(e) *EMERGENCY DEFINED.*—In this section, the term “emergency” means a situation where there is good cause for finding that consideration by the Board or by the Department of Transportation is impracticable or contrary to the public interest.

§ 1333. Finality of decisions; appeals

Decisions of the Administration made pursuant to the exercise of the functions enumerated in subtitle VII of this title shall be administratively final, and appeals as currently authorized by law shall be taken directly to the National Transportation Safety Board or to any court of competent jurisdiction, as appropriate.

§ 1334. Procurement program

(a) *EXEMPTION FROM PROCUREMENT LAWS.*—

(1) *IN GENERAL.*—The following laws and regulations shall not apply to the Federal Aviation Administration:

(A) Title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251–266).

(B) The Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.).

(C) The Federal Acquisition Streamlining Act of 1994 (Public Law 103–355).

(D) The Small Business Act (15 U.S.C. 631 et seq.); except that the Administration shall provide reasonable opportunities to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to be awarded contracts.

(E) Subchapter V of chapter 35 of title 31 (relating to the procurement protest system).

(F) The Brooks Automatic Data Processing Act (40 U.S.C. 759).

(G) Section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).

(H) The Federal Acquisition Regulation and any laws not listed in subparagraphs (A) through (G) providing authority to promulgate regulations in the Federal Acquisition Regulation.

(2) *EFFECTIVE DATE.*—The exemption provided by paragraph (1) shall not take effect until the expiration of the 180-day period referred to in subsection (c)(2).

(b) *DEVELOPMENT OF ACQUISITION MANAGEMENT SYSTEM.*—

(1) *IN GENERAL.*—Not later than 180 days after the date of the enactment of the Federal Aviation Administration Revitalization Act of 1995, the Federal Aviation Board, in consultation with such nongovernmental experts in acquisition management systems as the Board may employ, shall develop an acquisition management system for the Administration.

(2) *CONSULTATION.*—In developing the acquisition management system, the Board shall consult nongovernmental experts in acquisition management systems.

(3) *GOALS.*—The acquisition management system to be developed by the Board under paragraph (1) shall be designed—

(A) to ensure that services are procured and new equipment is installed and certified as quickly as possible without sacrificing principles of fairness and protection against waste, fraud, and abuse; and

(B) to ensure a common interoperable air traffic control system with the military.

(4) *EXPERTS EVALUATION.*—The arrangements entered into by the Board with the experts consulted by the Board under paragraph (2) shall provide for those experts to evaluate the acquisition management system developed by the Board and submit to Congress the results of such evaluation before the last day of the 180-day period referred to in paragraph (1).

(c) *NOTICE TO CONGRESS.*—

(1) *IN GENERAL.*—Upon the development of the acquisition management system, the Board shall submit a comprehensive plan describing the acquisition management system to Congress, along with all existing or proposed rules or regulations relevant to the system.

(2) *IMPLEMENTATION.*—The Administration may begin to implement the acquisition management system only after the expiration of the 180-day period that begins on the date on which the plan is submitted to Congress under paragraph (1). The acquisition management system shall apply to contracts entered into after the expiration of such 180-day period.

(d) *CONTRACTS.*—

(1) *APPROVAL OF CERTAIN CONTRACTS.*—The Administration may only enter into a contract that has a total contract value, including all options, of an amount greater than \$100,000,000 if the Board first approves of the entry into the contract.

(2) *NOTICE TO CONGRESS OF CERTAIN CONTRACTS.*—In addition to complying with paragraph (1), the Administration may only enter into a contract that has a total contract value, including all options, of an amount greater than \$250,000,000 if the Board provides written notice to Congress of the proposed entry into the contract, together with a description of the contract and at least 30 calendar days elapse after the date of such notification.

§ 1335. Judicial review of actions in carrying out certain transferred duties and powers

(a) *JUDICIAL REVIEW.*—An action of the Administration in carrying out a duty or power transferred under the Department of Transportation Act (Public Law 89-670) and under the Federal Aviation

Administration Revitalization Act of 1995 and an action of the Administrator of the Federal Aviation Administration in carrying out a duty or power specifically assigned to the Administrator by the Department of Transportation Act and transferred to the Administration by the Federal Aviation Administration Revitalization Act of 1995 may be reviewed judicially to the same extent and in the same way as if the action had been an action by the department, agency, or instrumentality of the United States Government carrying out the duty or power immediately before the transfer.

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

SUBTITLE III—GENERAL AND INTERMODAL PROGRAMS

* * * * *

CHAPTER 55—INTERMODAL TRANSPORTATION

* * * * *

§ 5502. Intermodal Transportation Advisory Board

(a) ORGANIZATION.—The Intermodal Transportation Advisory Board is a board in the Office of the Secretary of Transportation.

[(b) MEMBERSHIP.—The Board consists of the Secretary, who serves as chairman, and the Administrator, or the Administrator's designee, of—

- [(1) the Federal Highway Administration;
- [(2) the Federal Aviation Administration;
- [(3) the Maritime Administration;
- [(4) the Federal Railroad Administration; and
- [(5) the Federal Transit Administration.]]

(b) MEMBERSHIP.—The Board consists of—

- (1) the Secretary, who serves as chairman;
- (2) the Chief Executive Officer of the Federal Aviation Administration or the Chief Executive Officer's designee; and
- (3) the Administrator, or the Administrator's designee, of—
 - (A) the Federal Highway Administration;
 - (B) the Maritime Administration;
 - (C) the Federal Railroad Administration; and
 - (D) the Federal Transit Administration.

* * * * *

SUBTITLE VI—MOTOR VEHICLE AND DRIVER PROGRAMS

* * * * *

CHAPTER 303—NATIONAL DRIVER REGISTER

* * * * *

§ 30305. Access to Register information

(a) * * *

(b) REQUESTS TO OBTAIN INFORMATION.—(1) * * *

* * * * *

(3) An individual who has received, or is applying for, an airman's certificate may request the chief driver licensing official of a State to provide information about the individual under subsection (a) of this section to [the Administrator of] the Federal Aviation Administration. The [Administrator] *Administration* may receive the information and shall make the information available to the individual for review and written comment. The [Administrator] *Administration* may use the information to verify information required to be reported to the [Administrator] *Administration* by an airman applying for an airman medical certificate and to evaluate whether the airman meets the minimum standards prescribed by the [Administrator] *Administration* to be issued an airman medical certificate. The [Administrator] *Administration* may not otherwise divulge or use the information. Information may not be obtained from the Register under this paragraph if the information was entered in the Register more than 3 years before the request, unless the information is about a revocation or suspension still in effect on the date of the request.

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SUBTITLE VII—AVIATION PROGRAMS

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PART A—AIR COMMERCE AND SAFETY

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SUBPART I—GENERAL

* * * * *

CHAPTER 401—GENERAL PROVISIONS

* * * * *

§ 40101. Policy

(a) ECONOMIC REGULATION.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation *and the Federal Aviation Administration* shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity:

(1) * * *

* * * * *

(c) GENERAL SAFETY CONSIDERATIONS.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the [Administrator of the] Federal Aviation Administration shall consider the following matters:

(1) the requirements of national defense and commercial and general aviation.

(2) the public right of freedom of transit through the navigable airspace.

(d) SAFETY CONSIDERATIONS IN PUBLIC INTEREST.—In carrying out subpart III of this part and those provisions of subpart IV applicable in carrying out subpart III, the [Administrator] *Administration* shall consider the following matters, among others, as being in the public interest:

(1) * * *

* * * * *

§ 40102. Definitions

(a) GENERAL DEFINITIONS.—In this part—

(1) * * *

* * * * *

(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

* * * * *

(20) “Federal airway” means a part of the navigable airspace that the [Administrator] *Federal Aviation Administration* designates as a Federal airway.

* * * * *

(37) “public aircraft”—

(A) * * *

(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.

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 be-

tween 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.

* * * * *

§40103. Sovereignty and use of airspace

(a) SOVEREIGNTY AND PUBLIC RIGHT OF TRANSIT.—(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation *and the Federal Aviation Administration* shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for handicapped individuals.

(b) USE OF AIRSPACE.—(1) The [Administrator of the] Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The [Administrator] *Administration* may modify or revoke an assignment when required in the public interest.

(2) The [Administrator] *Administration* shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

- (A) navigating, protecting, and identifying aircraft;
- (B) protecting individuals and property on the ground;
- (C) using the navigable airspace efficiently; and
- (D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the [Administrator] *Administration*, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the [Administrator] *Administration* decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the [Administrator] *Administration* cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

* * * * *

§40104. Promotion of civil aeronautics and air commerce

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

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

§40105. International negotiations, agreements, and obligations

(a) ADVICE AND CONSULTATION.—The Secretary of State shall advise the [Administrator of the] Federal Aviation Administration and the Secretaries of Transportation and Commerce, and consult with them as appropriate, about negotiations for an agreement with a government of a foreign country to establish or develop air navigation, including air routes and services. The Secretary of Transportation shall consult with the Secretary of State in carrying out this part to the extent this part is related to foreign air transportation.

(b) ACTIONS OF SECRETARY AND [ADMINISTRATOR] *ADMINISTRATION*.—(1) In carrying out this part, the Secretary of Transportation and the [Administrator] *Administration*—

(A) shall act consistently with obligations of the United States Government under an international agreement;

(B) shall consider applicable laws and requirements of a foreign country; and

(C) may not limit compliance by an air carrier with obligations or liabilities imposed by the government of a foreign country when the Secretary takes any action related to a certificate of public convenience and necessity issued under chapter 411 of this title.

* * * * *

(c) CONSULTATION ON INTERNATIONAL AIR TRANSPORTATION POLICY.—In carrying out section 40101(e) of this title, the Secretaries of State and Transportation, to the maximum extent practicable, shall consult on broad policy goals and individual negotiations with—

(1) the Secretaries of Commerce and Defense *and the Federal Aviation Administration*;

* * * * *

§40106. Emergency powers

(a) DEVIATIONS FROM REGULATIONS.—Appropriate military authority may authorize aircraft of the armed forces of the United States to deviate from air traffic regulations prescribed under sec-

tion 40103(b) (1) and (2) of this title when the authority decides the deviation is essential to the national defense because of a military emergency or urgent military necessity. The authority shall—

(1) give the [Administrator of the] Federal Aviation Administration prior notice of the deviation at the earliest practicable time; and

(2) to the extent time and circumstances allow, make every reasonable effort to consult with the [Administrator] *Administration* and arrange for the deviation in advance on a mutually agreeable basis.

(b) SUSPENSION OF AUTHORITY.—(1) * * *

(2) The President may act under this subsection without notice or a hearing. The suspension remains in effect for as long as the President decides is necessary to ensure the security of aircraft against unlawful seizure. Notwithstanding section 40105(b) of this title, the authority of the President to suspend rights under this subsection is a condition to a certificate of public convenience and necessity, air carrier operating certificate, foreign air carrier or foreign aircraft permit, or foreign air carrier operating specification issued by the Secretary of Transportation *or the Federal Aviation Administration* under this part.

* * * * *

§ 40107. Presidential transfers

(a) GENERAL AUTHORITY.—The President may transfer to the [Administrator of the] Federal Aviation Administration a duty, power, activity, or facility of a department, agency, or instrumentality of the executive branch of the United States Government, or an officer or unit of a department, agency, or instrumentality of the executive branch, related primarily to selecting, developing, testing, evaluating, establishing, operating, or maintaining a system, procedure, facility, or device for safe and efficient air navigation and air traffic control. In making a transfer, the President may transfer records and property and make officers and employees from the department, agency, instrumentality, or unit available to the [Administrator] *Administration*.

(b) DURING WAR.—If war occurs, the President by executive order may transfer to the Secretary of Defense a duty, power, activity, or facility of the [Administrator] *Administration*. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.

§ 40108. Training schools

(a) AUTHORITY TO OPERATE.—The [Administrator of the] Federal Aviation Administration may operate schools to train officers and employees of the Administration to carry out duties, powers, and activities of the [Administrator] *Administration*.

(b) ATTENDANCE.—The [Administrator] *Administration* may authorize officers and employees of other departments, agencies, or instrumentalities of the United States Government, officers and employees of governments of foreign countries, and individuals from the aeronautics industry to attend those schools. However, if the attendance of any of those officers, employees, or individuals

increases the cost of operating the schools, the [Administrator] *Administration* may require the payment or transfer of amounts or other consideration to offset the additional cost. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

§ 40109. Authority to exempt

(a) * * *

(b) SAFETY REGULATION.—The [Administrator of the] Federal Aviation Administration may grant an exemption from a regulation prescribed in carrying out sections 40103(b) (1) and (2), 40119, 44901, 44903, 44906, and 44935–44937 of this title when the [Administrator] *Administration* decides the exemption is in the public interest.

* * * * *

§ 40110. General procurement authority

(a) GENERAL.—In carrying out this part, the [Administrator of the] Federal Aviation Administration—

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

* * * * *

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

(1) * * *

(2) may—

(A) * * *

* * * * *

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

* * * * *

§ 40111. Multiyear procurement contracts for services and related items

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31, the [Administrator of the] Federal Aviation Administration may make a contract of not more than 5 years for the following types of services and items of supply related to those services for which amounts otherwise would be available for obligation only in the fiscal year for which appropriated:

(1) * * *

* * * * *

(b) REQUIRED FINDINGS.—The [Administrator] *Administration* may make a contract under this section only if the [Administrator] *Administration* finds that—

(1) there will be a continuing requirement for the service consistent with current plans for the proposed contract period;

(2) providing the service will require a substantial initial investment in plant or equipment, or will incur a substantial contingent liability for assembling, training, or transporting a specialized workforce; and

(3) the contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation.

(c) CONSIDERATIONS.—When making a contract under this section, the [Administrator] *Administration* shall be guided by the following:

(1) The part of the cost of a plant or equipment amortized as a cost of contract performance may not be more than the ratio between the period of contract performance and the anticipated useful commercial life (instead of physical life) of the plant or equipment, considering the location and specialized nature of the plant or equipment, obsolescence, and other similar factors.

(2) The [Administrator] *Administration* shall consider the desirability of—

(A) obtaining an option to renew the contract for a reasonable period of not more than 3 years, at a price that does not include charges for nonrecurring costs already amortized; and

(B) reserving in the [Administrator] *Administration* the right, on payment of the unamortized part of the cost of the plant or equipment, to take title to the plant or equipment under appropriate circumstances.

* * * * *

§40112. Multiyear procurement contracts for property

(a) GENERAL AUTHORITY.—Notwithstanding section 1341(a)(1)(B) of title 31 and to the extent that amounts otherwise are available for obligation, the [Administrator of the] Federal Aviation Administration may make a contract of more than one but not more than 5 fiscal years to purchase property, except a contract to construct, alter, or make a major repair or improvement to real property or a contract to purchase property to which section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) applies.

(b) REQUIRED FINDINGS.—The [Administrator] *Administration* may make a contract under this section if the [Administrator] *Administration* finds that—

(1) the contract will promote the safety or efficiency of the national airspace system and will result in reduced total contract costs;

(2) the minimum need for the property to be purchased is expected to remain substantially unchanged during the proposed contract period in terms of production rate, procurement rate, and total quantities;

(3) there is a reasonable expectation that throughout the proposed contract period the [Administrator] *Administration* will request appropriations for the contract at the level required to avoid cancellation;

(4) there is a stable design for the property to be acquired and the technical risks associated with the property are not excessive; and

(5) the estimates of the contract costs and the anticipated savings from the contract are realistic.

(c) REGULATIONS.—The [Administrator] *Administration* shall prescribe regulations for acquiring property under this section to promote the use of contracts under this section in a way that will allow the most efficient use of those contracts. The regulations may provide for a cancellation provision in the contract to the extent the provision is necessary and in the best interest of the United States. The provision may include consideration of recurring and non-recurring costs of the contractor associated with producing the item to be delivered under the contract. The regulations shall provide that, to the extent practicable—

(1) to broaden the aviation industrial base—

(A) * * *

* * * * *

(2) this section and regulations prescribed under this section may not be carried out in a way that precludes or curtails the existing ability of the [Administrator] *Administration* to provide for—

(A) competition in producing items to be delivered under a contract under this section; or

(B) ending a prime contract when performance is deficient with respect to cost, quality, or schedule.

* * * * *

(e) CANCELLATION PAYMENT AND NOTICE OF CANCELLATION CEILING.—(1) * * *

(2) Before awarding a contract under this section containing a cancellation ceiling of more than \$100,000,000, the [Administrator] *Administration* shall give written notice of the proposed contract and cancellation ceiling to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives. The contract may not be awarded until the end of the 30-day period beginning on the date of the notice.

* * * * *

(g) LIMITATION.—*This section and section 40111 shall not be effective to the extent they are inconsistent with the acquisition management system being implemented under section 1334.*

§40113. Administrative

(a) GENERAL AUTHORITY.—The Secretary of Transportation [(or the Administrator of)] *and* the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the [(Administrator)] *Administration* may take action the Secretary or [(Administrator)] *Administration*, 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)] *and the Administration have* 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)] *In carrying out aviation safety functions, duties, and powers, the Federal Aviation Administration* 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)] *Administration* 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)] *Administration* may provide safety-related training and operational services to foreign aviation authorities with or without reimbursement, if the [(Administrator)] *Administration* 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)] *Administration* 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)] *Administration* 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] *Administration* shall transmit to Congress a list of the foreign aviation authorities to which the [Administrator] *Administration* 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) EXEMPTIONS.—

(1) FAA REVIEW OF REGULATIONS.—*Prior to issuing any regulation or granting any exemption to a regulation issued under this chapter that affects the transportation of hazardous materials by air, the Secretary shall provide the Administration an opportunity for review, and the Administration may disapprove such action if the Administration determines that there would be an adverse effect on aviation safety.*

(2) PROPOSED CHANGES.—*The Administration may, in the interest of aviation safety, propose to the Secretary regulatory changes affecting the transportation of hazardous materials by air.*

(3) ENFORCEMENT.—*Enforcement actions for violations of this chapter or of any regulations issued under this chapter that affect the transportation of hazardous materials by air shall be brought by the Administration.*

§ 40114. Reports and records

(a) WRITTEN REPORTS.—(1) Except as provided in this part, the Secretary of Transportation [(or the Administrator of] *and* the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the [Administrator)] *Administration* shall make a written report of each proceeding and investigation under this part in which a formal hearing was held and shall provide a copy to each party to the proceeding or investigation. The report shall include the decision, conclusions, order, and requirements of the Secretary or [Administrator] *Administration* as appropriate.

(2) The Secretary [(or the Administrator] *and the Administration* with respect to aviation safety duties and powers designated to be carried out by the [Administrator)] *Administration* shall have all reports, orders, decisions, and regulations the Secretary or [Administrator] *Administration*, as appropriate, issues or prescribes published in the form and way best adapted for public use. A publication of the Secretary or [Administrator] *Administration* is competent evidence of its contents.

* * * * *

§ 40115. Withholding information

(a) OBJECTIONS TO DISCLOSURE.—(1) A person may object to the public disclosure of information—

(A) in a record filed under this part; or

(B) obtained under this part by the Secretary of Transportation or *Federal Aviation Administration* or State or the United States Postal Service.

(2) An objection must be in writing and must state the reasons for the objection. The Secretary of Transportation or *Federal Aviation Administration* or State or the Postal Service shall order the information withheld from public disclosure when the appropriate Secretary or the Postal Service decides that disclosure of the information would—

(A) prejudice the United States Government in preparing and presenting its position in international negotiations; or

(B) have an adverse effect on the competitive position of an air carrier in foreign air transportation.

* * * * *

§ 40117. Passenger facility fees

(a) * * *

(b) GENERAL AUTHORITY.—(1) The [Secretary of Transportation] *Federal Aviation Administration* 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.

(c) APPLICATIONS.—(1) An eligible agency must submit to the [Secretary] *Administration* an application for authority to impose a passenger facility fee. The application shall contain information and be in the form that the [Secretary] *Administration* 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] *Administration* shall prescribe regulations that define reasonable notice and contain at least the following requirements:

(A) * * *

* * * * *

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

(d) LIMITATIONS ON APPROVING APPLICATIONS.—The [Secretary] *Administration* 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] *Administration* 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】** *Administration* approves an application that the agency has submitted under subsection (c) of this section; and

(B) subject to terms the **【Secretary】** *Administration* 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;

(C) for a project the **【Secretary】** *Administration* does not approve under this section before October 1, 1993, if, during the fiscal year ending September 30, 1993, the amount available for obligation under subchapter II of chapter 417 of this title is less than \$38,600,000, except that this clause—

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

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

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

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

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

(2) A project financed with a passenger facility fee may not be subject to an exclusive long-term lease or use agreement of an air

carrier or foreign air carrier, as defined by regulations of the [Secretary] *Administration*.

(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.

* * * * *

(h) COMPLIANCE.—(1) As necessary to ensure compliance with this section, the [Secretary] *Administration* 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] *Administration* periodically shall audit and review the use by an eligible agency of passenger facility revenue. After review and a public hearing, the [Secretary] *Administration* may end any part of the authority of the agency to impose a passenger facility fee to the extent the [Secretary] *Administration* decides that the revenue is not being used as provided in this section.

(3) The [Secretary] *Administration* 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] *Administration* 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] *Administration* 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] *Administration* 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.

* * * * *

§ 40119. Security and research and development activities

(a) GENERAL REQUIREMENTS.—The [Administrator of the] Federal Aviation Administration shall conduct research (including behavioral research) and development activities appropriate to develop, modify, test, and evaluate a system, procedure, facility, or

device to protect passengers and property against acts of criminal violence and aircraft piracy.

(b) DISCLOSURE.—(1) Notwithstanding section 552 of title 5, the [Administrator] *Administration* shall prescribe regulations prohibiting disclosure of information obtained or developed in carrying out security or research and development activities under section 44501 (a) or (c), 44502(a) (1) or (3), (b), or (c), 44504, 44505, 44507, 44508, 44511, 44512, 44513, 44901, 44903 (a), (b), (c), or (e), 44905, 44912, 44935, 44936, or 44938 (a) or (b) of this title if the [Administrator] *Administration* decides disclosing the information would—

- (A) be an unwarranted invasion of personal privacy;
- (B) reveal a trade secret or privileged or confidential commercial or financial information; or
- (C) be detrimental to the safety of passengers in air transportation.

(2) Paragraph (1) of this subsection does not authorize information to be withheld from a committee of Congress authorized to have the information.

(c) TRANSFERS OF DUTIES AND POWERS PROHIBITED.—Except as otherwise provided by law, the [Administrator] *Administration* may not transfer a duty or power under this section to another department, agency, or instrumentality of the United States Government.

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CHAPTER 417—OPERATIONS OF CARRIERS

* * * * *

SUBCHAPTER I—REQUIREMENTS

* * * * *

§ 41703. Navigation of foreign civil aircraft

(a) PERMITTED NAVIGATION.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States only—

(1) * * *

* * * * *

(3) if the Secretary of Transportation, *after consultation with the Federal Aviation Administration*, authorizes the navigation; and

(b) REQUIREMENTS FOR AUTHORIZING NAVIGATION.—The Secretary may authorize navigation under this section only if the Secretary, *after consultation with the Federal Aviation Administration*, decides the authorization is—

- (1) in the public interest; and
- (2) consistent with any agreement between the Government and the government of a foreign country.

* * * * *

§ 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 Washington National Airport), the [Secretary of Transportation] *Federal Aviation Administration* 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] *Administration* 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] *Administration* finds that an exemption under paragraph (2) would significantly increase operational delays, the [Secretary] *Administration* 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] *Administration* 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] *ADMINISTRATION*.—The [Secretary] *Administration* 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] *Administration* finds it to be in the public interest at a high density airport (other than Washington National Airport), the [Secretary] *Administration* 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] *Administration* 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] *Administration* 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 of Transportation 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.

(c) SLOTS FOR NEW ENTRANTS.—

(1) IN GENERAL.—If the [Secretary] Administration finds it to be in the public interest and the circumstances to be exceptional, the [Secretary] Administration 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 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 WASHINGTON NATIONAL AIRPORT.—

(1) IN GENERAL.—Notwithstanding sections 6005(c)(5) and 6009(e) of the Metropolitan Washington Airports Act of 1986, or any provision of this section, the [Secretary] Administration may, only under circumstances determined by the [Secretary] Administration to be exceptional, grant by order to an air carrier currently holding or operating a slot at 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 Washington National Airport), to enable that carrier to provide air transportation with Stage 3 aircraft at Washington National Airport; except that such exemption shall not—

(A) * * *

* * * * *

(f) RULEMAKING.—The [Secretary] Administration shall conduct a rulemaking proceeding based on the results of the study described in subsection (e). In the course of such proceeding, the [Secretary] Administration 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] Administration 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) * * *

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

(i) CONSULTATION WITH DOT.—In making determinations with respect to essential air service, exceptional circumstances, and the

public interest, the Administration shall consult with the Secretary of Transportation.

* * * * *

SUBPART III—SAFETY

CHAPTER 441—REGISTRATION AND RECORDATION OF AIRCRAFT

* * * * *

§44101. Operation of aircraft

(a) **REGISTRATION REQUIREMENT.**—Except as provided in subsection (b) of this section, a person may operate an aircraft only when the aircraft is registered under section 44103 of this title.

(b) **EXCEPTIONS.**—A person may operate an aircraft in the United States that is not registered—

(1) when authorized under section 40103(d) or 41703 of this title;

(2) when it is an aircraft of the national defense forces of the United States and is identified in a way satisfactory to the [Administrator of the] Federal Aviation Administration; and

(3) for a reasonable period of time after a transfer of ownership, under regulations prescribed by the [Administrator] *Administration*.

§44102. Registration requirements

(a) * * *

(b) **DUTY TO DEFINE CERTAIN TERM.**—In carrying out subsection (a)(1)(C) of this section, the [Secretary of Transportation] *Federal Aviation Administration* shall define “based and primarily used in the United States”.

§44103. Registration of aircraft

(a) **GENERAL.**—(1) On application of the owner of an aircraft that meets the requirements of section 44102 of this title, the [Administrator of the] Federal Aviation Administration shall—

(A) register the aircraft; and

(B) issue a certificate of registration to its owner.

(2) The [Administrator] *Administration* may prescribe the extent to which an aircraft owned by the holder of a dealer's certificate of registration issued under section 44104(2) of this title also is registered under this section.

(b) **CONTROLLED SUBSTANCE VIOLATIONS.**—(1) The [Administrator] *Administration* may not issue an owner's certificate of registration under subsection (a)(1) of this section to a person whose certificate is revoked under section 44106 of this title during the 5-year period beginning on the date of the revocation, except—

(A) as provided in section 44106(e)(2) of this title; or

(B) that the [Administrator] *Administration* may issue the certificate to the person after the one-year period beginning on the date of the revocation if the [Administrator] *Administration* decides that the aircraft otherwise meets the requirements

of section 44102 of this title and that denial of a certificate for the 5-year period—

(i) would be excessive considering the nature of the offense or the act committed and the burden the denial places on the person; or

(ii) would not be in the public interest.

(2) A decision of the [Administrator] *Administration* under paragraph (1)(B)(i) or (ii) of this subsection is within the discretion of the [Administrator] *Administration*. That decision or failure to make a decision is not subject to administrative or judicial review.

* * * * *

§ 44104. Registration of aircraft components and dealers' certificates of registration

The [Administrator of the] Federal Aviation Administration may prescribe regulations—

(1) in the interest of safety for registering and identifying an aircraft engine, propeller, or appliance; and

(2) in the public interest for issuing, suspending, and revoking a dealer's certificate of registration under this chapter and for its use by a person manufacturing, distributing, or selling aircraft.

§ 44105. Suspension and revocation of aircraft certificates

The [Administrator of the] Federal Aviation Administration may suspend or revoke a certificate of registration issued under section 44103 of this title when the aircraft no longer meets the requirements of section 44102 of this title.

§ 44106. Revocation of aircraft 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) REVOCATIONS.—(1) The [Administrator of the] Federal Aviation Administration shall issue an order revoking the certificate of registration for an aircraft issued to an owner under section 44103 of this title and any other certificate of registration that the owner of the aircraft holds under section 44103, if the [Administrator] *Administration* finds that—

(A) * * *

* * * * *

(c) ADVICE TO HOLDERS AND OPPORTUNITY TO ANSWER.—Before the [Administrator] *Administration* revokes a certificate under subsection (b) of this section, the [Administrator] *Administration* shall—

(1) advise the holder of the certificate of the charges or reasons on which the [Administrator] *Administration* bases the proposed action; and

(2) provide the holder of the certificate an opportunity to answer the charges and state why the certificate should not be revoked.

(d) APPEALS.—(1) A person whose certificate is revoked by the [Administrator] *Administration* 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 a hearing on the record. In conducting the hearing, the Board is not bound by the findings of fact of the [Administrator] *Administration*.

(2) When a person files an appeal with the Board under this subsection, the order of the [Administrator] *Administration* revoking the certificate is stayed. However, if the [Administrator] *Administration* 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 dispose of the appeal not later than 60 days after notification by the [Administrator] *Administration* under this paragraph.

(3) A person substantially affected by an order of the Board under this subsection may seek judicial review of the order under section 46110 of this title. The [Administrator] *Administration* shall be made a party to that judicial proceeding.

(e) ACQUITTAL.—(1) The [Administrator] *Administration* may not revoke, and the Board may not affirm a revocation of, a certificate of registration under this section on the basis of an activity described in subsection (b)(1)(A) of this section 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] *Administration* has revoked a certificate of registration of a person under this section because of an activity described in subsection (b)(1)(A) of this section, the [Administrator] *Administration* shall reissue a certificate to the person if the person—

(A) subsequently is acquitted of all charges related to a controlled substance in an indictment or information arising from the activity; and

(B) otherwise meets the requirements of section 44102 of this title.

§44107. Recordation of conveyances, leases, and security instruments

(a) ESTABLISHMENT OF SYSTEM.—The [Administrator of the] Federal Aviation Administration shall establish a system for recording—

(1) * * *

* * * * *

(c) ACKNOWLEDGMENT.—Except as the [Administrator] *Administration* otherwise may provide, a conveyance, lease, or instrument may be recorded under subsection (a) of this section only after it has been acknowledged before—

(1) a notary public; or

(2) another officer authorized under the laws of the United States, a State, the District of Columbia, or a territory or possession of the United States to acknowledge deeds.

(d) RECORDS AND INDEXES.—The [Administrator] *Administration* shall—

(1) keep a record of the time and date that each conveyance, lease, and instrument is filed and recorded with the [Administrator] *Administration*; and

(2) record each conveyance, lease, and instrument filed with the [Administrator] *Administration*, in the order of their receipt, and index them by—

(A) the identifying description of the aircraft, aircraft engine, or propeller, or location specified in a lease or instrument recorded under subsection (a)(2)(C) or (D) of this section; and

(B) the names of the parties to each conveyance, lease, and instrument.

* * * * *

§44110. Information about aircraft ownership and rights

The [Administrator of the] Federal Aviation Administration may provide by regulation for—

(1) endorsing information on each certificate of registration issued under section 44103 of this title and each certificate issued under section 44704 of this title about ownership of the aircraft for which each certificate is issued; and

(2) recording transactions affecting an interest in, and for other records, proceedings, and details necessary to decide the rights of a party related to, a civil aircraft of the United States, aircraft engine, propeller, appliance, or spare part.

§44111. Modifications in registration and recordation system for aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) AUTHORITY TO MAKE MODIFICATIONS.—The [Administrator of the] Federal Aviation Administration shall make modifications in the system for registering and recording aircraft necessary to make the system more effective in serving the needs of—

(1) * * *

* * * * *

(d) REGULATIONS.—(1) The [Administrator of the] Federal Aviation Administration shall prescribe regulations to carry out this section and provide a written explanation of how the regulations address each of the deficiencies and abuses described in subsection (c) of this section. 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.

(2) Regulations prescribed under this subsection shall require that—

(A) each individual listed in an application for registration of an aircraft provide with the application the individual's driver's license number; and

(B) each person (not an individual) listed in an application for registration of an aircraft provide with the application the person's taxpayer identifying number.

* * * * *

CHAPTER 443—INSURANCE

* * * * *

§44302. General authority

(a) INSURANCE AND REINSURANCE.—(1) Subject to subsection (b) of this section and section 44305(a) of this title, the [Secretary of Transportation] *Federal Aviation Administration* may provide insurance and reinsurance against loss or damage arising out of any risk from the operation of an American aircraft or foreign-flag aircraft—

(A) in foreign air commerce; or

(B) between at least 2 places, all of which are outside the United States.

(2) An aircraft may be insured or reinsured for not more than its reasonable value as determined by the [Secretary] *Administration*. Insurance or reinsurance may be provided only when the [Secretary] *Administration* decides that the insurance cannot be obtained on reasonable terms from an insurance carrier.

(b) PRESIDENTIAL APPROVAL.—The [Secretary] *Administration* may provide insurance or reinsurance under subsection (a) of this section only with the approval of the President. The President may approve the insurance or reinsurance only after deciding that the continued operation of the American aircraft or foreign-flag aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(c) CONSULTATION.—The President may require the [Secretary] *Administration* to consult with interested departments, agencies, and instrumentalities of the Government before providing insurance or reinsurance under this chapter.

(d) ADDITIONAL INSURANCE.—With the approval of the [Secretary] *Administration*, a person having an insurable interest in an aircraft may insure with other underwriters in an amount that is more than the amount insured with the [Secretary] *Administration*. However, the [Secretary] *Administration* may not benefit from the additional insurance. This subsection does not prevent the [Secretary] *Administration* from making contracts of coinsurance.

§44303. Coverage

The [Secretary of Transportation] *Federal Aviation Administration* may provide insurance and reinsurance authorized under section 44302 of this title for the following:

(1) * * *

* * * * *

§44304. Reinsurance

(a) GENERAL AUTHORITY.—To the extent the [Secretary of Transportation] *Federal Aviation Administration* is authorized to provide insurance under this chapter, the [Secretary] *Administration* may reinsure any part of the insurance provided by an insurance carrier. The [Secretary] *Administration* may reinsure with, transfer to, or transfer back to, the carrier any insurance or reinsurance provided by the [Secretary] *Administration* under this chapter.

(b) PREMIUM LEVELS.—The [Secretary] *Administration* may provide reinsurance at premiums not less than, or obtain reinsurance at premiums not higher than, the premiums the [Secretary] *Administration* establishes on similar risks or the premiums the insurance carrier charges for the insurance to be reinsured by the [Secretary] *Administration*, whichever is most advantageous to the [Secretary] *Administration*. However, the [Secretary] *Administration* may make allowances to the insurance carrier for expenses incurred in providing services and facilities that the [Secretary] *Administration* considers good business practice, except for payments by the carrier for the stimulation or solicitation of insurance business.

§44305. Insuring United States Government property

(a) * * *

(b) PREMIUM WAIVERS AND INDEMNIFICATION.—With the approval required under subsection (a) of this section, the [Secretary of Transportation] *Federal Aviation Administration* may provide the insurance without premium at the request of the Secretary of Defense or the head of a department, agency, or instrumentality designated by the President when the Secretary of Defense or the designated head agrees to indemnify the [Secretary of Transportation] *Federal Aviation Administration* against all losses covered by the insurance. The Secretary of Defense and any designated head may make indemnity agreements with the [Secretary of Transportation] *Federal Aviation Administration* under this section.

§44306. Premiums and limitations on coverage and claims

(a) PREMIUMS BASED ON RISK.—To the extent practical, the premium charged for insurance or reinsurance under this chapter shall be based on consideration of the risk involved.

(b) TIME LIMITS.—The [Secretary of Transportation] *Federal Aviation Administration* may provide insurance and reinsurance under this chapter for a period of not more than 60 days. The period may be extended for additional periods of not more than 60 days each only if the President decides, before each additional period, that the continued operation of the aircraft to be insured or reinsured is necessary to carry out the foreign policy of the United States Government.

(c) MAXIMUM INSURED AMOUNT.—The insurance policy on an aircraft insured or reinsured under this chapter shall specify a stated amount that is not more than the value of the aircraft, as determined by the [Secretary] *Administration*. A claim under the policy may not be paid for more than that stated amount.

§44307. Revolving fund

(a) EXISTENCE, DISBURSEMENTS, APPROPRIATIONS, AND DEPOSITS.—(1) There is a revolving fund in the Treasury. The Secretary of the Treasury shall disburse from the fund payments to carry out this chapter.

(2) Necessary amounts to carry out this chapter may be appropriated to the fund. The amounts appropriated and other amounts received in carrying out this chapter shall be deposited in the fund.

(b) INVESTMENT.—On request of the [Secretary of Transportation] *Federal Aviation Administration*, the Secretary of the Treasury may invest any part of the amounts in the revolving fund in interest-bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, the securities shall be deposited in the fund.

(c) EXCESS AMOUNTS.—The balance in the revolving fund in excess of an amount the [Secretary of Transportation] *Federal Aviation Administration* determines is necessary for the requirements of the fund and for reasonable reserves to maintain the solvency of the fund shall be deposited at least annually in the Treasury as miscellaneous receipts.

(d) EXPENSES.—The [Secretary of Transportation] *Federal Aviation Administration* shall deposit annually an amount in the Treasury as miscellaneous receipts to cover the expenses the Government incurs when the [Secretary of Transportation] *Federal Aviation Administration* uses appropriated amounts in carrying out this chapter. The deposited amount shall equal an amount determined by multiplying the average monthly balance of appropriated amounts retained in the revolving fund by a percentage that is at least the current average rate payable on marketable obligations of the Government. The Secretary of the Treasury shall determine annually in advance the percentage applied.

§44308. Administrative

(a) COMMERCIAL PRACTICES.—The [Secretary of Transportation] *Federal Aviation Administration* may carry out this chapter consistent with commercial practices of the aviation insurance business.

(b) ISSUANCE OF POLICIES AND DISPOSITION OF CLAIMS.—(1) The [Secretary] *Administration* may issue insurance policies to carry out this chapter. The [Secretary] *Administration* may prescribe the forms, amounts insured under the policies, and premiums charged. The [Secretary] *Administration* may change an amount of insurance or a premium for an existing policy only with the consent of the insured.

(2) For a claim under insurance authorized by this chapter, the [Secretary] *Administration* may—

(A) settle and pay the claim made for or against the United States Government; and

(B) pay the amount of a judgment entered against the Government.

(c) UNDERWRITING AGENT.—(1) The [Secretary] *Administration* may, and when practical shall, employ an insurance carrier or group of insurance carriers to act as an underwriting agent. The [Secretary] *Administration* may use the agent to adjust claims

under this chapter, but claims may be paid only when approved by the [Secretary] *Administration*.

(2) The [Secretary] *Administration* may pay reasonable compensation to an underwriting agent for servicing insurance the agent writes for the [Secretary] *Administration*. Compensation may include payment for reasonable expenses incurred by the agent but may not include a payment by the agent for stimulation or solicitation of insurance business.

(3) Except as provided by this subsection, the [Secretary] *Administration* may not pay an insurance broker or other person acting in a similar capacity any consideration for arranging insurance when the [Secretary] *Administration* directly insures any part of the risk.

(d) BUDGET.—The [Secretary] *Administration* shall submit annually a budget program for carrying out this chapter as provided for wholly owned Government corporations under chapter 91 of title 31.

(e) ACCOUNTS.—The [Secretary] *Administration* shall maintain a set of accounts. The Comptroller General shall audit those accounts under chapter 35 of title 31. Notwithstanding chapter 35, the Comptroller General shall allow credit for expenditures under this chapter made consistent with commercial practices in the aviation insurance business when shown to be necessary because of the business activities authorized by this chapter.

§44309. Civil actions

(a) * * *

* * * * *

(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] *Federal Aviation Administration* denies the claim. The claim is deemed to be administratively denied if the [Secretary] *Administration* does not act on the claim not later than 6 months after filing, unless the [Secretary] *Administration* makes a different agreement with the claimant when there is good cause for an agreement.

(d) INTERPLEADER.—(1) If the [Secretary] *Administration* 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.

* * * * *

§44310. Ending effective date

The authority of the [Secretary of Transportation] *Federal Aviation Administration* to provide insurance and reinsurance under this chapter is not effective after September 30, 1997.

CHAPTER 445—FACILITIES, PERSONNEL, AND RESEARCH

* * * * *

§44501. Plans and policy

(a) LONG RANGE PLANS AND POLICY REQUIREMENTS.—The [Administrator of the] Federal Aviation Administration shall make long range plans and policy for the orderly development and use of the navigable airspace, and the orderly development and location of air navigation facilities, that will best meet the needs of, and serve the interests of, civil aeronautics and the national defense, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern.

(b) AIRWAY CAPITAL INVESTMENT PLAN.—The [Administrator of the] Federal Aviation Administration shall review, revise, and publish a national airways system plan, known as the Airway Capital Investment Plan, before the beginning of each fiscal year. The plan shall set forth—

(1) for a 10-year period, the research, engineering, and development programs and the facilities and equipment that the [Administrator] *Administration* considers necessary for a system of airways, air traffic services, and navigation aids that will—

- (A) meet the forecasted needs of civil aeronautics;
- (B) meet the requirements that the Secretary of Defense establishes for the support of the national defense; and
- (C) provide the highest degree of safety in air commerce;

* * * * *

(4) a 10-year investment plan that considers long range objectives that the [Administrator] *Administration* considers necessary to—

- (A) ensure that safety is given the highest priority in providing for a safe and efficient airway system; and
- (B) meet the current and projected growth of aviation and the requirements of interstate commerce, the United States Postal Service, and the national defense.

(c) NATIONAL AVIATION RESEARCH PLAN.—(1) The [Administrator of the] Federal Aviation Administration shall prepare and publish annually a national aviation research plan and submit the plan to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives. The plan shall be submitted not later than the date of submission of the President's budget to Congress.

(2)(A) The plan shall describe, for a 15-year period, the research, engineering, and development that the [Administrator of the] Federal Aviation Administration considers necessary—

- (i) to ensure the continued capacity, safety, and efficiency of aviation in the United States, considering emerging technologies and forecasted needs of civil aeronautics; and
- (ii) to provide the highest degree of safety in air travel.

(B) The plan shall cover all research conducted under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title

and shall identify complementary and coordinated research efforts that the Administrator of the National Aeronautics and Space Administration conducts with amounts specifically appropriated to the Administration. For projects for which the [Administrator of the] Federal Aviation Administration anticipates requesting an appropriation, the plan shall include—

(i) for the first 2 years of the plan, detailed annual estimates of the schedule, cost, and work-force levels for each research project, including a description of the scope and content of each major contract, grant, or interagency agreement;

(ii) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major project and any additional major research projects that may be required to meet long-term objectives and that may have significant impact on future appropriations requirements;

(iii) for the 6th and subsequent years of the plan, the long-term objectives the [Administrator of the] Federal Aviation Administration considers necessary to ensure that aviation safety will be given the highest priority; and

(iv) details of a program to disseminate to the private sector the results of aviation research conducted by the [Administrator of the] Federal Aviation Administration, including any new technologies developed.

(3) Subject to section 40119(b) of this title and regulations prescribed under section 40119(b), the [Administrator of the] Federal Aviation Administration shall submit to the committees named in paragraph (1) of this subsection an annual report on the accomplishments of the research completed during the prior fiscal year. The report shall be submitted with the plan required under paragraph (1) and be organized to allow comparison with the plan in effect for the prior fiscal year.

§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] *Federal Aviation Administration* 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] *Administration* from the appropriated amounts.

(3) The [Secretary of Transportation] *Federal Aviation Administration* 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] *Administration* 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 shall be used for the purpose of carrying out this paragraph, including acquisition, site preparation work, installation, and related expenditures.

(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 that 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, construction, 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] *Administration* may provide advice on the effects of the establishment, construction, or alteration on the use of airspace by aircraft.

* * * * *

(f) 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] *Administration* 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] *Administration* shall accept the system and operate and maintain it under criteria of the [Administrator] *Administration*.

§ 44503. Reducing nonessential expenditures

The [Secretary of Transportation] *Federal Aviation Administration* shall attempt to reduce the capital, operating, maintenance, and administrative costs of the national airport and airway system to the maximum extent practicable consistent with the highest degree of aviation safety. At least annually, the [Secretary] *Administration* shall consult with and consider the recommendations of users of the system on ways to reduce nonessential expenditures of the United States Government for aviation. The [Secretary] *Administration* shall give particular attention to a recommendation that may reduce, with no adverse effect on safety, future personnel requirements and costs to the Government required to be recovered from user charges.

§ 44504. Improved aircraft, aircraft engines, propellers, and appliances

(a) DEVELOPMENTAL WORK AND SERVICE TESTING.—The [Administrator of the] Federal Aviation Administration may conduct or supervise developmental work and service testing to improve aircraft, aircraft engines, propellers, and appliances.

(b) RESEARCH.—The [Administrator] *Administration* shall conduct or supervise research—

(1) * * *

* * * * *

(c) AUTHORITY TO BUY ITEMS OFFERING SPECIAL ADVANTAGES.—In carrying out this section, the [Administrator] *Administration*, by negotiation or otherwise, may buy or exchange experimental aircraft, aircraft engines, propellers, and appliances that the [Administrator] *Administration* decides may offer special advantages to aeronautics.

§ 44505. Systems, procedures, facilities, and devices

(a) GENERAL REQUIREMENTS.—(1) The [Administrator of the] Federal Aviation Administration shall—

(A) develop, alter, test, and evaluate systems, procedures, facilities, and devices, and define their performance characteristics, to meet the needs for safe and efficient navigation and traffic control of civil and military aviation, except for needs of the armed forces that are peculiar to air warfare and primarily of military concern; and

(B) select systems, procedures, facilities, and devices that will best serve those needs and promote maximum coordination of air traffic control and air defense systems.

(2) The [Administrator] *Administration* may make contracts to carry out this subsection without regard to section 3324(a) and (b) of title 31.

(3) When a substantial question exists under paragraph (1) of this subsection about whether a matter is of primary concern to the armed forces, the [Administrator] *Administration* shall decide whether the [Administrator] *Administration* or the Secretary of the appropriate military department has responsibility. The [Administrator] *Administration* shall be given technical information related to each research and development project of the armed

forces that potentially applies to, or potentially conflicts with, the common system to ensure that potential application to the common system is considered properly and that potential conflicts with the system are eliminated.

(b) RESEARCH ON HUMAN FACTORS AND SIMULATION MODELS.—The [Administrator] *Administration* shall conduct or supervise research—

(1) * * *

* * * * *

(c) RESEARCH ON DEVELOPING AND MAINTAINING A SAFE AND EFFICIENT SYSTEM.—The [Administrator] *Administration* shall conduct or supervise research on—

(1) * * *

* * * * *

(d) COOPERATIVE AGREEMENTS.—The [Administrator] *Administration* may enter into cooperative agreements on a cost-shared basis with Federal and non-Federal entities that the [Administrator] *Administration* may select in order to conduct, encourage, and promote aviation research, engineering, and development, including the development of prototypes and demonstration models.

§44506. Air traffic controllers

(a) RESEARCH ON EFFECT OF AUTOMATION ON PERFORMANCE.—To develop the means necessary to establish appropriate selection criteria and training methodologies for the next generation of air traffic controllers, the [Administrator of the] Federal Aviation Administration shall conduct research to study the effect of automation on the performance of the next generation of air traffic controllers and the air traffic control system. The research shall include investigating—

(1) * * *

* * * * *

(b) RESEARCH ON HUMAN FACTOR ASPECTS OF AUTOMATION.—The [Administrators of the Federal Aviation Administration and] *Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration* may make an agreement for the use of the National Aeronautics and Space Administration's unique human factor facilities and expertise in conducting research activities to study the human factor aspects of the highly automated environment for the next generation of air traffic controllers. The research activities shall include investigating—

(1) human perceptual capabilities and the effect of computer-aided decision making on the workload and performance of air traffic controllers;

(2) information management techniques for advanced air traffic control display systems; and

(3) air traffic controller workload and performance measures, including the development of predictive models.

(c) COLLEGIATE TRAINING INITIATIVE.—(1) The [Administrator of the] Federal Aviation Administration may maintain the Collegiate Training Initiative program by making new agreements and continuing existing agreements with institutions of higher education

(as defined by the [Administrator] *Administration*) under which the institutions prepare students for the position of air traffic controller with the [Department of Transportation] *Administration* (as defined in section 2109 of title 5). The [Administrator] *Administration* may establish standards for the entry of institutions into the program and for their continued participation.

(2)(A) The [Administrator of the] Federal Aviation Administration may appoint an individual who has successfully completed a course of training in a program described in paragraph (1) of this subsection to the position of air traffic controller noncompetitively in the excepted service (as defined in section 2103 of title 5). An individual appointed under this paragraph serves at the pleasure of the [Administrator] *Administration*, subject to section 7511 of title 5. However, an appointment under this paragraph may be converted from one in the excepted service to a career conditional or career appointment in the competitive civil service (as defined in section 2102 of title 5) when the individual achieves full performance level air traffic controller status, as decided by the [Administrator] *Administration*.

(B) The authority under subparagraph (A) of this paragraph to make appointments in the excepted service expires on October 6, 1997, except that the [Administrator of the] Federal Aviation Administration may extend the authority for one or more successive one-year periods.

(d) STAFFING REPORT.—The [Administrator of the] Federal Aviation Administration shall submit annually to the Committee on [Public Works and Transportation] *Transportation and Infrastructure* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

(1) the staffing standards used to determine the number of air traffic controllers needed to operate the air traffic control system of the United States;

(2) a 3-year projection of the number of controllers needed to be employed to operate the system to meet the standards; and

(3) a detailed plan for employing the controllers, including projected budget requests.

§44507. Civil aeromedical research

The Civil Aeromedical Institute established by section [106(j)] 1317 of this title may—

(1) * * *

(2) make comments to the [Administrator of the] Federal Aviation Administration on human factors aspects of proposed air safety regulations;

(3) make comments to [the Administrator] *the Federal Aviation Board* on human factors aspects of proposed training programs, equipment requirements, standards, and procedures for aviation personnel;

(4) advise, assist, and represent the Federal Aviation Administration in the human factors aspects of joint projects between the Administration and the National Aeronautics and Space Administration, other departments, agencies, and instrumen-

talities of the United States Government, industry, and governments of foreign countries; and

(5) provide medical consultation services to the [Administrator] *Administration* about medical certification of airmen.

§ 44508. Research advisory committee

(a) ESTABLISHMENT AND DUTIES.—(1) There is a research advisory committee in the Federal Aviation Administration. The committee shall—

(A) provide advice and recommendations to the [Administrator of the] Federal Aviation Administration about needs, objectives, plans, approaches, content, and accomplishments of the aviation research program carried out under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title;

(B) assist in ensuring that the research is coordinated with similar research being conducted outside the Administration; and

(C) review the operations of the regional centers of air transportation excellence established under section 44513 of this title.

(2) The [Administrator] *Administration* may establish subordinate committees to provide advice on specific areas of research conducted under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title.

(b) MEMBERS, CHAIRMAN, PAY, AND EXPENSES.—(1) The committee is composed of not more than 30 members appointed by the [Administrator] *Administration* from among individuals who are not employees of the Administration and who are specially qualified to serve on the committee because of their education, training, or experience. In appointing members of the committee, the [Administrator] *Administration* shall ensure that the regional centers of air transportation excellence, universities, corporations, associations, consumers, and other departments, agencies, and instrumentalities of the United States Government are represented.

(2) The [Administrator] *Administration* shall designate the chairman of the committee.

(3) A member of the committee serves without pay. However, the [Administrator] *Administration* may allow a member, when attending meetings of the committee or a subordinate committee, expenses as authorized under section 5703 of title 5.

(c) SUPPORT STAFF, INFORMATION, AND SERVICES.—The [Administrator] *Administration* shall provide support staff for the committee. On request of the committee, the [Administrator] *Administration* shall provide information, administrative services, and supplies that the [Administrator] *Administration* considers necessary for the committee to carry out its duties and powers.

(d) NONAPPLICATION.—Section 14 of the Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the committee.

(e) USE AND LIMITATION OF AMOUNTS.—(1) Not more than .1 percent of the amounts made available to conduct research under sections 40119, 44504, 44505, 44507, 44511–44513, and 44912 of this title may be used by the [Administrator] *Administration* to carry out this section.

(2) A limitation on amounts available for obligation by or for the committee does not apply to amounts made available to carry out this section.

§44509. Demonstration projects

The [Secretary of Transportation] *Federal Aviation Administration* may carry out under this chapter demonstration projects that the [Secretary] *Administration* considers necessary for research and development activities under this chapter.

§44510. Airway science curriculum grants

(a) GENERAL AUTHORITY.—The [Administrator of the] Federal Aviation Administration may make competitive grant agreements with institutions of higher education having airway science curricula for the United States Government's share of the allowable direct costs of the following categories of items to the extent that the items are in support of airway science curricula:

- (1) the construction, purchase, or lease with an option to purchase, of buildings and associated facilities.
- (2) instructional material and equipment.

(b) COST GUIDELINES.—The [Administrator] *Administration* shall establish guidelines to determine the direct costs allowable under a grant to be made under this section. The Government's share of the allowable cost of a project assisted by a grant under this section may not be more than 65 percent.

§44511. Aviation research grants

(a) GENERAL AUTHORITY.—The [Administrator of the] Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations to conduct aviation research in areas the [Administrator] *Administration* considers necessary for the long-term growth of civil aviation.

(b) APPLICATIONS.—An institution of higher education or nonprofit research organization interested in receiving a grant under this section may submit an application to the [Administrator] *Administration*. The application must be in the form and contain the information the [Administrator] *Administration* requires.

(c) SOLICITATION, REVIEW, AND EVALUATION PROCESS.—The [Administrator] *Administration* shall establish a solicitation, review, and evaluation process that ensures—

- (1) providing grants under this section for proposals having adequate merit and relevancy to the mission of the Administration;
- (2) a fair geographical distribution of grants under this section; and
- (3) the inclusion of historically black institutions of higher education and other minority nonprofit research organizations for grant consideration under this section.

(d) RECORDS.—Each person receiving a grant under this section shall maintain records that the [Administrator] *Administration* requires as being necessary to facilitate an effective audit and evaluation of the use of money provided under the grant.

(e) ANNUAL REPORT.—The [Administrator] *Administration* shall submit an annual report to the Committee on Science, Space, and

Technology of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on carrying out this section.

§44512. Catastrophic failure prevention research grants

(a) GENERAL AUTHORITY.—The [Administrator of the] Federal Aviation Administration may make grants to institutions of higher education and nonprofit research organizations—

(1) to conduct aviation research related to the development of technologies and methods to assess the risk of, and prevent, defects, failures, and malfunctions of products, parts, processes, and articles manufactured for use in aircraft, aircraft engines, propellers, and appliances that could result in a catastrophic failure of an aircraft; and

(2) to establish centers of excellence for continuing the research.

(b) SOLICITATION, APPLICATION, REVIEW, AND EVALUATION PROCESS.—The [Administrator] *Administration* shall establish a solicitation, application, review, and evaluation process that ensures providing grants under this section for proposals having adequate merit and relevancy to the research described in subsection (a) of this section.

§44513. Regional centers of air transportation excellence

(a) GENERAL AUTHORITY.—The [Administrator of the] Federal Aviation Administration may make grants to institutions of higher education to establish and operate regional centers of air transportation excellence. The locations shall be distributed in a geographically fair way.

* * * * *

(c) APPLICATIONS.—An institution of higher education interested in receiving a grant under this section may submit an application to the [Administrator] *Administration*. The application must be in the form and contain the information that the [Administrator] *Administration* requires by regulation.

(d) SELECTION CRITERIA.—The [Administrator] *Administration* shall select recipients of grants under this section on the basis of the following criteria:

(1) * * *

* * * * *

(e) EXPENDITURE AGREEMENTS.—A grant may be made under this section in a fiscal year only if the recipient makes an agreement with the [Administrator] *Administration* that the [Administrator] *Administration* requires to ensure that the recipient will maintain its total expenditures from all other sources for establishing and operating the center and related research activities at a level at least equal to the average level of those expenditures in the 2 fiscal years of the recipient occurring immediately before November 5, 1990.

(f) GOVERNMENT'S SHARE OF COSTS.—The United States Government's share of a grant under this section is 50 percent of the costs of establishing and operating the center and related research activities that the grant recipient carries out.

(g) **ALLOCATING AMOUNTS.**—The [Administrator] *Administration* shall allocate amounts made available to carry out this section in a geographically fair way.

§44514. Flight service stations

(a) **HOURS OF OPERATION.**—(1) The [Secretary of Transportation] *Federal Aviation Administration* may close, or reduce the hours of operation of, a flight service station in an area only if the service provided in the area after the closing or during the hours the station is not in operation is provided by an automated flight service station with at least model 1 equipment.

(2) The [Secretary] *Administration* shall reopen a flight service station closed after March 24, 1987, but before July 15, 1987, as soon as practicable if the service in the area in which the station is located has not been provided since the closing by an automatic flight service station with at least model 1 equipment. The hours of operation for the reopened station shall be the same as were the hours of operation for the station on March 25, 1987. After reopening the station, the [Secretary] *Administration* may close, or reduce the hours of operation of, the station only as provided in paragraph (1) of this subsection.

(b) **MANNED AUXILIARY STATIONS.**—The [Secretary and the Administrator of the] *Federal Aviation Administration* shall establish a system of manned auxiliary flight service stations. The manned auxiliary flight service stations shall supplement the services of the planned consolidation to 61 automated flight service stations under the flight service station modernization program. A manned auxiliary flight service station shall be located in an area of unique weather or operational conditions that are critical to the safety of flight.

§44515. Advanced training facilities for maintenance technicians for air carrier aircraft

(a) **GENERAL AUTHORITY.**—The [Administrator of the] *Federal Aviation Administration* may make grants to not more than 4 vocational technical educational institutions to acquire or construct facilities to be used for the advanced training of maintenance technicians for air carrier aircraft.

(b) **ELIGIBILITY.**—The [Administrator] *Administration* may make a grant under this section to a vocational technical educational institution only if the institution has a training curriculum that prepares aircraft maintenance technicians who hold airframe and power plant certificates under subpart D of part 65 of title 14, Code of Federal Regulations, to maintain, without direct supervision, air carrier aircraft.

(c) **LIMITATION.**—A vocational technical educational institution may not receive more than a total of \$5,000,000 in grants under this section.

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) * * *

* * * * *

(5) regulations and minimum standards for other practices, methods, and procedure the [Administrator] *Administration* finds necessary for safety in air commerce and national security.

(b) **PRESCRIBING MINIMUM SAFETY STANDARDS.**—The [Administrator] *Administration* 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] *Administration* 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] *Administration* 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] *Administration* 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) **EXEMPTIONS.**—The [Administrator] *Administration* 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] *Administration* finds the exemption is in the public interest.

(f) **COST-BENEFIT ANALYSIS.**—

(1) **IN GENERAL.**—For any regulation or standard to be issued under subsection (a) or (b) that is likely to result in annualized compliance costs in excess of \$25,000,000, the *Administration* shall, in addition to other requirements in law, identify and publish together with such regulation or standard the following:

(A) The benefits of the regulation or standard, quantified where appropriate and feasible, and otherwise qualitatively described, including in appropriate cases, the nature and number of deaths or injuries that the regulation or standard is designed to prevent.

(B) The approximate number of aircraft, airports, airmen, or cabin crew affected by the regulation or standard.

(C) *The probable cost of fulfilling the requirements of the regulation or standard, quantified where appropriate and feasible, and otherwise qualitatively described, including in appropriate cases any adverse effects on competition or disruption or dislocation of air service or other commercial practices engaged in by the entities affected by such requirements.*

(D) *Alternative means of achieving the objective of the regulation or standard while minimizing the costs, adverse effects on competition, and the disruption or dislocation of air service or the commercial practices affected by the regulation or standard and a statement as to why the Administration chose the regulation or standard adopted in preference to the alternatives considered.*

(2) *EMERGENCY.*—*In the case of an emergency, the Chief Executive Officer or the Board may suspend the application of this subsection for the duration of the emergency.*

(3) *NONAPPLICABILITY TO ADVISORY CIRCULARS.*—*This subsection shall not apply to advisory circulars.*

§ 44702. Issuance of certificates

(a) **GENERAL AUTHORITY AND APPLICATIONS.**—The [Administrator of the] Federal Aviation Administration may issue airman certificates, type certificates, production certificates, airworthiness certificates, air carrier operating certificates, airport operating certificates, air agency certificates, and air navigation facility certificates under this chapter. An application for a certificate must—

(1) be under oath when the [Administrator] *Administration* requires; and

(2) be in the form, contain information, and be filed and served in the way the [Administrator] *Administration* prescribes.

(b) **CONSIDERATIONS.**—When issuing a certificate under this chapter, the [Administrator] *Administration* 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 certificate according to the differences between air transportation and other air commerce.

(c) **PRIOR CERTIFICATION.**—The [Administrator] *Administration* may authorize an aircraft, aircraft engine, propeller, or appliance for which a certificate has been issued authorizing the use of the aircraft, aircraft engine, propeller, or appliance in air transportation to be used in air commerce without another certificate being issued.

(d) **DELEGATION.**—(1) Subject to regulations, supervision, and review the [Administrator] *Administration* may prescribe, the [Administrator] *Administration* may delegate to a qualified private person, or to an employee under the supervision of that person, a matter related to—

(A) the examination, testing, and inspection necessary to issue a certificate under this chapter; and

(B) issuing the certificate.

(2) The [Administrator] *Administration* may rescind a delegation under this subsection at any time for any reason the [Administrator] *Administration* considers appropriate.

(3) A person affected by an action of a private person under this subsection may apply for reconsideration of the action by the [Administrator] *Administration*. On the [Administrator's] *Administration's* own initiative, the [Administrator] *Administration* may reconsider the action of a private person at any time. If the [Administrator] *Administration* decides on reconsideration that the action is unreasonable or unwarranted, the [Administrator] *Administration* shall change, modify, or reverse the action. If the [Administrator] *Administration* decides the action is warranted, the [Administrator] *Administration* shall affirm the action.

§ 44703. Airman certificates

(a) GENERAL.—The [Administrator of the] Federal Aviation Administration shall issue an airman certificate to an individual when the [Administrator] *Administration* 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] *Administration* 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] *Administration* 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] *Administration* 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] *Administration* 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) * * *

* * * * *

(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.

§44704. Type certificates, production certificates, and airworthiness certificates

(a) TYPE CERTIFICATES.—(1) The [Administrator of the] Federal Aviation Administration shall issue a type certificate for an aircraft, aircraft engine, or propeller, or for an appliance specified under paragraph (2)(A) of this subsection when the [Administrator] *Administration* finds that the aircraft, aircraft engine, propeller, or appliance is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a) of this title. On receiving an application for a type certificate, the [Administrator] *Administration* shall investigate the application and may conduct a hearing. The [Administrator] *Administration* shall make, or require the applicant to make, tests the [Administrator] *Administration* considers necessary in the interest of safety.

(2) The [Administrator] *Administration* may—

(A) specify in regulations those appliances that reasonably require a type certificate in the interest of safety;

(B) include in a type certificate terms required in the interest of safety; and

(C) record on the certificate a numerical specification of the essential factors related to the performance of the aircraft, aircraft engine, or propeller for which the certificate is issued.

(b) PRODUCTION CERTIFICATES.—The [Administrator] *Administration* shall issue a production certificate authorizing the production of a duplicate of an aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the [Administrator] *Administration* finds the duplicate will conform to the certificate. On receiving an application, the [Administrator] *Administration* shall inspect, and may require testing of, a duplicate to ensure that it conforms to the requirements of the certificate. The [Administrator] *Administration* may include in a production certificate terms required in the interest of safety.

(c) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an aircraft may apply to the [Administrator] *Administration* for an airworthiness certificate for the aircraft. The [Administrator] *Administration* shall issue an airworthiness certificate when the [Administrator] *Administration* finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation. The [Administrator] *Administration* shall register each airworthiness certificate and may include appropriate information in the certificate. The certificate number or other individual designation the [Administrator] *Administration* requires shall be displayed on the aircraft. The [Administrator] *Administration* may include in an airworthiness certificate terms required in the interest of safety.

(2) A person applying for the issuance or renewal of an airworthiness certificate for an aircraft for which ownership has not been recorded under section 44107 or 44110 of this title must submit with the application information related to the ownership of the aircraft the [Administrator] *Administration* decides is necessary to identify each person having a property interest in the aircraft and the kind and extent of the interest.

§ 44705. Air carrier operating certificates

The [Administrator of the] Federal Aviation Administration shall issue an air carrier operating certificate to a person desiring to operate as an air carrier when the [Administrator] *Administration* finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part. An air carrier operating certificate shall—

(1) contain terms necessary to ensure safety in air transportation; and

(2) specify the places to and from which, and the airways of the United States over which, a person may operate as an air carrier.

§ 44706. Airport operating certificates

(a) GENERAL.—The [Administrator of the] Federal Aviation Administration shall issue an airport operating certificate to a person desiring to operate an airport—

(1) that serves an air carrier operating aircraft designed for at least 31 passenger seats;

(2) that the [Administrator] *Administration* requires to have a certificate; and

(3) when the [Administrator] *Administration* finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and regulations and standards prescribed under this part.

(b) TERMS.—An airport operating certificate issued under this section shall contain terms necessary to ensure safety in air transportation. Unless the [Administrator] *Administration* decides that it is not in the public interest, the terms shall include conditions related to—

(1) operating and maintaining adequate safety equipment, including firefighting and rescue equipment capable of rapid access to any part of the airport used for landing, takeoff, or surface maneuvering of an aircraft; and

(2) friction treatment for primary and secondary runways that the [Secretary of Transportation] *Federal Aviation Administration* decides is necessary.

(c) EXEMPTIONS.—The [Administrator] *Administration* may exempt from the requirements of this section, related to firefighting and rescue equipment, an operator of an airport described in subsection (a) of this section having less than .25 percent of the total number of passenger boardings each year at all airports described in subsection (a) when the [Administrator] *Administration* decides that the requirements are or would be unreasonably costly, burdensome, or impractical.

§ 44707. Examining and rating air agencies

The [Administrator of the] Federal Aviation Administration may examine and rate the following air agencies:

(1) civilian schools giving instruction in flying or repairing, altering, and maintaining aircraft, aircraft engines, propellers, and appliances, on the adequacy of instruction, the suitability and airworthiness of equipment, and the competency of instructors.

(2) repair stations and shops that repair, alter, and maintain aircraft, aircraft engines, propellers, and appliances, on the adequacy and suitability of the equipment, facilities, and materials for, and methods of, repair and overhaul, and the competency of the individuals doing the work or giving instruction in the work.

(3) other air agencies the [Administrator] *Administration* decides are necessary in the public interest.

§ 44708. Inspecting and rating air navigation facilities

The [Administrator of the] Federal Aviation Administration may inspect, classify, and rate an air navigation facility available for the use of civil aircraft on the suitability of the facility for that use.

§ 44709. Amendments, modifications, suspensions, and revocations of certificates

(a) REINSPECTION AND REEXAMINATION.—The [Administrator of the] Federal Aviation Administration may reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, or reexamine an airman holding a certificate issued under section 44703 of this title.

(b) ACTIONS OF THE [ADMINISTRATOR] *ADMINISTRATION*.—The [Administrator] *Administration* may issue an order amending, modifying, suspending, or revoking—

(1) any part of a certificate issued under this chapter if—

(A) the [Administrator] *Administration* decides after conducting a reinspection, reexamination, or other investigation that safety in air commerce or air transportation and the public interest require that action; or

(B) the holder of the certificate has violated an aircraft noise or sonic boom standard or regulation prescribed under section 44715(a) of this title; and

(2) an airman certificate when the holder of the certificate is convicted of violating section 13(a) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742j–1(a)).

(c) ADVICE TO CERTIFICATE HOLDERS AND OPPORTUNITY TO ANSWER.—Before acting under subsection (b) of this section, the [Administrator] *Administration* shall advise the holder of the certificate of the charges or other reasons on which the [Administrator] *Administration* relies for the proposed action. Except in an emergency, the [Administrator] *Administration* shall provide the holder an opportunity to answer the charges and be heard why the certificate should not be amended, modified, suspended, or revoked.

(d) APPEALS.—(1) A person adversely affected by an order of the [Administrator] *Administration* under this section may appeal the order to the National Transportation Safety Board. After notice and an opportunity for a hearing, the Board may amend, modify, or reverse the order when the Board finds—

(A) if the order was issued under subsection (b)(1)(A) of this section, that safety in air commerce or air transportation and the public interest do not require affirmation of the order; or

(B) if the order was issued under subsection (b)(1)(B) of this section—

(i) that control or abatement of aircraft noise or sonic boom and the public health and welfare do not require affirmation of the order; or

(ii) the order, as it is related to a violation of aircraft noise or sonic boom standards and regulations, is not consistent with safety in air commerce or air transportation.

(2) The Board may modify a suspension or revocation of a certificate to imposition of a civil penalty.

(3) When conducting a hearing under this subsection, the Board is not bound by findings of fact of the [Administrator] *Administration* but is bound by all validly adopted interpretations of laws and regulations the [Administrator] *Administration* 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.

(e) **EFFECTIVENESS OF ORDERS PENDING APPEAL.**—When a person files an appeal with the Board under subsection (d) of the section, the order of the [Administrator] *Administration* is stayed. However, if the [Administrator] *Administration* advises the Board that an emergency exists and safety in air commerce or air transportation requires the order to be effective immediately—

(1) the order is effective; and

(2) the Board shall make a final disposition of the appeal not later than 60 days after the [Administrator] *Administration* so advises the Board.

(f) **JUDICIAL REVIEW.**—A person substantially affected by an order of the Board under this section, or the [Administrator] *Administration* when the [Administrator] *Administration* decides that an order of the Board under this section 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] *Administration* shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

§ 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 an airman certificate issued 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] *Administration* 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] *Administration* shall issue an order revoking an airman certificate issued an individual under section 44703 of this title if the [Administrator] *Administration* 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] *Administration* 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] *Administration* revokes a certificate under subsection (b) of this section, the [Administrator] *Administration* must—

(1) advise the holder of the certificate of the charges or reasons on which the [Administrator] *Administration* 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] *Administration* 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] *Administration* but shall be bound by all validly adopted interpretations of laws and regulations the [Administrator] *Administration* 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] *Administration* revoking the certificate is stayed. However, if the [Administrator] *Administration* 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] *Administration* so advises the Board.

(3) An individual substantially affected by an order of the Board under this subsection, or the [Administrator] *Administration* when the [Administrator] *Administration* 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] *Administration* 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] *Administration* 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] *Administration* has revoked an airman certificate under this section because of an activity described in subsection (b)(2)(A) of this section, the [Administrator] *Administration* 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** *Administration* 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** *Administration* decides that the waiver will facilitate law enforcement efforts.

§ 44711. Prohibitions and exemption

(a) * * *

(b) **EXEMPTION.**—On terms the **Administrator of the** Federal Aviation Administration prescribes as being in the public interest, the **Administrator** *Administration* 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.

§ 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.

(c) **REMOVAL.**—The **Administrator** *Administration* 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.

§44713. Inspection and maintenance

(a) GENERAL EQUIPMENT REQUIREMENTS.—An air carrier shall make, or cause to be made, any inspection, repair, or maintenance of equipment used in air transportation as required by this part or regulations prescribed or orders issued by the [Administrator of the] Federal Aviation Administration under this part. A person operating, inspecting, repairing, or maintaining the equipment shall comply with those requirements, regulations, and orders.

(b) DUTIES OF INSPECTORS.—The [Administrator of the] Federal Aviation Administration shall employ inspectors who shall—

(1) inspect aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture and when in use by an air carrier in air transportation, to enable the [Administrator] *Administration* to decide whether the aircraft, aircraft engines, propellers, or appliances are in safe condition and maintained properly; and

(2) advise and cooperate with the air carrier during that inspection and maintenance.

(c) UNSAFE AIRCRAFT, ENGINES, PROPELLERS, AND APPLIANCES.—When an inspector decides that an aircraft, aircraft engine, propeller, or appliance is not in condition for safe operation, the inspector shall notify the air carrier in the form and way prescribed by the [Administrator of the] Federal Aviation Administration. For 5 days after the carrier is notified, the aircraft, engine, propeller, or appliance may not be used in air transportation or in a way that endangers air transportation unless the [Administrator] *Administration* or the inspector decides the aircraft, engine, propeller, or appliance is in condition for safe operation.

(d) MODIFICATIONS IN SYSTEM.—(1) The [Administrator of the] Federal Aviation Administration shall make modifications in the system for processing forms for major repairs or alterations to fuel tanks and fuel systems of aircraft not used to provide air transportation that are necessary to make the system more effective in serving the needs of users of the system, including 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 address at least each of the following deficiencies in, and abuses of, the existing system:

(A) the lack of a special identification feature to allow the forms to be distinguished easily from other major repair and alteration forms.

(B) the excessive period of time required to receive the forms at the Airmen and Aircraft Registry of the Administration.

(C) the backlog of forms waiting for processing at the Registry.

(D) the lack of ready access by law enforcement officials to information contained on the forms.

(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.

§ 44714. Aviation fuel standards

The [Administrator of the] Federal Aviation Administration shall prescribe—

(1) standards for the composition or chemical or physical properties of an aircraft fuel or fuel additive to control or eliminate aircraft emissions the Administrator of the Environmental Protection Agency decides under section 231 of the Clean Air Act (42 U.S.C. 7571) endanger the public health or welfare; and

(2) regulations providing for carrying out and enforcing those standards.

§ 44715. Controlling aircraft noise and sonic boom

(a) STANDARDS AND REGULATIONS.—(1) To relieve and protect the public health and welfare from aircraft noise and sonic boom, the [Administrator of the] Federal Aviation Administration shall prescribe—

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

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

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

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

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

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

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

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

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

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

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

(1) prescribe regulations as provided by this section—

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

(B) that amend the proposed regulations; or

(2) publish in the Federal Register—

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

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

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

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

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

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

(B) identify any statement related to an action under subsection (c) of this section filed under section 102(2)(C) of the

National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

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

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

(e) SUPPLEMENTAL REPORTS.—The Administrator of the Environmental Protection Agency may request the [Administrator of the] Federal Aviation Administration to file a supplemental report if the report under subsection (d) of this section indicates that the proposed regulations under subsection (c) of this section, for which a statement under section 102(2)(C) of the Act (42 U.S.C. 4332(2)(C)) is not required, should not be prescribed. The supplemental report shall be published in the Federal Register within the time the Administrator of the Environmental Protection Agency specifies. However, the time specified must be at least 90 days after the date of the request. The supplemental report shall contain a comparison of the environmental effects, including those that cannot be avoided, of the action of the [Administrator of the] Federal Aviation Administration and the proposed regulations of the Administrator of the Environmental Protection Agency.

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

§44716. Collision avoidance systems

(a) DEVELOPMENT AND CERTIFICATION.—The [Administrator of the] Federal Aviation Administration shall—

(1) complete the development of the collision avoidance system known as TCAS–II so that TCAS–II can operate under visual and instrument flight rules and can be upgraded to the performance standards applicable to the collision avoidance system known as TCAS–III;

(2) develop and carry out a schedule for developing and certifying TCAS–II that will result in certification not later than June 30, 1989; and

(3) submit to Congress monthly reports on the progress being made in developing and certifying TCAS–II.

(b) INSTALLATION AND OPERATION.—The [Administrator] *Administration* shall require by regulation that, not later than 30 months after the date certification is made under subsection (a)(2) of this section, TCAS–II be installed and operated on each civil aircraft that has a maximum passenger capacity of at least 31 seats and

is used to provide air transportation of passengers, including intrastate air transportation of passengers. The [Administrator] *Administration* may extend the deadline in this subsection for not more than 2 years if the [Administrator] *Administration* finds the extension is necessary to promote—

- (1) a safe and orderly transition to the operation of a fleet of civil aircraft described in this subsection equipped with TCAS-II; or
- (2) other safety objectives.

(c) OPERATIONAL EVALUATION.—Not later than December 30, 1990, the [Administrator] *Administration* shall establish a one-year program to collect and assess safety and operational information from civil aircraft equipped with TCAS-II for the operational evaluation of TCAS-II. The [Administrator] *Administration* shall encourage foreign air carriers that operate civil aircraft equipped with TCAS-II to participate in the program.

(d) AMENDING SCHEDULE FOR WINDSHEAR EQUIPMENT.—The [Administrator] *Administration* shall consider the feasibility and desirability of amending the schedule for installing airborne low-altitude windshear equipment to make the schedule compatible with the schedule for installing TCAS-II.

(e) DEADLINE FOR DEVELOPMENT AND CERTIFICATION.—(1) The [Administrator] *Administration* shall complete developing and certifying TCAS-III as soon as possible.

(2) Necessary amounts may be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out this subsection.

(f) INSTALLING AND USING TRANSPONDERS.—The [Administrator] *Administration* shall prescribe regulations requiring that, not later than December 30, 1990, operating transponders with automatic altitude reporting capability be installed and used for aircraft operating in designated terminal airspace where radar service is provided for separation of aircraft. The [Administrator] *Administration* may provide for access to that airspace (except terminal control areas and airport radar service areas) by nonequipped aircraft if the [Administrator] *Administration* finds the access will not interfere with the normal traffic flow.

§44717. Aging aircraft

(a) INSPECTIONS AND REVIEWS.—The [Administrator of the] Federal Aviation Administration shall prescribe regulations that ensure the continuing airworthiness of aging aircraft. The regulations prescribed under subsection (a) of this section—

- (1) at least shall require the [Administrator] *Administration* to make inspections, and review the maintenance and other records, of each aircraft an air carrier uses to provide air transportation that the [Administrator] *Administration* decides may be necessary to enable the [Administrator] *Administration* to decide whether the aircraft is in safe condition and maintained properly for operation in air transportation;

- (2) at least shall require an air carrier to demonstrate to the [Administrator] *Administration*, as part of the inspection, that maintenance of the aircraft's age-sensitive parts and compo-

nents has been adequate and timely enough to ensure the highest degree of safety;

(3) shall require the air carrier to make available to the [Administrator] *Administration* the aircraft and any records about the aircraft that the [Administrator] *Administration* requires to carry out a review; and

(4) shall establish procedures to be followed in carrying out an inspection.

(b) WHEN AND HOW INSPECTIONS AND REVIEWS SHALL BE CARRIED OUT.—(1) Inspections and reviews required under subsection (a)(1) of this section shall be carried out as part of each heavy maintenance check of the aircraft conducted after the 14th year in which the aircraft has been in service.

(2) Inspections under subsection (a)(1) of this section shall be carried out as provided under section 44701(a)(2) (B) and (C) of this title.

(c) AIRCRAFT MAINTENANCE SAFETY PROGRAMS.—The [Administrator] *Administration* shall establish—

(1) a program to verify that air carriers are maintaining their aircraft according to maintenance programs approved by the [Administrator] *Administration*;

(2) a program—

(A) to provide inspectors and engineers of the Administration with training necessary to conduct auditing inspections of aircraft operated by air carriers for corrosion and metal fatigue; and

(B) to enhance participation of those inspectors and engineers in those inspections; and

(3) a program to ensure that air carriers demonstrate to the [Administrator] *Administration* their commitment and technical competence to ensure the airworthiness of aircraft that the carriers operate.

(d) FOREIGN AIR TRANSPORTATION.—(1) The [Administrator] *Administration* shall take all possible steps to encourage governments of foreign countries and relevant international organizations to develop standards and requirements for inspections and reviews that—

(A) will ensure the continuing airworthiness of aging aircraft used by foreign air carriers to provide foreign air transportation to and from the United States; and

(B) will provide passengers of those foreign air carriers with the same level of safety that will be provided passengers of air carriers by carrying out this section.

(2) Not later than September 30, 1994, the [Administrator] *Administration* shall report to Congress on carrying out this subsection.

§ 44718. Structures interfering with air commerce

(a) NOTICE.—By regulation or by order when necessary, the [Secretary of Transportation] *Federal Aviation Administration* shall require a person to give adequate public notice, in the form and way the [Secretary] *Administration* prescribes, of the construction, alteration, establishment, or expansion, or the proposed construction,

alteration, establishment, or expansion, of a structure or sanitary landfill when the notice will promote—

- (1) safety in air commerce; and
- (2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports.

(b) STUDIES.—(1) Under regulations prescribed by the [Secretary] *Administration*, if the [Secretary] *Administration* decides that constructing or altering a structure may result in an obstruction of the navigable airspace or an interference with air navigation facilities and equipment or the navigable airspace, the [Secretary] *Administration* shall conduct an aeronautical study to decide the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment. In conducting the study, the [Secretary] *Administration* shall consider factors relevant to the efficient and effective use of the navigable airspace, including—

- (A) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;
- (B) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;
- (C) the impact on existing public-use airports and aeronautical facilities;
- (D) the impact on planned public-use airports and aeronautical facilities; and
- (E) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures.

(2) On completing the study, the [Secretary] *Administration* shall issue a report disclosing completely the extent of the adverse impact on the safe and efficient use of the navigable airspace that the [Secretary] *Administration* finds will result from constructing or altering the structure.

(c) BROADCAST APPLICATIONS AND TOWER STUDIES.—In carrying out laws related to a broadcast application and conducting an aeronautical study related to broadcast towers, the [Administrator of the] Federal Aviation Administration and the Federal Communications Commission shall take action necessary to coordinate efficiently—

- (1) the receipt and consideration of, and action on, the application; and
- (2) the completion of any associated aeronautical study.

§ 44719. Standards for navigational aids

The [Secretary of Transportation] *Federal Aviation Administration* shall prescribe regulations on standards for installing navigational aids, including airport control towers. For each type of facility, the regulations shall consider at a minimum traffic density (number of aircraft operations without consideration of aircraft size), terrain and other obstacles to navigation, weather characteristics, passengers served, and potential aircraft operating efficiencies.

§ 44720. Meteorological services

(a) RECOMMENDATIONS.—The [Administrator of the] Federal Aviation Administration shall make recommendations to the Sec-

retary of Commerce on providing meteorological services necessary for the safe and efficient movement of aircraft in air commerce. In providing the services, the Secretary shall cooperate with the [Administrator] *Administration* and give complete consideration to those recommendations.

(b) PROMOTING SAFETY AND EFFICIENCY.—To promote safety and efficiency in air navigation to the highest possible degree, the Secretary shall—

(1) observe, measure, investigate, and study atmospheric phenomena, and maintain meteorological stations and offices, that are necessary or best suited for finding out in advance information about probable weather conditions;

(2) provide reports to the [Administrator] *Federal Aviation Administration* to persons engaged in civil aeronautics that are designated by the [Administrator] *Federal Aviation Administration* and to other persons designated by the Secretary in a way and with a frequency that best will result in safety in, and facilitating, air navigation;

* * * * *

§ 44721. Aeronautical maps and charts

(a) PUBLICATION.—(1) The [Administrator of the] Federal Aviation Administration may arrange for the publication of aeronautical maps and charts necessary for the safe and efficient movement of aircraft in air navigation, using the facilities and assistance of departments, agencies, and instrumentalities of the United States Government as far as practicable.

(2) In carrying out paragraph (1) of this subsection, the [Administrator] *Administration* shall update and arrange for the publication of clearly defined routes for navigating through a complex terminal airspace area and to and from an airport located in such an area, if the [Administrator] *Administration* decides that publication of the routes would promote safety in air navigation. The routes shall be developed in consultation with pilots and other users of affected airports and shall be for the optional use of pilots operating under visual flight rules.

(b) INDEMNIFICATION.—The Government shall make an agreement to indemnify any person that publishes a map or chart for use in aeronautics from any part of a claim arising out of the depiction by the person on the map or chart of a defective or deficient flight procedure or airway if the flight procedure or airway was—

- (1) prescribed by the [Administrator] *Administration*;
- (2) depicted accurately on the map or chart; and
- (3) not obviously defective or deficient.

§ 44722. Aircraft operations in winter conditions

The [Administrator of the] Federal Aviation Administration shall prescribe regulations requiring procedures to improve safety of aircraft operations during winter conditions. In deciding on the procedures to be required, the [Administrator] *Administration* shall consider at least aircraft and air traffic control modifications, the availability of different types of deicing fluids (considering their efficacy and environmental limitations), the types of deicing equip-

ment available, and the feasibility and desirability of establishing timeframes within which deicing must occur under certain types of inclement weather.

§44723. Annual report

Not later than January 1 of each year, the [Secretary of Transportation] *Federal Aviation Board* shall submit to Congress a comprehensive report on the safety enforcement activities of the Federal Aviation Administration during the fiscal year ending the prior September 30th. The report shall include—

(1) * * *

* * * * *

CHAPTER 449—SECURITY

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SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

44931. Director of Intelligence and Security.

[44932. Assistant Administrator for Civil Aviation Security.]

44932. *Civil aviation security.*

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SUBCHAPTER I—REQUIREMENTS

§44901. Screening passengers and property

(a) **GENERAL REQUIREMENTS.**—The [Administrator of the] Federal Aviation Administration shall prescribe regulations requiring screening of all passengers and property that will be carried in a cabin of an aircraft in air transportation or intrastate air transportation. The screening must take place before boarding and be carried out by a weapon-detecting facility or procedure used or operated by an employee or agent of an air carrier, intrastate air carrier, or foreign air carrier.

(b) **AMENDING REGULATIONS.**—Notwithstanding subsection (a) of this section, the [Administrator] *Administration* may amend a regulation prescribed under subsection (a) to require screening only to ensure security against criminal violence and aircraft piracy in air transportation and intrastate air transportation.

(c) **EXEMPTIONS AND ADVISING CONGRESS ON REGULATIONS.**—The [Administrator] *Administration*—

(1) may exempt from this section air transportation operations, except scheduled passenger operations of an air carrier providing air transportation under a certificate issued under section 41102 of this title or a permit issued under section 41302 of this title; and

(2) shall advise Congress of a regulation to be prescribed under this section at least 30 days before the effective date of the regulation, unless the [Administrator] *Administration* decides an emergency exists requiring the regulation to become effective in fewer than 30 days and notifies Congress of that decision.

§ 44902. Refusal to transport passengers and property

(a) MANDATORY REFUSAL.—The [Administrator of the] Federal Aviation Administration shall prescribe regulations requiring an air carrier, intrastate air carrier, or foreign air carrier to refuse to transport—

(1) a passenger who does not consent to a search under section 44901(a) of this title establishing whether the passenger is carrying unlawfully a dangerous weapon, explosive, or other destructive substance; or

(2) property of a passenger who does not consent to a search of the property establishing whether the property unlawfully contains a dangerous weapon, explosive, or other destructive substance.

(b) PERMISSIVE REFUSAL.—Subject to regulations of the [Administrator] *Administration*, an air carrier, intrastate air carrier, or foreign air carrier may refuse to transport a passenger or property the carrier decides is, or might be, inimical to safety.

(c) AGREEING TO CONSENT TO SEARCH.—An agreement to carry passengers or property in air transportation or intrastate air transportation by an air carrier, intrastate air carrier, or foreign air carrier is deemed to include an agreement that the passenger or property will not be carried if consent to search the passenger or property for a purpose referred to in this section is not given.

§ 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] *Administration* 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] *Administration* 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] *Administration* 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] *Federal Aviation Administration* 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] *Administration* decides, after being notified by an operator in the form the [Administrator] *Administration* prescribes, that not enough qualified State, local, and private law enforcement personnel are available to carry out subsection (b), the [Administrator] *Administration* may authorize the operator to use, on a reimbursable basis, personnel employed by the [Administrator] *Administration*, 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] *Administration* 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] *Administration* 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] *Administration* 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] *Administration* 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] *Federal Aviation Administration* 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] *Administration* 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] *Administration*, other departments, agencies, and instrumentalities of the Government shall provide assistance necessary to carry out this subsection.

§ 44904. Domestic air transportation system security

(a) **ASSESSING THREATS.**—The [Administrator of the] Federal Aviation Administration and the Director of the Federal Bureau of Investigation jointly shall assess current and potential threats to the domestic air transportation system. The assessment shall include consideration of the extent to which there are individuals with the capability and intent to carry out terrorist or related unlawful acts against that system and the ways in which those individuals might carry out those acts. The [Administrator] *Administration* and the Director jointly shall decide on and carry out the most effective method for continuous analysis and monitoring of security threats to that system.

(b) **ASSESSING SECURITY.**—In coordination with the Director, the [Administrator] *Administration* shall carry out periodic threat and vulnerability assessments on security at each airport that is part of the domestic air transportation system. Each assessment shall include consideration of—

- (1) the adequacy of security procedures related to the handling and transportation of checked baggage and cargo;
- (2) space requirements for security personnel and equipment;
- (3) separation of screened and unscreened passengers, baggage, and cargo;
- (4) separation of the controlled and uncontrolled areas of airport facilities; and
- (5) coordination of the activities of security personnel of the Administration, the United States Customs Service, the Immi-

gration and Naturalization Service, and air carriers, and of other law enforcement personnel.

(c) IMPROVING SECURITY.—The [Administrator] *Administration* shall take necessary actions to improve domestic air transportation security by correcting any deficiencies in that security discovered in the assessments, analyses, and monitoring carried out under this section.

§ 44905. Information about threats to civil aviation

(a) PROVIDING INFORMATION.—Under guidelines the [Secretary of Transportation] *Federal Aviation Administration* prescribes, an air carrier, airport operator, ticket agent, or individual employed by an air carrier, airport operator, or ticket agent, receiving information (except a communication directed by the United States Government) about a threat to civil aviation shall provide the information promptly to the [Secretary] *Administration*.

(b) FLIGHT CANCELLATION.—If a decision is made that a particular threat cannot be addressed in a way adequate to ensure, to the extent feasible, the safety of passengers and crew of a particular flight or series of flights, the [Administrator of the] Federal Aviation Administration shall cancel the flight or series of flights.

(c) GUIDELINES ON PUBLIC NOTICE.—(1) * * *

(2) The guidelines shall provide for consideration of—

- (A) the specificity of the threat;
- (B) the credibility of intelligence information related to the threat;
- (C) the ability to counter the threat effectively;
- (D) the protection of intelligence information sources and methods;
- (E) cancellation, by an air carrier or the [Administrator] *Administration*, of a flight or series of flights instead of public notice;
- (F) the ability of passengers and crew to take steps to reduce the risk to their safety after receiving public notice of a threat; and
- (G) other factors the [Administrator] *Administration* considers appropriate.

(d) GUIDELINES ON NOTICE TO CREWS.—The [Administrator] *Administration* shall develop guidelines for ensuring that notice in appropriate cases of threats to the security of an air carrier flight is provided to the flight crew and cabin crew of that flight.

(e) LIMITATION ON NOTICE TO SELECTIVE TRAVELERS.—Notice of a threat to civil aviation may be provided to selective potential travelers only if the threat applies only to those travelers.

(f) RESTRICTING ACCESS TO INFORMATION.—In cooperation with the departments, agencies, and instrumentalities of the Government that collect, receive, and analyze intelligence information related to aviation security, the [Administrator] *Administration* shall develop procedures to minimize the number of individuals who have access to information about threats. However, a restriction on access to that information may be imposed only if the restriction does not diminish the ability of the Government to carry out its duties and powers related to aviation security effectively, in-

cluding providing notice to the public and flight and cabin crews under this section.

(g) DISTRIBUTION OF GUIDELINES.—The guidelines developed under this section shall be distributed for use by appropriate officials of the [Department of Transportation] *Federal Aviation Administration*, the Department of State, the Department of Justice, and air carriers.

§44906. Foreign air carrier security programs

The [Administrator of the] Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the [Administrator] *Administration*. The [Administrator] *Administration* may approve a security program of a foreign air carrier under section 129.25 only if the [Administrator] *Administration* decides the security program provides passengers of the foreign air carrier a level of protection similar to the level those passengers would receive under the security programs of air carriers serving the same airport. The [Administrator] *Administration* shall require a foreign air carrier to use procedures equivalent to those required of air carriers serving the same airport if the [Administrator] *Administration* decides that the procedures are necessary to provide a level of protection similar to that provided passengers of the air carriers serving the same airport. The [Administrator] *Administration* shall prescribe regulations to carry out this section.

§44907. Security standards at foreign airports

(a) ASSESSMENT.—(1) At intervals the [Secretary of Transportation] *Federal Aviation Administration* considers necessary, the [Secretary] *Administration* shall assess the effectiveness of the security measures maintained at—

(A) a foreign airport—

(i) served by an air carrier;

(ii) from which a foreign air carrier serves the United States; or

(iii) that poses a high risk of introducing danger to international air travel; and

(B) other foreign airports the [Secretary] *Administration* considers appropriate.

(2) The [Secretary of Transportation] *Federal Aviation Administration* shall conduct an assessment under paragraph (1) of this subsection—

(A) in consultation with appropriate aeronautic authorities of the government of a foreign country concerned and each air carrier serving the foreign airport for which the [Secretary] *Administration* is conducting the assessment;

(B) to establish the extent to which a foreign airport effectively maintains and carries out security measures; and

(C) by using a standard that will result in an analysis of the security measures at the airport based at least on the standards and appropriate recommended practices contained in Annex 17 to the Convention on International Civil Aviation in effect on the date of the assessment.

(3) Each report to Congress required under section 44938(b) of this title shall contain a summary of the assessments conducted under this subsection.

(b) CONSULTATION.—In carrying out subsection (a) of this section, the **【Secretary of Transportation】** *Federal Aviation Administration* shall consult with the Secretary of State—

(1) on the terrorist threat that exists in each country; and

(2) to establish which foreign airports are not under the de facto control of the government of the foreign country in which they are located and pose a high risk of introducing danger to international air travel.

(c) NOTIFYING FOREIGN AUTHORITIES.—When the **【Secretary of Transportation】** *Federal Aviation Administration*, after conducting an assessment under subsection (a) of this section, decides that an airport does not maintain and carry out effective security measures, the **【Secretary of Transportation】** *Federal Aviation Administration*, after advising the Secretary of State, shall notify the appropriate authorities of the government of the foreign country of the decision and recommend the steps necessary to bring the security measures in use at the airport up to the standard used by the **【Secretary of Transportation】** *Federal Aviation Administration* in making the assessment.

(d) ACTIONS WHEN AIRPORTS NOT MAINTAINING AND CARRYING OUT EFFECTIVE SECURITY MEASURES.—(1) When the **【Secretary of Transportation】** *Federal Aviation Administration* decides under this section that an airport does not maintain and carry out effective security measures—

(A) the **【Secretary of Transportation】** *Federal Aviation Administration* shall—

(i) publish the identity of the airport in the Federal Register;

(ii) have the identity of the airport posted and displayed prominently at all United States airports at which scheduled air carrier operations are provided regularly; and

(iii) notify the news media of the identity of the airport;

(B) each air carrier and foreign air carrier providing transportation between the United States and the airport shall provide written notice of the decision, on or with the ticket, to each passenger buying a ticket for transportation between the United States and the airport;

(C) notwithstanding section 40105(b) of this title, the Secretary of Transportation *or Federal Aviation Administration*, after consulting with the appropriate aeronautic authorities of the foreign country concerned and each air carrier serving the airport and with the approval of the Secretary of State, may withhold, revoke, or prescribe conditions on the operating authority of an air carrier or foreign air carrier that uses that airport to provide foreign air transportation; and

(D) the President may prohibit an air carrier or foreign air carrier from providing transportation between the United States and any other foreign airport that is served by aircraft flying to or from the airport with respect to which a decision is made under this section.

(2)(A) Paragraph (1) of this subsection becomes effective—

(i) 90 days after the government of a foreign country is notified under subsection (c) of this section if the **【Secretary of Transportation】** *Federal Aviation Administration* finds that the government has not brought the security measures at the airport up to the standard the **【Secretary】** *Administration* used in making an assessment under subsection (a) of this section; or

(ii) immediately on the decision of the **【Secretary of Transportation】** *Federal Aviation Administration* under subsection (c) of this section if the **【Secretary of Transportation】** *Federal Aviation Administration* decides, after consulting with the Secretary of State, that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from the airport.

(B) The **【Secretary of Transportation】** *Federal Aviation Administration* immediately shall notify the Secretary of State of a decision under subparagraph (A)(ii) of this paragraph so that the Secretary of State may issue a travel advisory required under section 44908(a) of this title.

(3) The Secretary of Transportation *or Federal Aviation Administration* promptly shall submit to Congress a report (and classified annex if necessary) on action taken under paragraph (1) or (2) of this subsection, including information on attempts made to obtain the cooperation of the government of a foreign country in meeting the standard the Secretary *or Administration* used in assessing the airport under subsection (a) of this section.

(4) An action required under paragraph (1) (A) and (B) of this subsection is no longer required only if the **【Secretary of Transportation】** *Federal Aviation Administration*, in consultation with the Secretary of State, decides that effective security measures are maintained and carried out at the airport. The **【Secretary of Transportation】** *Federal Aviation Administration* shall notify Congress when the action is no longer required to be taken.

(e) **SUSPENSIONS.**—Notwithstanding sections 40105(b) and 40106(b) of this title, the Secretary of Transportation *or Federal Aviation Administration*, with the approval of the Secretary of State and without notice or a hearing, shall suspend the right of an air carrier or foreign air carrier to provide foreign air transportation, and the right of a person to operate aircraft in foreign air commerce, to or from a foreign airport when the Secretary of Transportation *or Federal Aviation Administration* decides that—

(1) a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from that airport; and

(2) the public interest requires an immediate suspension of transportation between the United States and that airport.

(f) **CONDITION OF CARRIER AUTHORITY.**—This section is a condition to authority the Secretary of Transportation *or Federal Aviation Administration* grants under this part to an air carrier or foreign air carrier.

§44908. Travel advisory and suspension of foreign assistance

(a) TRAVEL ADVISORIES.—On being notified by the [Secretary of Transportation] *Federal Aviation Administration* that the [Secretary of Transportation] *Federal Aviation Administration* has decided under section 44907(d)(2)(A)(ii) of this title that a condition exists that threatens the safety or security of passengers, aircraft, or crew traveling to or from a foreign airport that the [Secretary of Transportation] *Federal Aviation Administration* has decided under section 44907 of this title does not maintain and carry out effective security measures, the Secretary of State—

- (1) immediately shall issue a travel advisory for that airport;
- (2) shall publish the advisory in the Federal Register; and
- (3) shall publicize the advisory widely.

(b) SUSPENDING ASSISTANCE.—The President shall suspend assistance provided under the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or the Arms Export Control Act (22 U.S.C. 2751 et seq.) to a country in which is located an airport with respect to which section 44907(d)(1) of this title becomes effective if the Secretary of State decides the country is a high terrorist threat country. The President may waive this subsection if the President decides, and reports to Congress, that the waiver is required because of national security interests or a humanitarian emergency.

(c) ACTIONS NO LONGER REQUIRED.—An action required under this section is no longer required only if the [Secretary of Transportation] *Federal Aviation Administration* has made a decision as provided under section 44907(d)(4) of this title. The [Secretary] *Administration* shall notify Congress when the action is no longer required to be taken.

§44909. Passenger manifests

(a) AIR CARRIER REQUIREMENTS.—(1) Not later than March 16, 1991, the [Secretary of Transportation] *Federal Aviation Administration* 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 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] *Federal Aviation Administration* 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] *Federal Aviation Administration* 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.

§ 44911. Intelligence

(a) * * *

(b) POLICIES AND PROCEDURES ON REPORT AVAILABILITY.—The head of each unit in the intelligence community shall prescribe policies and procedures to ensure that intelligence reports about international terrorism are made available, as appropriate, to the heads of other units in the intelligence community, the Secretary of Transportation, and the [Administrator of the] *Federal Aviation Administration*.

* * * * *

(e) WRITTEN WORKING AGREEMENTS.—The heads of units in the intelligence community, the Secretary, and the [Administrator] *Administration* shall review and, as appropriate, revise written working agreements between the intelligence community and the [Administrator] *Administration*.

§ 44912. Research and development

(a) PROGRAM REQUIREMENT.—(1) The [Administrator of the] *Federal Aviation Administration* shall establish and carry out a program to accelerate and expand the research, development, and implementation of technologies and procedures to counteract terrorist acts against civil aviation. The program shall provide for developing and having in place, not later than November 16, 1993, new equipment and procedures necessary to meet the technological challenges presented by terrorism. The program shall include research on, and development of, technological improvements and ways to enhance human performance.

(2) In designing and carrying out the program established under this subsection, the [Administrator] *Administration* shall—

(A) consult and coordinate activities with other departments, agencies, and instrumentalities of the United States Government doing similar research;

(B) identify departments, agencies, and instrumentalities that would benefit from that research; and

(C) seek cost-sharing agreements with those departments, agencies, and instrumentalities.

(3) In carrying out the program established under this subsection, the [Administrator] *Administration* shall review and consider the annual reports the Secretary of Transportation submits to Congress on transportation security and intelligence.

(4) The [Administrator] *Administration* may—

(A) make grants to institutions of higher learning and other appropriate research facilities with demonstrated ability to carry out research described in paragraph (1) of this subsection, and fix the amounts and terms of the grants; and

(B) make cooperative agreements with governmental authorities the [Administrator] *Administration* decides are appropriate.

(b) REVIEW OF THREATS.—(1) The [Administrator] *Administration* shall complete an intensive review of threats to civil aviation, with particular focus on—

(A) * * *

* * * * *

(2) The [Administrator] *Administration* shall use the results of the review under this subsection to develop the focus and priorities of the program established under subsection (a) of this section.

(c) SCIENTIFIC ADVISORY PANEL.—The [Administrator] *Administration* shall establish a scientific advisory panel, as a subcommittee of the Research, Engineering and Development Advisory Committee, to review, comment on, advise on the progress of, and recommend modifications in, the program established under subsection (a) of this section, including the need for long-range research programs to detect and prevent catastrophic damage to commercial aircraft by the next generation of terrorist weapons. The panel shall consist of individuals with scientific and technical expertise in—

(1) the development and testing of effective explosive detection systems;

(2) aircraft structure and experimentation to decide on the type and minimum weights of explosives that an effective technology must be capable of detecting;

(3) technologies involved in minimizing airframe damage to aircraft from explosives; and

(4) other scientific and technical areas the [Administrator] *Administration* considers appropriate.

§44913. Explosive detection

(a) DEPLOYMENT AND PURCHASE OF EQUIPMENT.—(1) A deployment or purchase of explosive detection equipment under section 108.7(b)(8) or 108.20 of title 14, Code of Federal Regulations, or similar regulation is required only if the [Administrator of the] Federal Aviation Administration certifies that the equipment alone, or as part of an integrated system, can detect under realistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The [Administrator] *Administration* shall base the certification on the results of tests conducted under protocols developed in consultation with expert scientists outside of the Administration. Those tests shall be completed not later than April 16, 1992.

(2) Before completion of the tests described in paragraph (1) of this subsection, but not later than April 16, 1992, the [Administrator] *Administration* may require deployment of explosive detection equipment described in paragraph (1) if the [Administrator] *Administration* decides that deployment will enhance aviation security significantly. In making that decision, the [Administrator] *Administration* shall consider factors such as the ability of the equipment alone, or as part of an integrated system, to detect under re-

alistic air carrier operating conditions the amounts, configurations, and types of explosive material that would likely be used to cause catastrophic damage to commercial aircraft. The [Administrator] *Administration* shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Public Works and Transportation of the House of Representatives of a deployment decision made under this paragraph.

(3) This subsection does not prohibit the [Administrator] *Administration* from purchasing or deploying explosive detection equipment described in paragraph (1) of this subsection.

(b) GRANTS.—The [Secretary of Transportation] *Federal Aviation Administration* may provide grants to continue the Explosive Detection K–9 Team Training Program to detect explosives at airports and on aircraft.

§ 44914. Airport construction guidelines

In consultation with air carriers, airport authorities, and others the [Administrator of the] Federal Aviation Administration considers appropriate, the [Administrator] *Administration* shall develop guidelines for airport design and construction to allow for maximum security enhancement. In developing the guidelines, the [Administrator] *Administration* shall consider the results of the assessment carried out under section 44904(a) of this title.

§ 44915. Exemptions

The [Administrator of the] Federal Aviation Administration may exempt from sections 44901, 44903 (a)–(c) and (e), 44906, 44935, and 44936 of this title airports in Alaska served only by air carriers that—

- (1) hold certificates issued under section 41102 of this title;
- (2) operate aircraft with certificates for a maximum gross takeoff weight of less than 12,500 pounds; and
- (3) board passengers, or load property intended to be carried in an aircraft cabin, that will be screened under section 44901 of this title at another airport in Alaska before the passengers board, or the property is loaded on, an aircraft for a place outside Alaska.

SUBCHAPTER II—ADMINISTRATION AND PERSONNEL

* * * * *

[§ 44932. Assistant Administrator for Civil Aviation Security

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

§ 44932. Civil aviation security

[(b)] (a) DUTIES AND POWERS.—The [Assistant Administrator] *officer designated by the Chief Executive Officer of the Federal Aviation Administration* shall—

- (1) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration,

including Federal Security Managers as provided by section 44933 of this title;

- (2) enforce security-related requirements;
- (3) identify the research and development requirements of security-related activities;
- (4) inspect security systems;
- (5) report information to the Director of Intelligence and Security that may be necessary to allow the Director to carry out assigned duties and powers;
- (6) assess threats to civil aviation; and
- (7) carry out other duties and powers the [Administrator] *Administration* considers appropriate.

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

- (1) to strengthen controls over checked baggage in air transportation, including ways to ensure baggage reconciliation and inspection of items in passenger baggage that could potentially contain explosive devices;
- (2) to strengthen control over individuals having access to aircraft;
- (3) to improve testing of security systems;
- (4) to ensure the use of the best available x-ray equipment for air transportation security purposes; and
- (5) to strengthen preflight screening of passengers.

§ 44933. Federal Security Managers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The [Administrator of the] Federal Aviation Administration shall establish the position of Federal Security Manager at each airport in the United States at which the [Administrator] *Administration* decides a Manager is necessary for air transportation security. The [Administrator] *Administration* shall designate individuals as Managers for, and station those Managers at, those airports. The [Administrator] *Administration* may designate a current field employee of the Administration as a Manager. A Manager reports directly to the [Assistant Administrator for Civil Aviation Security] *officer designated by the Chief Executive Officer of the Administration*. The [Administrator] *Administration* shall station an individual as Manager at each airport in the United States that the [Secretary of Transportation] *Federal Aviation Administration* designates as a category X airport.

(b) DUTIES AND POWERS.—The Manager at each airport shall—

(1) * * *

* * * * *

(4) serve as the on-site coordinator of the [Administrator's] *Administration's* response to terrorist incidents and threats at the airport;

(5) coordinate the day-to-day Government aviation security activities at the airport;

(6) coordinate efforts related to aviation security with local law enforcement; and

(7) coordinate activities with other Managers.

(c) LIMITATION.—A Civil Aviation Security Field Officer may not be assigned security duties and powers at an airport having a Manager.

§ 44934. Foreign Security Liaison Officers

(a) ESTABLISHMENT, DESIGNATION, AND STATIONING.—The [Administrator of the] Federal Aviation Administration shall establish the position of Foreign Security Liaison Officer for each airport outside the United States at which the [Administrator] *Administration* decides an Officer is necessary for air transportation security. In coordination with the Secretary of State, the [Administrator] *Administration* shall designate an Officer for each of those airports. In coordination with the Secretary, the [Administrator] *Administration* shall designate an Officer for each of those airports where extraordinary security measures are in place. The Secretary shall give high priority to stationing those Officers.

(b) DUTIES AND POWERS.—An Officer reports directly to the [Assistant Administrator for Civil Aviation Security] *officer designated by the Chief Executive Officer of the Administration*. The Officer at each airport shall—

(1) serve as the liaison of the [Assistant Administrator] *Administration* to foreign security authorities (including governments of foreign countries and foreign airport authorities) in carrying out United States Government security requirements at that airport; and

(2) to the extent practicable, carry out duties and powers referred to in section 44933(b) of this title.

(c) COORDINATION OF ACTIVITIES.—The activities of each Officer shall be coordinated with the chief of the diplomatic mission of the United States to which the Officer is assigned. Activities of an Officer under this section shall be consistent with the duties and powers of the Secretary and the chief of mission to a foreign country under section 103 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (22 U.S.C. 4802) and section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

§ 44935. Employment standards and training

(a) EMPLOYMENT STANDARDS.—The [Administrator of the] Federal Aviation Administration shall prescribe standards for the employment and continued employment of, and contracting for, air carrier personnel and, as appropriate, airport security personnel. The standards shall include—

(1) minimum training requirements for new employees;

(2) retraining requirements;

(3) minimum staffing levels;

(4) minimum language skills; and

(5) minimum education levels for employees, when appropriate.

(b) REVIEW AND RECOMMENDATIONS.—In coordination with air carriers, airport operators, and other interested persons, the [Administrator] *Administration* shall review issues related to human performance in the aviation security system to maximize that performance. When the review is completed, the [Administrator] *Ad-*

ministration shall recommend guidelines and prescribe appropriate changes in existing procedures to improve that performance.

(c) SECURITY PROGRAM TRAINING, STANDARDS, AND QUALIFICATIONS.—(1) The **[Administrator]** *Administration*—

(A) may train individuals employed to carry out a security program under section 44903(c) of this title; and

(B) shall prescribe uniform training standards and uniform minimum qualifications for individuals eligible for that training.

(2) The **[Administrator]** *Administration* may authorize reimbursement for travel, transportation, and subsistence expenses for security training of non-United States Government domestic and foreign individuals whose services will contribute significantly to carrying out civil aviation security programs. To the extent practicable, air travel reimbursed under this paragraph shall be on air carriers.

(d) EDUCATION AND TRAINING STANDARDS FOR SECURITY COORDINATORS, SUPERVISORY PERSONNEL, AND PILOTS.—(1) The **[Administrator]** *Administration* shall prescribe standards for educating and training—

(A) ground security coordinators;

(B) security supervisory personnel; and

(C) airline pilots as in-flight security coordinators.

(2) The standards shall include initial training, retraining, and continuing education requirements and methods. Those requirements and methods shall be used annually to measure the performance of ground security coordinators and security supervisory personnel.

§ 44936. Employment investigations and restrictions

(a) EMPLOYMENT INVESTIGATION REQUIREMENT.—(1) 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]** *Administration* decides is necessary to ensure air transportation security, of each individual employed in, or applying for, a position in which the individual has unescorted access, or may permit other individuals to have unescorted access, to—

(A) aircraft of an air carrier or foreign air carrier; or

(B) a secured area of an airport in the United States the **[Administrator]** *Administration* designates that serves an air carrier or foreign air carrier.

(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]** *Administration* requires is conducted.

(b) PROHIBITED EMPLOYMENT.—(1) * * *

(2) The **[Administrator]** *Administration* 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 car-

rying out the investigation required under this section, if the [Administrator] *Administration* approves a plan to employ the individual that provides alternate security arrangements.

(c) FINGERPRINTING AND RECORD CHECK INFORMATION.—(1) If the [Administrator] *Administration* 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] *Administration* 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] *Administration* designates. Before designating an individual to obtain and submit fingerprints or receive results of a check, the [Administrator] *Administration* shall consult with the Attorney General.

(2) The [Administrator] *Administration* 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] *Administration* 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] *Administration* 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.

§ 44937. Prohibition on transferring duties and powers

Except as specifically provided by law, the [Administrator of the] Federal Aviation Administration may not transfer a duty or power under section 44903(a), (b), (c), or (e), 44906, 44912, 44935, 44936, or 44938(b)(3) of this title to another department, agency, or instrumentality of the United States Government.

§ 44938. Reports

(a) TRANSPORTATION SECURITY.—Not later than March 31 of each year, the Secretary of Transportation shall submit to Congress a report on transportation security with recommendations the Sec-

retary considers appropriate. The report shall be prepared in conjunction with the annual report the [Administrator of the] Federal Aviation Administration submits under subsection (b) of this section, but may not duplicate the information submitted under subsection (b) or section 44907(a)(3) of this title. The Secretary may submit the report in classified and unclassified parts. The report shall include—

(1) * * *

* * * * *

(9) an assessment of financial and staffing requirements, and attainment of existing staffing goals, for carrying out duties and powers of the [Administrator] *Administration* related to security; and

(10) appropriate legislative and regulatory recommendations.

(b) SCREENING AND FOREIGN AIR CARRIER AND AIRPORT SECURITY.—The [Administrator] *Administration* shall submit annually to Congress a report—

(1) on the effectiveness of procedures under section 44901 of this title;

(2) that includes a summary of the assessments conducted under section 44907(a)(1) and (2) of this title; and

(3) that includes an assessment of the steps being taken, and the progress being made, in ensuring compliance with section 44906 of this title for each foreign air carrier security program at airports outside the United States—

(A) at which the [Administrator] *Administration* decides that Foreign Security Liaison Officers are necessary for air transportation security; and

(B) for which extraordinary security measures are in place.

(c) DOMESTIC AIR TRANSPORTATION SYSTEM SECURITY.—The [Administrator] *Administration* shall submit to Congress an annual report for each of the calendar years 1991 and 1992 on the progress being made, and the problems occurring, in carrying out section 44904 of this title. The report shall include recommendations for improving domestic air transportation security.

CHAPTER 451—ALCOHOL AND CONTROLLED SUBSTANCES TESTING

* * * * *

§ 45101. Definition

In this chapter, “controlled substance” means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) specified by the [Administrator of the] Federal Aviation Administration.

§ 45102. Alcohol and controlled substances testing programs

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—(1) In the interest of aviation safety, the [Administrator of the] Federal Aviation Administration shall prescribe regulations not later than October 28, 1992, that establish a program requiring air carriers and foreign air carriers to conduct

preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the [Administrator] *Administration*) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.

(2) When the [Administrator] *Administration* considers it appropriate in the interest of safety, the [Administrator] *Administration* may prescribe regulations for conducting periodic recurring testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—(1) The [Administrator] *Administration* shall establish a program of preemployment, reasonable suspicion, random, and post-accident testing for the use of alcohol or a controlled substance in violation of law or a Government regulation for employees of the Administration whose duties include responsibility for safety-sensitive functions.

(2) When the [Administrator] *Administration* considers it appropriate in the interest of safety, the [Administrator] *Administration* may prescribe regulations for conducting periodic recurring testing of employees of the Administration responsible for safety-sensitive functions for use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) SANCTIONS.—In prescribing regulations under the programs required by this section, the [Administrator] *Administration* shall require, as the [Administrator] *Administration* considers appropriate, the suspension or revocation of any certificate issued to an individual referred to in this section, or the disqualification or dismissal of the individual, under this chapter when a test conducted and confirmed under this chapter indicates the individual has used alcohol or a controlled substance in violation of law or a Government regulation.

§ 45103. Prohibited service

(a) USE OF ALCOHOL OR A CONTROLLED SUBSTANCE.—An individual may not use alcohol or a controlled substance after October 28, 1991, in violation of law or a United States Government regulation and serve as an airman, crewmember, airport security screening contract employee, air carrier employee responsible for safety-sensitive functions (as decided by the [Administrator of the] Federal Aviation Administration), or employee of the Administration with responsibility for safety-sensitive functions.

(b) REHABILITATION REQUIRED TO RESUME SERVICE.—Notwithstanding subsection (a) of this section, an individual found to have used alcohol or a controlled substance after October 28, 1991, in violation of law or a Government regulation may serve as an airman, crewmember, airport security screening contract employee, air carrier employee responsible for safety-sensitive functions (as decided by the [Administrator] *Administration*), or employee of the Administration with responsibility for safety-sensitive functions

only if the individual completes a rehabilitation program described in section 45105 of this title.

(c) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—An individual who served as an airman, crewmember, airport security screening contract employee, air carrier employee responsible for safety-sensitive functions (as decided by the [Administrator] *Administration*), or employee of the Administration with responsibility for safety-sensitive functions and who was found by the [Administrator] *Administration* to have used alcohol or a controlled substance after October 28, 1991, in violation of law or a Government regulation may not carry out the duties related to air transportation that the individual carried out before the finding of the [Administrator] *Administration* if the individual—

- (1) used the alcohol or controlled substance when on duty;
- (2) began or completed a rehabilitation program described in section 45105 of this title before using the alcohol or controlled substance; or
- (3) refuses to begin or complete a rehabilitation program described in section 45105 of this title after a finding by the [Administrator] *Administration* under this section.

§ 45104. Testing and laboratory requirements

In carrying out section 45102 of this title, the [Administrator of the] Federal Aviation Administration shall develop requirements that—

- (1) * * *

* * * * *

§ 45105. Rehabilitation

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—The [Administrator of the] Federal Aviation Administration shall prescribe regulations establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of employees of air carriers and foreign air carriers referred to in section 45102(a)(1) of this title who need assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a United States Government regulation. Each air carrier and foreign air carrier is encouraged to make such a program available to all its employees in addition to the employees referred to in section 45102(a)(1). The [Administrator] *Administration* shall decide on the circumstances under which employees shall be required to participate in a program. This subsection does not prevent an air carrier or foreign air carrier from establishing a program under this subsection in cooperation with another air carrier or foreign air carrier.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—The [Administrator] *Administration* shall establish and maintain a rehabilitation program that at least provides for the identification and opportunity for treatment of employees of the Administration whose duties include responsibility for safety-sensitive functions who need assistance in resolving problems with the use of alcohol or a controlled substance.

§45106. Relationship to other laws, regulations, standards, and orders

(a) EFFECT ON STATE AND LOCAL GOVERNMENT LAWS, REGULATIONS, STANDARDS, OR ORDERS.—A State or local government may not prescribe, issue, or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this chapter. However, a regulation prescribed under this chapter does not preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(b) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—(1) In prescribing regulations under this chapter, the [Administrator of the] Federal Aviation Administration—

(A) shall establish only requirements applicable to foreign air carriers that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(2) The Secretaries of State and Transportation jointly shall request the governments of foreign countries that are members of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit crewmembers in international civil aviation from using alcohol or a controlled substance in violation of law or a United States Government regulation.

(c) OTHER REGULATIONS ALLOWED.—This section does not prevent the [Administrator] *Administration* from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by airmen, crewmembers, airport security screening contract employees, air carrier employees responsible for safety-sensitive functions (as decided by the [Administrator] *Administration*), or employees of the Administration with responsibility for safety-sensitive functions.

CHAPTER 453—FEES

* * * * *

§45301. Authority to impose fees

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

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

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

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

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

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

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

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

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

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

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

§45302. Fees involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL AUTHORITY AND MAXIMUM FEES.—The [Administrator of the] Federal Aviation Administration may impose fees to pay for the costs of issuing airman certificates to pilots and certificates of registration of aircraft and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The following fees may not be more than the amounts specified:

(1) \$12 for issuing an airman's certificate to a pilot.

(2) \$25 for registering an aircraft after the transfer of ownership.

(3) \$15 for renewing an aircraft registration.

(4) \$7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

(c) ADJUSTMENTS.—The [Administrator] *Administration* shall adjust the maximum fees established by subsection (b) of this section for changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

(d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees imposed under this section shall be credited to the account in the Treasury from which the [Administrator] *Administration* incurs expenses in carrying out chapter 441 and sections 44701–44716 of this title (except sections 44701(c), 44703(f)(2), and

44713(d)(2)). The money is available to the [Administrator] *Administration* to pay expenses for which the fees are collected.

(e) EFFECTIVE DATE.—A fee may not be imposed under this section before the date on which the regulations prescribed under sections 44111(d), 44703(f)(2), and 44713(d)(2) of this title take effect.

§ 45303. Maximum fees for private person services

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

SUBPART IV—ENFORCEMENT AND PENALTIES

CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS

Sec.

46101. Complaints and investigations.

* * * * *

46106. Enforcement by the Secretary of Transportation and [Administrator of the] Federal Aviation Administration.

* * * * *

§ 46101. Complaints and investigations

(a) GENERAL.—(1) A person may file a complaint in writing with the Secretary of Transportation [(or the Administrator of)] *(or the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the [Administrator] Administration)* about a person violating this part or a requirement prescribed under this part. Except as provided in subsection (b) of this section, the Secretary or [Administrator] *Administration* shall investigate the complaint if a reasonable ground appears to the Secretary or [Administrator] *Administration* for the investigation.

(2) On the initiative of the Secretary of Transportation or the [Administrator] *Administration*, as appropriate, the Secretary or [Administrator] *Administration* may conduct an investigation, if a reasonable ground appears to the Secretary or [Administrator] *Administration* for the investigation, about—

(A) a person violating this part or a requirement prescribed under this part; or

(B) any question that may arise under this part.

(3) The Secretary of Transportation or [Administrator] *Administration* may dismiss a complaint without a hearing when the Secretary or [Administrator] *Administration* is of the opinion that the complaint does not state facts that warrant an investigation or action.

(4) After notice and an opportunity for a hearing and subject to section 40105(b) of this title, the Secretary of Transportation or [Administrator] *Administration* shall issue an order to compel compliance with this part if the Secretary or [Administrator] *Administration* finds in an investigation under this subsection that a person is violating this part.

(b) COMPLAINTS AGAINST MEMBERS OF ARMED FORCES.—The Secretary of Transportation or [Administrator] *Administration* shall

refer a complaint against a member of the armed forces of the United States performing official duties to the Secretary of the department concerned for action. Not later than 90 days after receiving the complaint, the Secretary of that department shall inform the Secretary of Transportation or [Administrator] *Administration* of the action taken on the complaint, including any corrective or disciplinary action taken.

§46102. Proceedings

(a) CONDUCTING PROCEEDINGS.—Subject to subchapter II of chapter 5 of title 5, the Secretary of Transportation [(or the Administrator of] *(or the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the [Administrator] Administration)* may conduct proceedings in a way conducive to justice and the proper dispatch of business.

(b) APPEARANCE.—A person may appear and be heard before the Secretary and the [Administrator] *Administration* in person or by an attorney. The Secretary may appear and participate as an interested party in a proceeding the [Administrator] *Administration* conducts under section 40113(a) of this title.

(c) RECORDING AND PUBLIC ACCESS.—Official action taken by the Secretary and [Administrator] *Administration* under this part shall be recorded. Proceedings before the Secretary and [Administrator] *Administration* shall be open to the public on the request of an interested party unless the Secretary or [Administrator] *Administration* decides that secrecy is required because of national defense.

(d) CONFLICTS OF INTEREST.—The Secretary, the [Administrator] *Administration*, or an officer or employee of the Administration may not participate in a proceeding referred to in subsection (a) of this section in which the individual has a pecuniary interest.

§46103. Service of notice, process, and actions

(a) DESIGNATING AGENTS.—(1) Each air carrier and foreign air carrier shall designate an agent on whom service of notice and process in a proceeding before, and an action of, the Secretary of Transportation [(or the Administrator of] *(or the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the [Administrator] Administration)* may be made.

(2) The designation—

(A) shall be in writing and filed with the Secretary or [Administrator] *Administration*; and

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

(b) SERVICE.—(1) Service may be made—

(A) by personal service;

(B) on a designated agent; or

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

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

(c) SERVING AGENTS.—Service on an agent designated under this section shall be made at the office or usual place of residence of the agent. If an air carrier or foreign air carrier does not have a des-

ignated agent, service may be made by posting the notice, process, or action in the office of the Secretary or [Administrator] *Administration*.

§46104. Evidence

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

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

(2) administer oaths;

(3) examine witnesses; and

(4) receive evidence at a place in the United States the Secretary or [Administrator] *Administration* designates.

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

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

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

(3) Before taking a deposition, the party or the attorney of the party proposing to take the deposition must give reasonable notice in writing to the opposing party or the attorney of record of that party. The notice shall state the name of the witness and the time and place of taking the deposition.

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

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

(A) by a consular officer or an individual commissioned by the Secretary or [Administrator] *Administration* or agreed on by the parties by written stipulation filed with the Secretary or [Administrator] *Administration*; or

(B) under letters rogatory issued by a court of competent jurisdiction at the request of the Secretary or [Administrator] *Administration*.

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

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

§46105. Regulations and orders

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

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

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

§46106. Enforcement by the Secretary of Transportation and [Administrator of the] Federal Aviation Administration

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]) *Administration*) may bring a civil action against a person in a district court of the United States to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part. The action may be brought in the judicial district in which the person does business or the violation occurred.

§46107. Enforcement by the Attorney General

(a) CIVIL ACTIONS TO ENFORCE SECTION 40106(b).—The Attorney General may bring a civil action in a district court of the United States against a person to enforce section 40106(b) of this title. The action may be brought in the judicial district in which the person does business or the violation occurred.

(b) CIVIL ACTIONS TO ENFORCE THIS PART.—(1) On request of 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]) *Administration*), the Attorney General may bring a civil action in an appropriate court—

(A) to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part; and

(B) to prosecute a person violating this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part.

(2) The costs and expenses of a civil action shall be paid out of the appropriations for the expenses of the courts of the United States.

(c) PARTICIPATION OF SECRETARY OR [ADMINISTRATOR] *ADMINISTRATION*.—On request of the Attorney General, the Secretary or [Administrator] *Administration*, as appropriate, may participate in a civil action under this part.

§46108. Enforcement of certificate requirements by interested persons

An interested person may bring a civil action in a district court of the United States against a person to enforce section 41101(a)(1) of this title. The action may be brought in the judicial district in which the defendant does business or the violation occurred.

§46109. Joinder and intervention

A person interested in or affected by a matter under consideration in a proceeding before the Secretary of Transportation or the Federal Aviation Administration or civil action to enforce this part or a requirement or regulation prescribed, or an order or any term of a certificate or permit issued, under this part may be joined as a party or permitted to intervene in the proceeding or civil action.

§46110. Judicial review

(a) FILING AND VENUE.—Except for an order related to a foreign air carrier subject to disapproval by the President under section 41307 or 41509(f) of this title, a person disclosing a substantial interest in an order issued by 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]) *Administration*) under this part may apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after the order is issued. The court may allow the petition to be filed after the 60th day only if there are reasonable grounds for not filing by the 60th day.

(b) JUDICIAL PROCEDURES.—When a petition is filed under subsection (a) of this section, the clerk of the court immediately shall send a copy of the petition to the Secretary or [Administrator] *Administration*, as appropriate. The Secretary or [Administrator] *Administration* shall file with the court a record of any proceeding in which the order was issued, as provided in section 2112 of title 28.

(c) AUTHORITY OF COURT.—When the petition is sent to the Secretary or [Administrator] *Administration*, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary or [Administrator] *Administration* to conduct further proceedings. After reasonable notice to the Secretary or [Administrator] *Administration*, the court may grant interim relief by staying the order or taking other appropriate action when good cause for its action exists. Findings of fact by the Secretary or [Administrator] *Administration*, if supported by substantial evidence, are conclusive.

(d) REQUIREMENT FOR PRIOR OBJECTION.—In reviewing an order under this section, the court may consider an objection to an order of the Secretary or [Administrator] *Administration* only if the objection was made in the proceeding conducted by the Secretary or [Administrator] *Administration* or if there was a reasonable ground for not making the objection in the proceeding.

(e) SUPREME COURT REVIEW.—A decision by a court under this section may be reviewed only by the Supreme Court under section 1254 of title 28.

CHAPTER 463—PENALTIES

* * * * *

§46301. Civil penalties

(a) * * *

* * * * *

(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) * * *

* * * * *

(D) a violation under subsection (a)(1) of this section related to the transportation *by other than air* of hazardous material.

(2) *FAA NOTICE AND HEARING.*—*The Federal Aviation Administration may impose a civil penalty for violations under subsection (a)(1) of this section related to the transportation by air of hazardous material only after notice and an opportunity for a hearing.*

[(2)] (3) The Secretary or Administration, as appropriate, 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) * * *

(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), or any of sections 44701 (a) or (b), 44702–44716, 44901, 44903 (b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, 44932–44938, 46302, 46303, or 47107(b) (as further defined by the [Secretary] Administration 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] Administration 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] Administration 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] Administration 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] Administration 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] Administration 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] Administra-

tion but is bound by all validly adopted interpretations of laws and regulations the [Administrator] *Administration* 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] *Administration* is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the [Administrator] *Administration* when the [Administrator] *Administration* 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] *Administration* 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] *Administration* may impose a penalty on an individual (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] *Administration* 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] *Administration* 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] *Administration* 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 *or Administration, as the case may be*, 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), or any of sections 44701 (a) or (b), 44702–44716, 44901, 44903 (b) or (c), 44905, 44906, 44907(d)(1)(B), 44912–44915, or 44932–44938 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 *and an order of the Administration* imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—(1) * * *

(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)] *or Administration, as appropriate*, a timely report on action taken.

§46302. False information

(a) * * *

(b) COMPROMISE AND SETOFF.—(1) The [Secretary of Transportation] *Federal Aviation Administration* may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

§46303. Carrying a weapon

(a) CIVIL PENALTY.—An individual who, when on, or attempting to board, an aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the individual or the property of the individual a concealed dangerous weapon that is or would be accessible to the individual in flight is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation.

(b) COMPROMISE AND SETOFF.—(1) The [Secretary of Transportation] *Federal Aviation Administration* may compromise the amount of a civil penalty imposed under subsection (a) of this section.

(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.

(c) NONAPPLICATION.—This section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the Government, authorized to carry arms in an official capacity; or

(2) another individual the [Administrator of the] Federal Aviation Administration by regulation authorizes to carry arms in an official capacity.

§46304. Liens on aircraft

(a) AIRCRAFT SUBJECT TO LIENS.—When an aircraft is involved in a violation referred to in section 46301(a)(1)(A)–(C), (2), or (3) of this title and the violation is by the owner of, or individual commanding, the aircraft, the aircraft is subject to a lien for the civil penalty.

(b) SEIZURE.—An aircraft subject to a lien under this section may be seized summarily and placed in the custody of a person authorized to take custody of it under regulations of 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] *Administration*). A report on the seizure shall be submitted to the Attorney General. The Attorney General promptly shall bring a civil action in rem to enforce the lien or notify the Secretary or [Administrator] *Administration* that the action will not be brought.

(c) RELEASE.—An aircraft seized under subsection (b) of this section shall be released from custody when—

(1) the civil penalty is paid;

(2) a compromise amount agreed on is paid;

(3) the aircraft is seized under a civil action in rem to enforce the lien;

(4) the Attorney General gives notice that a civil action will not be brought under subsection (b) of this section; or

(5) a bond (in an amount and with a surety the Secretary or [Administrator] *Administration* prescribes), conditioned on payment of the penalty or compromise, is deposited with the Secretary or [Administrator] *Administration*.

* * * * *

§46306. Registration violations involving aircraft not providing air transportation

(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

(b) GENERAL CRIMINAL PENALTY.—Except as provided by subsection (c) of this section, a person shall be fined under title 18, imprisoned for not more than 3 years, or both, if the person—

(1) * * *

* * * * *

(9) operates an aircraft with a fuel tank or fuel system that has been installed or modified knowing that the tank, system, installation, or modification does not comply with regulations

and requirements of the [Administrator of the] Federal Aviation Administration.

* * * * *

(d) SEIZURE AND FORFEITURE.—(1) The Administrator of Drug Enforcement or the Commissioner of Customs may seize and forfeit under the customs laws an aircraft whose use is related to a violation of subsection (b) of this section, or to aid or facilitate a violation, regardless of whether a person is charged with the violation.

(2) An aircraft's use is presumed to have been related to a violation of, or to aid or facilitate a violation of—

(A) subsection (b)(1) of this section if the aircraft certificate of registration has been forged or altered;

(B) subsection (b)(3) of this section if there is an external display of false or misleading registration numbers or country of registration;

(C) subsection (b)(4) of this section if—

(i) the aircraft is registered to a false or fictitious person;

or

(ii) the application form used to obtain the aircraft certificate of registration contains a material false statement;

(D) subsection (b)(5) of this section if the aircraft was operated when it was not registered under section 44103 of this title; or

(E) subsection (b)(9) of this section if the aircraft has a fuel tank or fuel system that was installed or altered—

(i) in violation of a regulation or requirement of the [Administrator of the] Federal Aviation Administration; or

(ii) if a certificate required to be issued for the installation or alteration is not carried on the aircraft.

(3) The [Administrator of the] Federal Aviation Administration, the Administrator of Drug Enforcement, and the Commissioner shall agree to a memorandum of understanding to establish procedures to carry out this subsection.

(e) RELATIONSHIP TO STATE LAWS.—This part does not prevent a State from establishing a criminal penalty, including providing for forfeiture and seizure of aircraft, for a person that—

(1) knowingly and willfully forges or alters an aircraft certificate of registration;

(2) knowingly sells, uses, attempts to use, or possesses with the intent to use, a fraudulent aircraft certificate of registration;

(3) knowingly and willfully displays or causes to be displayed on an aircraft a mark that is false or misleading about the nationality or registration of the aircraft; or

(4) obtains an aircraft certificate of registration from the [Administrator of the] Federal Aviation Administration by—

(A) knowingly and willfully falsifying or concealing a material fact;

(B) making a false, fictitious, or fraudulent statement; or

(C) making or using a false document knowing it contains a false, fictitious, or fraudulent statement or entry.

* * * * *

§ 46308. Interference with air navigation

A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person—

- (1) * * *
- (2) after a warning from the [Administrator of the] Federal Aviation Administration, continues to maintain a misleading light or signal; or

* * * * *

§ 46311. Unlawful disclosure of information

(a) CRIMINAL PENALTY.—The Secretary of Transportation, the [Administrator of the] Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the [Administrator] *Administration*, or an officer or employee of the Secretary or [Administrator] *Administration* shall be fined under title 18, imprisoned for not more than 2 years, or both, if the Secretary, [Administrator] *Administration*, officer, or employee knowingly and willfully discloses information that—

- (1) the Secretary, [Administrator] *Administration*, officer, or employee acquires when inspecting the records of an air carrier; or
- (2) is withheld from public disclosure under section 40115 of this title.

(b) NONAPPLICATION.—Subsection (a) of this section does not apply if—

- (1) the officer or employee is directed by the Secretary or [Administrator] *Administration* to disclose information that the Secretary or [Administrator] *Administration* had ordered withheld; or
- (2) the Secretary, [Administrator] *Administration*, officer, or employee is directed by a court of competent jurisdiction to disclose the information.

(c) WITHHOLDING INFORMATION FROM CONGRESS.—This section does not authorize the Secretary or [Administrator] *Administration* to withhold information from a committee of Congress authorized to have the information.

* * * * *

§ 46313. Refusing to appear or produce records

A person not obeying a subpoena or requirement of 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] *Administration*) to appear and testify or produce records shall be fined under title 18, imprisoned for not more than one year, or both.

* * * * *

§ 46315. Lighting violations involving transporting controlled substances by aircraft not providing air transportation

- (a) * * *

(b) **CRIMINAL PENALTY.**—A person shall be fined under title 18, imprisoned for not more than 5 years, or both, if—

(1) the person knowingly and willfully operates an aircraft in violation of a regulation or requirement of the [Administrator of the] Federal Aviation Administration related to the display of navigation or anticollision lights;

* * * * *

§ 46316. General criminal penalty when specific penalty not provided

(a) **CRIMINAL PENALTY.**—Except as provided by subsection (b) of this section, when another criminal penalty is not provided under this chapter, a person that knowingly and willfully violates this part, a regulation prescribed or order issued by 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] *Administration*) under this part, or any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title shall be fined under title 18. A separate violation occurs for each day the violation continues.

* * * * *

CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES

* * * * *

§ 46505. Carrying a weapon or explosive on an aircraft

(a) * * *

* * * * *

(d) **NONAPPLICATION.**—Subsection (b)(1) of this section does not apply to—

(1) a law enforcement officer of a State or political subdivision of a State, or an officer or employee of the United States Government, authorized to carry arms in an official capacity;

(2) another individual the [Administrator of the] Federal Aviation Administration by regulation authorizes to carry a dangerous weapon in air transportation or intrastate air transportation; or

* * * * *

PART B—AIRPORT DEVELOPMENT AND NOISE

CHAPTER 471—AIRPORT DEVELOPMENT

* * * * *

SUBCHAPTER I—AIRPORT IMPROVEMENT

§47101. Policies

(a) * * *

* * * * *

(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] *Federal Aviation Administration* to relieve congestion at commercial service airports by diverting aircraft passengers from fixed-wing aircraft to helicopter carriers.

* * * * *

(g) COOPERATION.—To carry out the policy of subsection (a)(5) of this section, the [Secretary of Transportation] *Federal Aviation Administration* shall 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.

(h) CONSULTATION.—To carry out the policy of subsection (a)(6) of this section, the [Secretary of Transportation] *Federal Aviation Administration* shall consult with the Secretary of the Interior and the Administrator of the Environmental 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) * * *

* * * * *

(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] *Administration* requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport;

* * * * *

(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] *Administration* 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] *Administration* under this subchapter.

* * * * *

(5) “airport planning” means planning as defined by regulations the [Secretary] *Administration* 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] *Administration* determines has at least 2,500 passenger boardings each year and is receiving scheduled passenger aircraft service.

* * * * *

(9) “landed weight” means the weight of aircraft transporting only cargo in intrastate, interstate, and foreign air transportation, as the [Secretary] *Administration* determines under regulations the [Secretary] *Administration* prescribes.

(10) “passenger boardings”—

(A) means revenue passenger boardings on an aircraft in service in air commerce as the [Secretary] *Administration* determines under regulations the [Secretary] *Administration* 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] *Administration* 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] *Administration* makes to a sponsor to carry out at least one project.

(17) “public-use airport” means—

(A) a public airport; or

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

(i) a reliever airport; or

(ii) determined by the [Secretary] *Administration* 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] *Administration* 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] *Administration* under this subchapter an application for financial assistance; and

(B) a private owner of a public-use airport that submits to the [Secretary] *Administration* 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.

§ 47103. National plan of integrated airport systems

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—The [Secretary of Transportation] *Federal Aviation Administration* shall maintain the plan for developing public-use airports in the United States, named “the national plan of integrated airport systems”. The plan shall include the kind and estimated cost of eligible airport development the [Secretary of Transportation] *Federal Aviation Administration* considers necessary to provide a safe, efficient, and integrated system of public-use airports adequate to anticipate and meet the needs of civil aeronautics, to meet the national defense requirements of the Secretary of Defense, and to meet identified needs of the United States Postal Service. Airport development included in the plan may not be limited to meeting the needs of any particular classes or categories of public-use airports. In maintaining the plan, the [Secretary of Transportation] *Federal Aviation Administration* shall consider the needs of each segment of civil aviation and the relationship of each airport to—

- (1) the rest of the transportation system in the particular area;
- (2) forecasted technological developments in aeronautics; and
- (3) forecasted developments in other modes of intercity transportation.

(b) **SPECIFIC REQUIREMENTS.**—In maintaining the plan, the [Secretary of Transportation] *Federal Aviation Administration* shall—

- (1) to the extent possible and as appropriate, consult with departments, agencies, and instrumentalities of the United States Government, with public agencies, and with the aviation community;
- (2) consider tall structures that reduce safety or airport capacity; and
- (3) make every reasonable effort to address the needs of air cargo operations, Short Takeoff and Landing/Very Short Takeoff and Landing aircraft operations, and rotary wing aircraft operations.

(c) **AVAILABILITY OF DOMESTIC MILITARY AIRPORTS AND AIRPORT FACILITIES.**—To the extent possible, the Secretary of Defense shall make domestic military airports and airport facilities available for civil use. In advising the [Secretary of Transportation] *Federal Aviation Administration* under subsection (a) of this section, the Secretary of Defense shall indicate the extent to which domestic military airports and airport facilities are available for civil use.

(d) **PUBLICATION.**—The [Secretary of Transportation] *Federal Aviation Administration* shall publish the status of the plan every 2 years.

§ 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] *Federal Aviation Administration* may make project grants under this subchapter from the Airport and Airway Trust Fund.

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

(c) **EXPIRATION OF AUTHORITY.**—After September 30, 1996, the [Secretary] *Administration* 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.

§ 47105. Project grant applications

(a) **SUBMISSION AND CONSULTATION.**—(1) An application for a project grant under this subchapter may be submitted to the [Secretary of Transportation] *Federal Aviation Administration* by—

- (A) a sponsor; or

(B) a State, as the only sponsor, for an airport development project benefitting 1 or more airports in the State or for airport planning for projects for 1 or more airports in the State if—

(i) the sponsor of each airport gives written consent that the State be the applicant;

(ii) the [Secretary] *Administration* is satisfied there is administrative merit and aeronautical benefit in the State being the sponsor; and

(iii) an acceptable agreement exists that ensures that the State will comply with appropriate grant conditions and other assurances the [Secretary] *Administration* requires.

(2) Before deciding to undertake an airport development project at an airport under this subchapter, a sponsor shall consult with the airport users that will be affected by the project.

(3) This subsection does not authorize a public agency that is subject to the laws of a State to apply for a project grant in violation of a law of the State.

(b) CONTENTS AND FORM.—An application for a project grant under this subchapter—

(1) shall describe the project proposed to be undertaken;

(2) may propose a project only for a public-use airport included in the current national plan of integrated airport systems;

(3) may propose airport development only if the development complies with standards the [Secretary] *Administration* prescribes or approves, including standards for site location, airport layout, site preparation, paving, lighting, and safety of approaches; and

(4) shall be in the form and contain other information the [Secretary] *Administration* prescribes.

(c) STATE STANDARDS FOR AIRPORT DEVELOPMENT.—The [Secretary] *Administration* may approve standards (except standards for safety of approaches) that a State prescribes for airport development at nonprimary public-use airports in the State. On approval under this subsection, a State's standards apply to the nonprimary public-use airports in the State instead of the comparable standards prescribed by the [Secretary] *Administration* under subsection (b)(3) of this section. The [Secretary] *Administration*, or the State with the approval of the [Secretary] *Administration*, may revise standards approved under this subsection.

(d) CERTIFICATION OF COMPLIANCE.—The [Secretary] *Administration* may require a sponsor to certify that the sponsor will comply with this subchapter in carrying out the project. The [Secretary] *Administration* may rescind the acceptance of a certification at any time. This subsection does not affect an obligation or responsibility of the [Secretary] *Administration* under another law of the United States.

(e) PREVENTIVE MAINTENANCE.—After January 1, 1995, the [Secretary] *Administration* may approve an application under this subchapter for the replacement or reconstruction of pavement at an airport only if the sponsor has provided such assurances or certifications as the [Secretary] *Administration* may determine appropriate that such airport has implemented an effective airport pave-

ment maintenance-management program. The [Secretary] *Administration* may require such reports on pavement condition and pavement management programs as the [Secretary] *Administration* determines may be useful.

(f) NOTIFICATION.—The sponsor of an airport for which an amount is apportioned under section 47114(c) of this title shall notify the [Secretary] *Administration* of the fiscal year in which the sponsor intends to submit a project grant application for the apportioned amount. The notification shall be given by the time and contain the information the [Secretary] *Administration* prescribes.

§47106. Project grant application approval conditioned on satisfaction of project requirements

(a) PROJECT GRANT APPLICATION APPROVAL.—The [Secretary of Transportation] *Federal Aviation Administration* may approve an application under this subchapter for a project grant only if the [Secretary] *Administration* is satisfied that—

(1) the project is consistent with plans (existing at the time the project is approved) of public agencies authorized by the State in which the airport is located to plan for the development of the area surrounding the airport;

(2) the project will contribute to carrying out this subchapter;

(3) enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter;

(4) the project will be completed without unreasonable delay; and

(5) the sponsor has authority to carry out the project as proposed.

(b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—The [Secretary] *Administration* may approve an application under this subchapter for an airport development project grant for an airport only if the [Secretary] *Administration* is satisfied that—

(1) the sponsor, a public agency, or the Government holds good title to the areas of the airport used or intended to be used for the landing, taking off, or surface maneuvering of aircraft, or that good title will be acquired;

(2) the interests of the community in or near which the project may be located have been given fair consideration; and

(3) the application provides touchdown zone and centerline runway lighting, high intensity runway lighting, or land necessary for installing approach light systems that the [Secretary] *Administration*, considering the category of the airport and the kind and volume of traffic using it, decides is necessary for safe and efficient use of the airport by aircraft.

(c) ENVIRONMENTAL REQUIREMENTS.—(1) The [Secretary] *Administration* may approve an application under this subchapter for an airport development project involving the location of an airport or runway or a major runway extension—

(A) only if the sponsor certifies to the [Secretary] *Administration* that—

(i) an opportunity for a public hearing was given to consider the economic, social, and environmental effects of the

location and the location's consistency with the objectives of any planning that the community has carried out; and

(ii) the airport management board has voting representation from the communities in which the project is located or has advised the communities that they have the right to petition the [Secretary] *Administration* about a proposed project;

(B) only if the chief executive officer of the State in which the project will be located certifies in writing to the [Secretary] *Administration* that there is reasonable assurance that the project will be located, designed, constructed, and operated in compliance with applicable air and water quality standards, except that the Administrator of the Environmental Protection Agency shall make the certification instead of the chief executive officer if—

(i) the State has not approved any applicable State or local standards; and

(ii) the Administrator of the *Environmental Protection Agency* has prescribed applicable standards; and

(C) if the application is found to have a significant adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, or another factor affecting the environment, only after finding that no possible and prudent alternative to the project exists and that every reasonable step has been taken to minimize the adverse effect.

(2) The [Secretary] *Federal Aviation Administration* may approve an application under this subchapter for an airport development project that does not involve the location of an airport or runway, or a major runway extension, at an existing airport without requiring an environmental impact statement related to noise for the project if—

(A) completing the project would allow operations at the airport involving aircraft complying with the noise standards prescribed for “stage 2” aircraft in section 36.1 of title 14, Code of Federal Regulations, to replace existing operations involving aircraft that do not comply with those standards; and

(B) the project meets the other requirements under this subchapter.

(3) At the [Secretary's] *Administration's* request, the sponsor shall give the [Secretary] *Administration* a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4)(A) Notice of certification or of refusal to certify under paragraph (1)(B) of this subsection shall be provided to the [Secretary] *Administration* not later than 60 days after the [Secretary] *Administration* receives the application.

(B) The [Secretary] *Administration* shall condition approval of the application on compliance with the applicable standards during construction and operation.

(5) The [Secretary] *Administration* may make a finding under paragraph (1)(C) of this subsection only after completely reviewing the matter. The review and finding must be a matter of public record.

(d) **WITHHOLDING APPROVAL.**—(1) The **【Secretary】 Administration** may withhold approval of an application under this subchapter for amounts apportioned under section 47114 (c) and (e) of this title for violating an assurance or requirement of this subchapter only if—

(A) the **【Secretary】 Administration** provides the sponsor an opportunity for a hearing; and

(B) not later than 180 days after the later of the date of the application or the date the **【Secretary】 Administration** discovers the noncompliance, the **【Secretary】 Administration** finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the **【Secretary】 Administration** and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the **【Secretary】 Administration** withholding approval may obtain review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The action must be brought not later than 60 days after the order is served on the petitioner.

(e) **REPORTS RELATING TO CONSTRUCTION OF CERTAIN NEW HUB AIRPORTS.**—At least 90 days prior to the approval under this subchapter of a project grant application for construction of a new hub airport that is expected to have 0.25 percent or more of the total annual enplanements in the United States, the **【Secretary】 Administration** shall submit to Congress a report analyzing the anticipated impact of such proposed new airport on—

(1) the fees charged to air carriers (including landing fees), and other costs that will be incurred by air carriers, for using the proposed airport;

(2) air transportation that will be provided in the geographic region of the proposed airport; and

(3) the availability and cost of providing air transportation to rural areas in such geographic region.

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

(a) **GENERAL WRITTEN ASSURANCES.**—The **【Secretary of Transportation】 Federal Aviation Administration** may approve a project grant application under this subchapter for an airport development project only if the **【Secretary】 Administration** receives written assurances, satisfactory to the **【Secretary】 Administration**, that—

(1) * * *

* * * * *

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

* * * * *

(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] *Administration* 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] *Administration*, 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] *Administration* that the [Secretary] *Administration* 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] *Administration* prescribes;

(B) the [Secretary] *Administration* 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] *Administration* approves, and the [Secretary] *Administration* 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] *Administration* 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] *Administration*, will—

(i) eliminate the adverse effect in a way the [Secretary] *Administration* approves; or

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the [Secretary] *Administration* 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] *Administration* on reasonable request, and a report of the airport budget will be available to the public at reasonable times and places; and

(19) the airport owner or operator will submit to the [Secretary] *Administration* 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.

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The [Secretary of Transportation] *Federal Aviation Administration* may approve a project grant application under this subchapter for an airport development project only if the [Secretary] *Administration* receives written assurances, satisfactory to the [Secretary] *Administration*, 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.

* * * * *

(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] *Federal Aviation Administration* 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] *Federal Aviation Administration* may approve an application under this subchapter for an airport development project grant only if the [Secretary] *Adminis-*

tration receives written assurances, satisfactory to the [Secretary] *Administration*, 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] *Administration* 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] *Administration* 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] *Administration* 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] *Administration*, in another eligible airport development project the [Secretary] *Administration* approves under this subchapter or paid to the [Secretary] *Administration* for deposit in the Fund if another eligible project does not exist.

(3) Proceeds referred to in paragraphs (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] *Federal Aviation Administration* may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the [Secretary] *Administration* 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] *Federal Aviation Administration* may approve a project grant application

under this subchapter for an airport development project only if the **【Secretary】 Administration** receives written assurances, satisfactory to the **【Secretary】 Administration**, 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】 Administration**) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title).

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(8) Not later than April 29, 1993, the **【Secretary of Transportation】 Federal Aviation Administration** 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】 Federal Aviation Administration** 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】 Administration**—

(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】 Administration** 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】 Federal Aviation Administration**—

(A) shall prescribe requirements for sponsors that the **【Secretary】 Administration** considers necessary; and

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

(2) The **【Secretary of Transportation】 Federal Aviation Administration** may approve an application for a project grant only if the **【Secretary】 Administration** 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】 Federal Aviation Administration** 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】 Federal Aviation**

Administration uses to construct a facility at Government expense, the [Secretary] *Administration* 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] *Administration* 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) * * *

* * * * *

(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] *Federal Aviation Administration*. A determination is approved unless the [Secretary] *Administration* 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] *Federal Aviation Administration* 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] *Administration* shall provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on [Public Works and Transportation] *Transportation and Infrastructure* of the House of Representatives an annual summary of the reports submitted to the [Secretary] *Administration* under subsection (a)(19) of this section and under section 111(b) of the Federal Aviation Administration Authorization Act of 1994.

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

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

and such other relevant information as the [Secretary] *Administration* may by law consider.

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(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] *Administration* to such possible violations.

§47108. Project grant agreements

(a) OFFER AND ACCEPTANCE.—On approving a project grant application under this subchapter, the [Secretary of Transportation] *Federal Aviation Administration* 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] *Administration* may impose terms on the offer that the [Secretary] *Administration* 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.

* * * * *

(d) CHANGING WORKSCOPE.—With the consent of the sponsor, the [Secretary] *Administration* 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.

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§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] *Federal Aviation Administration* 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 incurs related to an audit the [Secretary] *Administration* 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 compatibility 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 section 47114(c)(1)(A) and (2) of this title and if the cost is incurred—

(i) during the fiscal year ending September 30, 1994;

(ii) before a grant agreement is executed for the project but according to an airport layout plan the [Secretary] *Administration* approves before the cost is incurred and all applicable statutory and administrative requirements that would apply to the project if the agreement had been executed; and

(iii) for work related to a project for which a grant agreement previously was executed during the fiscal year ending September 30, 1994;

(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] *Administration* 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] *Administration* 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] *Administration*, 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】 Administration** 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】 Administration's** approval.
- (e) **LETTERS OF INTENT.**—(1) The **【Secretary】 Federal Aviation Board** 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】 Federal Aviation Administration** will reimburse the sponsor for the Government's share of allowable project costs, as amounts become available, if the sponsor, after the **【Secretary】 Federal Aviation Board** 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】 Federal Aviation Board**, 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】 Federal Aviation Board** 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 es-

timated by the [Secretary] *Federal Aviation Administration* 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.

§ 47111. Payments under project grant agreements

(a) GENERAL AUTHORITY.—After making a project grant agreement under this subchapter and consulting with the sponsor, the [Secretary of Transportation] *Federal Aviation Administration* may decide when and in what amounts payments under the agreement will be made. Payments totaling not more than 90 percent of the United States Government's share of the project's estimated allowable costs may be made before the project is completed if the sponsor certifies to the [Secretary] *Administration* that the total amount expended from the advance payments at any time will not be more than the cost of the airport development work completed on the project at that time.

(b) RECOVERING PAYMENTS.—If the [Secretary] *Administration* determines that the total amount of payments made under a grant agreement under this subchapter is more than the Government's share of the total allowable project costs, the Government may recover the excess amount. If the [Secretary] *Administration* finds that a project for which an advance payment was made has not been completed within a reasonable time, the Government may recover any part of the advance payment for which the Government received no benefit.

(c) PAYMENT DEPOSITS.—A payment under a project grant agreement under this subchapter may be made only to an official or depository designated by the sponsor and authorized by law to receive public money.

(d) WITHHOLDING PAYMENTS.—(1) The [Secretary] *Administration* may withhold a payment under a grant agreement under this subchapter for more than 180 days after the payment is due only if the [Secretary] *Administration*—

(A) notifies the sponsor and provides an opportunity for a hearing; and

(B) finds that the sponsor has violated the agreement.

(2) The 180-day period may be extended by—

(A) agreement of the [Secretary] *Administration* and the sponsor; or

(B) the hearing officer if the officer decides an extension is necessary because the sponsor did not follow the schedule the officer established.

(3) A person adversely affected by an order of the [Secretary] *Administration* withholding a payment may apply for review of the order by filing a petition in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the project is located. The petition must be filed not later than 60 days after the order is served on the petitioner.

(e) ACTION ON GRANT ASSURANCES CONCERNING AIRPORT REVENUES.—If, after notice and opportunity for a hearing, the [Secretary] *Administration* finds a violation of section 47107(b) of this title, as further defined by the [Secretary] *Administration* under section 47107(l) of this title, or a violation of an assurance made under section 47107(b) of this title, and the [Secretary] *Administration* has provided an opportunity for the airport sponsor to take corrective action to cure such violation, and such corrective action has not been taken within the period of time set by the [Secretary] *Administration*, the [Secretary] *Administration* shall withhold approval of any new grant application for funds under this chapter, or any proposed modification to an existing grant that would increase the amount of funds made available under this chapter to the airport sponsor, and withhold approval of any new application to impose a fee under section 40117 of this title. Such applications may thereafter be approved only upon a finding by the [Secretary] *Administration* that such corrective action as the [Secretary] *Administration* requires has been taken to address the violation and that the violation no longer exists.

(f) JUDICIAL ENFORCEMENT.—For any violation of this chapter or any grant assurance made under this chapter, the [Secretary] *Administration* may apply to the district court of the United States for any district in which the violation occurred for enforcement. Such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining any person from further violation.

§47112. Carrying out airport development projects

(a) CONSTRUCTION WORK.—The [Secretary of Transportation] *Federal Aviation Administration* may inspect and approve construction work for an airport development project carried out under a grant agreement under this subchapter. The construction work must be carried out in compliance with regulations the [Secretary] *Administration* prescribes. The regulations shall require the sponsor to make necessary cost and progress reports on the project. The regulations may amend or modify a contract related to the project only if the contract was made with actual notice of the regulations.

* * * * *

§47113. Minority and disadvantaged business participation

(a) DEFINITIONS.—In this section—

(1) “small business concern”—

(A) has the same meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632); but

(B) does not include a concern, or group of concerns controlled by the same socially and economically disadvantaged individual, that has average annual gross receipts over the prior 3 fiscal years of more than \$16,015,000, as adjusted by the [Secretary of Transportation] *Federal Aviation Administration* for inflation.

(2) “socially and economically disadvantaged individual” has the same meaning given that term in section 8(d) of the Act (15 U.S.C. 637(d)) and relevant subcontracting regulations prescribed under section 8(d), except that women are presumed to be socially and economically disadvantaged.

(b) GENERAL REQUIREMENT.—Except to the extent the [Secretary] *Administration* decides otherwise, at least 10 percent of amounts available in a fiscal year under section 48103 of this title shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(c) UNIFORM CRITERIA.—The [Secretary] *Administration* shall establish minimum uniform criteria for State governments and airport sponsors to use in certifying whether a small business concern qualifies under this section. The criteria shall include on-site visits, personal interviews, licenses, analyses of stock ownership and bonding capacity, listings of equipment and work completed, resumes of principal owners, financial capacity, and type of work preferred.

(d) SURVEYS AND LISTS.—Each State or airport sponsor annually shall survey and compile a list of small business concerns referred to in subsection (b) of this section and the location of each concern in the State.

§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] *Federal Aviation Administration* 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] *Administration* shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) \$7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) \$5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) \$2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year; and

(iv) \$.65 for each additional passenger boarding at the airport during the prior calendar year.

(B) Not less than \$500,000 nor more than \$22,000,000 may be apportioned under subparagraph (A) of this paragraph to an airport sponsor for a primary airport for each fiscal year.

(2)(A) The **【Secretary】 Administration** shall apportion to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds for each fiscal year an amount equal to 3.5 percent of the amount subject to apportionment each year, allocated among those airports in the proportion that the total annual landed weight of those aircraft landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports. However, not more than 8 percent of the amount apportioned under this paragraph may be apportioned for any one airport.

(B) Landed weight under subparagraph (A) of this paragraph is the landed weight of aircraft landing at each of those airports and all those airports during the prior calendar year.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 49.5 percent of the amount subject to apportionment for a fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the **【Secretary】 Administration** shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 49.5 percent limit is achieved.

(B) If a law limits the amount subject to apportionment to less than \$1,900,000,000 for a fiscal year, the total of all amounts apportioned under paragraphs (1) and (2) of this subsection may not be more than 44 percent of the amount subject to apportionment for that fiscal year. If this subparagraph requires reduction of an amount that otherwise would be apportioned under this subsection, the **【Secretary】 Administration** shall reduce proportionately the amount apportioned to each sponsor of an airport under paragraphs (1) and (2) until the 44 percent limit is achieved.

(d) AMOUNTS APPORTIONED TO STATES.—(1) In this subsection—

(A) “area” includes land and water.

(B) “population” means the population stated in the latest decennial census of the United States.

(2) The **【Secretary】 Administration** shall apportion to the States 12 percent of the amount subject to apportionment for each fiscal year as follows:

(A) one percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(B) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C) of this title, in States not named in clause (A) of this paragraph in the proportion that the population of each of those States bears to the total population of all of those States.

(C) except as provided in paragraph (3) of this subsection, 49.5 percent of the apportioned amount for airports, except primary airports and airports described in section 47117(e)(1)(C)

of this title, in States not named in clause (A) of this paragraph in the proportion that the area of each of those States bears to the total area of all of those States.

(3) An amount apportioned under paragraph (2) of this subsection for an airport in—

(A) Alaska may be made available by the [Secretary] *Administration* 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] *Administration* for a primary airport and an airport described in section 47117(e)(1)(C) of this title.

(e) ALTERNATIVE APPORTIONMENT FOR ALASKA.—(1) Instead of apportioning amounts for airports in Alaska under subsections (c) and (d) of this section, the [Secretary] *Administration* may apportion amounts for those airports in the way in which amounts were apportioned in the fiscal year ending September 30, 1980, under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the [Secretary] *Administration* 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] *Administration* from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(3) Airports referred to in this subsection include those public airports that received scheduled service as of September 3, 1982, but were not apportioned amounts in the fiscal year ending September 30, 1980, under section 15(a) of the Act because the airports were not under the control of a State or local public agency.

(f) REDUCING APPORTIONMENTS.—An amount that would be apportioned under this section (except subsection (c)(2)) in a fiscal year to the sponsor of an airport having at least .25 percent of the total number of boardings each year in the United States and for which a fee is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to 50 percent of the projected revenues from the fee in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section.

§47115. Discretionary fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The [Secretary of Transportation] *Federal Aviation Administration* has a discretionary fund. The fund consists of—

(1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)–(e) of this title; and

(2) 25 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the [Secretary] *Administration* 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] *Administration* 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] *Administration* shall consider—

(1) the effect the project will have on the overall national air transportation system capacity;

(2) the project benefit and cost; and

(3) the financial commitment from non-United States Government sources to preserve or enhance airport capacity.

(e) WAIVING PERCENTAGE REQUIREMENT.—If the [Secretary] *Administration* decides the [Secretary] *Administration* 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] *Administration* 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] *Administration* 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] *Administration* finds that the amount of revenues used by the airport for purposes other than capital or operating costs in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of such revenues in the airport's first fiscal year ending after the date of the enactment of this subsection, adjusted by the [Sec-

retary] *Administration* for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

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§47116. Small airport fund

(a) EXISTENCE AND AMOUNTS IN FUND.—The [Secretary of Transportation] *Federal Aviation Administration* has a small airport fund. The fund consists of 75 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) DISTRIBUTION OF AMOUNTS.—The [Secretary] *Administration* 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-third for grants to sponsors of public-use airports (except commercial service airports).

(2) 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.

§47117. Use of apportioned amounts

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114 (c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year. If the amount is not obligated under the apportionment within that time, it shall be added to the discretionary fund.

(c) PRIMARY AIRPORTS.—(1) An amount apportioned to a sponsor of a primary airport under section 47114(c)(1) of this title is available for grants for any public-use airport of the sponsor included in the national plan of integrated airport systems.

(2) A sponsor of a primary airport may make an agreement with the [Secretary of Transportation] *Federal Aviation Administration* waiving any part of the amount apportioned for the airport under section 47114(c)(1) of this title if the [Secretary] *Administration* 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] *Administration* shall use amounts made available under section 48103 of this title for each fiscal year as follows:

(A) at least 5 percent for grants for reliever airports.

(B) at least 12.5 percent for grants for airport noise compatibility planning under section 47505(a)(2) of this title and for carrying out noise compatibility programs under section 47504(c)(1) of this title.

(C) at least 1.5 percent for grants for—

(i) nonprimary commercial service airports; and

(ii) public airports (except commercial service airports) that were eligible for United States Government assistance from amounts apportioned under section 15(a)(3) of the Airport and Airway Development Act of 1970, and to which section 15(a)(3)(A) (I) or (II) of the Act applied during the fiscal year that ended September 30, 1981.

(D) at least .75 percent for integrated airport system planning grants to planning agencies designated by the [Secretary] *Administration* and authorized by the laws of a State or political subdivision of a State to do planning for an area of the State or subdivision in which a grant under this chapter is to be used.

(E) at least 2.25 percent for the fiscal year ending September 30, 1993, and at least 2.5 percent for each of the fiscal years ending September 30, 1994, 1995, and 1996, to sponsors of current or former military airports designated by the [Secretary] *Administration* under section 47118(a) of this title for grants for developing current and former military airports to improve the capacity of the national air transportation system.

(2) A grant from the amount apportioned under section 47114(e) of this title may not be included as part of the 1.5 percent required to be used for grants under paragraph (1)(C) of this subsection.

(3) If the [Secretary] *Administration* 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] *Administration* determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(f) LIMITATION FOR COMMERCIAL SERVICE AIRPORT IN ALASKA.—The [Secretary] *Administration* may not make a grant for a commercial service airport in Alaska of more than 110 percent of the amount apportioned for the airport for a fiscal year under section 47114(e) of this title.

(g) DISCRETIONARY USE OF APPORTIONMENTS.—(1) Subject to paragraph (2) of this subsection, if the [Secretary] *Administration* finds, based on the notices the [Secretary] *Administration* receives under section 47105(e) of this title or otherwise, that an amount apportioned under section 47114 of this title will not be used for grants during a fiscal year, the [Secretary] *Administration* 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] *Administration* may make a grant under paragraph (1) of this subsection only if the [Secretary] *Administration* decides that—

(A) the total amount used for grants for the fiscal year under section 48103 of this title will not be more than the amount made available under section 48103 for that fiscal year; and

(B) the amounts authorized for grants under section 48103 of this title for later fiscal years are sufficient for grants of the apportioned amounts that were not used for grants under the apportionment during the fiscal year and that remain available under subsection (b) of this section.

(h) LIMITING AUTHORITY OF [SECRETARY] *ADMINISTRATION*.—The authority of the [Secretary] *Administration* to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

§47118. Designating current and former military airports

(a) GENERAL REQUIREMENTS.—The [Secretary of Transportation] *Federal Aviation Administration* shall designate not more than 15 current or former military airports for which grants may be made under section 47117(e)(1)(E) of this title. The [Secretary] *Administration* may only designate an airport for such grants (other than an airport designated for such grants on or before the date of the enactment of this sentence) if the [Secretary] *Administration* finds that grants under such section for projects at such airport would reduce delays at an airport with more than 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings.

(b) SURVEY.—Not later than September 30, 1991, the [Secretary] *Administration* shall complete a survey of current and former military airports to identify which airports have the greatest potential to improve the capacity of the national air transportation system. The survey shall identify the capital development needs of those airports to make them part of the system and which of those qualify for grants under section 47104 of this title.

(c) CONSIDERATIONS.—In carrying out this section, the [Secretary] *Administration* shall consider only current or former military airports that, when at least partly converted to civilian commercial or reliever airports as part of the national air transportation system, will enhance airport and air traffic control system capacity in major metropolitan areas and reduce current and projected flight delays.

(d) GRANTS.—Grants under section 47117(e)(1)(E) of this title may be made for an airport designated under subsection (a) of this section for the 5 fiscal years following the designation.

(e) TERMINAL BUILDING FACILITIES.—Notwithstanding section 47109(c) of this title, not more than \$5,000,000 for each airport from amounts the [Secretary] *Administration* distributes under section 47115 of this title for a fiscal year is available to the sponsor of a current or former military airport the [Secretary] *Admin-*

istration designates under this section to construct, improve, or repair a terminal building facility, including terminal gates used for revenue passengers getting on or off aircraft. A gate constructed, improved, or repaired under this subsection—

- (1) may not be leased for more than 10 years; and
- (2) is not subject to majority in interest clauses.

(f) **PARKING LOTS, FUEL FARMS, AND UTILITIES.**—Not more than a total of \$4,000,000 for each airport from amounts the [Secretary] *Administration* distributes under section 47115 of this title for the fiscal years ending September 30, 1993–1996, is available to the sponsor of a current or former military airport the [Secretary] *Administration* designates under this section to construct, improve, or repair airport surface parking lots, fuel farms, and utilities.

§47119. Terminal development costs

(a) **REPAYING BORROWED MONEY.**—An amount apportioned under section 47114 of this title and made available to the sponsor of an air carrier airport at which terminal development was carried out after June 30, 1970, and before July 12, 1976, or, in the case of a commercial service airport which annually had less than 0.05 percent of the total enplanements in the United States, between January 1, 1992, and October 31, 1992, is available to repay immediately money borrowed and used to pay the costs for terminal development at the airport, if those costs would be allowable project costs under section 47110(d) of this title if they had been incurred after September 3, 1982. An amount is available for a grant under this subsection—

(1) only if—

(A) the sponsor submits the certification required under section 47110(d) of this title;

(B) the [Secretary of Transportation] *Federal Aviation Administration* decides that using the amount to repay the borrowed money will not defer an airport development project outside the terminal area at that airport; and

(C) amounts available for airport development under this subchapter will not be used for additional terminal development projects at the airport for at least 3 years beginning on the date the grant is used to repay the borrowed money; and

(2) subject to the limitations in subsections (b) (1) and (2) of this section.

(b) **AVAILABILITY OF AMOUNTS.**—In a fiscal year, the [Secretary] *Administration* may make available—

(1) to a sponsor of a primary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(c)(1) of this title to pay project costs allowable under section 47110(d) of this title;

(2) on approval of the [Secretary] *Administration*, not more than \$200,000 of the amount that may be distributed for the fiscal year from the discretionary fund established under section 47115 of this title—

(A) to a sponsor of a nonprimary commercial service airport to pay project costs allowable under section 47110(d) of this title; and

(B) to a sponsor of a reliever airport for the types of project costs allowable under section 47110(d), including project costs allowable for a commercial service airport that each year does not have more than .05 percent of the total boardings in the United States;

(3) for use by a primary airport that each year does not have more than .05 percent of the total boardings in the United States, any part of amounts that may be distributed for the fiscal year from the discretionary fund and small airport fund to pay project costs allowable under section 47110(d) of this title; or

(4) not more than \$25,000,000 to pay project costs allowable for the fiscal year under section 47110(d) of this title for projects at commercial service airports that were not eligible for assistance for terminal development during the fiscal year ending September 30, 1980, under section 20(b) of the Airport and Airway Development Act of 1970.

(c) NONHUB AIRPORTS.—With respect to a project at a commercial service airport which annually has less than 0.05 percent of the total enplanements in the United States, the [Secretary] *Administration* may approve the use of the amounts described in subsection (a) notwithstanding the requirements of sections 47107(a)(17), 47112, and 47113.

§ 47120. Grant priority

In making a grant under this subchapter, the [Secretary of Transportation] *Federal Aviation Administration* may give priority to a project that is consistent with an integrated airport system plan.

§ 47121. Records and audits

(a) RECORDS.—A sponsor shall keep the records the [Secretary of Transportation] *Federal Aviation Administration* requires. The [Secretary] *Administration* may require records—

(1) that disclose—

(A) the amount and disposition by the sponsor of the proceeds of the grant;

(B) the total cost of the plan or program for which the grant is given or used; and

(C) the amounts and kinds of costs of the plan or program provided by other sources; and

(2) that make it easier to carry out an audit.

(b) AUDITS AND EXAMINATIONS.—The [Secretary] *Administration* and the Comptroller General may audit and examine records of a sponsor that are related to a grant made under this subchapter.

(c) AUTHORITY OF COMPTROLLER GENERAL.—When an independent audit is made of the accounts of a sponsor under this subchapter related to the disposition of the proceeds of the grant or related to the plan or program for which the grant was given or used, the sponsor shall submit a certified copy of the audit to the Comptroller General not more than 6 months after the end of the fiscal year for which the audit was made. Not later than April 15 of each year, the Comptroller General shall report to Congress describing the results of each audit conducted or reviewed by the Comptroller

General under this section during the prior fiscal year. The Comptroller General shall prescribe regulations necessary to carry out this subsection.

(d) **AUDIT REQUIREMENT.**—The [Secretary] *Administration* may require a sponsor to conduct an appropriate audit as a condition for receiving a grant under this subchapter.

(e) **ANNUAL REVIEW.**—The [Secretary] *Administration* shall review annually the recordkeeping and reporting requirements under this subchapter to ensure that they are the minimum necessary to carry out this subchapter.

(f) **WITHHOLDING INFORMATION FROM CONGRESS.**—This section does not authorize the [Secretary] *Administration* or the Comptroller General to withhold information from a committee of Congress authorized to have the information.

§47122. Administrative

(a) **GENERAL.**—The [Secretary of Transportation] *Federal Aviation Administration* may take action the [Secretary] *Administration* considers necessary to carry out this subchapter, including conducting investigations and public hearings, prescribing regulations and procedures, and issuing orders.

(b) **CONDUCTING INVESTIGATIONS AND PUBLIC HEARINGS.**—In conducting an investigation or public hearing under this subchapter, the [Secretary] *Administration* has the same authority the [Secretary] *Administration* has under section 46104 of this title. An action of the [Secretary] *Administration* in exercising that authority is governed by the procedures specified in section 46104 and shall be enforced as provided in section 46104.

§47123. Nondiscrimination

The [Secretary of Transportation] *Federal Aviation Administration* shall take affirmative action to ensure that an individual is not excluded because of race, creed, color, national origin, or sex from participating in an activity carried out with money received under a grant under this subchapter. The [Secretary] *Administration* shall prescribe regulations necessary to carry out this section. The regulations shall be similar to those in effect under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.). This section is in addition to title VI of the Act.

§47124. Agreements for State and local operation of airport facilities

(a) **GOVERNMENT RELIEF FROM LIABILITY.**—The [Secretary of Transportation] *Federal Aviation Administration* shall ensure that an agreement under this subchapter with a State or a political subdivision of a State to allow the State or subdivision to operate an airport facility in the State or subdivision relieves the United States Government from any liability arising out of, or related to, acts or omissions of employees of the State or subdivision in operating the airport facility.

(b) **AIR TRAFFIC CONTROL CONTRACT PROGRAM.**—(1) The [Secretary] *Administration* shall continue the low activity (Visual Flight Rules) level I air traffic control tower contract program established under subsection (a) of this section for towers existing on

December 30, 1987, and extend the program to other towers as practicable.

(2) The [Secretary] *Administration* may make a contract, on a sole source basis, with a State or a political subdivision of a State to allow the State or subdivision to operate an airport traffic control tower classified as a level I (Visual Flight Rules) tower if the [Secretary] *Administration* decides that the State or subdivision has the capability to comply with the requirements of this paragraph. The contract shall require that the State or subdivision comply with applicable safety regulations in operating the facility and with applicable competition requirements in making a subcontract to perform work to carry out the contract.

§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] *Federal Aviation Administration* 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] *Administration* 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] *Administration*, to the extent it is not developed for an airport purpose or used consistently with the conveyance.

(b) 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.

§47126. Criminal penalties for false statements

A person (including an officer, agent, or employee of the United States Government or a public agency) shall be fined under title 18, imprisoned for not more than 5 years, or both, if the person, with intent to defraud the Government, knowingly makes—

- (1) a false statement about the kind, quantity, quality, or cost of the material used or to be used, or the quantity, quality, or cost of work performed or to be performed, in connection with the submission of a plan, map, specification, contract, or estimate of project cost for a project included in a grant application submitted to the [Secretary of Transportation] *Federal Aviation Administration* for approval under this subchapter;
- (2) a false statement or claim for work or material for a project included in a grant application approved by the [Secretary] *Administration* under this subchapter; or
- (3) a false statement in a report or certification required under this subchapter.

§ 47127. Ground transportation demonstration projects

(a) GENERAL AUTHORITY.—To improve the airport and airway system of the United States consistent with regional airport system plans financed under section 13(b) of the Airport and Airway Development Act of 1970, the [Secretary of Transportation] *Federal Aviation Administration* may carry out ground transportation demonstration projects to improve ground access to air carrier airport terminals. The [Secretary] *Administration* may carry out a demonstration project independently or by grant or contract, including an agreement with another department, agency, or instrumentality of the United States Government.

(b) PRIORITY.—In carrying out this section, the [Secretary] *Administration* shall give priority to a demonstration project that—

- (1) affects an airport in an area with an operating regional rapid transit system with existing facilities reasonably near the airport;
- (2) includes connection of the airport terminal to that system;
- (3) is consistent with and supports a regional airport system plan adopted by the planning agency for the region and submitted to the [Secretary] *Administration*; and
- (4) improves access to air transportation for individuals residing or working in the region by encouraging the optimal balance of use of airports in the region.

§ 47128. State block grant pilot program

(a) GENERAL REQUIREMENTS.—The [Secretary of Transportation] *Federal Aviation Administration* shall prescribe regulations to carry out a State block grant pilot program. The regulations shall provide that the [Secretary] *Administration* may designate not more than 7 qualified States to assume administrative responsibility for all airport grant amounts available under this subchapter, except for amounts designated for use at primary airports.

(b) APPLICATIONS AND SELECTION.—(1) A State wishing to participate in the program must submit an application to the [Secretary] *Administration*. The [Secretary] *Administration* shall select a State on the basis of its application only after—

- (A) deciding the State has an organization capable of effectively administering a block grant made under this section;
- (B) deciding the State uses a satisfactory airport system planning process;

(C) deciding the State uses a programming process acceptable to the [Secretary] *Administration*;

(D) finding that the State has agreed to comply with United States Government standard requirements for administering the block grant; and

(E) finding that the State has agreed to provide the [Secretary] *Administration* with program information the [Secretary] *Administration* requires.

(2) For the fiscal years ending September 30, 1993–1996, the States selected shall include Illinois, Missouri, and North Carolina.

(c) SAFETY AND SECURITY NEEDS AND NEEDS OF SYSTEM.—Before deciding whether a planning process is satisfactory or a programming process is acceptable under subsection (b)(1)(B) or (C) of this section, the [Secretary] *Administration* shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government.

(d) ENDING EFFECTIVE DATE AND REPORT.—This section is effective only through September 30, 1996.

§47129. Resolution of airport-air carrier disputes concerning airport fees

(a) AUTHORITY TO REQUEST [SECRETARY'S] *ADMINISTRATION'S* DETERMINATION.—

(1) IN GENERAL.—The [Secretary of Transportation] *Federal Aviation Administration* shall issue a determination as to whether a fee imposed upon one or more air carriers (as defined in section 40102 of this subtitle) by the owner or operator of an airport is reasonable if—

(A) a written request for such determination is filed with the [Secretary] *Administration* by such owner or operator; or

(B) a written complaint requesting such determination is filed with the [Secretary] *Administration* by an affected air carrier within 60 days after such carrier receives written notice of the establishment or increase of such fee.

(2) CALCULATION OF FEE.—A fee subject to a determination of reasonableness under this section may be calculated pursuant to either a compensatory or residual fee methodology or any combination thereof.

(3) [SECRETARY] *ADMINISTRATION* NOT TO SET FEE.—In determining whether a fee is reasonable under this section, the [Secretary] *Administration* may only determine whether the fee is reasonable or unreasonable and shall not set the level of the fee.

(b) PROCEDURAL REGULATIONS.—Not later than 90 days after the date of the enactment of this section, the [Secretary] *Administration* shall publish in the Federal Register final regulations, policy statements, or guidelines establishing—

(1) the procedures for acting upon any written request or complaint filed under subsection (a)(1); and

(2) the standards or guidelines that shall be used by the [Secretary] *Administration* in determining under this section whether an airport fee is reasonable.

(c) DECISIONS BY [SECRETARY] *ADMINISTRATION*.—The final regulations, policy statements, or guidelines required in subsection (b) shall provide the following:

(1) Not more than 120 days after an air carrier files with the [Secretary] *Administration* a written complaint relating to an airport fee, the [Secretary] *Administration* shall issue a final order determining whether such fee is reasonable.

(2) Within 30 days after such complaint is filed with the [Secretary] *Administration*, the [Secretary] *Administration* shall dismiss the complaint if no significant dispute exists or shall assign the matter to an administrative law judge; and thereafter the matter shall be handled in accordance with part 302 of title 14, Code of Federal Regulations, or as modified by the [Secretary] *Administration* to ensure an orderly disposition of the matter within the 120-day period and any specifically applicable provisions of this section.

(3) The administrative law judge shall issue a recommended decision within 60 days after the complaint is assigned or within such shorter period as the [Secretary] *Administration* may specify.

(4) If the [Secretary] *Administration*, upon the expiration of 120 days after the filing of the complaint, has not issued a final order, the decision of the administrative law judge shall be deemed to be the final order of the [Secretary] *Administration*.

(5) Any party to the dispute may seek review of a final order of the [Secretary] *Administration* under this subsection in the Circuit Court of Appeals for the District of Columbia Circuit or the court of appeals in the circuit where the airport which gives rise to the written complaint is located.

(6) Any findings of fact in a final order of the [Secretary] *Administration* under this subsection, if supported by substantial evidence, shall be conclusive if challenged in a court pursuant to this subsection. No objection to such a final order shall be considered by the court unless objection was urged before an administrative law judge or the [Secretary] *Administration* at a proceeding under this subsection or, if not so urged, unless there were reasonable grounds for failure to do so.

(d) PAYMENT UNDER PROTEST; GUARANTEE OF AIR CARRIER ACCESS.—

(1) PAYMENT UNDER PROTEST.—

(A) IN GENERAL.—Any fee increase or newly established fee which is the subject of a complaint that is not dismissed by the [Secretary] *Administration* shall be paid by the complainant air carrier to the airport under protest.

(B) REFERRAL OR CREDIT.—Any amounts paid under this subsection by a complainant air carrier to the airport under protest shall be subject to refund or credit to the air carrier in accordance with directions in the final order of the [Secretary] *Administration* within 30 days of such order.

(C) ASSURANCE OF TIMELY REPAYMENT.—In order to assure the timely repayment, with interest, of amounts in dispute determined not to be reasonable by the [Secretary] *Administration*, the airport shall obtain a letter of credit, or surety bond, or other suitable credit facility, equal to the amount in dispute that is due during the 120-day period established by this section, plus interest, unless the airport and the complainant air carrier agree otherwise.

(D) DEADLINE.—The letter of credit, or surety bond, or other suitable credit facility shall be provided to the [Secretary] *Administration* within 20 days of the filing of the complaint and shall remain in effect for 30 days after the earlier of 120 days or the issuance of a timely final order by the [Secretary] *Administration* determining whether such fee is reasonable.

(2) GUARANTEE OF AIR CARRIER ACCESS.—Contingent upon an air carrier's compliance with the requirements of paragraph (1) and pending the issuance of a final order by the [Secretary] *Administration* determining the reasonableness of a fee that is the subject of a complaint filed under subsection (a)(1)(B), an owner or operator of an airport may not deny an air carrier currently providing air service at the airport reasonable access to airport facilities or service, or otherwise interfere with an air carrier's prices, routes, or services, as a means of enforcing the fee.

* * * * *

§ 47130. Airport safety data collection

Notwithstanding any other provision of law, the [Administrator of the] Federal Aviation Administration may contract, using sole source or limited source authority, for the collection of airport safety data.

§ 47131. Annual report

Not later than April 1 of each year, the [Secretary of Transportation] *Federal Aviation Administration* shall submit to Congress a report on activities carried out under this subchapter during the prior fiscal year. The report shall include—

- (1) a detailed statement of airport development completed;
- (2) the status of each project undertaken;
- (3) the allocation of appropriations; and
- (4) an itemized statement of expenditures and receipts.

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 a State, political subdivision of a

State, or tax-supported organization any interest in surplus property—

(1) that the [Secretary of Transportation] *Federal Aviation Administration* 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 nonaviation businesses at a public airport; and

(2) if the Administrator of General Services approves the gift and decides the interest is not best suited for industrial use.

(b) ENSURING COMPLIANCE.—Only the [Secretary] *Administration* may ensure compliance with an instrument giving an interest in surplus property under this subchapter. The [Secretary] *Administration* may amend the instrument to correct the instrument or to make the gift 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.

§47152. Terms of gifts

Except as provided in section 47153 of this title, the following terms apply to a gift 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] *Federal Aviation Administration* 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.

* * * * *

(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] *Administration* 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.

* * * * *

§47153. Waiving and adding terms

(a) GENERAL AUTHORITY.—(1) The [Secretary of Transportation] *Federal Aviation Administration* may waive, without charge, a

term of a gift of an interest in property under this subchapter if the **【Secretary】** *Administration* decides that—

(A) the property no longer serves the purpose for which it was given; or

(B) the waiver will not prevent carrying out the purpose for which the gift was made and is necessary to advance the civil aviation interests of the United States.

(2) The **【Secretary of Transportation】** *Federal Aviation Administration* 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】** *Federal Aviation Administration* 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.

CHAPTER 473—INTERNATIONAL AIRPORT FACILITIES

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§47302. Providing airport and airway property in foreign territories

(a) **GENERAL AUTHORITY.**—Subject to the concurrence of the Secretary of State and the consideration of objectives of the International Civil Aviation Organization—

(1) the **【Secretary of Transportation】** *Federal Aviation Administration* may acquire, establish, and construct airport property and airway property (except meteorological facilities) in foreign territory; and

* * * * *

(c) **ACCEPTING FOREIGN PAYMENTS.**—The **【Secretary of Transportation or】** *Federal Aviation Administration or the Secretary of Commerce*, as appropriate, may accept payment from a government of a foreign country or international organization for facilities or services sold or provided the government or organization under this chapter. The amount received may be credited to the appropriation current when the expenditures are or were paid, the appropriation current when the amount is received, or both.

§47303. Training foreign citizens

Subject to the concurrence of the Secretary of State, the **【Secretary of Transportation or】** *Federal Aviation Administration or the Secretary of Commerce*, as appropriate, may train a foreign citizen in a subject related to aeronautics and essential to the orderly and safe operation of civil aircraft. The training may be provided—

(1) directly by the appropriate **【Secretary】** *agency head* or jointly with another department, agency, or instrumentality of the United States Government;

- (2) through a public or private agency of the United States (including a State or municipal educational institution); or
- (3) through an international organization.

§ 47304. Transfer of airport and airway property

(a) GENERAL AUTHORITY.—When requested by the government of a foreign country or an international organization, the [Secretary of Transportation or] *Federal Aviation Administration or the Secretary of Commerce*, as appropriate, may transfer to the government or organization airport property and airway property operated and maintained under this chapter by the appropriate [Secretary] *agency heads* in foreign territory. The transfer shall be on terms the appropriate [Secretary] *agency head* considers proper, including consideration agreed on through negotiations with the government or organization.

(b) PROPERTY INSTALLED OR CONTROLLED BY MILITARY.—Subject to terms to which the parties agree, the Secretary of a military department may transfer without charge to the [Secretary of Transportation] *Federal Aviation Administration* airport property and airway property (except meteorological facilities), and to the Secretary of Commerce meteorological facilities, that the Secretary of the military department installed or controls in territory outside the continental United States. The transfer may be made if consistent with the needs of national defense and—

(1) the Secretary of the military department finds that the property or facility is no longer required exclusively for military purposes; and

(2) the [Secretary of Transportation or] *Chief Executive Officer of the Federal Aviation Administration or the Secretary of Commerce*, as appropriate, decides that the transfer is or may be necessary to carry out this chapter.

(c) REPUBLIC OF PANAMA.—(1) The [Secretary of Transportation] *Federal Aviation Administration* may provide, operate, and maintain facilities and services for air navigation, airway communications, and air traffic control in the Republic of Panama subject to—

(A) the approval of the Secretary of Defense; and

(B) each obligation assumed by the United States Government under an agreement between the Government and the Republic of Panama.

(2) The Secretary of a military department may transfer without charge to the [Secretary of Transportation] *Federal Aviation Administration* property located in the Republic of Panama when the [Secretary of Transportation] *Federal Aviation Administration* decides that the transfer may be useful in carrying out this chapter.

(3) Subsection (b) of this section (related to the [Secretary of Transportation] *Federal Aviation Administration*) and section 47302(a) and (b) of this title do not apply in carrying out this subsection.

(d) RETAKING PROPERTY FOR MILITARY REQUIREMENT.—(1) * * *

(2) On the recommendation of the [Secretary of Transportation or] *Chief Executive Officer of the Federal Aviation Administration or the Secretary of Commerce*, as appropriate, the Secretary of a military department may decide not to act under paragraph (1) of this subsection.

§47305. Administrative

(a) GENERAL AUTHORITY.—The [Secretary of Transportation] *Federal Aviation Administration* shall consolidate, operate, protect, maintain, and improve airport property and airway property (except meteorological facilities), and the Secretary of Commerce may consolidate, operate, protect, maintain, and improve meteorological facilities, that the appropriate [Secretary] *agency head* has acquired and that are located in territory outside the continental United States. In carrying out this section, the appropriate [Secretary] *agency head* may—

- (1) adapt the property or facility to the needs of civil aeronautics;
- (2) lease the property or facility for not more than 20 years;
- (3) make a contract, or provide directly, for facilities and services;
- (4) make reasonable charges for aeronautical services; and
- (5) acquire an interest in property.

(b) CREDITING APPROPRIATIONS.—Money received from the direct sale or charge that the [Secretary of Transportation or] *Chief Executive Officer of the Federal Aviation Administration or the Secretary of Commerce*, as appropriate, decides is equivalent to the cost of facilities and services sold or provided under subsection (a)(3) and (4) of this section is credited to the appropriation from which the cost was paid. The balance shall be deposited in the Treasury as miscellaneous receipts.

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§47306. Criminal penalty

A person that knowingly and willfully violates a regulation prescribed by the [Secretary of Transportation] *Federal Aviation Administration* to carry out this chapter shall be fined under title 18, imprisoned for not more than 6 months, or both.

CHAPTER 475—NOISE

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SUBCHAPTER I—NOISE ABATEMENT**§47501. Definitions**

In this subchapter—

- (1) “airport” means a public-use airport as defined in section 47102 of this title.
- (2) “airport operator” means—
 - (A) for an airport serving air carriers that have certificates from the [Secretary of Transportation] *Federal Aviation Administration*, any person holding an airport operating certificate issued under section 44706 of this title; and
 - (B) for any other airport, the person operating the airport.

§47502. Noise measurement and exposure systems and identifying land use compatible with noise exposure

After consultation with the Administrator of the Environmental Protection Agency and United States Government, State, and interstate agencies that the [Secretary of Transportation] *Federal Aviation Administration* considers appropriate, the [Secretary] *Administration* shall by regulation—

- (1) establish a single system of measuring noise that—
 - (A) has a highly reliable relationship between projected noise exposure and surveyed reactions of individuals to noise; and
 - (B) is applied uniformly in measuring noise at airports and the surrounding area;
- (2) establish a single system for determining the exposure of individuals to noise resulting from airport operations, including noise intensity, duration, frequency, and time of occurrence; and
- (3) identify land uses normally compatible with various exposures of individuals to noise.

§47503. Noise exposure maps

(a) SUBMISSION AND PREPARATION.—An airport operator may submit to the [Secretary of Transportation] *Federal Aviation Administration* a noise exposure map showing the noncompatible uses in each area of the map on the date the map is submitted, a description of estimated aircraft operations during 1985, and how those operations will affect the map. The map shall—

- (1) be prepared in consultation with public agencies and planning authorities in the area surrounding the airport; and
- (2) comply with regulations prescribed under section 47502 of this title.

(b) REVISED MAPS.—If a change in the operation of an airport will establish a substantial new noncompatible use in an area surrounding the airport, the airport operator shall submit a revised noise exposure map to the [Secretary] *Administration* showing the new noncompatible use.

§47504. Noise compatibility programs

(a) SUBMISSIONS.—(1) An airport operator that submitted a noise exposure map and related information under section 47503(a) of this title may submit a noise compatibility program to the [Secretary of Transportation] *Federal Aviation Administration* after—

- (A) consulting with public agencies and planning authorities in the area surrounding the airport, United States Government officials having local responsibility for the airport, and air carriers using the airport; and

(B) notice and an opportunity for a public hearing.

(2) A program submitted under paragraph (1) of this subsection shall state the measures the operator has taken or proposes to take to reduce existing noncompatible uses and prevent introducing additional noncompatible uses in the area covered by the map. The measures may include—

- (A) establishing a preferential runway system;

(B) restricting the use of the airport by a type or class of aircraft because of the noise characteristics of the aircraft;

(C) constructing barriers and acoustical shielding and soundproofing public buildings;

(D) using flight procedures to control the operation of aircraft to reduce exposure of individuals to noise in the area surrounding the airport; and

(E) acquiring land, air rights, easements, development rights, and other interests to ensure that the property will be used in ways compatible with airport operations.

(b) APPROVALS.—(1) The [Secretary] *Administration* shall approve or disapprove a program submitted under subsection (a) of this section (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) not later than 180 days after receiving it. The [Secretary] *Administration* shall approve the program (except as the program is related to flight procedures referred to in subsection (a)(2)(D)) if the program—

(A) does not place an unreasonable burden on interstate or foreign commerce;

(B) is reasonably consistent with achieving the goal of reducing noncompatible uses and preventing the introduction of additional noncompatible uses; and

(C) provides for necessary revisions because of a revised map submitted under section 47503(b) of this title.

(2) A program (except as the program is related to flight procedures referred to in subsection (a)(2)(D) of this section) is deemed to be approved if the [Secretary] *Administration* does not act within the 180-day period.

(3) The [Secretary] *Administration* shall submit any part of a program related to flight procedures referred to in subsection (a)(2)(D) of this section to the [Administrator of the] Federal Aviation Administration. The [Administrator] *Administration* shall approve or disapprove that part of the program.

(c) GRANTS.—(1) The [Secretary] *Administration* may incur obligations to make grants from amounts available under section 48103 of this title to carry out a project under a part of a noise compatibility program approved under subsection (b) of this section. A grant may be made to—

(A) an airport operator submitting the program; and

(B) a unit of local government in the area surrounding the airport, if the [Secretary] *Administration* decides the unit is able to carry out the project.

(2) SOUNDPROOFING AND ACQUISITION OF CERTAIN RESIDENTIAL BUILDINGS AND PROPERTIES.—The [Secretary] *Administration* may incur obligations to make grants from amounts made available under section 48103 of this title—

(A) for projects to soundproof residential buildings—

(i) if the airport operator received approval for a grant for a project to soundproof residential buildings pursuant to section 301(d)(4)(B) of the Airport and Airway Safety and Capacity Expansion Act of 1987;

(ii) if the airport operator submits updated noise exposure contours, as required by the [Secretary] *Administration*; and

(iii) if the **【Secretary】** *Administration* determines that the proposed projects are compatible with the purposes of this chapter;

(B) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to soundproof residential buildings located on residential properties, and to acquire residential properties, at which noise levels are not compatible with normal operations of an airport—

(i) if the airport operator amended an existing local aircraft noise regulation during calendar year 1993 to increase the maximum permitted noise levels for scheduled air carrier aircraft as a direct result of implementation of revised aircraft noise departure procedures mandated for aircraft safety purposes by the **【Administrator of the】** Federal Aviation Administration for standardized application at airports served by scheduled air carriers;

(ii) if the airport operator submits updated noise exposure contours, as required by the **【Secretary】** *Administration*; and

(iii) if the **【Secretary】** *Administration* determines that the proposed projects are compatible with the purposes of this chapter;

(C) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to carry out any part of a program developed before February 18, 1980, or before implementing regulations were prescribed, if the **【Secretary】** *Administration* decides the program is substantially consistent with reducing existing noncompatible uses and preventing the introduction of additional noncompatible uses and the purposes of this chapter will be furthered by promptly carrying out the program; and

(D) to an airport operator and unit of local government referred to in paragraph (1)(A) or (1)(B) of this subsection to soundproof a building in the noise impact area surrounding the airport that is used primarily for educational or medical purposes and that the **【Secretary】** *Administration* decides is adversely affected by airport noise.

(3) An airport operator may agree to make a grant made under paragraph (1)(A) of this subsection available to a public agency in the area surrounding the airport if the **【Secretary】** *Administration* decides the agency is able to carry out the project.

(4) The Government's share of a project for which a grant is made under this subsection is the greater of—

(A) 80 percent of the cost of the project; or

(B) the Government's share that would apply if the amounts available for the project were made available under subchapter I of chapter 471 of this title for a project at the airport.

(5) The provisions of subchapter I of chapter 471 of this title related to grants apply to a grant made under this chapter, except—

(A) section 47109(a) and (b) of this title; and

(B) any provision that the [Secretary] *Administration* decides is inconsistent with, or unnecessary to carry out, this chapter.

(d) GOVERNMENT RELIEF FROM LIABILITY.—The Government is not liable for damages from aviation noise because of action taken under this section.

§ 47505. Airport noise compatibility planning grants

(a) GENERAL AUTHORITY.—The [Secretary of Transportation] *Federal Aviation Administration* may make a grant to a sponsor of an airport to develop, for planning purposes, information necessary to prepare and submit—

(1) a noise exposure map and related information under section 47503 of this title, including the cost of obtaining the information; or

(2) a noise compatibility program under section 47504 of this title.

* * * * *

§ 47507. Nonadmissibility of noise exposure map and related information as evidence

No part of a noise exposure map or related information described in section 47503 of this title that is submitted to, or prepared by, the [Secretary of Transportation] *Federal Aviation Administration* and no part of a list of land uses the [Secretary] *Administration* identifies as normally compatible with various exposures of individuals to noise may be admitted into evidence or used for any other purpose in a civil action asking for relief for noise resulting from the operation of an airport.

§ 47508. Noise standards for air carriers and foreign air carriers providing foreign air transportation

(a) GENERAL REQUIREMENTS.—The [Secretary of Transportation] *Federal Aviation Administration* shall require each air carrier and foreign air carrier providing foreign air transportation to comply with noise standards—

(1) the [Secretary] *Administration* prescribed for new subsonic aircraft in regulations of the [Secretary] *Administration* in effect on January 1, 1977; or

(2) of the International Civil Aviation Organization that are substantially compatible with standards of the [Secretary] *Administration* for new subsonic aircraft in regulations of the [Secretary] *Administration* at parts 36 and 91 of title 14, Code of Federal Regulations, prescribed between January 2, 1977, and January 1, 1982.

(b) COMPLIANCE AT PHASED RATE.—The [Secretary] *Administration* shall require each air carrier and foreign air carrier providing foreign air transportation to comply with the noise standards at a phased rate similar to the rate for aircraft registered in the United States.

(c) NONDISCRIMINATION.—The requirement for air carriers providing foreign air transportation may not be more stringent than the requirement for foreign air carriers.

§47509. Research program on quiet aircraft technology for propeller and rotor driven aircraft

(a) ESTABLISHMENT.—The [Administrator of the] Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall conduct a study to identify technologies for noise reduction of propeller driven aircraft and rotorcraft.

(b) GOAL.—The goal of the study conducted under subsection (a) is to determine the status of research and development now underway in the area of quiet technology for propeller driven aircraft and rotorcraft, including technology that is cost beneficial, and to determine whether a research program to supplement existing research activities is necessary.

(c) PARTICIPATION.—In conducting the study required under subsection (a), the [Administrator of the] Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall encourage the participation of the Department of Defense, the Department of the Interior, the airtour industry, the aviation industry, academia and other appropriate groups.

(d) REPORT.—Not less than 280 days after the date of the enactment of this section, the [Administrator of the] Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration shall transmit to Congress a report on the results of the study required under subsection (a).

(e) RESEARCH AND DEVELOPMENT PROGRAM.—If the [Administrator of the] Federal Aviation Administration and the Administrator of the National Aeronautics and Space Administration determine that additional research and development is necessary and would substantially contribute to the development of quiet aircraft technology, then the agencies shall conduct an appropriate research program in consultation with the entities listed in subsection (c) to develop safe, effective, and economical noise reduction technology (including technology that can be applied to existing propeller driven aircraft and rotorcraft) that would result in aircraft that operate at substantially reduced levels of noise to reduce the impact of such aircraft and rotorcraft on the resources of national parks and other areas.

§47510. Tradeoff allowance

Notwithstanding another law or a regulation prescribed or order issued under that law, the tradeoff provisions contained in appendix C of part 36 of title 14, Code of Federal Regulations, apply in deciding whether an aircraft complies with subpart I of part 91 of title 14.

SUBCHAPTER II—NATIONAL AVIATION NOISE POLICY

§47521. Findings

Congress finds that—

(1) * * *

* * * * *

(8) a precondition to the establishment and collection of a passenger facility fee is the prescribing by the [Secretary of Transportation] *Federal Aviation Administration* of a regulation establishing procedures for reviewing airport noise and access restrictions on operations of stage 2 and stage 3 aircraft.

§47522. Definitions

In this subchapter—

- (1) “air carrier”, “air transportation”, and “United States” have the same meanings given those terms in section 40102(a) of this title;
- (2) “stage 3 noise levels” means the stage 3 noise levels in part 36 of title 14, Code of Federal Regulations, in effect on November 5, 1990.

§47523. National aviation noise policy

(a) GENERAL REQUIREMENTS.—Not later than July 1, 1991, the [Secretary of Transportation] *Federal Aviation Administration* shall establish by regulation a national aviation noise policy that considers this subchapter, including the phaseout and nonaddition of stage 2 aircraft as provided in this subchapter and dates for carrying out that policy and reporting requirements consistent with this subchapter and law existing as of November 5, 1990.

* * * * *

§47524. Airport noise and access restriction review program

(a) * * *

* * * * *

(c) STAGE 3 AIRCRAFT.—(1) Except as provided in subsection (d) of this section, an airport noise or access restriction on the operation of stage 3 aircraft not in effect on October 1, 1990, may become effective only if the restriction has been agreed to by the airport proprietor and all aircraft operators or has been submitted to and approved by the [Secretary of Transportation] *Federal Aviation Administration* after an airport or aircraft operator’s request for approval as provided by the program established under this section. Restrictions to which this paragraph applies include—

- (A) a restriction on noise levels generated on either a single event or cumulative basis;
- (B) a restriction on the total number of stage 3 aircraft operations;
- (C) a noise budget or noise allocation program that would include stage 3 aircraft;
- (D) a restriction on hours of operations; and
- (E) any other restriction on stage 3 aircraft.

(2) Not later than 180 days after the [Secretary] *Administration* receives an airport or aircraft operator’s request for approval of an airport noise or access restriction on the operation of a stage 3 aircraft, the [Secretary] *Administration* shall approve or disapprove the restriction. The [Secretary] *Administration* may approve the restriction only if the [Secretary] *Administration* finds on the basis of substantial evidence that—

(A) the restriction is reasonable, nonarbitrary, and non-discriminatory;

(B) the restriction does not create an unreasonable burden on interstate or foreign commerce;

(C) the restriction is not inconsistent with maintaining the safe and efficient use of the navigable airspace;

(D) the restriction does not conflict with a law or regulation of the United States;

(E) an adequate opportunity has been provided for public comment on the restriction; and

(F) the restriction does not create an unreasonable burden on the national aviation system.

(3) Paragraphs (1) and (2) of this subsection do not apply if the [Administrator of the] Federal Aviation Administration, before November 5, 1990, has formed a working group (outside the process established by part 150 of title 14, Code of Federal Regulations) with a local airport operator to examine the noise impact of air traffic control procedure changes at the airport. However, if an agreement on noise reductions at that airport is made between the airport proprietor and one or more air carriers or foreign air carriers that constitute a majority of the carrier use of the airport, this paragraph applies only to a local action to enforce the agreement.

(4) The [Secretary] *Administration* may reevaluate an airport noise or access restriction previously agreed to or approved under this subsection on request of an aircraft operator able to demonstrate to the satisfaction of the [Secretary] *Administration* that there has been a change in the noise environment of the affected airport that justifies a reevaluation. The [Secretary] *Administration* shall establish by regulation procedures for conducting a reevaluation. A reevaluation—

(A) shall be based on the criteria in paragraph (2) of this subsection; and

(B) may be conducted only after 2 years after a decision under paragraph (2) of this subsection has been made.

* * * * *

(e) GRANT LIMITATIONS.—Beginning on the 91st day after the [Secretary] *Administration* prescribes a regulation under subsection (a) of this section, a sponsor of a facility operating under an airport noise or access restriction on the operation of stage 3 aircraft that first became effective after October 1, 1990, is eligible for a grant under section 47104 of this title and is eligible to impose a passenger facility fee under section 40117 of this title only if the restriction has been—

(1) agreed to by the airport proprietor and aircraft operators;

(2) approved by the [Secretary] *Administration* as required by subsection (c)(1) of this section; or

(3) rescinded.

§47525. Decision about airport noise and access restrictions on certain stage 2 aircraft

The [Secretary of Transportation] *Federal Aviation Administration* shall conduct a study and decide on the application of section

47524(a)–(d) of this title to airport noise and access restrictions on the operation of stage 2 aircraft with a maximum weight of not more than 75,000 pounds. In making the decision, the [Secretary] *Administration* shall consider—

- (1) noise levels produced by those aircraft relative to other aircraft;
- (2) the benefits to general aviation and the need for efficiency in the national air transportation system;
- (3) the differences in the nature of operations at airports and the areas immediately surrounding the airports;
- (4) international standards and agreements on aircraft noise; and
- (5) other factors the [Secretary] *Administration* considers necessary.

§47526. Limitations for noncomplying airport noise and access restrictions

Unless the [Secretary of Transportation] *Federal Aviation Administration* is satisfied that an airport is not imposing an airport noise or access restriction not in compliance with this subchapter, the airport may not—

- (1) receive money under subchapter I of chapter 471 of this title; or
- (2) impose a passenger facility fee under section 40117 of this title.

§47527. Liability of the United States Government for noise damages

When a proposed airport noise or access restriction is disapproved under this subchapter, the United States Government shall assume liability for noise damages only to the extent that a taking has occurred as a direct result of the disapproval. The United States Court of Federal Claims has exclusive jurisdiction of a civil action under this section.

§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] *Federal Aviation Administration* 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] *Administration* 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] *Administration* may grant a waiver under this subsection if the [Secretary] *Administration* finds it would be in the public interest. In making the finding, the [Secretary] *Administration* 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] *Administration* 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 phase-out 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] *Administration* 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] *Administration* shall submit to Congress an annual report on the progress being made toward that compliance.

* * * * *

§ 47529. Nonaddition rule

(a) * * *

(b) EXEMPTIONS.—The [Secretary of Transportation] *Federal Aviation Administration* may provide an exemption from subsection (a) of this section to permit a person to obtain modifications to an aircraft to meet the stage 3 noise levels.

* * * * *

§ 47532. Judicial review

An action taken by the [Secretary of Transportation] *Federal Aviation Administration* under any of sections 47528–47531 of this title is subject to judicial review as provided under section 46110 of this title.

§47533. Relationship to other laws

Except as provided by section 47524 of this title, this subchapter does not affect—

- (1) law in effect on November 5, 1990, on airport noise or access restrictions by local authorities;
- (2) any proposed airport noise or access restriction at a general aviation airport if the airport proprietor has formally initiated a regulatory or legislative process before October 2, 1990; or
- (3) the authority of the [Secretary of Transportation] *Federal Aviation Administration* to seek and obtain legal remedies the [Secretary] *Administration* considers appropriate, including injunctive relief.

PART C—FINANCING**CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND
AUTHORIZATIONS**

Sec.

48101. Air navigation facilities.

* * * * *

[48109. Submission of budget information and legislative recommendations and comments.]

48109. *Budget information and legislative recommendations and comments.*

48110. Facilities for advanced training of maintenance technicians for air carrier aircraft.

48111. *Budgetary treatment of Airport and Airway Trust Fund.*

48112. *Safeguards against deficit spending.*

§48101. Air navigation facilities

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of the following amounts may be appropriated to the [Secretary of Transportation] *Federal Aviation Administration* out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title:

- (1) For the fiscal years ending September 30, 1991–1993, \$8,200,000,000.
- (2) For the fiscal years ending September 30, 1991–1994, \$10,724,000,000.
- (3) For the fiscal years ending September 30, 1991–1995, \$13,394,000,000.
- (4) For the fiscal years ending September 30, 1991–1996, \$16,129,000,000.

(b) MAJOR AIRWAY CAPITAL INVESTMENT PLAN CHANGES.—If the [Secretary] *Administration* 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] *Administration* out of the Fund for the fiscal year ending September 30, 1994, to carry out the augmentation or modification.

(c) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

§48102. Research and development

(a) AUTHORIZATION OF APPROPRIATIONS.—Not more than the following amounts may be appropriated to the [Secretary of Transportation] *Federal Aviation Administration* out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out sections 44504, 44505, 44507, 44509, and 44511–44513 of this title:

(1) * * *

* * * * *

(b) AVAILABILITY FOR RESEARCH.—(1) At least 15 percent of the amount appropriated under subsection (a) of this section shall be for long-term research projects.

(2) At least 3 percent of the amount appropriated under subsection (a) of this section shall be available to the [Administrator of the] Federal Aviation Administration to make grants under section 44511 of this title.

(c) TRANSFERS BETWEEN CATEGORIES.—(1) Not more than 10 percent of the net amount authorized for a category of projects and activities in a fiscal year under subsection (a) of this section may be transferred to or from that category in that fiscal year.

(2) The [Secretary] *Administration* may transfer more than 10 percent of an authorized amount to or from a category only after—

(A) submitting a written explanation of the proposed transfer to the Committees on Science, Space, and Technology and Appropriations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate; and

(B) 30 days have passed after the explanation is submitted or each Committee notifies the [Secretary] *Administration* in writing that it does not object to the proposed transfer.

(d) AIRPORT CAPACITY RESEARCH AND DEVELOPMENT.—(1) Of the amounts made available under subsection (a) of this section, at least \$25,000,000 may be appropriated each fiscal year for research and development under section 44505 (a) and (c) of this title on preserving and enhancing airport capacity, including research and development on improvements to airport design standards, maintenance, safety, operations, and environmental concerns.

(2) The [Administrator] *Administration* shall submit to the Committees on Science, Space, and Technology and [Public Works and Transportation] *Transportation and Infrastructure* of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on expenditures made under paragraph (1) of this subsection for each fiscal year. The report shall be submitted not later than 60 days after the end of the fiscal year.

(e) AIR TRAFFIC CONTROLLER PERFORMANCE RESEARCH.—Necessary amounts may be appropriated to the [Secretary] *Administration* out of amounts in the Fund available for research and development to conduct research under section 44506 (a) and (b) of this title.

(f) AVAILABILITY OF AMOUNTS.—Amounts appropriated under subsection (a) of this section remain available until expended.

§48103. Airport planning and development and noise compatibility planning and programs

The total amounts which shall be available after September 30, 1981, to the [Secretary of Transportation] *Federal Aviation Administration* 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 \$17,583,500,000 for fiscal years ending before October 1, 1994, \$19,744,500,000 for fiscal years ending before October 1, 1995, and \$21,958,500,000 for fiscal years ending before October 1, 1996.

§48104. Certain direct costs and joint air navigation services

(a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this section, the balance of the money available in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) may be appropriated to the [Secretary of Transportation] *Federal Aviation Administration* out of the Fund for—

(1) direct costs the [Secretary] *Administration* incurs to flight check, operate, and maintain air navigation facilities referred to in section 44502(a)(1)(A) of this title safely and efficiently; and

(2) the costs of services provided under international agreements related to the joint financing of air navigation services assessed against the United States Government.

* * * * *

§48105. Weather reporting services

To reimburse the Secretary of Commerce for the cost incurred by the National Oceanic and Atmospheric Administration of providing weather reporting services to the Federal Aviation Administration, the [Secretary of Transportation] *Federal Aviation Administration* may expend from amounts available under section 48104 of this title not more than the following amounts:

(1) for the fiscal year ending September 30, 1993, \$35,596,000.

(2) for the fiscal year ending September 30, 1994, \$37,800,000.

(3) for the fiscal year ending September 30, 1995, \$39,000,000.

§48106. Airway science curriculum grants

Amounts are available from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to carry out section 44510 of this title. The amounts remain available until expended.

§48107. Civil aviation security research and development

After the review under section 44912(b) of this title is completed, necessary amounts may be appropriated to the [Secretary of Transportation] *Federal Aviation Administration* 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 under section 44912(a)(4)(A).

§48108. Availability and uses of amounts

(a) AVAILABILITY OF AMOUNTS.—Amounts equal to the amounts authorized under sections 48101–48105 of this title remain in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) until appropriated for the purposes of sections 48101–48105.

(b) LIMITATIONS ON USES.—(1) Amounts in the Fund may be appropriated only to carry out a program or activity referred to in this chapter.

(2) Amounts in the Fund may be appropriated for administrative expenses of the [Department of Transportation] *Federal Aviation Administration* or a component of the Department only to the extent authorized by section 48104 of this title.

(c) LIMITATION ON OBLIGATING OR EXPENDING AMOUNTS.—In a fiscal year beginning after September 30, 1996, the [Secretary of Transportation] *Federal Aviation Administration* may obligate or expend an amount appropriated out of the Fund under section 48104 of this title only if a law expressly amends section 48104.

§48109. Submission of budget information and legislative recommendations and comments

[When the Administrator of the Federal Aviation Administration submits to the Secretary of Transportation, the President, or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or 48102 of this title, the Administrator concurrently shall submit a copy of the information, recommendation, or comment to the Speaker of the House of Representatives, the Committees on Public Works and Transportation and Appropriations of the House, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.]

§48109. Budget information and legislative recommendations and comments

(a) PREPARATION.—Subject to approval of the Federal Aviation Board, the Chief Executive Officer shall prepare an annual budget for the Administration.

(b) SUBMISSION OF BUDGET TO DOT.—

(1) IN GENERAL.—At the same time that agencies of the Department of Transportation having jurisdiction over other modes of transportation are required to submit their budgets to the Secretary of Transportation, the Administration shall submit to the Secretary the budget prepared by the Administration and approved by the Board. The Secretary shall review the budget and may recommend to the Administration modifica-

tions in the budget necessary to ensure that the budget is consistent with the needs of the national transportation system and the Secretary's aviation responsibilities. The Administration may modify the budget to adopt any recommendation made by the Secretary.

(2) *OPPORTUNITY FOR COMMENT.*—At least 30 days before submitting a budget to the Secretary under paragraph (1), the Administration shall submit a draft of the budget to the Management Advisory Committee established by section 1315 for comment.

(c) *SUBMISSION OF BUDGET TO CONGRESS.*—

(1) *IN GENERAL.*—When the Board submits to the President or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or section 48102, the Board concurrently shall submit a copy of the information, recommendation, or comment to the Speaker of the House of Representatives, the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

(2) *SPECIAL RULE WITH RESPECT TO ANNUAL BUDGETS.*—The annual budget of the Administration submitted to Congress shall include—

(A) budget requests and Airport and Airway Trust Fund estimates for the ensuing 4 fiscal years;

(B) a numerical ranking, by degree of importance to the national airspace system, of the Administration's requests for funding of air traffic control modernization projects under section 48101;

(C) the total number of man-years of direct effort the Administration estimates it will use under support service contracts (including professional, technical, engineering, site preparation, and installation and other services comparable to those performed by Government employees, but not including maintenance as part of a supply contract, janitorial, research and development, or construction services or services incidental to supply contracts) during the fiscal year for which the budget is being submitted;

(D) any modifications made by the Administration under subsection (b) with respect to the budget; and

(E) if the Administration does not adopt a recommendation made by the Secretary under subsection (b), a description of the recommendation and the reasons for not adopting the recommendation.

Subparagraph (C) shall take effect with the budget submission for fiscal year 1997. The estimate under subparagraph (C) for such budget submission shall include for comparison the estimated total number of man-years of direct effort the Administration used under such support service contracts in each of fiscal years 1992 and 1995.

§48110. Facilities for advanced training of maintenance technicians for air carrier aircraft

For the fiscal years ending September 30, 1993–1995, amounts necessary to carry out section 44515 of this title may be appropriated to the [Secretary of Transportation] *Federal Aviation Administration* out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502). The amounts remain available until expended.

§48111. Budgetary treatment of Airport and Airway Trust Fund

The receipts and disbursements of the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502)—

(1) shall not be included in the totals of—

(A) the budget of the United States Government as submitted by the President, or

(B) the congressional budget (including allocations of budget authority and outlays provided therein),

(2) shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government, and

(3) shall be exempt from any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

§48112. Safeguards against deficit spending

(a) ESTIMATES OF UNFUNDED AVIATION AUTHORIZATIONS AND NET AVIATION RECEIPTS.—Not later than March 31 of each year, the Federal Aviation Administration, in consultation with the Secretary of the Treasury, shall estimate—

(1) the amount which would (but for this section) be the unfunded aviation authorizations at the close of the first fiscal year that begins after that March 31, and

(2) the net aviation receipts at the close of such fiscal year.

(b) PROCEDURE OF EXCESS UNFUNDED AVIATION AUTHORIZATIONS.—If the Administration determines for any fiscal year that the amount described in subsection (a)(1) exceeds the amount described in subsection (a)(2), the Board shall determine the amount of such excess.

(c) ADJUSTMENT OF AUTHORIZATIONS IF UNFUNDED AUTHORIZATIONS EXCEED RECEIPTS.—

(1) DETERMINATION OF PERCENTAGE.—If the Administration determines that there is an excess referred to in subsection (b) for a fiscal year, the Administration shall determine the percentage which—

(A) such excess, is of

(B) the total of the amounts authorized to be appropriated from the Airport and Airway Trust Fund established by section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) for the next fiscal year.

(2) ADJUSTMENT OF AUTHORIZATIONS.—If the Administration determines a percentage under paragraph (1), each amount authorized to be appropriated from the Airport and Airway Trust

Fund for the next fiscal year shall be reduced by such percentage.

(d) AVAILABILITY OF AMOUNTS PREVIOUSLY WITHHELD.—

(1) ADJUSTMENT OF AUTHORIZATIONS.—If, after a reduction has been made under subsection (c)(2), the Administration determines that the amount described in subsection (a)(1) does not exceed the amount described in subsection (a)(2) or that the excess referred to in subsection (b) is less than the amount previously determined, each amount authorized to be appropriated that was reduced under subsection (c)(2) shall be increased, by an equal percentage, to the extent the Administration determines that it may be so increased without causing the amount described in subsection (a)(1) to exceed the amount described in subsection (a)(2) (but not by more than the amount of the reduction).

(2) APPORTIONMENT.—The Administration shall apportion amounts made available for apportionment by paragraph (1).

(3) PERIOD OF AVAILABILITY.—Any funds apportioned under paragraph (2) shall remain available for the period for which they would be available if such apportionment took effect with the fiscal year in which they are apportioned under paragraph (2).

(e) REPORTS.—Any estimate under subsection (a) and any determination under subsection (b), (c), or (d) shall be reported by the Administration to Congress.

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

(1) NET AVIATION RECEIPTS.—The term “net aviation receipts” means, with respect to any period, the excess of—

(A) the receipts (including interest) of the Airport and Airway Trust Fund during such period, over

(B) the amounts to be transferred during such period from the Airport and Airway Trust Fund under section 9502(d) of the Internal Revenue Code of 1986 (other than paragraph (1) thereof).

(2) UNFUNDED AVIATION AUTHORIZATIONS.—The term “unfunded aviation authorization” means, at any time, the excess (if any) of—

(A) the total amount authorized to be appropriated from the Airport and Airway Trust Fund which has not been appropriated, over

(B) the amount available in the Airport and Airway Trust Fund at such time to make such appropriation (after all other unliquidated obligations at such time which are payable from the Airport and Airway Trust Fund have been liquidated).

PART D—MISCELLANEOUS

CHAPTER 491—BUY-AMERICAN PREFERENCES

* * * * *

§49101. Buying goods produced in the United States

(a) PREFERENCE.—The [Secretary of Transportation] *Federal Aviation Administration* may obligate an amount that may be appropriated to carry out section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b) WAIVER.—The [Secretary] *Administration* may waive subsection (a) of this section if the [Secretary] *Administration* finds that—

(1) * * *

* * * * *

§49103. Contract preference for domestic firms

(a) DEFINITIONS.—In this section—

(1) “domestic firm” means a business entity incorporated, and conducting business, in the United States.

(2) “foreign firm” means a business entity not described in clause (1) of this subsection.

(b) PREFERENCE.—Subject to subsections (c) and (d) of this section, the [Administrator of the] Federal Aviation Administration may make, with a domestic firm, a contract related to a grant made under section 44511, 44512, or 44513 of this title that, under competitive procedures, would be made with a foreign firm, if—

(1) the [Administrator] *Administration* decides, and the Secretary of Commerce and the United States Trade Representative concur, that the public interest requires making the contract with the domestic firm, considering United States international obligations and trade relations;

(2) the difference between the bids submitted by the foreign firm and the domestic firm is not more than 6 percent;

(3) the final product of the domestic firm will be assembled completely in the United States; and

(4) at least 51 percent of the final product of the domestic firm will be produced in the United States.

(c) NONAPPLICATION.—Subsection (b) of this section does not apply if—

(1) compelling national security considerations require that subsection (b) of this section not apply; or

(2) the Trade Representative decides that making the contract would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party.

(d) APPLICATION TO CERTAIN GRANTS.—This section applies only to a contract related to a grant made under section 44511, 44512, or 44513 of this title for which—

(1) an amount is authorized by section 48102(a), (b), or (d) of this title to be made available for the fiscal years ending September 30, 1991, and September 30, 1992; and

(2) a solicitation for bid is issued after November 5, 1990.

(e) REPORT.—The [Administrator] *Administration* shall submit a report to Congress on—

(1) contracts to which this section applies that are made with foreign firms in the fiscal years ending September 30, 1991, and September 30, 1992;

(2) the number of contracts that meet the requirements of subsection (b) of this section, but that the Trade Representative decides would violate the General Agreement on Tariffs and Trade or an international agreement to which the United States is a party; and

(3) the number of contracts made under this section.

§49104. Restriction on airport projects using products or services of foreign countries denying fair market opportunities

(a) * * *

(b) LIMITATION ON USE OF AVAILABLE AMOUNTS.—(1) * * *

(2) Paragraph (1) of this subsection does not apply when the [Secretary of Transportation] *Federal Aviation Administration* decides that—

(A) applying paragraph (1) to the product, service, or project is not in the public interest;

(B) a product or service of the same class or type and of satisfactory quality is not produced or offered in the United States, or in a foreign country not listed under subsection (d)(1) of this section, in a sufficient and reasonably available amount; and

(C) the project cost will increase by more than 20 percent if the product or service is excluded.

* * * * *

§49105. Fraudulent use of “Made in America” label

If the [Secretary of Transportation] *Federal Aviation Administration* decides that a person intentionally affixed a “Made in America” label to goods sold in or shipped to the United States that are not made in the United States, the [Secretary] *Administration* shall declare the person ineligible, for not less than 3 nor more than 5 years, to receive a contract or grant from the United States Government related to a contract made under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except sections 47106(d) and 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388–353). The [Secretary] *Administration* may bring a civil action to enforce this section in any district court of the United States.

* * * * *

**SUBTITLE IX—COMMERCIAL SPACE
TRANSPORTATION**

* * * * *

CHAPTER 701—COMMERCIAL SPACE LAUNCH ACTIVITIES

* * * * *

§ 70101. Findings and purposes

(a) * * *

(b) PURPOSES.—The purposes of this chapter are—

(1) to promote economic growth and entrepreneurial activity through use of the space environment for peaceful purposes;

(2) to encourage the United States private sector to provide launch vehicles and associated services by—

(A) simplifying and expediting the issuance and transfer of commercial launch licenses; and

(B) facilitating and encouraging the use of Government-developed space technology;

(3) to provide that the [Secretary of Transportation] *Federal Aviation Administration* is to oversee and coordinate the conduct of commercial launch operations, issue and transfer commercial launch licenses authorizing those operations, and protect the public health and safety, safety of property, and national security and foreign policy interests of the United States; and

(4) to facilitate the strengthening and expansion of the United States space transportation infrastructure, including the enhancement of United States launch sites and launch-site support facilities, with Government, State, and private sector involvement, to support the full range of United States space-related activities.

§ 70102. Definitions

In this chapter—

(1) “citizen of the United States” means—

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

(B) an entity organized or existing under the laws of the United States or a State; or

(C) an entity organized or existing under the laws of a foreign country if the controlling interest (as defined by the [Secretary of Transportation] *Federal Aviation Administration*) is held by an individual or entity described in subclause (A) or (B) of this clause.

* * * * *

(6) “launch site” means the location on Earth from which a launch takes place (as defined in a license the [Secretary] *Administration* issues or transfers under this chapter) and necessary facilities.

* * * * *

§ 70103. General authority

(a) GENERAL.—The [Secretary of Transportation] *Federal Aviation Administration* shall carry out this chapter.

(b) FACILITATING COMMERCIAL LAUNCHES.—In carrying out this chapter, the [Secretary] *Administration* shall—

(1) encourage, facilitate, and promote commercial space launches by the private sector; and

(2) take actions to facilitate private sector involvement in commercial space transportation activity, and to promote public-private partnerships involving the United States Government, State governments, and the private sector to build, expand, modernize, or operate a space launch infrastructure.

(c) EXECUTIVE AGENCY ASSISTANCE.—When necessary, the head of an executive agency shall assist the [Secretary] *Administration* in carrying out this chapter.

§ 70104. Restrictions on launches and operations

(a) * * *

* * * * *

(c) PREVENTING LAUNCHES.—The [Secretary of Transportation] *Federal Aviation Administration* shall establish whether all required licenses, authorizations, and permits required for a payload have been obtained. If no license, authorization, or permit is required, the [Secretary] *Administration* may prevent the launch if the [Secretary] *Administration* decides the launch would jeopardize the public health and safety, safety of property, or national security or foreign policy interest of the United States.

§ 70105. License applications and requirements

(a) APPLICATIONS.—A person may apply to the [Secretary of Transportation] *Federal Aviation Administration* for a license or transfer of a license under this chapter in the form and way the [Secretary] *Administration* prescribes. Consistent with the public health and safety, safety of property, and national security and foreign policy interests of the United States, the [Secretary] *Administration*, not later than 180 days after receiving an application, shall issue or transfer a license if the [Secretary] *Administration* decides in writing that the applicant complies, and will continue to comply, with this chapter and regulations prescribed under this chapter. The [Secretary] *Administration* shall inform the applicant of any pending issue and action required to resolve the issue if the [Secretary] *Administration* has not made a decision not later than 120 days after receiving an application.

(b) REQUIREMENTS.—(1) Except as provided in this subsection, all requirements of the laws of the United States applicable to the launch of a launch vehicle or the operation of a launch site are requirements for a license under this chapter.

(2) The [Secretary] *Administration* may prescribe—

(A) any term necessary to ensure compliance with this chapter, including on-site verification that a launch or operation complies with representations stated in the application;

(B) an additional requirement necessary to protect the public health and safety, safety of property, national security interests, and foreign policy interests of the United States; and

(C) by regulation that a requirement of a law of the United States not be a requirement for a license if the [Secretary] *Administration*, after consulting with the head of the appropriate executive agency, decides that the requirement is not nec-

essary to protect the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(3) The [Secretary] *Administration* may waive a requirement for an individual applicant if the [Secretary] *Administration* decides that the waiver is in the public interest and will not jeopardize the public health and safety, safety of property, and national security and foreign policy interests of the United States.

(c) PROCEDURES AND TIMETABLES.—The [Secretary] *Administration* shall establish procedures and timetables that expedite review of a license application and reduce the regulatory burden for an applicant.

§ 70106. Monitoring activities

(a) GENERAL REQUIREMENTS.—A licensee under this chapter must allow the [Secretary of Transportation] *Federal Aviation Administration* to place an officer or employee of the United States Government or another individual as an observer at a launch site the licensee uses, at a production facility or assembly site a contractor of the licensee uses to produce or assemble a launch vehicle, or at a site at which a payload is integrated with a launch vehicle. The observer will monitor the activity of the licensee or contractor at the time and to the extent the [Secretary] *Administration* considers reasonable to ensure compliance with the license or to carry out the duties of the [Secretary] *Administration* under section 70104(c) of this title. A licensee must cooperate with an observer carrying out this subsection.

(b) CONTRACTS.—To the extent provided in advance in an appropriation law, the [Secretary] *Administration* may make a contract with a person to carry out subsection (a) of this section.

§ 70107. Effective periods, and modifications, suspensions, and revocations, of licenses

(a) EFFECTIVE PERIODS OF LICENSES.—The [Secretary of Transportation] *Federal Aviation Administration* shall specify the period for which a license issued or transferred under this chapter is in effect.

(b) MODIFICATIONS.—On the initiative of the [Secretary] *Administration* or on application of the licensee, the [Secretary] *Administration* may modify a license issued or transferred under this chapter if the [Secretary] *Administration* decides the modification will comply with this chapter.

(c) SUSPENSIONS AND REVOCATIONS.—The [Secretary] *Administration* may suspend or revoke a license if the [Secretary] *Administration* decides that—

(1) the licensee has not complied substantially with a requirement of this chapter or a regulation prescribed under this chapter; or

(2) the suspension or revocation is necessary to protect the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(d) EFFECTIVE PERIODS OF MODIFICATIONS, SUSPENSIONS, AND REVOCATIONS.—Unless the [Secretary] *Administration* specifies otherwise, a modification, suspension, or revocation under this sec-

tion takes effect immediately and remains in effect during a review under section 70110 of this title.

(e) NOTIFICATION.—The [Secretary] *Administration* shall notify the licensee in writing of the decision of the [Secretary] *Administration* under this section and any action the [Secretary] *Administration* takes or proposes to take based on the decision.

§ 70108. Prohibition, suspension, and end of launches and operation of launch sites

(a) GENERAL AUTHORITY.—The [Secretary of Transportation] *Federal Aviation Administration* may prohibit, suspend, or end immediately the launch of a launch vehicle or the operation of a launch site licensed under this chapter if the [Secretary] *Administration* decides the launch or operation is detrimental to the public health and safety, the safety of property, or a national security or foreign policy interest of the United States.

(b) EFFECTIVE PERIODS OF ORDERS.—An order under this section takes effect immediately and remains in effect during a review under section 70110 of this title.

§ 70109. Preemption of scheduled launches

(a) GENERAL.—With the cooperation of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration, the [Secretary of Transportation] *Federal Aviation Administration* shall act to ensure that a launch of a payload is not preempted from access to a United States Government launch site or launch property, except for imperative national need, when a launch date commitment from the Government has been obtained for a launch licensed under this chapter. A licensee or transferee preempted from access to a launch site or launch property does not have to pay the Government any amount for launch services attributable only to the scheduled launch prevented by the preemption.

(b) IMPERATIVE NATIONAL NEED DECISIONS.—In consultation with the [Secretary of Transportation] *Federal Aviation Administration*, the Secretary of Defense or the Administrator shall decide when an imperative national need requires preemption under subsection (a) of this section. That decision may not be delegated.

(c) REPORTS.—In cooperation with the [Secretary of Transportation] *Federal Aviation Administration*, the Secretary of Defense or the Administrator, as appropriate, shall submit to Congress not later than 7 days after a decision to preempt under subsection (a) of this section, a report that includes an explanation of the circumstances justifying the decision and a schedule for ensuring the prompt launching of a preempted payload.

§ 70110. Administrative hearings and judicial review

(a) ADMINISTRATIVE HEARINGS.—The [Secretary of Transportation] *Federal Aviation Administration* shall provide an opportunity for a hearing on the record to—

- (1) an applicant under this chapter, for a decision of the [Secretary] *Administration* under section 70105(a) of this title to issue or transfer a license with terms or deny the issuance or transfer of a license;

(2) an owner or operator of a payload under this chapter, for a decision of the [Secretary] *Administration* under section 70104(c) of this title to prevent the launch of the payload; and

(3) a licensee under this chapter, for a decision of the [Secretary] *Administration* under—

(A) section 70107 (b) or (c) of this title to modify, suspend, or revoke a license; or

(B) section 70108(a) of this title to prohibit, suspend, or end a launch or operation of a launch site licensed by the [Secretary] *Administration*.

(b) JUDICIAL REVIEW.—A final action of the [Secretary] *Administration* under this chapter is subject to judicial review as provided in chapter 7 of title 5.

§ 70111. Acquiring United States Government property and services

(a) GENERAL REQUIREMENTS AND CONSIDERATIONS.—(1) The [Secretary of Transportation] *Federal Aviation Administration* shall facilitate and encourage the acquisition by the private sector and State governments of—

(A) launch property of the United States Government that is excess or otherwise is not needed for public use; and

(B) launch services, including utilities, of the Government otherwise not needed for public use.

(2) In acting under paragraph (1) of this subsection, the [Secretary] *Administration* shall consider the commercial availability on reasonable terms of substantially equivalent launch property or launch services from a domestic source.

(b) PRICE.—(1) In this subsection, “direct costs” means the actual costs that—

(A) can be associated unambiguously with a commercial launch effort; and

(B) the Government would not incur if there were no commercial launch effort.

(2) In consultation with the [Secretary] *Administration*, the head of the executive agency providing the property or service under subsection (a) of this section shall establish the price for the property or service. The price for—

(A) acquiring launch property by sale or transaction instead of sale is the fair market value;

(B) acquiring launch property (except by sale or transaction instead of sale) is an amount equal to the direct costs, including specific wear and tear and property damage, the Government incurred because of acquisition of the property; and

(C) launch services is an amount equal to the direct costs, including the basic pay of Government civilian and contractor personnel, the Government incurred because of acquisition of the services.

(c) COLLECTION BY [SECRETARY] *ADMINISTRATION*.—The [Secretary] *Administration* may collect a payment under this section with the consent of the head of the executive agency establishing the price. Amounts collected under this subsection shall be deposited in the Treasury. Amounts (except for excess launch property)

shall be credited to the appropriation from which the cost of providing the property or services was paid.

(d) COLLECTION BY OTHER GOVERNMENTAL HEADS.—The head of a department, agency, or instrumentality of the Government may collect a payment for an activity involved in producing a launch vehicle or its payload for launch if the activity was agreed to by the owner or manufacturer of the launch vehicle or payload.

§ 70112. Liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—(1) When a license is issued or transferred under this chapter, the licensee or transferee shall obtain liability insurance or demonstrate financial responsibility in amounts to compensate for the maximum probable loss from claims by—

(A) a third party for death, bodily injury, or property damage or loss resulting from an activity carried out under the license; and

(B) the United States Government against a person for damage or loss to Government property resulting from an activity carried out under the license.

(2) The [Secretary of Transportation] *Federal Aviation Administration* shall determine the amounts required under paragraph (1)(A) and (B) of this subsection, after consulting with the Administrator of the National Aeronautics and Space Administration, the Secretary of the Air Force, and the heads of other appropriate executive agencies.

* * * * *

(b) RECIPROCAL WAIVER OF CLAIMS.—(1) A license issued or transferred under this chapter shall contain a provision requiring the licensee or transferee to make a reciprocal waiver of claims with its contractors, subcontractors, and customers, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license.

(2) The [Secretary of Transportation] *Federal Aviation Administration* shall make, for the Government, executive agencies of the Government involved in launch services, and contractors and subcontractors involved in launch services, a reciprocal waiver of claims with the licensee or transferee, contractors, subcontractors, and customers of the licensee or transferee, and contractors and subcontractors of the customers, involved in launch services under which each party to the waiver agrees to be responsible for property damage or loss it sustains, or for personal injury to, death of, or property damage or loss sustained by its own employees resulting from an activity carried out under the license. The waiver applies only to the extent that claims are more than the amount of insurance or demonstration of financial responsibility required under subsection (a)(1)(B) of this section. After consulting with the Administrator and the Secretary of the Air Force, the [Secretary of Transportation] *Federal Aviation Administration* may waive, for

the Government and a department, agency, and instrumentality of the Government, the right to recover damages for damage or loss to Government property to the extent insurance is not available because of a policy exclusion the [Secretary of Transportation] *Federal Aviation Administration* decides is usual for the type of insurance involved.

(c) DETERMINATION OF MAXIMUM PROBABLE LOSSES.—The [Secretary of Transportation] *Federal Aviation Administration* shall determine the maximum probable losses under subsection (a)(1)(A) and (B) of this section associated with an activity under a license not later than 90 days after a licensee or transferee requires a determination and submits all information the [Secretary] *Administration* requires. The [Secretary] *Administration* shall amend the determination as warranted by new information.

(d) ANNUAL REPORT.—(1) Not later than November 15 of each year, the [Secretary of Transportation] *Federal Aviation Administration* shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science, Space, and Technology of the House of Representatives a report on current determinations made under subsection (c) of this section related to all issued licenses and the reasons for the determinations.

(2) Not later than May 15 of each year, the [Secretary of Transportation] *Federal Aviation Administration* shall review the amounts specified in subsection (a)(3)(A) of this section and submit a report to Congress that contains proposed adjustments in the amounts to conform with changed liability expectations and availability of insurance on the world market. The proposed adjustment takes effect 30 days after a report is submitted.

(e) LAUNCHES INVOLVING GOVERNMENT FACILITIES AND PERSONNEL.—The [Secretary of Transportation] *Federal Aviation Administration* shall establish requirements consistent with this chapter for proof of financial responsibility and other assurances necessary to protect the Government and its executive agencies and personnel from liability, death, bodily injury, or property damage or loss as a result of a launch or operation of a launch site involving a facility or personnel of the Government. The [Secretary] *Administration* may not relieve the Government of liability under this subsection for death, bodily injury, or property damage or loss resulting from the willful misconduct of the Government or its agents.

(f) COLLECTION AND CREDITING PAYMENTS.—The head of a department, agency, or instrumentality of the Government shall collect a payment owed for damage or loss to Government property under its jurisdiction or control resulting from an activity carried out under a license issued or transferred under this chapter. The payment shall be credited to the current applicable appropriation, fund, or account of the department, agency, or instrumentality.

§ 70113. Paying claims exceeding liability insurance and financial responsibility requirements

(a) GENERAL REQUIREMENTS.—(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the [Secretary of Transportation] *Federal Aviation Administration* shall provide

for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a licensee or transferee under this chapter, a contractor, subcontractor, or customer of the licensee or transferee, or a contractor or subcontractor of a customer, resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one launch—

(A) is more than the amount of insurance or demonstration of financial responsibility required under section 70112(a)(1)(A) of this title; and

(B) is not more than \$1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The **【Secretary】 Administration** may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 70112(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an insurance policy exclusion the **【Secretary】 Administration** decides is usual for the type of insurance involved, the **【Secretary】 Administration** may provide for paying the excluded claims without regard to the limitation contained in section 70112(a)(1).

(b) NOTICE, PARTICIPATION, AND APPROVAL.—Before a payment under subsection (a) of this section is made—

(1) notice must be given to the Government of a claim, or a civil action related to the claim, against a party described in subsection (a)(1) of this section for death, bodily injury, or property damage or loss;

(2) the Government must be given an opportunity to participate or assist in the defense of the claim or action; and

(3) the **【Secretary】 Administration** must approve any part of a settlement to be paid out of appropriations of the Government.

(c) WITHHOLDING PAYMENTS.—The **【Secretary】 Administration** may withhold a payment under subsection (a) of this section if the **【Secretary】 Administration** certifies that the amount is not reasonable. However, the **【Secretary】 Administration** shall deem to be reasonable the amount of a claim finally decided by a court of competent jurisdiction.

(d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—(1) If as a result of an activity carried out under a license issued or transferred under this chapter the total of claims related to one launch is likely to be more than the amount of required insurance or demonstration of financial responsibility, the **【Secretary】 Administration** shall—

(A) survey the causes and extent of damage; and

(B) submit expeditiously to Congress a report on the results of the survey.

(2) Not later than 90 days after a court determination indicates that the liability for the total of claims related to one launch may

be more than the required amount of insurance or demonstration of financial responsibility, the President, on the recommendation of the [Secretary] *Administration*, shall submit to Congress a compensation plan that—

- (A) outlines the total dollar value of the claims;
- (B) recommends sources of amounts to pay for the claims;
- (C) includes legislative language required to carry out the plan if additional legislative authority is required; and
- (D) for a single event or incident, may not be for more than \$1,500,000,000.

* * * * *

(f) APPLICATION.—This section applies to a license issued or transferred under this chapter for which the [Secretary] *Administration* receives a complete and valid application not later than December 31, 1999.

§ 70114. Disclosing information

The [Secretary of Transportation] *Federal Aviation Administration*, an officer or employee of the United States Government, or a person making a contract with the [Secretary] *Administration* under section 70106(b) of this title may disclose information under this chapter that qualifies for an exemption under section 552(b)(4) of title 5 or is designated as confidential by the person or head of the executive agency providing the information only if the [Secretary] *Administration* decides withholding the information is contrary to the public or national interest.

§ 70115. Enforcement and penalty

(a) PROHIBITIONS.—A person may not violate this chapter, a regulation prescribed under this chapter, or any term of a license issued or transferred under this chapter.

(b) GENERAL AUTHORITY.—(1) In carrying out this chapter, the [Secretary of Transportation] *Federal Aviation Administration* may—

- (A) conduct investigations and inquiries;
- (B) administer oaths;
- (C) take affidavits; and
- (D) under lawful process—
 - (i) enter at a reasonable time a launch site, production facility, assembly site of a launch vehicle, or site at which a payload is integrated with a launch vehicle to inspect an object to which this chapter applies or a record or report the [Secretary] *Administration* requires be made or kept under this chapter; and
 - (ii) seize the object, record, or report when there is probable cause to believe the object, record, or report was used, is being used, or likely will be used in violation of this chapter.

(2) The [Secretary] *Administration* may delegate a duty or power under this chapter related to enforcement to an officer or employee of another executive agency with the consent of the head of the agency.

(c) CIVIL PENALTY.—(1) After notice and an opportunity for a hearing on the record, a person the **【Secretary】 Administration** finds to have violated subsection (a) of this section is liable to the United States Government for a civil penalty of not more than \$100,000. A separate violation occurs for each day the violation continues.

(2) In conducting a hearing under paragraph (1) of this subsection, the **【Secretary】 Administration** may—

(A) subpoena witnesses and records; and

(B) enforce a subpoena in an appropriate district court of the United States.

(3) The **【Secretary】 Administration** shall impose the civil penalty by written notice. The **【Secretary】 Administration** may compromise or remit a penalty imposed, or that may be imposed, under this section.

(4) The **【Secretary】 Administration** shall recover a civil penalty not paid after the penalty is final or after a court enters a final judgment for the **【Secretary】 Administration**.

§ 70116. Consultation

(a) MATTERS AFFECTING NATIONAL SECURITY.—The **【Secretary of Transportation】 Federal Aviation Administration** shall consult with the Secretary of Defense on a matter under this chapter affecting national security. The Secretary of Defense shall identify and notify the **【Secretary of Transportation】 Federal Aviation Administration** of a national security interest relevant to an activity under this chapter.

(b) MATTERS AFFECTING FOREIGN POLICY.—The **【Secretary of Transportation】 Federal Aviation Administration** shall consult with the Secretary of State on a matter under this chapter affecting foreign policy. The Secretary of State shall identify and notify the **【Secretary of Transportation】 Federal Aviation Administration** of a foreign policy interest or obligation relevant to an activity under this chapter.

(c) OTHER MATTERS.—In carrying out this chapter, the **【Secretary of Transportation】 Federal Aviation Administration** shall consult with the head of another executive agency—

(1) to provide consistent application of licensing requirements under this chapter;

(2) to ensure fair treatment for all license applicants; and

(3) when appropriate.

§ 70117. Relationship to other executive agencies, laws, and international obligations

(a) * * *

* * * * *

(d) CONSULTATION.—The **【Secretary of Transportation】 Federal Aviation Administration** is encouraged to consult with a State to simplify and expedite the approval of a space launch activity.

(e) FOREIGN COUNTRIES.—The **【Secretary of Transportation】 Federal Aviation Administration** shall—

(1) carry out this chapter consistent with an obligation the United States Government assumes in a treaty, convention, or

agreement in force between the Government and the government of a foreign country; and

(2) consider applicable laws and requirements of a foreign country when carrying out this chapter.

(f) LAUNCH NOT AN EXPORT.—A launch vehicle or payload that is launched is not, because of the launch, an export for purposes of a law controlling exports.

(g) NONAPPLICATION.—This chapter does not apply to—

(1) a launch, operation of a launch vehicle or launch site, or other space activity the Government carries out for the Government; or

(2) planning or policies related to the launch, operation, or activity.

§ 70118. User fees

The [Secretary of Transportation] *Federal Aviation Administration* may collect a user fee for a regulatory or other service conducted under this chapter only if specifically authorized by this chapter.

§ 70119. Authorization of appropriations

The following amounts may be appropriated to the [Secretary of Transportation] *Federal Aviation Administration* for the fiscal year ending September 30, 1993:

(1) \$4,900,000 to carry out this chapter.

(2) \$20,000,000 for a program to ensure the resiliency of the space launch infrastructure of the United States if a law is enacted to establish that program in the Department of Transportation.

CHAPTER 703—SPACE TRANSPORTATION INFRASTRUCTURE MATCHING GRANTS

* * * * *

§ 70301. Definitions

In this chapter—

(1) the definitions in section 502 of the National Aeronautics and Space Administration Authorization Act, Fiscal Year 1993 (15 U.S.C. 5802) apply.

(2) “commercial space transportation infrastructure development” includes—

(A) construction, improvement, design, and engineering of space transportation infrastructure in the United States; and

(B) technical studies to define how new or enhanced space transportation infrastructure can best meet the needs of the United States commercial space transportation industry.

(3) “project” means a project (or separate projects submitted together) to carry out commercial space transportation infrastructure development, including the combined submission of all projects to be undertaken at a particular site in a fiscal year.

(4) “project grant” means a grant of an amount by the [Secretary of Transportation] *Federal Aviation Administration* to a sponsor for one or more projects.

(5) “public agency” means a State or an agency of a State, a political subdivision of a State, or a tax-supported organization.

(6) “sponsor” means a public agency that, individually or jointly with one or more other public agencies, submits to the [Secretary] *Administration* under this chapter an application for a project grant.

§ 70302. Grant authority

(a) GENERAL AUTHORITY.—To ensure the resiliency of the space transportation infrastructure of the United States, the [Secretary of Transportation] *Federal Aviation Administration* may make project grants to sponsors as provided in this chapter.

(b) LIMITATIONS.—The [Secretary] *Administration* may make a project grant under this chapter only if—

(1) at least 10 percent of the total cost of the project will be paid by the private sector; and

(2) the grant will not be for more than 50 percent of the total cost of the project.

§ 70303. Grant applications

(a) GENERAL.—A sponsor may submit to the [Secretary of Transportation] *Federal Aviation Administration* an application for a project grant. The application must state the project to be undertaken and be in the form and contain the information the [Secretary] *Administration* requires.

(b) CONSIDERATIONS AND CONSULTATION.—(1) In selecting proposed projects for grants under this section, the [Secretary of Transportation] *Federal Aviation Administration* shall consider—

(A) the contribution of the project to industry capabilities that serve the United States Government’s space transportation needs;

(B) the extent of industry’s financial contribution to the project;

(C) the extent of industry’s participation in the project;

(D) the positive impact of the project on the international competitiveness of the United States space transportation industry;

(E) the extent of State contributions to the project; and

(F) the impact of the project on launch operations and other activities at Government launch ranges.

(2) The [Secretary of Transportation] *Federal Aviation Administration* shall consult with the Secretary of Defense, the Administrator of the National Space and Aeronautics Administration, and the heads of other appropriate agencies of the Government about paragraphs (1) (A) and (F) of this subsection.

(c) REQUIREMENTS.—The [Secretary of Transportation] *Federal Aviation Administration* may approve an application only if the [Secretary] *Administration* is satisfied that—

(1) the project will contribute to the purposes of this chapter;

(2) the project is reasonably consistent with plans (existing at the time of approval of the project) of public agencies that are—

(A) authorized by the State in which the project is located; and

(B) responsible for the development of the area surrounding the project site;

(3) if the application proposes to use Government property, the specific consent of the head of the appropriate agency has been obtained;

(4) the project will be completed without unreasonable delay;

(5) the sponsor submitting the application has the legal authority to engage in the project; and

(6) any additional requirements prescribed by the [Secretary] *Administration* have been met.

(d) PREFERENCE FOR INDUSTRY CONTRIBUTIONS.—The [Secretary of Transportation] *Federal Aviation Administration* shall give preference to applications for projects for which there will be greater industry financial contributions, all other factors being equal.

§ 70304. Environmental requirements

(a) POLICY.—It is the policy of the United States that projects selected under this chapter shall provide for the protection and enhancement of the natural resources and the quality of the environment of the United States. In carrying out this policy, the [Secretary of Transportation] *Federal Aviation Administration* shall consult with the Secretary of the Interior and the Administrator of the Environmental Protection Agency about a project that may have a significant effect on natural resources, including fish and wildlife, natural, scenic, and recreational assets, water and air quality, and other factors affecting the environment. If the [Secretary of Transportation] *Federal Aviation Administration* finds that a project will have a significant adverse effect, the [Secretary] *Administration* may approve the application for the project only if, after a complete review that is a matter of public record, the [Secretary] *Administration* makes a written finding that no feasible and prudent alternative to the project exists and that all reasonable steps have been taken to minimize the adverse effect.

(b) PUBLIC HEARING REQUIREMENT.—The [Secretary of Transportation] *Federal Aviation Administration* may approve an application only if the sponsor of the project certifies to the [Secretary] *Administration* that an opportunity for a public hearing has been provided to consider the economic, social, and environmental effects of the project and its consistency with the goals of any planning carried out by the community. When a hearing is held under this paragraph, the sponsor shall submit a copy of the transcript of the hearing to the [Secretary] *Administration*.

(c) COMPLIANCE WITH AIR AND WATER QUALITY STANDARDS.—(1) The [Secretary of Transportation] *Federal Aviation Administration* may approve an application only if the chief executive officer of the State in which the project is located certifies in writing to the [Secretary] *Administration* that there is reasonable assurance that the project will be located, designed, constructed, and operated to comply with applicable air and water quality standards. If the Admin-

istrator has not prescribed those standards, certification shall be obtained from the Administrator. Notice of certification or refusal to certify shall be provided not later than 60 days after the [Secretary] *Administration* receives the application.

(2) The [Secretary of Transportation] *Federal Aviation Administration* shall condition the approval of an application on compliance with applicable air and water quality standards during construction and operation.

(d) COMPLIANCE WITH LAWS AND REGULATIONS.—The [Secretary of Transportation] *Federal Aviation Administration* may require a certification from a sponsor that the sponsor will comply with all applicable laws and regulations. The [Secretary] *Administration* may rescind at any time acceptance of a certification from a sponsor under this subsection. This subsection does not affect any responsibility of the [Secretary] *Administration* under another law, including—

- (1) section 303 of this title;
- (2) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
- (3) title VIII of the Act of April 11, 1968 (42 U.S.C. 3601 et seq.);
- (4) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); and
- (5) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

§ 70305. Authorization of appropriations

Not more than \$10,000,000 may be appropriated to the [Secretary of Transportation] *Federal Aviation Administration* to make grants under this chapter. Amounts appropriated under this section remain available until expended.

* * * * *

SECTION 11 OF THE INSPECTOR GENERAL ACT OF 1978

DEFINITIONS

SEC. 11. As used in this Act—

- (1) the term “head of the establishment” means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation, or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans’ Affairs; the Director of the Federal Emergency Management Agency, the Office of Personnel Management or the United States Information Agency; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board; the Chairperson of the Thrift Depositor Protection Oversight Board; the Chief Executive Officer of the Corporation for National and Community Service or *Federal Aviation*

Administration; the Administrator of the Community Development Financial Institutions Fund; and the chief officer of the Resolution Trust Corporation; or the Commissioner of Social Security, Social Security Administration; as the case may be;

(2) the term “establishment” means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, or the Treasury; the Agency for International Development, the Community Development Financial Institutions Fund, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Federal Deposit Insurance Corporation, the Small Business Administration, the United States Information Agency, *the Federal Aviation Administration*, the Corporation for National and Community Service,, or the Veterans’ Administration, or the Social Security Administration; as the case may be;

* * * * *

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart A—General Provisions

CHAPTER 21—DEFINITIONS

* * * * *

§ 2109. Air traffic controller; Secretary

For the purpose of this title—

(1) “air traffic controller” or “controller” means a civilian employee of the [Department of Transportation] *Federal Aviation Administration* or the Department of Defense who, in an air traffic control facility or flight service station facility—

(A) is actively engaged—

(i) in the separation and control of air traffic; or

(ii) in providing preflight, inflight, or airport advisory service to aircraft operators; or

(B) is the immediate supervisor of any employee described in subparagraph (A); and

(2) “Secretary”, when used in connection with “air traffic controller” or “controller”, means the [Secretary of Transportation] *Chief Executive Officer of the Federal Aviation Administration* with respect to controllers in the [Department of

Transportation] *Federal Aviation Administration*, and the Secretary of Defense with respect to controllers in the Department of Defense.

* * * * *

Subpart C—Employee Performance

CHAPTER 41—TRAINING

* * * * *

§ 4109. Expenses of training

(a) * * *

* * * * *

(c) Notwithstanding subsection (a)(1) of this section, the [Administrator, Federal Aviation Administration,] *Federal Aviation Administration* may pay an individual training to be an air traffic controller of such Administration, and the Secretary of Defense may pay an individual training to be an air traffic controller of the Department of Defense, during the period of such training, at the applicable rate of basic pay for the hours of training officially ordered or approved in excess of forty hours in an administrative workweek.

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Subpart D—Pay and Allowances

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

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§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.

* * * * *

[Administrator, Federal Aviation Administration.]

* * * * *

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and
Space Administration.

* * * * *

【Deputy Administrator, Federal Aviation Administration.】

* * * * *

CHAPTER 55—PAY ADMINISTRATION

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
5501. Disposition of money accruing from lapsed salaries or unused appropriations
for salaries.

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SUBCHAPTER V—PREMIUM PAY

5541. Definitions.

* * * * *

5546a. Differential pay for certain employees of **【the Federal Aviation Adminis-
tration and】** the Department of Defense.

* * * * *

SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

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§ 5532. Employment of retired members of the uniformed services; reduction in retired or retainer pay

(a) * * *

* * * * *

**【(f)(1) Notwithstanding any other provision of law, the retired or
retainer pay of a former member of a uniformed service shall not
be reduced while such former member is temporarily employed,
during the period described in paragraph (2) or any portion thereof,
under the administrative authority of the Administrator, Federal
Aviation Administration, or the Secretary of Defense to perform du-
ties in the operation of the air traffic control system or to train oth-
ers to perform such duties.**

**【(2) The provisions of paragraph (1) of this subsection shall be
in effect for any period ending not later than December 31, 1989,
during which the Administrator, Federal Aviation Administration,
or the Secretary of Defense determines that there is an unusual
shortage of air traffic controllers performing duties under the ad-
ministrative authority of such Administrator or such Secretary, re-
spectively.】**

* * * * *

SUBCHAPTER V—PREMIUM PAY

* * * * *

§ 5546a. Differential pay for certain employees of **【the Fed- eral Aviation Administration and】 the Department of Defense**

(a) The **【Administrator of the Federal Aviation Administration
(hereafter in this section referred to as the “Administrator”) and**

the] Secretary of Defense (hereinafter referred to in this section as the "Secretary") may pay premium pay at the rate of 5 per centum of the applicable rate of basic pay to—

(1) any employee of [the Federal Aviation Administration or] the Department of Defense who is—

(A) occupying a position in the air traffic controller series classified not lower than GS-9 and located in an air traffic control center or terminal or in a flight service station;

(B) assigned to a position classified not lower than GS-09 or WG-10 located in an airway facilities sector; or

(C) assigned to a flight inspection crew-member position classified not lower than GS-11 located in a flight inspection field office,

the duties of whose position are determined by the [Administrator or the] Secretary to be directly involved in or responsible for the operation and maintenance of the air traffic control system; and

(2) any employee of [the Federal Aviation Administration or] the Department of Defense who is assigned to a flight test pilot position classified not lower than GS-12 located in a region or center, the duties of whose position are determined by the [Administrator or the] Secretary to be unusually taxing, physically or mentally, and to be critical to the advancement of aviation safety[; and].

[(3) any employee of the Federal Aviation Administration who occupies a position at the Federal Aviation Administration Academy, Oklahoma City, Oklahoma, the duties of which are determined by the Administrator to require the individual to be actively engaged in or directly responsible for training employees to perform the duties of a position described in subparagraph (a); (b); or (c) or paragraph (1) of this subsection, and who, immediately prior to assuming such position at such Academy, occupied a position referred to in subparagraph (a), (b), or (c) of paragraph (1) of this subsection.]

(b) The premium pay payable under any subsection of this section is in addition to basic pay and to premium pay payable under any other subsection of this section and any other provision of this subchapter.

(c)(1) The [Administrator or the] Secretary may pay premium pay to any employee of [the Federal Aviation Administration or] the Department of Defense who—

(A) is an air traffic controller located in an air traffic control center or terminal;

(B) is not required as a condition of employment to be certified by the Administrator or the Secretary as proficient and medically qualified to perform duties including the separation and control of air traffic; and

(C) is so certified.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 1.6 per centum of the applicable rate of basic pay for so long as such employee is so certified.

(d)(1) The [Administrator or the] Secretary may pay premium pay to any air traffic controller of [the Federal Aviation Adminis-

tration or] the Department of Defense who is assigned by the [Administrator or the] Secretary to provide on-the-job training to another air traffic controller while such other air traffic controller is directly involved in the separation and control of live air traffic.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 10 per centum of the applicable hourly rate of basic pay times the number of hours and portion of an hour during which the air traffic controller of [the Federal Aviation Administration or] the Department of Defense provides on-the-job training.

(e)(1) The [Administrator or the] Secretary may pay premium pay to any air traffic controller or flight service station specialist of [the Federal Aviation Administration or] the Department of Defense who, while working a regularly scheduled eight-hour period of service, is required by his supervisor to work during the fourth through sixth hour of such period without a break of thirty minutes for a meal.

(2) Premium pay paid under paragraph (1) of this subsection shall be paid at the rate of 50 per centum of one-half of the applicable hourly rate of basic pay.

(f)(1) The [Administrator or the] Secretary shall prescribe standards for determining which air traffic controllers and other employees of [the Federal Aviation Administration or] the Department of Defense are to be paid premium pay under this section.

[(2) The Administrator may prescribe such rules as he determines are necessary to carry out the provisions of this section.]

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CHAPTER 5 OF TITLE 14, UNITED STATES CODE

CHAPTER 5—FUNCTIONS AND POWERS

Sec.

81. Aids to navigation authorized.

82. Cooperation with [Administrator of] the Federal Aviation Administration.

* * * * *

§81. Aids to navigation authorized

In order to aid navigation and to prevent disasters, collisions, and wrecks of vessels and aircraft, the Coast Guard may establish, maintain, and operate:

(1) * * *

* * * * *

(3) electronic aids to navigation systems (a) required to serve the needs of the armed forces of the United States peculiar to warfare and primarily of military concern as determined by the Secretary of Defense or any department within the Department of Defense; or (b) required to serve the needs of the maritime commerce of the United States; or (c) required to serve the needs of the air commerce of the United States as requested by [the Administrator of] the Federal Aviation Administration.

These aids to navigation other than electronic aids to navigation systems shall be established and operated only within the United States, the waters above the Continental Shelf, the territories and possessions of the United States, the Trust Territory of the Pacific Islands, and beyond the territorial jurisdiction of the United States at places where naval or military bases of the United States are or may be located. The Coast Guard may establish, maintain, and operate aids to maritime navigation under paragraph (1) of this section by contract with any person, public body, or instrumentality.

§82. Cooperation with [Administrator of] the Federal Aviation Administration

The Coast Guard, in establishing, maintaining, or operating any aids to air navigation herein provided, shall solicit the cooperation of [the Administrator of] the Federal Aviation Administration to the end that the personnel and facilities of the Federal Aviation Administration will be utilized to the fullest possible advantage. Before locating and operating any such aid on military or naval bases or regions, the consent of the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, as the case may be, shall first be obtained. No such aid shall be located within the territorial jurisdiction of any foreign country without the consent of the government thereof. Nothing in this title shall be deemed to limit the authority granted by chapter 167 of title 10 or part A of subtitle VII of title 49.

* * * * *

§90. Ocean stations

(a) * * *

(b) The Coast Guard is authorized, subject to approval by [the Administrator of] the Federal Aviation Administration, to operate, on floating ocean stations authorized herein, such air navigation facilities as the [Administrator] *Administration* may find necessary or desirable for the safe and efficient protection and control of air traffic. The Coast Guard, in establishing, maintaining, or operating such air navigation facilities shall request the cooperation of [the Administrator of] the Federal Aviation Administration to the end that the personnel and facilities of the Federal Aviation Administration will be utilized to the fullest possible advantage.

* * * * *

WOLF TRAP FARM PARK ACT

* * * * *

SEC. 4. (a) * * *

* * * * *

(e) No grants or loans may be made under this section unless the Secretary has received what the Secretary deems to be adequate written assurance from the [Administrator of the] Federal Aviation Administration that any easement granted to the Common-

wealth of Virginia by the [Administrator] *Administration* for construction of the Dulles Toll Road will contain noise standards ("A" weighted energy average sound level of 52 to 54 dB) and other standards set forth in the Final Environmental Impact Statement for the Dulles Airport Access Road Outer Parallel Toll Roads, prepared by the Federal Aviation Administration and issued in May of 1982, legally enforceable by the [Administrator] *Administration* and by the Secretary which are adequate to protect the center from undue noise pollution and other environmental degradation attributable to such toll road both during and after its construction, and will also contain legally enforceable assurances that the Commonwealth of Virginia will promptly take measures to achieve the noise levels specified in the easement. Such measures may include a partial or total ban on truck traffic on the toll road or other mitigation recommended by the Secretary and the [Administrator] *Administration*.

* * * * *

SEC. 8. (a) * * *

(b) The Secretary shall monitor noise pollution which is associated with the Dulles road corridor (including the airport access and toll roads) and shall notify the Federal Aviation Administration, the Commonwealth of Virginia, and the appropriate committees of Congress if, after conferring with the [Administrator of the] Federal Aviation Administration, the Secretary finds that such noise pollution is exceeding the standards set forth in section 4(e). Within sixty days after any such notification, the [Administrator of the] Federal Aviation Administration shall take steps to reduce noise pollution so as to conform to such standards. The Secretary or the Foundation may bring an action in the United States District Court for the District of Columbia to enjoin any violation by the Commonwealth of Virginia of the easement referred to in section 4(e).

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SECTION 922 OF TITLE 18, UNITED STATES CODE

§ 922. Unlawful acts

(a) * * *

* * * * *

(p)(1) * * *

* * * * *

(5) This subsection shall not apply to any firearm which—

(A) has been certified by the Secretary of Defense or the Director of Central Intelligence, after consultation with the Secretary and [the Administrator of] the Federal Aviation Administration, as necessary for military or intelligence applications; and

* * * * *

ACT OF AUGUST 12, 1946

AN ACT To establish a national air museum, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) There is hereby established under the Smithsonian Institution a bureau to be known as a National Air and Space Museum, which shall be administered by the Smithsonian Institution with the advice of a board to be composed of the Chief of Staff of the Air Force, or his designee, the Chief of Naval Operations, or his designee, the Chief of Staff of the Army, or his designee, the Commandant of the Marine Corps, or his designee, the Commandant of the Coast Guard, or his designee, the Administrator of the National Aeronautics and Space Administration, or his designee, the [Administrator of the Federal Aviation Agency,] *Chief Executive Officer of the Federal Aviation Administration*, or his designee, the Secretary of the Smithsonian Institution, and three citizens of the United States appointed by the President from civilian life who shall serve at the pleasure of the President. The members of the board shall serve as such members without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the board.

* * * * *

SECTION 602 OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

SEC. 602. REPEAL AND SAVING PROVISIONS.

(a) * * *

* * * * *

(d) Nothing in this Act shall impair or affect any authority of—

(1) * * *

* * * * *

(14) the [Administrator of the Federal Aviation Agency or] *Federal Aviation Administration* or the Chief of the Weather Bureau with respect to the disposal of airport property and airway property for use as such property. For the purpose of this paragraph the terms “airport property” and “airway property” shall have the respective meanings ascribed to them in the International Aviation Facilities Postal Service;

* * * * *

NOISE CONTROL ACT OF 1972

* * * * *

CITIZEN SUITS

SEC. 12. (a) Except as provided in subsection (b), any person (other than the United States) may commence a civil action on his own behalf—

(1) * * *

(2) against—

(A) * * *

(B) the [Administrator of the] Federal Aviation Administration where there is alleged a failure of such [Administrator] *Administration* to perform any act or duty under section [611 of the Federal Aviation Act of 1958] *44709(b)(1)(B) or 44715 of title 49, United States Code*, which is not discretionary with such [Administrator] *Administration*.

The district courts of the United States shall have jurisdiction, without regard to the amount in controversy, to restrain such person from violating such noise control requirement or to order [such Administrator] *the agency* to perform such act or duty, as the case may be.

(b) No action may be commenced—

(1) under subsection (a)(1)—

(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator of the Environmental Protection Agency (and to the Federal Aviation [Administrator] *Administration* in the case of a violation of a noise control requirement under such section 611) and (ii) to any alleged violator of such requirement, or

(B) if an [Administrator] *agency* has commenced and is diligently prosecuting a civil action to require compliance with the noise control requirement, but in any such action in a court of the United States any person may intervene as a matter of right, or

(c) In an action under this section, the Administrator of the Environmental Protection Agency, if not a party, may intervene as a matter of right. In an action under this section respecting a noise control requirement under section [611 of the Federal Aviation Act of 1958,] *44715 of title 49, United States Code*, the [Administrator of the] Federal Aviation Administration, if not a party, may also intervene as a matter of right.

* * * * *

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any noise control requirement or to seek any other relief (including relief against an [Administrator] *agency*).

* * * * *

JUDICIAL REVIEW; WITNESSES

SEC. 16. (a) A petition for review of action of the Administrator of the Environmental Protection Agency in promulgating any standard or regulation under section 6, 17, or 18 of this Act or any labeling regulation under section 8 of this Act may be filed only in

the United States Court of Appeals for the District of Columbia Circuit, and a petition for review of action of the [Administrator of the] Federal Aviation Administration in promulgating any standard or regulation under section [611 of the Federal Aviation Act of 1958] 44715 of title 49, United States Code, may be filed only in such court. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of either [Administrator] agency with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(b) If a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and was not available at the time of the proceeding before the Administrator of such Agency or the Federal Aviation Administration (as the case may be), the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before such [Administrator] agency, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. Such [Administrator] agency may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

(c) With respect to relief pending review of an action by either [Administrator] agency, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay is (1) likely to prevail on the merits in the review proceeding and (2) will suffer irreparable harm pending such proceeding.

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SECTION 604 OF THE CLEAN AIR ACT

SEC. 604. PHASE-OUT OF PRODUCTION AND CONSUMPTION OF CLASS I SUBSTANCES.

(a) * * *

* * * * *

(d) EXCEPTIONS FOR ESSENTIAL USES OF METHYL CHLOROFORM, MEDICAL DEVICES, AND AVIATION SAFETY.—

(1) * * *

* * * * *

(3) AVIATION SAFETY.—(A) Notwithstanding the termination of production required by subsection (b), the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211 (bromochlorodifluoromethane), halon-1301 (bromotrifluoromethane), and halon-2402 (dibromo-

tetrafluoroethane) solely for purposes of aviation safety if the [Administrator of the] Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.

(B) The [Administrator of the] Federal Aviation Administration shall, in consultation with the Administrator, examine whether safe and effective substitutes for methyl chloroform or alternative techniques will be available for nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue and whether an exception for such uses of methyl chloroform under this paragraph will be necessary for purposes of airline safety after January 1, 2005 and provide a report to Congress in 1998.

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