

115TH CONGRESS }  
*1st Session* }

HOUSE OF REPRESENTATIVES

{ REPORT  
{ 115-296

21ST CENTURY AVIATION INNOVATION, REFORM,  
AND REAUTHORIZATION ACT

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REPORT

OF THE

COMMITTEE ON TRANSPORTATION  
AND INFRASTRUCTURE

together with

DISSENTING VIEWS

[TO ACCOMPANY H.R. 2997]



SEPTEMBER 6, 2017.—Ordered to be printed

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SEPTEMBER 6, 2017.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2997]

[Including cost estimate of the Congressional Budget Office]

The Committee on Transportation and Infrastructure, to whom was referred the bill (H.R. 2997) to transfer operation of air traffic services currently provided by the Federal Aviation Administration to a separate not-for-profit corporate entity, to reauthorize programs of the Federal Aviation Administration, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:  
 Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “21st Century Aviation Innovation, Reform, and Reauthorization Act” or the “21st Century AIRR Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Effective date.

**TITLE I—AUTHORIZATIONS**

**Subtitle A—Funding of FAA Programs**

- Sec. 101. Airport planning and development and noise compatibility planning and programs.
- Sec. 102. Facilities and equipment.
- Sec. 103. FAA operations.
- Sec. 104. Adjustment to AIP program funding.
- Sec. 105. Funding for aviation programs.
- Sec. 106. Applicability.

**Subtitle B—Passenger Facility Charges**

- Sec. 111. Passenger facility charge modernization.
- Sec. 112. Pilot program for passenger facility charge authorizations.

**Subtitle C—Airport Improvement Program Modifications**

- Sec. 121. Clarification of airport obligation to provide FAA airport space.
- Sec. 122. Mothers’ rooms at airports.
- Sec. 123. Extension of competitive access reports.
- Sec. 124. Grant assurances.
- Sec. 125. Government share of project costs.
- Sec. 126. Updated veterans’ preference.
- Sec. 127. Special rule.
- Sec. 128. Marshall Islands, Micronesia, and Palau.
- Sec. 129. Nondiscrimination.
- Sec. 130. State block grant program expansion.
- Sec. 131. Midway Island Airport.
- Sec. 132. Property conveyance releases.
- Sec. 133. Minority and disadvantaged business participation.
- Sec. 134. Contract tower program.
- Sec. 135. Airport access roads in remote locations.
- Sec. 136. Buy America requirements.

**Subtitle D—Airport Noise and Environmental Streamlining**

- Sec. 151. Recycling plans for airports.
- Sec. 152. Pilot program sunset.
- Sec. 153. Extension of grant authority for compatible land use planning and projects by State and local governments.
- Sec. 154. Updating airport noise exposure maps.
- Sec. 155. Stage 3 aircraft study.
- Sec. 156. Addressing community noise concerns.
- Sec. 157. Study on potential health impacts of overflight noise.
- Sec. 158. Environmental mitigation pilot program.
- Sec. 159. Aircraft noise exposure.
- Sec. 160. Community involvement in FAA NextGen projects located in metroplexes.
- Sec. 161. Critical habitat on or near airport property.
- Sec. 162. Clarification of reimbursable allowed costs of FAA memoranda of agreement.

**TITLE II—AMERICAN AIR NAVIGATION SERVICES CORPORATION**

- Sec. 201. Purposes.

**Subtitle A—Establishment of Air Traffic Services Provider**

- Sec. 211. American Air Navigation Services Corporation.

**Subtitle B—Amendments to Federal Aviation Laws**

- Sec. 221. Definitions.
- Sec. 222. Sunset of FAA air traffic entities and officers.
- Sec. 223. Role of Administrator.
- Sec. 224. Emergency powers.
- Sec. 225. Presidential transfers in time of war.
- Sec. 226. Airway capital investment plan before date of transfer.
- Sec. 227. Aviation facilities before date of transfer.
- Sec. 228. Judicial review.
- Sec. 229. Civil penalties.

**Subtitle C—Other Matters**

- Sec. 241. Use of Federal technical facilities.
- Sec. 242. Ensuring progress on NextGen priorities before date of transfer.

- Sec. 243. Severability.
- Sec. 244. Prohibition on receipt of Federal funds.

#### TITLE III—FAA SAFETY CERTIFICATION REFORM

##### Subtitle A—General Provisions

- Sec. 301. Definitions.
- Sec. 302. Safety Oversight and Certification Advisory Committee.

##### Subtitle B—Aircraft Certification Reform

- Sec. 311. Aircraft certification performance objectives and metrics.
- Sec. 312. Organization designation authorizations.
- Sec. 313. ODA review.
- Sec. 314. Type certification resolution process.
- Sec. 315. Safety enhancing equipment and systems for small general aviation airplanes.
- Sec. 316. Review of certification process for small general aviation airplanes.

##### Subtitle C—Flight Standards Reform

- Sec. 331. Flight standards performance objectives and metrics.
- Sec. 332. FAA task force on flight standards reform.
- Sec. 333. Centralized safety guidance database.
- Sec. 334. Regulatory Consistency Communications Board.

##### Subtitle D—Safety Workforce

- Sec. 341. Safety workforce training strategy.
- Sec. 342. Workforce review.

##### Subtitle E—International Aviation

- Sec. 351. Promotion of United States aerospace standards, products, and services abroad.
- Sec. 352. Bilateral exchanges of safety oversight responsibilities.
- Sec. 353. FAA leadership abroad.
- Sec. 354. Registration, certification, and related fees.

#### TITLE IV—SAFETY

##### Subtitle A—General Provisions

- Sec. 401. FAA technical training.
- Sec. 402. Safety critical staffing.
- Sec. 403. International efforts regarding tracking of civil aircraft.
- Sec. 404. Aircraft data access and retrieval systems.
- Sec. 405. Advanced cockpit displays.
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- Sec. 411. Emergency medical equipment on passenger aircraft.
- Sec. 412. HIMS program.
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- Sec. 414. Flight attendant duty period limitations and rest requirements.
- Sec. 415. Secondary cockpit barriers.
- Sec. 416. Aviation maintenance industry technical workforce.
- Sec. 417. Critical airfield markings.

##### Subtitle B—Unmanned Aircraft Systems

- Sec. 431. Definitions.
- Sec. 432. Codification of existing law; additional provisions.
- Sec. 433. Unmanned aircraft test ranges.
- Sec. 434. Sense of Congress regarding unmanned aircraft safety.
- Sec. 435. UAS privacy review.
- Sec. 436. Public UAS operations by Tribal governments.
- Sec. 437. Evaluation of aircraft registration for small unmanned aircraft.
- Sec. 438. Study on roles of governments relating to low-altitude operation of small unmanned aircraft.
- Sec. 439. Study on financing of unmanned aircraft services.
- Sec. 440. Update of FAA comprehensive plan.
- Sec. 441. Cooperation related to certain counter-UAS technology.

#### TITLE V—AIR SERVICE IMPROVEMENTS

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- Sec. 501. Reliable air service in American Samoa.
- Sec. 502. Cell phone voice communication ban.
- Sec. 503. Advisory committee for aviation consumer protection.
- Sec. 504. Improved notification of insecticide use.
- Sec. 505. Advertisements and disclosure of fees for passenger air transportation.
- Sec. 506. Involuntarily bumping passengers after aircraft boarded.
- Sec. 507. Availability of consumer rights information.
- Sec. 508. Consumer complaints hotline.
- Sec. 509. Widespread disruptions.
- Sec. 510. Involuntarily denied boarding compensation.
- Sec. 511. Consumer information on actual flight times.
- Sec. 512. Advisory committee for transparency in air ambulance industry.
- Sec. 513. Air ambulance complaints.
- Sec. 514. Passenger rights.

##### Subtitle B—Aviation Consumers With Disabilities

- Sec. 541. Select subcommittee.

- Sec. 542. Aviation consumers with disabilities study.  
 Sec. 543. Feasibility study on in-cabin wheelchair restraint systems.  
 Sec. 544. Access advisory committee recommendations.

Subtitle C—Small Community Air Service

- Sec. 551. Essential air service authorization.  
 Sec. 552. Extension of final order establishing mileage adjustment eligibility.  
 Sec. 553. Study on essential air service reform.  
 Sec. 554. Small community air service.  
 Sec. 555. Air transportation to noneligible places.

TITLE VI—MISCELLANEOUS

- Sec. 601. Review of FAA strategic cybersecurity plan.  
 Sec. 602. Consolidation and realignment of FAA services and facilities.  
 Sec. 603. FAA review and reform.  
 Sec. 604. Aviation fuel.  
 Sec. 605. Right to privacy when using air traffic control system.  
 Sec. 606. Air shows.  
 Sec. 607. Part 91 review, reform, and streamlining.  
 Sec. 608. Aircraft registration.  
 Sec. 609. Air transportation of lithium cells and batteries.  
 Sec. 610. Remote tower pilot program for rural and small communities.  
 Sec. 611. Ensuring FAA readiness to provide seamless oceanic operations.  
 Sec. 612. Sense of Congress regarding women in aviation.  
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 Sec. 633. Part 107 implementation improvements.  
 Sec. 634. Part 107 transparency and technology improvements.  
 Sec. 635. Prohibitions against smoking on passenger flights.  
 Sec. 636. Consumer protection requirements relating to large ticket agents.  
 Sec. 637. Agency procurement reporting requirements.  
 Sec. 638. Zero-emission vehicles and technology.  
 Sec. 639. Employee Assault Prevention and Response Plans.  
 Sec. 640. Study on training of customer-facing air carrier employees.  
 Sec. 641. Minimum dimensions for passenger seats.  
 Sec. 642. Study of ground transportation options.

**SEC. 2. EFFECTIVE DATE.**

Except as otherwise expressly provided, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

## TITLE I—AUTHORIZATIONS

### Subtitle A—Funding of FAA Programs

**SEC. 101. AIRPORT PLANNING AND DEVELOPMENT AND NOISE COMPATIBILITY PLANNING AND PROGRAMS.**

(a) AUTHORIZATION.—Section 48103(a) of title 49, United States Code, is amended by striking “section 47504(c)” and all that follows through the period at the end and inserting the following: “section 47504(c)—

- “(1) \$3,597,000,000 for fiscal year 2018;  
 “(2) \$3,666,000,000 for fiscal year 2019;  
 “(3) \$3,746,000,000 for fiscal year 2020;  
 “(4) \$3,829,000,000 for fiscal year 2021;  
 “(5) \$3,912,000,000 for fiscal year 2022; and  
 “(6) \$3,998,000,000 for fiscal year 2023.”

(b) OBLIGATION AUTHORITY.—Section 47104(c) of title 49, United States Code, is amended in the matter preceding paragraph (1) by striking “September 30, 2017,” and inserting “September 30, 2023,”.



**SEC. 102. FACILITIES AND EQUIPMENT.**

(a) **AUTHORIZATION OF APPROPRIATIONS FROM AIRPORT AND AIRWAY TRUST FUND.**—Section 48101(a) of title 49, United States Code, is amended by striking paragraphs (1) through (5) and inserting the following:

“(1) \$2,920,000,000 for fiscal year 2018.

“(2) \$2,984,000,000 for fiscal year 2019.

“(3) \$3,049,000,000 for fiscal year 2020.”

(b) **SET ASIDES.**—Section 48101(d) of title 49, United States Code, is amended by inserting “, carried out using amounts appropriated under subsection (a),” after “air traffic control modernization project”.

(c) **AUTHORIZATION OF APPROPRIATIONS FROM GENERAL FUND.**—

(1) **IN GENERAL.**—Title 49, United States Code, is amended by inserting after section 48101 the following:

**“§ 48101a. Other facilities and equipment**

“There is authorized to be appropriated to the Secretary of Transportation to acquire, establish, and improve facilities and equipment (other than facilities and equipment relating to air traffic services)—

“(1) \$189,000,000 for fiscal year 2021;

“(2) \$193,000,000 for fiscal year 2022; and

“(3) \$198,000,000 for fiscal year 2023.”

(2) **CLERICAL AMENDMENT.**—The analysis for chapter 481 of title 49, United States Code, is amended by inserting after the item relating to section 48101 the following:

“48101a. Other facilities and equipment.”

(3) **CONFORMING AMENDMENTS.**—

(A) **SUBMISSION OF BUDGET INFORMATION AND LEGISLATIVE RECOMMENDATIONS AND COMMENTS.**—Section 48109 of title 49, United States Code, is amended by inserting “, 48101a,” before “or 48102”.

(B) **REPROGRAMMING NOTIFICATION REQUIREMENT.**—Section 48113 of title 49, United States Code, is amended by inserting “48101a,” before “or 48103”.

**SEC. 103. FAA OPERATIONS.**

(a) **AUTHORIZATION OF APPROPRIATIONS FROM GENERAL FUND.**—Section 106(k)(1) of title 49, United States Code, is amended—

(1) in the paragraph heading by inserting “FROM GENERAL FUND” after “MAINTENANCE”; and

(2) by striking subparagraphs (A) through (E) and inserting the following:

“(A) \$2,059,000,000 for fiscal year 2018;

“(B) \$2,126,000,000 for fiscal year 2019;

“(C) \$2,197,000,000 for fiscal year 2020;

“(D) \$1,957,000,000 for fiscal year 2021;

“(E) \$2,002,000,000 for fiscal year 2022; and

“(F) \$2,047,000,000 for fiscal year 2023.”

(b) **AUTHORIZATION OF APPROPRIATIONS FROM AIRPORT AND AIRWAY TRUST FUND.**—Section 106(k)(2) of title 49, United States Code, is amended to read as follows:

“(2) **SALARIES, OPERATIONS, AND MAINTENANCE FROM AIRPORT AND AIRWAY TRUST FUND.**—There is authorized to be appropriated to the Secretary out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 for salaries, operations, and maintenance of the Administration—

“(A) \$8,073,000,000 for fiscal year 2018;

“(B) \$8,223,000,000 for fiscal year 2019; and

“(C) \$8,374,000,000 for fiscal year 2020.”

(c) **AUTHORITY TO TRANSFER FUNDS.**—Section 106(k)(3) of title 49, United States Code, is amended—

(1) by striking “fiscal years 2012 through 2017” and inserting “fiscal years 2018 through 2020”; and

(2) by striking “paragraph (1)” each place it appears and inserting “paragraphs (1) and (2)”.

**SEC. 104. ADJUSTMENT TO AIP PROGRAM FUNDING.**

Section 48112 of title 49, United States Code, and the item relating to such section in the analysis for chapter 481 of such title, are repealed.

**SEC. 105. FUNDING FOR AVIATION PROGRAMS.**

Section 48114(a)(1)(A)(ii) of title 49, United States Code, is amended by striking “in fiscal year 2014 and each fiscal year thereafter” and inserting “in fiscal years 2014 through 2017”.

**SEC. 106. APPLICABILITY.**

This subtitle, and the amendments made by this subtitle, shall apply only to fiscal years beginning after September 30, 2017.

## **Subtitle B—Passenger Facility Charges**

**SEC. 111. PASSENGER FACILITY CHARGE MODERNIZATION.**

Section 40117(b) of title 49, United States Code, is amended—

- (1) in paragraph (1) by striking “or \$3” and inserting “\$3, \$4, or \$4.50”;
- (2) by repealing paragraph (4);
- (3) in paragraph (6)—
  - (A) by striking “specified in paragraphs (1) and (4)” and inserting “specified in paragraph (1)”; and
  - (B) by striking “imposed under paragraph (1) or (4)” and inserting “imposed under paragraph (1)”; and
- (4) in paragraph (7)(A)—
  - (A) by striking “specified in paragraphs (1), (4), and (6)” and inserting “specified in paragraphs (1) and (6)”; and
  - (B) by striking “imposed under paragraph (1) or (4)” and inserting “imposed under paragraph (1)”.

**SEC. 112. PILOT PROGRAM FOR PASSENGER FACILITY CHARGE AUTHORIZATIONS.**

Section 40117(l) of title 49, United States Code, is amended—

- (1) in the subsection heading by striking “AT NONHUB AIRPORTS”; and
- (2) in paragraph (1) by striking “nonhub”.

## **Subtitle C—Airport Improvement Program Modifications**

**SEC. 121. CLARIFICATION OF AIRPORT OBLIGATION TO PROVIDE FAA AIRPORT SPACE.**

Section 44502 of title 49, United States Code, is amended by adding at the end the following:

“(f) AIRPORT SPACE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator of the Federal Aviation Administration may not require an airport owner, operator, or sponsor (as defined in section 47102) to provide building construction, maintenance, utilities, administrative support, or space on airport property to the Federal Aviation Administration without adequate compensation.

“(2) EXCEPTIONS.—Paragraph (1) does not apply in any case in which an airport owner, operator, or sponsor—

“(A) provides land or buildings without compensation prior to the date of transfer (as defined in section 90101(a)) to the Federal Aviation Administration for facilities used to carry out activities related to air traffic control or navigation pursuant to a grant assurance; or

“(B) provides goods or services to the Federal Aviation Administration without compensation or at below-market rates pursuant to a negotiated agreement between the owner, operator, or sponsor and the Administrator.”.

**SEC. 122. MOTHERS' ROOMS AT AIRPORTS.**

(a) LACTATION AREA DEFINED.—Section 47102 of title 49, United States Code, is amended by adding at the end the following:

“(29) ‘lactation area’ means a room or other location in a commercial service airport that—

“(A) provides a location for members of the public to express breast milk that is shielded from view and free from intrusion from the public;

“(B) has a door that can be locked;

“(C) includes a place to sit, a table or other flat surface, and an electrical outlet;

“(D) is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

“(E) is not located in a restroom.”.

(b) **PROJECT GRANT WRITTEN ASSURANCES FOR LARGE AND MEDIUM HUB AIRPORTS.**—

(1) **IN GENERAL.**—Section 47107(a) of title 49, United States Code, is amended—

(A) in paragraph (20) by striking “and” at the end;  
 (B) in paragraph (21) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:  
 “(22) with respect to a medium or large hub airport, the airport owner or operator will maintain a lactation area in each passenger terminal building of the airport in the sterile area (as defined in section 1540.5 of title 49, Code of Federal Regulations) of the building.”.

(2) **APPLICABILITY.**—

(A) **IN GENERAL.**—The amendment made by paragraph (1) shall apply to a project grant application submitted for a fiscal year beginning on or after the date that is 2 years after the date of enactment of this Act.

(B) **SPECIAL RULE.**—The requirement in the amendment made by paragraph (1) that a lactation area be located in the sterile area of a passenger terminal building shall not apply with respect to a project grant application for a period of time, determined by the Secretary of Transportation, if the Secretary determines that construction or maintenance activities make it impracticable or unsafe for the lactation area to be located in the sterile area of the building.

(c) **TERMINAL DEVELOPMENT COSTS.**—Section 47119(a) of title 49, United States Code, is amended by adding at the end the following:

“(3) **LACTATION AREAS.**—In addition to the projects described in paragraph (1), the Secretary may approve a project for terminal development for the construction or installation of a lactation area at a commercial service airport.”.

(d) **PRE-EXISTING FACILITIES.**—On application by an airport sponsor, the Secretary may determine that a lactation area in existence on the date of enactment of this Act complies with the requirement of section 47107(a)(22) of title 49, United States Code, as added by this section, notwithstanding the absence of one of the facilities or characteristics referred to in the definition of the term “lactation area” in section 47102 of such title, as added by this section.

**SEC. 123. EXTENSION OF COMPETITIVE ACCESS REPORTS.**

Section 47107(r)(3) of title 49, United States Code, is amended by striking “October 1, 2017” and inserting “October 1, 2023”.

**SEC. 124. GRANT ASSURANCES.**

(a) **CONSTRUCTION OF RECREATIONAL AIRCRAFT.**—Section 47107 is amended by adding at the end the following:

“(u) **CONSTRUCTION OF RECREATIONAL AIRCRAFT.**—

“(1) **IN GENERAL.**—The construction of a covered aircraft shall be treated as an aeronautical activity for purposes of—

“(A) determining an airport’s compliance with a grant assurance made under this section or any other provision of law; and

“(B) the receipt of Federal financial assistance for airport development.

“(2) **COVERED AIRCRAFT DEFINED.**—In this subsection, the term ‘covered aircraft’ means an aircraft—

“(A) used or intended to be used exclusively for recreational purposes; and

“(B) constructed or under construction by a private individual at a general aviation airport.”.

(b) **COMMUNITY USE OF AIRPORT LAND.**—Section 47107 of title 49, United States Code, as amended by this section, is further amended by adding at the end the following:

“(v) **COMMUNITY USE OF AIRPORT LAND.**—

“(1) **IN GENERAL.**—Notwithstanding subsection (a)(13), and subject to paragraph (2), the sponsor of a public-use airport shall not be considered to be in violation of this subtitle, or to be found in violation of a grant assurance made under this section, or under any other provision of law, as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor has entered into an agreement, including a revised agreement, with a local government providing for the use of airport property for an interim compatible recreational purpose at below fair market value.

“(2) **RESTRICTIONS.**—This subsection shall apply only—

“(A) to an agreement regarding airport property that was initially entered into before the publication of the Federal Aviation Administration’s Policy and Procedures Concerning the Use of Airport Revenue, dated February 16, 1999;

“(B) if the agreement between the sponsor and the local government is subordinate to any existing or future agreements between the sponsor and the Secretary, including agreements related to a grant assurance under this section;

“(C) to airport property that was acquired under a Federal airport development grant program;

“(D) if the airport sponsor has provided a written statement to the Administrator that the property made available for a recreational purpose will not be needed for any aeronautical purpose during the next 10 years;

“(E) if the agreement includes a term of not more than 2 years to prepare the airport property for the interim compatible recreational purpose and not more than 10 years of use for that purpose;

“(F) if the recreational purpose will not impact the aeronautical use of the airport;

“(G) if the airport sponsor provides a certification that the sponsor is not responsible for preparation, start-up, operations, maintenance, or any other costs associated with the recreational purpose; and

“(H) if the recreational purpose is consistent with Federal land use compatibility criteria under section 47502.

“(3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as permitting a diversion of airport revenue for the capital or operating costs associated with the community use of airport land.”.

**SEC. 125. GOVERNMENT SHARE OF PROJECT COSTS.**

Section 47109(a) of title 49, United States Code, is amended—

(1) in paragraph (1) by striking “primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports;” and inserting “medium or large hub airport;”;

(2) by striking paragraph (5) and inserting the following:

“(5) 95 percent for a project that—

“(A) the Administrator determines is a successive phase of a multi-phase construction project for which the sponsor received a grant in fiscal year 2011; and

“(B) for which the United States Government’s share of allowable project costs could otherwise be 90 percent under paragraph (2) or (3).”.

**SEC. 126. UPDATED VETERANS’ PREFERENCE.**

Section 47112(c)(1)(C) of title 49, United States Code, is amended—

(1) by striking “or Operation New Dawn for more” and inserting “Operation New Dawn, Operation Inherent Resolve, Operation Freedom’s Sentinel, or any successor contingency operation to such operations for more”; and

(2) by striking “or Operation New Dawn (whichever is later)” and inserting “Operation New Dawn, Operation Inherent Resolve, Operation Freedom’s Sentinel, or any successor contingency operation to such operations (whichever is later)”.

**SEC. 127. SPECIAL RULE.**

Section 47114(d)(3) of title 49, United States Code, is amended by adding at the end the following:

“(C) During fiscal years 2018 through 2020—

“(i) an airport that accrued apportionment funds under subparagraph (A) in fiscal year 2013 that is listed as having an unclassified status under the most recent national plan of integrated airport systems shall continue to accrue apportionment funds under subparagraph (A) at the same amount the airport accrued apportionment funds in fiscal year 2013, subject to the conditions of this paragraph;

“(ii) notwithstanding the period of availability as described in section 47117(b), an amount apportioned to an airport under clause (i) shall be available to the airport only during the fiscal year in which the amount is apportioned; and

“(iii) notwithstanding the waiver permitted under section 47117(c)(2), an airport receiving apportionment funds under clause (i) may not waive its claim to any part of the apportioned funds in order to make the funds available for a grant for another public-use airport.

“(D) An airport that re-establishes its classified status shall be eligible to accrue apportionment funds pursuant to subparagraph (A) so long as such airport retains its classified status.”.

**SEC. 128. MARSHALL ISLANDS, MICRONESIA, AND PALAU.**

Section 47115 of title 49, United States Code, is amended—

(1) by striking subsection (i);

- (2) by redesignating subsection (j) as subsection (i); and
- (3) in subsection (i) (as so redesignated) by striking “fiscal years 2012 through 2017” and inserting “fiscal years 2017 through 2023”.

**SEC. 129. NONDISCRIMINATION.**

Section 47123 of title 49, United States Code, is amended—

- (1) by striking “The Secretary of Transportation” and inserting the following:

“(a) IN GENERAL.—The Secretary of Transportation”; and

- (2) by adding at the end the following:

“(b) INDIAN EMPLOYMENT.—

“(1) TRIBAL SPONSOR PREFERENCE.—Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on a project or contract at—

“(A) an airport sponsored by an Indian tribal government; or

“(B) an airport located on an Indian reservation.

“(2) STATE PREFERENCE.—A State may implement a preference for employment of Indians on a project carried out under this subchapter near an Indian reservation.

“(3) IMPLEMENTATION.—The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.

“(4) INDIAN TRIBAL GOVERNMENT DEFINED.—In this section, the term ‘Indian tribal government’ has the same meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).”.

**SEC. 130. STATE BLOCK GRANT PROGRAM EXPANSION.**

Section 47128(a) of title 49, United States Code, is amended by striking “not more than 9 qualified States for fiscal years 2000 and 2001 and 10 qualified States for each fiscal year thereafter” and inserting “not more than 20 qualified States for each fiscal year”.

**SEC. 131. MIDWAY ISLAND AIRPORT.**

Section 186(d) of the Vision 100—Century of Aviation Reauthorization Act (117 Stat. 2518) is amended in the first sentence by striking “fiscal years 2012 through 2017” and inserting “fiscal years 2017 through 2023”.

**SEC. 132. PROPERTY CONVEYANCE RELEASES.**

Section 817(a) of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 47125 note) is amended—

- (1) by striking “or section 23” and inserting “, section 23”; and

- (2) by inserting “, or section 47125 of title 49, United States Code” before the period at the end.

**SEC. 133. MINORITY AND DISADVANTAGED BUSINESS PARTICIPATION.**

Congress finds the following:

(1) While significant progress has occurred due to the establishment of the airport disadvantaged business enterprise program (49 U.S.C. 47107(e) and 47113), discrimination and related barriers continue to pose significant obstacles for minority- and women-owned businesses seeking to do business in airport-related markets across the Nation. These continuing barriers merit the continuation of the airport disadvantaged business enterprise program.

(2) Congress has received and reviewed testimony and documentation of race and gender discrimination from numerous sources, including congressional hearings and roundtables, scientific reports, reports issued by public and private agencies, news stories, reports of discrimination by organizations and individuals, and discrimination lawsuits. This testimony and documentation shows that race- and gender-neutral efforts alone are insufficient to address the problem.

(3) This testimony and documentation demonstrates that discrimination across the Nation poses a barrier to full and fair participation in airport-related businesses of women business owners and minority business owners in the racial groups detailed in parts 23 and 26 of title 49, Code of Federal Regulations, and has impacted firm development and many aspects of airport-related business in the public and private markets.

(4) This testimony and documentation provides a strong basis that there is a compelling need for the continuation of the airport disadvantaged business enterprise program and the airport concessions disadvantaged business enterprise program to address race and gender discrimination in airport-related business.

**SEC. 134. CONTRACT TOWER PROGRAM.****(a) AIR TRAFFIC CONTROL CONTRACT PROGRAM.—**

(1) **SPECIAL RULE.**—Section 47124(b)(1)(B) of title 49, United States Code, is amended by striking “exceeds the benefit for a period of 18 months after such determination is made” and inserting the following: “exceeds the benefit—

“(i) for the 1-year period after such determination is made; or

“(ii) if an appeal of such determination is requested, for the 1-year period described in subsection (d)(4)(D)”.

(2) **FUNDING OF COST-SHARE PROGRAM.**—Section 47124(b)(3)(E) of title 49, United States Code, is amended to read as follows:

“(E) **FUNDING.**—Amounts appropriated pursuant to section 106(k)(1) may be used to carry out this paragraph.”.

**(3) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—**

(A) **GRANTS.**—Section 47124(b)(4)(A) of title 49, United States Code, is amended in each of clauses (i)(III) and (ii)(III) by inserting “, including remote air traffic control tower equipment certified by the Federal Aviation Administration” after “1996”.

(B) **ELIGIBILITY.**—Section 47124(b)(4)(B) of title 49, United States Code, is amended to read as follows:

“(B) **ELIGIBILITY.**—

“(i) **BEFORE DATE OF TRANSFER.**—Before the date of transfer (as defined in section 90101(a)), an airport sponsor shall be eligible for a grant under this paragraph only if—

“(I)(aa) the sponsor is a participant in the Federal Aviation Administration contract tower program established under subsection (a) and continued under paragraph (1) or the pilot program established under paragraph (3); or

“(bb) construction of a nonapproach control tower would qualify the sponsor to be eligible to participate in such program;

“(II) the sponsor certifies that it will pay not less than 10 percent of the cost of the activities for which the sponsor is receiving assistance under this paragraph;

“(III) the Secretary affirmatively accepts the proposed contract tower into a contract tower program under this section and certifies that the Secretary will seek future appropriations to pay the Federal Aviation Administration’s cost of the contract to operate the tower to be constructed under this paragraph;

“(IV) the sponsor certifies that it will pay its share of the cost of the contract to operate the tower to be constructed under this paragraph; and

“(V) in the case of a tower to be constructed under this paragraph from amounts made available under section 47114(d)(2) or 47114(d)(3)(B), the Secretary certifies that—

“(aa) the Federal Aviation Administration has consulted the State within the borders of which the tower is to be constructed and the State supports the construction of the tower as part of its State airport capital plan; and

“(bb) the selection of the tower for funding is based on objective criteria.

“(ii) **ON AND AFTER DATE OF TRANSFER.**—On and after the date of transfer (as defined in section 90101(a)), an airport sponsor shall be eligible for a grant under this paragraph only if—

“(I) the Secretary determines that the tower to be constructed at the sponsor’s airport using the amounts of the grant will be operated pursuant to an agreement entered into by the American Air Navigation Services Corporation and an entity pursuant to section 90302(c)(3);

“(II) the sponsor certifies that it will pay not less than 10 percent of the cost of the activities for which the sponsor is receiving assistance under this paragraph; and

“(III) in the case of a tower to be constructed under this paragraph from amounts made available under section 47114(d)(2) or 47114(d)(3)(B), the Secretary certifies that—

“(aa) the Federal Aviation Administration has consulted the State within the borders of which the tower is to be constructed and the State supports the construction of the tower as part of its State airport capital plan; and

“(bb) the selection of the tower for funding is based on objective criteria.”.

- (C) LIMITATION ON FEDERAL SHARE.—Section 47124(b)(4) of title 49, United States Code, is amended by striking subparagraph (C).
- (4) BENEFIT-TO-COST CALCULATION FOR PROGRAM APPLICANTS.—Section 47124(b)(3) of title 49, United States Code, is amended by adding at the end the following:
- “(G) BENEFIT-TO-COST CALCULATION.—Not later than 90 days after receiving an application to the Contract Tower Program, the Secretary shall calculate a benefit-to-cost ratio (as described in subsection (d)) for the applicable air traffic control tower for purposes of selecting towers for participation in the Contract Tower Program.”.
- (b) SAFETY AUDITS.—Section 47124(c) of title 49, United States Code, is amended—
- (1) by striking “The Secretary” and inserting the following:
- “(1) BEFORE DATE OF TRANSFER.—Before the date of transfer (as defined in section 90101(a)), the Secretary”; and
- (2) by adding at the end the following:
- “(2) ON AND AFTER DATE OF TRANSFER.—On and after the date of transfer (as defined in section 90101(a)), oversight of air traffic control towers that receive funding under this section shall be carried out in accordance with performance-based regulations and minimum safety standards prescribed under section 90501.”.
- (c) CRITERIA TO EVALUATE PARTICIPANTS.—Section 47124 of title 49, United States Code, is amended by adding at the end the following:
- “(d) CRITERIA TO EVALUATE PARTICIPANTS.—
- “(1) TIMING OF EVALUATIONS.—
- “(A) TOWERS PARTICIPATING IN COST-SHARE PROGRAM.—In the case of an air traffic control tower that is operated under the program established under subsection (b)(3), the Secretary shall annually calculate a benefit-to-cost ratio with respect to the tower.
- “(B) TOWERS PARTICIPATING IN CONTRACT TOWER PROGRAM.—In the case of an air traffic control tower that is operated under the program established under subsection (a) and continued under subsection (b)(1), the Secretary shall not calculate a benefit-to-cost ratio after the date of enactment of this subsection with respect to the tower unless the Secretary determines that the annual aircraft traffic at the airport where the tower is located has decreased—
- “(i) by more than 25 percent from the previous year; or
- “(ii) by more than 60 percent cumulatively in the preceding 3-year period.
- “(2) COSTS TO BE CONSIDERED.—In establishing a benefit-to-cost ratio under this section with respect to an air traffic control tower, the Secretary shall consider only the following costs:
- “(A) The Federal Aviation Administration’s actual cost of wages and benefits of personnel working at the tower.
- “(B) The Federal Aviation Administration’s actual telecommunications costs directly associated with the tower.
- “(C) The Federal Aviation Administration’s costs of purchasing and installing any air traffic control equipment that would not have been purchased or installed except for the operation of the tower.
- “(D) The Federal Aviation Administration’s actual travel costs associated with maintaining air traffic control equipment that is owned by the Administration and would not be maintained except for the operation of the tower.
- “(3) OTHER CRITERIA TO BE CONSIDERED.—In establishing a benefit-to-cost ratio under this section with respect to an air traffic control tower, the Secretary shall add a 10 percentage point margin of error to the benefit-to-cost ratio determination to acknowledge and account for the direct and indirect economic and other benefits that are not included in the criteria the Secretary used in calculating that ratio.
- “(4) REVIEW OF COST-BENEFIT DETERMINATIONS.—In issuing a benefit-to-cost ratio determination under this section with respect to an air traffic control tower located at an airport, the Secretary shall implement the following procedures:
- “(A) The Secretary shall provide the airport (or the State or local government having jurisdiction over the airport) at least 90 days following the date of receipt of the determination to submit to the Secretary a request for an appeal of the determination, together with updated or additional data in support of the appeal.
- “(B) Upon receipt of a request for an appeal submitted pursuant to subparagraph (A), the Secretary shall—

“(i) transmit to the Administrator of the Federal Aviation Administration any updated or additional data submitted in support of the appeal; and

“(ii) provide the Administrator not more than 90 days to review the data and provide a response to the Secretary based on the review.

“(C) After receiving a response from the Administrator pursuant to subparagraph (B), the Secretary shall—

“(i) provide the airport, State, or local government that requested the appeal at least 30 days to review the response; and

“(ii) withhold from taking further action in connection with the appeal during that 30-day period.

“(D) If, after completion of the appeal procedures with respect to the determination, the Secretary requires the tower to transition into the program established under subsection (b)(3), the Secretary shall not require a cost-share payment from the airport, State, or local government for 1 year following the last day of the 30-day period described in subparagraph (C).”.

**SEC. 135. AIRPORT ACCESS ROADS IN REMOTE LOCATIONS.**

Notwithstanding section 47102 of title 49, United States Code, for fiscal years 2017 through 2020, the definition of the term “terminal development” under that section includes the development of an airport access road that—

(1) is located in a noncontiguous State;

(2) is not more than 3 miles in length;

(3) connects to the nearest public roadways of not more than the 2 closest census designated places; and

(4) is constructed for the purpose of connecting the census designated places with a planned or newly constructed airport.

**SEC. 136. BUY AMERICA REQUIREMENTS.**

(a) NOTICE OF WAIVERS.—If the Secretary of Transportation determines that it is necessary to waive the application of section 50101(a) of title 49, United States Code, based on a finding under section 50101(b) of that title, the Secretary, at least 10 days before the date on which the waiver takes effect, shall—

(1) make publicly available, in an easily identifiable location on the website of the Department of Transportation, a detailed written justification of the waiver determination; and

(2) provide an informal public notice and comment opportunity on the waiver determination.

(b) ANNUAL REPORT.—For each fiscal year, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on waivers issued under section 50101 of title 49, United States Code, during the fiscal year.

## **Subtitle D—Airport Noise and Environmental Streamlining**

**SEC. 151. RECYCLING PLANS FOR AIRPORTS.**

Section 47106(a)(6) of title 49, United States Code, is amended by inserting “that includes the project” before “, the master plan”.

**SEC. 152. PILOT PROGRAM SUNSET.**

(a) IN GENERAL.—Section 47140 of title 49, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—Section 47140a of title 49, United States Code, is redesignated as section 47140.

(c) CLERICAL AMENDMENTS.—The analysis for chapter 471 of title 49, United States Code, is amended—

(1) by striking the items relating to sections 47140 and 47140a; and

(2) by inserting after the item relating to section 47139 the following:

“47140. Increasing the energy efficiency of airport power sources.”.

**SEC. 153. EXTENSION OF GRANT AUTHORITY FOR COMPATIBLE LAND USE PLANNING AND PROJECTS BY STATE AND LOCAL GOVERNMENTS.**

Section 47141(f) of title 49, United States Code, is amended by striking “September 30, 2017” and inserting “September 30, 2023”.

**SEC. 154. UPDATING AIRPORT NOISE EXPOSURE MAPS.**

Section 47503(b) of title 49, United States Code, is amended to read as follows:

“(b) REVISED MAPS.—



“(1) IN GENERAL.—An airport operator that submitted a noise exposure map under subsection (a) shall submit a revised map to the Secretary if, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration.

“(2) TIMING.—A submission under paragraph (1) shall be required only if the relevant change in the operation of the airport occurs during—

“(A) the forecast period of the applicable noise exposure map submitted by an airport operator under subsection (a); or

“(B) the implementation period of the airport operator’s noise compatibility program.”.

**SEC. 155. STAGE 3 AIRCRAFT STUDY.**

(a) STUDY.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall initiate a review of the potential benefits, costs, and other impacts that would result from a phaseout of covered stage 3 aircraft.

(b) CONTENTS.—The review shall include—

(1) a determination of the number, types, frequency of operations, and owners and operators of covered stage 3 aircraft;

(2) an analysis of the potential benefits, costs, and other impacts to air carriers, general aviation operators, airports, communities surrounding airports, and the general public associated with phasing out or reducing the operations of covered stage 3 aircraft, assuming such a phaseout or reduction is put into effect over a reasonable period of time;

(3) a determination of lessons learned from the phaseout of stage 2 aircraft that might be applicable to a phaseout or reduction in the operations of covered stage 3 aircraft, including comparisons between the benefits, costs, and other impacts associated with the phaseout of stage 2 aircraft and the potential benefits, costs, and other impacts determined under paragraph (2);

(4) a determination of the costs and logistical challenges associated with recertifying stage 3 aircraft capable of meeting stage 4 noise levels; and

(5) a determination of stakeholder views on the feasibility and desirability of phasing out covered stage 3 aircraft, including the views of—

(A) air carriers;

(B) airports;

(C) communities surrounding airports;

(D) aircraft and avionics manufacturers;

(E) operators of covered stage 3 aircraft other than air carriers; and

(F) such other stakeholders and aviation experts as the Comptroller General considers appropriate.

(c) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review.

(d) COVERED STAGE 3 AIRCRAFT DEFINED.—In this section, the term “covered stage 3 aircraft” means an aircraft weighing more than 75,000 pounds that is not capable of meeting the stage 4 noise levels in part 36 of title 14, Code of Federal Regulations.

**SEC. 156. ADDRESSING COMMUNITY NOISE CONCERNS.**

When proposing a new area navigation departure procedure, or amending an existing procedure that would direct aircraft between the surface and 6,000 feet above ground level over noise sensitive areas, the Administrator of the Federal Aviation Administration shall consider the feasibility of dispersal headings or other lateral track variations to address community noise concerns, if—

(1) the affected airport operator, in consultation with the affected community, submits a request to the Administrator for such a consideration;

(2) the airport operator’s request would not, in the judgment of the Administrator, conflict with the safe and efficient operation of the national airspace system; and

(3) the effect of a modified departure procedure would not significantly increase noise over noise sensitive areas, as determined by the Administrator.

**SEC. 157. STUDY ON POTENTIAL HEALTH IMPACTS OF OVERFLIGHT NOISE.**

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall enter into an agreement with an eligible institution of higher education to conduct a study on the

health impacts of noise from aircraft flights on residents exposed to a range of noise levels from such flights.

(b) SCOPE OF STUDY.—The study shall—

(1) include an examination of the incremental health impacts attributable to noise exposure that result from aircraft flights, including sleep disturbance and elevated blood pressure;

(2) be focused on residents in the metropolitan area of—

- (A) Boston;
- (B) Chicago;
- (C) the District of Columbia;
- (D) New York;
- (E) the Northern California Metroplex;
- (F) Phoenix;
- (G) the Southern California Metroplex; or
- (H) such other area as may be identified by the Administrator;

(3) consider, in particular, the incremental health impacts on residents living partly or wholly underneath flight paths most frequently used by aircraft flying at an altitude lower than 10,000 feet, including during takeoff or landing; and

(4) include an assessment of the relationship between a perceived increase in aircraft noise, including as a result of a change in flight paths that increases the visibility of aircraft from a certain location, and an actual increase in aircraft noise, particularly in areas with high or variable levels of nonaircraft-related ambient noise.

(c) ELIGIBILITY.—An institution of higher education is eligible to conduct the study if the institution—

(1) has—

(A) a school of public health that has participated in the Center of Excellence for Aircraft Noise and Aviation Emissions Mitigation of the Federal Aviation Administration; or

(B) a center for environmental health that receives funding from the National Institute of Environmental Health Sciences;

(2) is located in one of the areas identified in subsection (b);

(3) applies to the Administrator in a timely fashion;

(4) demonstrates to the satisfaction of the Administrator that the institution is qualified to conduct the study;

(5) agrees to submit to the Administrator, not later than 3 years after entering into an agreement under subsection (a), the results of the study, including any source materials used; and

(6) meets such other requirements as the Administrator determines necessary.

(d) REPORT.—Not later than 90 days after the Administrator receives the results of the study, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the results.

#### SEC. 158. ENVIRONMENTAL MITIGATION PILOT PROGRAM.

(a) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program involving not more than 6 projects at public-use airports in accordance with this section.

(b) GRANTS.—In carrying out the program, the Secretary may make grants to sponsors of public-use airports from funds apportioned under section 47117(e)(1)(A) of title 49, United States Code.

(c) USE OF FUNDS.—Amounts from a grant received by the sponsor of a public-use airport under the program shall be used for environmental mitigation projects that will measurably reduce or mitigate aviation impacts on noise, air quality, or water quality at the airport or within 5 miles of the airport.

(d) ELIGIBILITY.—Notwithstanding any other provision of chapter 471 of title 49, United States Code, an environmental mitigation project approved under this section shall be treated as eligible for assistance under that chapter.

(e) SELECTION CRITERIA.—In selecting from among applicants for participation in the program, the Secretary may give priority consideration to projects that—

(1) will achieve the greatest reductions in aircraft noise, airport emissions, or airport water quality impacts either on an absolute basis or on a per dollar of funds expended basis; and

(2) will be implemented by an eligible consortium.

(f) FEDERAL SHARE.—The Federal share of the cost of a project carried out under the program shall be 50 percent.

(g) MAXIMUM AMOUNT.—Not more than \$2,500,000 may be made available by the Secretary in grants under the program for any single project.

(h) IDENTIFYING BEST PRACTICES.—The Secretary may establish and publish information identifying best practices for reducing or mitigating aviation impacts on noise, air quality, and water quality at airports or in the vicinity of airports based on the projects carried out under the program.

(i) SUNSET.—The program shall terminate 5 years after the Secretary makes the first grant under the program.

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

(1) ELIGIBLE CONSORTIUM.—The term “eligible consortium” means a consortium that is comprised of 2 or more of the following entities:

- (A) Businesses incorporated in the United States.
- (B) Public or private educational or research organizations located in the United States.
- (C) Entities of State or local governments in the United States.
- (D) Federal laboratories.

(2) ENVIRONMENTAL MITIGATION PROJECT.—The term “environmental mitigation project” means a project that—

- (A) introduces new environmental mitigation techniques or technologies that have been proven in laboratory demonstrations;
- (B) proposes methods for efficient adaptation or integration of new concepts into airport operations; and
- (C) will demonstrate whether new techniques or technologies for environmental mitigation are—
  - (i) practical to implement at or near multiple public-use airports; and
  - (ii) capable of reducing noise, airport emissions, or water quality impacts in measurably significant amounts.

**SEC. 159. AIRCRAFT NOISE EXPOSURE.**

(a) REVIEW.—The Administrator of the Federal Aviation Administration shall conduct a review of the relationship between aircraft noise exposure and its effects on communities around airports.

(b) REPORT.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator shall submit to Congress a report containing the results of the review.

(2) PRELIMINARY RECOMMENDATIONS.—The report shall contain such preliminary recommendations as the Administrator determines appropriate for revising the land use compatibility guidelines in part 150 of title 14, Code of Federal Regulations, based on the results of the review and in coordination with other agencies.

**SEC. 160. COMMUNITY INVOLVEMENT IN FAA NEXTGEN PROJECTS LOCATED IN METROPLEXES.**

(a) COMMUNITY INVOLVEMENT POLICY.—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall complete a review of the Federal Aviation Administration’s community involvement practices for Next Generation Air Transportation System (NextGen) projects located in metroplexes identified by the Administration. The review shall include, at a minimum, a determination of how and when to engage airports and communities in performance-based navigation proposals.

(b) REPORT.—Not later than 60 days after completion of the review, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on—

- (1) how the Administration will improve community involvement practices for NextGen projects located in metroplexes;
- (2) how and when the Administration will engage airports and communities in performance-based navigation proposals; and
- (3) lessons learned from NextGen projects and pilot programs and how those lessons learned are being integrated into community involvement practices for future NextGen projects located in metroplexes.

**SEC. 161. CRITICAL HABITAT ON OR NEAR AIRPORT PROPERTY.**

(a) FEDERAL AGENCY REQUIREMENTS.—The Secretary of Transportation, to the maximum extent practicable, shall work with the heads of appropriate Federal agencies to ensure that designations of critical habitat, as that term is defined in section 3 of the Endangered Species Act of 1973 (16 U.S.C. 1532), on or near airport property do not—

- (1) result in conflicting statutory, regulatory, or Federal grant assurance requirements for airports or aircraft operators;
- (2) interfere with the safe operation of aircraft; or

- (3) occur on airport-owned lands that have become attractive habitat for a threatened or endangered species because such lands—
  - (A) have been prepared for future development;
  - (B) have been designated as noise buffer land; or
  - (C) are held by the airport to prevent encroachment of uses that are incompatible with airport operations.

(b) STATE REQUIREMENTS.—In a State where a State agency is authorized to designate land on or near airport property for the conservation of a threatened or endangered species in the State, the Secretary, to the maximum extent practicable, shall work with the State in the same manner as the Secretary works with the heads of Federal agencies under subsection (a).

**SEC. 162. CLARIFICATION OF REIMBURSABLE ALLOWED COSTS OF FAA MEMORANDA OF AGREEMENT.**

Section 47504(c)(2) of title 49, United States Code, is amended—

- (1) in subparagraph (D) by striking “and” at the end;
- (2) in subparagraph (E) by striking the period at the end and inserting “; and”; and
- (3) by adding at the end the following:
  - “(F) to an airport operator of a congested airport (as defined in section 47175) and a unit of local government referred to in paragraph (1)(B) to carry out a project to mitigate noise, if the project—
    - “(i) consists of—
      - “(I) replacement windows, doors, and the installation of through-the-wall air-conditioning units; or
      - “(II) a contribution of the equivalent costs to be used for reconstruction, if reconstruction is the preferred local solution;
    - “(ii) is located at a school near the airport; and
    - “(iii) is included in a memorandum of agreement entered into before September 30, 2002, even if the airport has not met the requirements of part 150 of title 14, Code of Federal Regulations, and only if the financial limitations of the memorandum are applied.”.

**TITLE II—AMERICAN AIR NAVIGATION SERVICES CORPORATION**

**SEC. 201. PURPOSES.**

It is declared to be the purpose of Congress in this title to transfer operation of air traffic services currently provided by the Federal Aviation Administration to a separate not-for-profit corporate entity to provide for the more efficient operation and improvement of air traffic services.

**Subtitle A—Establishment of Air Traffic Services Provider**

**SEC. 211. AMERICAN AIR NAVIGATION SERVICES CORPORATION.**

(a) IN GENERAL.—Title 49, United States Code, is amended by adding at the end the following:

**“Subtitle XI—American Air Navigation Services Corporation**

“Chapter	Sec.
“901. General Provisions .....	90101
“903. Establishment of Air Traffic Services Provider; Transfer of Air Traffic Services .....	90301
“905. Regulation of Air Traffic Services Provider .....	90501
“907. General Rights of Access to Airspace, Airports, and Air Traffic Services Vital for Ensuring Safe Operations for All Users .....	90701
“909. Continuity of Air Traffic Services to Department of Defense and Other Public Agencies .....	90901
“911. Employee Management .....	91101
“913. Other Matters .....	91301
“915. Congressional Oversight of Air Traffic Services Provider .....	91501

**“CHAPTER 901—GENERAL PROVISIONS**

“Sec.  
“90101. Definitions.

**“§ 90101. Definitions**

“(a) IN GENERAL.—In this subtitle, the following definitions apply:

“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the FAA.

“(2) AIR TRAFFIC SERVICES.—The term ‘air traffic services’ means services—  
 “(A) used for the monitoring, directing, control, and guidance of aircraft or flows of aircraft and for the safe conduct of flight, including communications, navigation, and surveillance services and provision of aeronautical information; and

“ (B) provided directly, or contracted for, by the FAA before the date of transfer.

“(3) AIR TRAFFIC SERVICES USER.—The term ‘air traffic services user’ means any individual or entity using air traffic services provided by the Corporation within United States airspace or international airspace delegated to the United States.

“(4) BOARD.—The term ‘Board’ means the Board of Directors of the Corporation.

“(5) CEO.—The term ‘CEO’ means the Chief Executive Officer of the Corporation.

“(6) CHARGE; FEE.—The terms ‘charge’ and ‘fee’ mean any rate, charge, fee, or other service charge for the use of air traffic services.

“(7) CORPORATION.—The term ‘Corporation’ means the American Air Navigation Services Corporation established under this subtitle.

“(8) DATE OF TRANSFER.—The term ‘date of transfer’ means the date on which the Corporation assumes operational control of air traffic services from the FAA pursuant to this subtitle, which shall be October 1, 2020.

“(9) DIRECTOR.—The term ‘Director’ means a Director of the Board.

“(10) FAA.—The term ‘FAA’ means the Federal Aviation Administration.

“(11) INTERIM CEO.—The term ‘Interim CEO’ means the Interim Chief Executive Officer of the Corporation.

“(12) REGIONAL AIR CARRIER.—The term ‘regional air carrier’ means an air carrier operating under part 121 of title 14, Code of Federal Regulations, that—

“ (A) exclusively or primarily operates aircraft with a seating capacity of 76 seats or fewer; and

“ (B) is not majority owned or controlled by any other air carrier or air carrier holding company.

“(13) SECRETARY.—The term ‘Secretary’ means the Secretary of Transportation.

“(b) APPLICABILITY OF OTHER DEFINITIONS.—Except with respect to the terms specifically defined in this subtitle, the definitions contained in section 40102(a) shall apply to the terms used in this subtitle.

**“CHAPTER 903—ESTABLISHMENT OF AIR TRAFFIC SERVICES PROVIDER; TRANSFER OF AIR TRAFFIC SERVICES**

“Sec.

“90301. Establishment of Corporation.

“90302. Transfer of air traffic services.

“90303. Role of Secretary in transferring air traffic services to Corporation.

“90304. Status and applicable laws.

“90305. Nomination Panels for Board.

“90306. Board of Directors.

“90307. Fiduciary duties and qualifications of Directors.

“90308. Bylaws and duties.

“90309. Committees of Board; independent auditors.

“90310. Advisory Board.

“90311. Officers and their responsibilities.

“90312. Authority of Corporation.

“90313. Charges and fees for air traffic services.

“90314. Preemption of authority over air traffic services.

“90315. Actions by and against Corporation.

“90316. Transfer of Federal personnel to Corporation.

“90317. Transfer of facilities to Corporation.

“90318. Approval of transferred air navigation facilities and other equipment.

“90319. Use of spectrum systems and data.

“90320. Transition plan.

**“§ 90301. Establishment of Corporation**

“(a) FEDERAL CHARTER.—There is established a federally chartered, not-for-profit corporation to be known as the ‘American Air Navigation Services Corporation’, which shall be incorporated in a State of its choosing.

“(b) CORPORATION NAME.—

“(1) IN GENERAL.—The Corporation may conduct its business and affairs, and otherwise hold itself out, as the ‘American Air Navigation Services Corporation’ in any jurisdiction.

“(2) EXCLUSIVE RIGHT.—The Corporation shall have the exclusive right to use the name ‘American Air Navigation Services Corporation’.

“(3) ALTERNATIVE NAME.—The Corporation may do business under a name other than the ‘American Air Navigation Services Corporation’ at its choosing.

**“§ 90302. Transfer of air traffic services**

“(a) IN GENERAL.—The Secretary shall transfer operational control over air traffic services within United States airspace and international airspace delegated to the United States to the Corporation on the date of transfer in a systematic and orderly manner that ensures continuity of safe air traffic services.

“(b) MANAGEMENT AND OPERATION OF AIR TRAFFIC SERVICES.—Subject to section 90501, including the performance-based regulations and minimum safety standards prescribed under that section, the Corporation may establish and carry out plans for the management and operation of air traffic services within United States airspace and international airspace delegated to the United States.

“(c) ENTITIES AUTHORIZED TO PROVIDE AIR TRAFFIC SERVICES AFTER DATE OF TRANSFER.—After the date of transfer, no entity, other than the Corporation, is authorized or permitted to provide air traffic services within United States airspace or international airspace delegated to the United States, except for—

“(1) the Department of Defense, as authorized by chapter 909;

“(2) entities to which the United States has delegated certain air traffic services responsibilities;

“(3) entities with which the Corporation has contracted for the provision of air traffic services; and

“(4) entities authorized to operate an unmanned aircraft traffic management system or service pursuant to section 45506 or 45507.

**“§ 90303. Role of Secretary in transferring air traffic services to Corporation**

“(a) IN GENERAL.—As appropriate, and except as otherwise provided, the Secretary shall manage and execute the transfer of operational control over air traffic services pursuant to section 90302(a) and any related transition processes and procedures.

“(b) NONDELEGATION.—Except as otherwise provided, the Secretary may not delegate any of the authority or requirements under this subtitle to the Administrator.

**“§ 90304. Status and applicable laws**

“(a) NON-FEDERAL ENTITY.—The Corporation is not a department, agency, or instrumentality of the United States Government, and is not subject to title 31.

“(b) LIABILITY.—The United States Government shall not be liable for the actions or inactions of the Corporation.

“(c) NOT-FOR-PROFIT CORPORATION.—The Corporation shall maintain its status as a not-for-profit corporation exempt from taxation under the Internal Revenue Code of 1986.

“(d) NO FEDERAL GUARANTEE.—Any debt assumed by the Corporation shall not have an implied or explicit Federal guarantee.

**“§ 90305. Nomination Panels for Board**

“(a) IN GENERAL.—The Nomination Panels described in subsection (b) shall be responsible for nominating individuals to serve as Directors pursuant to section 90306.

“(b) NOMINATION PANELS.—The Nomination Panels shall be as follows:

“(1) PASSENGER AIR CARRIER NOMINATION PANEL.—A Passenger Air Carrier Nomination Panel composed of passenger air carrier representatives, with each air carrier with more than 30,000,000 annual passenger enplanements designating 1 representative to the Panel.

“(2) CARGO AIR CARRIER NOMINATION PANEL.—A Cargo Air Carrier Nomination Panel composed of cargo air carrier representatives, with each all-cargo air carrier with more than 1,000,000 total annual enplaned cargo revenue tons designating 1 representative to the Panel.

“(3) REGIONAL AIR CARRIER NOMINATION PANEL.—A Regional Air Carrier Nomination Panel composed of regional air carrier representatives, with each of the 3 largest regional air carriers, as measured by annual passenger enplanements, designating 1 representative to the Panel.

“(4) GENERAL AVIATION NOMINATION PANEL.—A General Aviation Nomination Panel composed of 6 representatives designated by the principal organization representing noncommercial owners and recreational operators of general aviation aircraft.

“(5) BUSINESS AVIATION NOMINATION PANEL.—A Business Aviation Nomination Panel composed of—

“(A) 2 representatives designated by the principal organization representing owners, operators, and users of general aviation aircraft used exclusively in furtherance of business enterprises;

“(B) 2 representatives designated by the principal organization representing aviation-related businesses, including fixed-base operators; and

“(C) 2 representatives designated by the principal organization representing aerospace manufacturers of general aviation aircraft and equipment.

“(6) AIR TRAFFIC CONTROLLER NOMINATION PANEL.—An Air Traffic Controller Nomination Panel composed of 6 representatives designated by the largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the Corporation.

“(7) AIRPORT NOMINATION PANEL.—An Airport Nomination Panel composed of—

“(A) 3 representatives designated by the principal organization representing commercial service airports; and

“(B) 3 representatives designated by the principal organization representing airport executives.

“(8) COMMERCIAL PILOT NOMINATION PANEL.—A Commercial Pilot Nomination Panel composed of commercial pilot representatives, with each organization engaged in collective bargaining on behalf of air carrier pilots with more than 5,000 members designating 1 member to the Panel.

“(c) DETERMINATION OF ENTITIES.—

“(1) BEFORE DATE OF TRANSFER.—Before the date of transfer, and not later than 30 days after the date of enactment of this subtitle, the Secretary shall determine the entities referred to in subsection (b).

“(2) AFTER DATE OF TRANSFER.—On and after the date of transfer, the Board shall determine the entities referred to in subsection (b), in accordance with the bylaws of the Corporation.

“(3) STATISTICS.—In determining annual statistics for purposes of this subsection, the Secretary and the Board shall utilize data published by the Department of Transportation for the most recent calendar year.

“(4) LIMITATIONS.—

“(A) SINGLE DESIGNATION.—No entity determined under this subsection may designate a representative to more than 1 Nomination Panel.

“(B) CARRIERS OWNED OR CONTROLLED BY SAME HOLDING COMPANY.—If 2 or more air carriers determined under this subsection are owned or controlled by the same holding company, only 1 of those air carriers may designate a representative to a Nomination Panel.

“(d) TERMS.—An individual on a Nomination Panel shall serve at the pleasure of the entity that the individual is representing.

“(e) QUALIFICATIONS.—Only an individual who is a citizen of the United States may be designated to a Nomination Panel.

“(f) PROHIBITIONS.—An individual may not serve on a Nomination Panel if the individual is—

“(1) an officer or employee of the Corporation;

“(2) a Member of Congress or an elected official serving in a State, local, or Tribal government; or

“(3) an officer or employee of the Federal Government or any State, local, or Tribal government.

“(g) LARGEST ORGANIZATION ENGAGED IN COLLECTIVE BARGAINING ON BEHALF OF AIR TRAFFIC CONTROLLERS EMPLOYED BY THE CORPORATION DEFINED.—Before the date of transfer, in this section, the term ‘largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the Corporation’ means the largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the FAA.

**“§ 90306. Board of Directors**

“(a) AUTHORITY.—The powers of the Corporation shall be vested in a Board of Directors that governs the Corporation.

“(b) COMPOSITION OF BOARD.—The Board shall be composed of the following Directors:

“(1) The CEO.

“(2) 2 Directors appointed by the Secretary.

“(3) 1 Director nominated by the Passenger Air Carrier Nomination Panel.

“(4) 1 Director nominated by the Cargo Air Carrier Nomination Panel.

“(5) 1 Director nominated by the Regional Air Carrier Nomination Panel.

“(6) 1 Director nominated by the General Aviation Nomination Panel.

“(7) 1 Director nominated by the Business Aviation Nomination Panel.

- “(8) 1 Director nominated by the Air Traffic Controller Nomination Panel.  
“(9) 1 Director nominated by the Airport Nomination Panel.  
“(10) 1 Director nominated by the Commercial Pilot Nomination Panel.  
“(11) 2 Directors nominated and selected by the other Directors.
- “(c) NOMINATIONS AND APPOINTMENTS.—  
“(1) PRIOR TO DATE OF TRANSFER.—  
“(A) SUBMISSION OF NOMINATION LISTS.—Before the date of transfer, and not later than 60 days after the date of enactment of this subtitle, each Nomination Panel shall submit to the Secretary a list, chosen by consensus, of 4 individuals nominated to be Directors.  
“(B) APPOINTMENT AND SELECTION.—Not later than 30 days after the date on which the last nomination list is submitted under subparagraph (A), the Secretary shall—  
“(i) appoint 2 individuals to be Directors under subsection (b)(2); and  
“(ii) select, pursuant to subsection (b), the appropriate number of individuals to be Directors from each nomination list.  
“(C) RESUBMISSION.—A Nomination Panel shall resubmit a list submitted under subparagraph (A), not later than 15 days after notification by the Secretary of the need to resubmit the list, if the Secretary determines that an individual on the list is—  
“(i) not qualified to serve as a Director under section 90307; or  
“(ii) otherwise not fit to serve as a Director.  
“(D) AT-LARGE DIRECTORS.—Not later than 30 days after the Secretary appoints and selects the Directors pursuant to subparagraph (B), the Board shall nominate and select the additional Directors under subsection (b)(11) by a two-thirds vote.
- “(2) AFTER DATE OF TRANSFER.—  
“(A) NOMINATION.—As appropriate, a Nomination Panel shall submit to the Board a list, chosen by consensus, of 4 individuals nominated to be Directors.  
“(B) SELECTION.—The Board shall select, pursuant to subsection (b), the appropriate number of individuals to be Directors from a list submitted by a Nomination Panel.  
“(C) RESUBMISSION.—A Nomination Panel shall resubmit a list submitted under subparagraph (A), not later than 15 days after notification by the Board of the need to resubmit the list, if the Board determines that more than 1 individual on the list is—  
“(i) not qualified to serve as a Director under section 90307; or  
“(ii) otherwise not fit to serve as a Director.  
“(D) AT-LARGE DIRECTORS.—The Board shall nominate and select Directors under subsection (b)(11) in accordance with the bylaws of the Corporation.  
“(E) APPOINTED DIRECTORS.—None of the Directors appointed by the Secretary under subsection (b)(2) shall be subject to approval by the Board.
- “(d) CHAIRPERSON.—The Chairperson of the Board shall—  
“(1) be selected from among the Directors (other than the CEO) by a majority vote of the Directors; and  
“(2) subject to subsection (e), serve until replaced by a majority vote of the Directors.
- “(e) TERMS.—  
“(1) INITIAL TERMS.—The term of each Director appointed, or nominated and selected, before the date of transfer (other than the CEO) shall expire on the date that is 2 years after the date of transfer.  
“(2) SUBSEQUENT TERMS.—The term of each Director appointed, or nominated and selected, on or after the date of transfer (other than the CEO) shall be 4 years, except as provided by paragraph (3).  
“(3) STAGGERING.—The Board shall stagger the duration of the terms of the initial Directors appointed, or nominated and selected, after the date of transfer to promote the stability of the Board.  
“(4) TERM LIMIT.—Except as provided by subsection (f)(3), a Director may not serve on the Board for more than 8 years.
- “(f) VACANCIES.—  
“(1) BEFORE DATE OF TRANSFER.—Before the date of transfer, a vacancy on the Board shall be filled in the manner in which the original appointment or selection was made.  
“(2) AFTER DATE OF TRANSFER.—After the date of transfer, a vacancy on the Board shall be filled in the manner in which the original appointment was made (in the case of Directors appointed under subsection (b)(2)) or in the man-



ner described under subsection (c)(2) (in the case of Directors nominated by Nomination Panels or the Board).

“(3) SERVICE UNTIL SUCCESSOR TAKES OFFICE.—A Director may serve after the expiration of the Director’s term until a successor has been appointed or nominated and selected.

“(g) MEETINGS AND QUORUM.—

“(1) MEETINGS.—

“(A) IN GENERAL.—The Board shall meet at the call of the Chairperson (or as otherwise provided in the bylaws) and, at a minimum, on a quarterly basis.

“(B) INITIAL MEETING.—Not later than 90 days after the date of enactment of this subtitle, the Board shall hold its initial meeting.

“(C) IN-PERSON MEETING.—At least 1 meeting of the Board each year shall be conducted in person.

“(2) QUORUM.—A quorum of the Board, consisting of a majority of the Directors then in office, shall be required to conduct any business of the Board.

“(3) APPROVAL OF BOARD ACTIONS.—Except as otherwise provided, the threshold for approving Board actions shall be as set forth in the bylaws.

“(h) REMOVAL OF DIRECTORS.—A Director may be removed in accordance with section 90307(c) and the bylaws of the Corporation.

**“§ 90307. Fiduciary duties and qualifications of Directors**

“(a) FIDUCIARY DUTIES.—The fiduciary duties of a Director shall be solely and exclusively to the Corporation.

“(b) QUALIFICATIONS.—

“(1) IN GENERAL.—Only a citizen of the United States may be appointed or nominated as a Director.

“(2) PROHIBITIONS.—An individual may not serve as a Director if the individual—

“(A) is an officer, agent, or employee of the Corporation (other than the CEO);

“(B) is, or has been within the preceding 2 years, a Member of Congress;

“(C) is an elected official serving in a State, local, or Tribal government;

“(D) is an officer or employee of the Federal Government or any State, local, or Tribal government;

“(E) is a director, officer, trustee, agent, or employee of—

“(i) a bargaining agent that represents employees of the Corporation;

“(ii) an entity that has a material interest as a supplier, client, or user of the Corporation’s services; or

“(iii) any of the entities determined under section 90305(c);

“(F) receives any form of compensation or material benefit from an entity that has a material interest as a supplier, client, or user of the Corporation’s services, excluding compensation from a defined benefit plan resulting from the individual’s past employment; or

“(G) has or holds any other fiduciary duty, legal obligation, office, employed position, or material interest that would prevent the individual from satisfying the requirements of subsection (a) under the applicable laws of the State in which the Corporation is incorporated.

“(3) EXCEPTION.—Subparagraphs (C) and (D) of paragraph (2) shall not apply to an individual solely because the individual is an elected member of a school board or is employed by an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

“(c) BREACH OF FIDUCIARY DUTY TO CORPORATION.—

“(1) IN GENERAL.—The Board shall remove any Director who breaches a fiduciary duty to the Corporation—

“(A) pursuant to procedures to be established in the bylaws of the Corporation; and

“(B) not later than 30 days after determining that a breach has occurred.

“(2) LIMITED PRIVATE RIGHT OF ACTION.—The Corporation shall have the exclusive right to seek injunctive or monetary relief (or both) against a Director or former Director for a breach of a fiduciary duty to the Corporation.

“(d) PROHIBITION ON INDEMNIFICATION AND CERTAIN INSURANCE.—Notwithstanding section 90312 or any other provision of law, the Corporation shall neither indemnify nor procure insurance to indemnify any Director for liability relating to a breach of a fiduciary duty to the Corporation.

**“§ 90308. Bylaws and duties**

“(a) IN GENERAL.—The Board shall adopt and amend the bylaws of the Corporation.

“(b) BYLAWS.—The bylaws of the Corporation shall include, at a minimum—

- “(1) the duties and responsibilities of the Board (including those described in subsection (c)), officers, Advisory Board, and committees of the Corporation; and
  - “(2) the operational procedures of the Corporation.
- “(c) DUTIES AND RESPONSIBILITIES OF BOARD.—The Board shall be responsible for actions of the Corporation, including—
- “(1) adoption of an annual budget;
  - “(2) approval of a strategic plan, including updates thereto, and other plans supporting the strategy laid out in the strategic plan;
  - “(3) adoption of an annual action plan;
  - “(4) authorization of any form or instrument of indebtedness, including loans and bond issues;
  - “(5) assessment, modification, and collection of charges and fees for air traffic services in accordance with the standards described in section 90313;
  - “(6) hiring and supervision of the CEO;
  - “(7) establishment and maintenance of an appropriately funded reserve fund;
  - “(8) adoption of a code of conduct and code of ethics for Directors, officers, agents, and employees of the Corporation;
  - “(9) establishment of a process for ensuring that the fiduciary duties of a Director are solely and exclusively to the Corporation;
  - “(10) establishment of a process for the removal of a Director, including the removal of a Director for breach of a fiduciary duty to the Corporation; and
  - “(11) adoption of a process for filling vacancies on the Board.

**“§ 90309. Committees of Board; independent auditors**

“(a) COMMITTEES OF BOARD.—The Board shall establish and maintain a Safety Committee, a Compensation Committee, a Technology Committee, and such other committees as the Board determines are necessary or appropriate to carry out the responsibilities of the Board effectively. Such committees shall be composed solely of Directors.

“(b) INDEPENDENT AUDITORS.—The Board shall retain independent auditors to conduct annual audits of the Corporation’s financial statements and internal controls.

**“§ 90310. Advisory Board**

“(a) ESTABLISHMENT.—There shall be an Advisory Board of the Corporation.

“(b) DUTIES.—The Advisory Board—

“(1) shall conduct such activities as the Board determines appropriate;

“(2) shall submit to the Board recommendations for Directors to be nominated and selected under section 90306(b)(11); and

“(3) may, on its own initiative, study, report, and make recommendations to the Board on matters relating to the Corporation’s provision of air traffic services and associated safety considerations.

“(c) MEMBERSHIP.—

“(1) NUMBER.—The Advisory Board shall consist of not more than 15 individuals, who are citizens of the United States, representing interested entities.

“(2) REPRESENTATIVES.—The members of the Advisory Board shall include, at a minimum, representatives of the following:

“(A) Air carriers.

“(B) General aviation.

“(C) Business aviation.

“(D) Commercial service airports.

“(E) Operators and manufacturers of commercial unmanned aircraft systems.

“(F) Appropriate labor organizations.

“(G) The Department of Defense.

“(H) Small communities, including at least 1 community primarily served by a nonhub airport.

“(d) STRUCTURE; TERMS.—The membership and structure of the Advisory Board, including the duration that individuals may serve on the Advisory Board, shall be determined by the Board in accordance with the bylaws of the Corporation.

**“§ 90311. Officers and their responsibilities**

“(a) CHIEF EXECUTIVE OFFICER.—

“(1) HIRING.—

“(A) IN GENERAL.—The Corporation shall have a Chief Executive Officer, who shall be hired by the Board to manage the Corporation.

“(B) QUALIFICATIONS.—The CEO shall be an individual who—

“(i) is a citizen of the United States;

“(ii) satisfies the qualifications to serve as a Director under section 90307; and

“(iii) by reason of professional background and experience, is especially qualified to manage the Corporation.

“(2) DUTIES.—The CEO shall—

“(A) be responsible for the management and direction of the Corporation, including its officers and employees, and for the exercise of all powers and responsibilities of the Corporation;

“(B) establish Corporation offices and define the responsibilities and duties of the offices, with full authority to organize the Corporation as required; and

“(C) designate an officer of the Corporation who is vested with the authority to act in the capacity of the CEO if the CEO is absent or incapacitated.

“(3) SCOPE OF AUTHORITY.—

“(A) IN GENERAL.—The CEO shall be subject to the policy guidance of the Board, report to the Board, and serve at the pleasure of the Board.

“(B) AUTHORITY OF BOARD.—The Board may modify or revoke actions of the CEO pursuant to procedures set forth in the bylaws of the Corporation.

“(b) OTHER OFFICERS AND EMPLOYEES.—

“(1) IN GENERAL.—The CEO shall appoint such other officers and employees of the Corporation as the CEO determines appropriate.

“(2) CHIEF OPERATING OFFICER; CHIEF FINANCIAL OFFICER.—An appointment of an individual as chief operating officer or chief financial officer by the CEO shall be subject to the approval of the Board.

“(3) DELEGATION OF FUNCTIONS.—The CEO may delegate to the other officers and employees of the Corporation any of the functions of the Corporation.

“(4) COMPENSATION.—Compensation for the CEO, chief operating officer, and chief financial officer shall be set by the Board.

“(c) INTERIM CEO.—

“(1) HIRING.—Not later than 60 days after the date of the Secretary’s appointment and selection of Directors under section 90306(c)(1)(B), the Board shall hire an Interim Chief Executive Officer who meets the qualifications specified in subsection (a)(1)(B).

“(2) AUTHORITY AND TERM.—

“(A) AUTHORITY.—The Interim CEO shall—

“(i) exercise the same authority as the CEO, including serving on the Board;

“(ii) carry out the same duties as the CEO; and

“(iii) be subject to the same prohibitions and limitations as the CEO.

“(B) TERM.—The Interim CEO shall serve until the Board hires a CEO.

“(3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to restrict the ability of the Board to hire the individual serving as the Interim CEO to be the CEO.

#### “§ 90312. Authority of Corporation

“(a) GENERAL AUTHORITY.—Except as otherwise provided in this subtitle, the Corporation—

“(1) shall have perpetual succession in its corporate name unless dissolved by law;

“(2) may adopt and use a corporate seal;

“(3) may own, lease, use, improve, and dispose of such property as the Corporation considers necessary to carry out the purposes of the Corporation;

“(4) may contract with other parties;

“(5) may sue or be sued;

“(6) may be held liable under civil and criminal law;

“(7) may indemnify the Directors, including the Interim CEO or CEO, and other officers, agents, and employees of the Corporation; and

“(8) shall have such other corporate powers as are necessary or appropriate to carry out the purposes of this subtitle and of the Corporation.

“(b) LIMITATIONS.—

“(1) BUSINESS ACTIVITIES.—The Corporation may only engage in business activities that are—

“(A) related to carrying out air traffic services; or

“(B) ancillary or incidental to carrying out such services.

“(2) EQUITY SHARES.—The Corporation may not issue or sell equity shares in the Corporation.

#### “§ 90313. Charges and fees for air traffic services

“(a) ASSESSMENT AND COLLECTION OF CHARGES AND FEES.—Beginning on the date of transfer, and subject to this section and section 90502, the Corporation may assess and collect charges and fees from air traffic services users for air traffic services

provided by the Corporation in United States airspace or international airspace delegated to the United States.

“(b) BOARD APPROVAL OF CHARGES AND FEES.—The Board shall—

“(1) approve a proposal for—

“(A) an initial schedule of charges and fees pursuant to subsection (g); and

“(B) any change in the charges or fees;

“(2) provide air traffic services users and other interested persons notice of a proposal approved under paragraph (1) in a manner and form prescribed by the Secretary; and

“(3) submit a proposal approved under paragraph (1) (other than a proposal to decrease a charge or fee) to the Secretary 90 days prior to the effective date of the proposal in a manner and form prescribed by the Secretary.

“(c) SECRETARIAL REVIEW.—

“(1) PUBLIC COMMENT.—Upon receiving a proposal from the Corporation under subsection (b)(3), the Secretary shall solicit public comments on the proposal for a 30-day period.

“(2) SECRETARIAL APPROVAL.—

“(A) IN GENERAL.—Not later than 15 days after the last day of the 30-day public comment period, the Secretary shall—

“(i) approve the proposal upon determining that the proposal complies with the standards in subsection (d); or

“(ii) disapprove the proposal upon determining that the proposal does not comply with the standards in subsection (d).

“(B) EFFECTIVENESS OF PROPOSAL.—If the Secretary does not issue a timely decision pursuant to subparagraph (A), the proposal shall be deemed approved.

“(d) STANDARDS.—The Secretary shall apply the following standards in reviewing a proposal from the Corporation under subsection (c):

“(1) The amount or type of charges and fees paid by an air traffic services user may not—

“(A) be determinant of the air traffic services provided to the user; or

“(B) adversely impact the ability of the user to use or access any part of the national airspace system.

“(2) Charges and fees shall be consistent with the document titled ‘ICAO’s Policies on Charges for Airports and Air Navigation Services’, Ninth Edition, 2012.

“(3) Charges and fees may not be discriminatory.

“(4) Charges and fees shall be consistent with United States international obligations.

“(5) Certain categories of air traffic services users may be charged on a flat fee basis so long as the charge or fee is otherwise consistent with this subsection.

“(6) Charges and fees may not be imposed for air traffic services provided with respect to operations of aircraft that qualify as public aircraft under sections 40102(a) and 40125.

“(7) Charges and fees may not be imposed for air traffic services provided with respect to aircraft operations conducted pursuant to part 91, 133, 135, 136, or 137 of title 14, Code of Federal Regulations.

“(8) Charges and fees may not be structured such that air traffic services users have incentives to operate in ways that diminish safety to avoid the charges and fees.

“(9) Charges and fees, based on reasonable and financially sound projections, may not generate revenues exceeding the Corporation’s current and anticipated financial requirements in relation to the provision of air traffic services.

“(e) CORPORATION’S FINANCIAL REQUIREMENTS.—In determining whether a proposal received from the Corporation under subsection (b) would generate revenues in compliance with subsection (d)(9), the Secretary shall consider costs and other liabilities of the Corporation, including—

“(1) costs incurred before the date of transfer;

“(2) operations and maintenance costs;

“(3) management and administrative costs;

“(4) depreciation costs;

“(5) interest costs and other expenses related to debt servicing;

“(6) cash reserves or other requirements needed to maintain credit ratings or comply with debt covenants; and

“(7) any tax liability.

“(f) PAYMENT OF CHARGES AND FEES.—

“(1) IN GENERAL.—An air traffic services user shall pay a charge or fee assessed by the Corporation under subsection (a) for services rendered and any interest and penalties assessed under paragraph (2).

“(2) LATE PAYMENT OR NONPAYMENT.—The Corporation may assess and collect interest and penalties for late payment or nonpayment of a charge or fee assessed by the Corporation under subsection (a).

“(3) PRIVATE RIGHT OF ACTION.—The Corporation may file suit in any district court of the United States having jurisdiction over the parties, without respect to the amount in controversy and without regard to the citizenship of the parties, to enforce this subsection not later than 2 years after the date on which a claim accrues. A claim accrues, under this paragraph, upon the rendering of the relevant air traffic services by the Corporation.

“(g) INITIAL SCHEDULE.—Notwithstanding subsection (b)(3), the Corporation shall propose an initial schedule of charges and fees at least 180 days before the date of transfer.

“(h) AIRCRAFT OPERATION DEFINED.—In this section, the term ‘aircraft operation’ means the movement of an aircraft beginning with the take-off of the aircraft and ending with the landing of the aircraft.

**“§ 90314. Preemption of authority over air traffic services**

“(a) STATE DEFINED.—In this section, the term ‘State’ means a State, the District of Columbia, and a territory or possession of the United States.

“(b) PREEMPTION.—A State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to air traffic services.

“(c) AIRPORT OWNER OR OPERATOR.—Subsection (b) may not be construed to limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates a landing area from carrying out its proprietary powers and rights over the landing area.

**“§ 90315. Actions by and against Corporation**

“(a) JURISDICTION FOR LEGAL ACTIONS GENERALLY.—

“(1) JURISDICTION OF UNITED STATES DISTRICT COURTS.—The United States district courts shall have original jurisdiction over all actions brought by or against the Corporation, except as otherwise provided in this subtitle.

“(2) REMOVAL OF ACTIONS IN STATE COURTS.—Any action brought in a State court to which the Corporation is a party shall be removed to the appropriate United States district court under the provisions of chapter 89 of title 28.

“(b) TESTIMONY OF CORPORATION EMPLOYEES.—

“(1) IN GENERAL.—Except with the consent of the chief legal officer of the Corporation, employees of the Corporation may not provide expert opinion or expert testimony in civil litigation related to the Corporation.

“(2) EXCEPTIONS.—The Corporation may prescribe the circumstances, if any, under which employees of the Corporation may provide expert opinion or expert testimony in civil litigation related to the Corporation.

**“§ 90316. Transfer of Federal personnel to Corporation**

“(a) TRANSFER OF FAA EMPLOYEES TO CORPORATION.—

“(1) PROCESS.—Not later than 180 days after the date of enactment of this subtitle, the Secretary, after meeting and conferring with the CEO and representatives of the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees, shall commence a process to determine, consistent with the purposes of this subtitle, which activities and employees, or categories of employees, of the FAA shall be transferred to the Corporation on or before the date of transfer.

“(2) DETERMINATION; TRANSFER.—The Secretary shall—

“(A) not later than 180 days prior to the date of transfer, complete the determination of which activities, employees, or categories of employees shall be transferred to the Corporation under paragraph (1);

“(B) upon completing the determination, notify the CEO, the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees, and all affected employees of such determination; and

“(C) on or before the date of transfer, transfer such activities, employees, or categories of employees.

“(b) SUBSEQUENT TRANSFER OF EMPLOYEES.—

“(1) IN GENERAL.—

“(A) TRANSFERS FROM FAA TO CORPORATION.—During the 180-day period beginning on the date of transfer, the Secretary, after meeting and conferring with the CEO and representatives of the certified labor organizations recognized under section 91105 and labor organizations recognized under

section 7111 of title 5 as exclusive representatives of FAA employees, may transfer an employee from the FAA to the Corporation if the Secretary, after meeting and conferring with the CEO and the representatives, finds that the determination with respect to the employee under subsection (a) was inconsistent with the purposes of this subtitle.

“(B) TRANSFERS FROM CORPORATION TO FAA.—During the 180-day period beginning on the date of transfer, the Secretary, after meeting and conferring with the CEO and representatives of the certified labor organizations recognized under section 91105 and labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees, may transfer an employee from the Corporation to the FAA if the Secretary, after the consultation with the CEO and the representatives, finds that the determination with respect to the employee under subsection (a) was inconsistent with the purposes of this subtitle.

“(2) REEMPLOYMENT OF FEDERAL EMPLOYEES.—An employee transferred from the Corporation to the FAA under this subsection shall be entitled to the same rights and benefits, and reemployment, in the same manner as if covered by section 3582 of title 5 notwithstanding section 8347(o), 8713, or 8914 of such title.

“(3) ELECTION OF BENEFITS FOR EMPLOYEES SUBJECT TO DELAYED TRANSFER TO CORPORATION.—In the case of an employee of the FAA transferred to the Corporation under this subsection, such employee shall be afforded the opportunity to make the election provided under section 91102(b) with respect to benefits.

“(c) CORPORATION EMPLOYEE BENEFITS.—At least 180 days before the date of transfer, the Corporation shall establish a compensation and benefits program for—

“(1) employees hired by the Corporation after the date of transfer; and

“(2) employees that make the election under section 91102(b)(1)(A)(ii).

“(d) PROTECTIONS FOR EMPLOYEES NOT TRANSFERRED TO CORPORATION.—For those employees of the FAA directly involved in the operation of air traffic services who are not transferred to the Corporation pursuant to subsection (a) or who transferred back to the FAA pursuant to subsection (b), the Secretary shall provide to such employees compensation and benefits consistent with the applicable collective-bargaining agreement that are not less than the level of compensation and benefits provided to such FAA employees prior to the date of transfer unless mutually agreed to by the FAA and representatives of the certified labor organization.

“(e) SUITABILITY, CLEARANCES, AND MEDICAL QUALIFICATIONS.—All federally issued or federally required credentials, certificates, clearances, medical qualifications, access rights, substance testing results, and any other Federal permissions or approvals held by any employee of the FAA in the operation of air traffic services that are valid and effective on the day prior to the date of transfer shall remain valid and effective after the date of transfer—

“(1) unless revoked for cause; or

“(2) until equivalent or substantially equivalent credentials, certificates, clearances, medical qualifications, access rights, substance testing results, and any other Federal permissions or approvals have been issued to the employee on or after the date of transfer.

“(f) TRANSITION AGREEMENTS.—

“(1) BIPARTITE AGREEMENT.—

“(A) MEETINGS.—At least 180 days before the date of transfer, the Corporation shall meet with the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees to resolve employment-related transition matters that affect employees represented by those labor organizations and that are not otherwise covered under this section.

“(B) DUTY TO BARGAIN IN GOOD FAITH.—The Corporation and the labor organizations described in subparagraph (A) (in this subsection referred to as the ‘parties’) shall be subject to the duty to bargain in good faith under chapter 911 in any meetings pursuant to this paragraph.

“(C) DISPUTE RESOLUTION PROCEDURES.—If the parties fail to reach an agreement over the initial or subsequent employment-related transition issues not otherwise covered under this section, the matters shall be subject to the dispute resolution procedures established under subsections (a), (b), and (e) of section 91107.

“(2) TRIPARTITE AGREEMENT.—

“(A) MEETINGS.—At least 1 year before the date of transfer, the Corporation and the FAA shall meet with the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees to resolve transition matters related to the separation of air traffic services from the FAA pursuant to this subtitle that affect employees represented by

those labor organizations and that are not otherwise covered under this section.

“(B) DUTY TO BARGAIN IN GOOD FAITH.—To the extent applicable, the Corporation and the labor organizations described in subparagraph (A) shall be subject to the duty to bargain in good faith under chapter 911 in any meetings pursuant to this paragraph.

“(C) DISPUTE RESOLUTION PROCEDURES.—If the Corporation and the certified labor organizations described in subparagraph (A) fail to reach an agreement over the initial or subsequent transition issues related to the separation of air traffic services from the FAA, not otherwise covered under this section, the matters shall be subject to the dispute resolution procedures established under subsections (a), (b), and (e) of section 91107.

**“§ 90317. Transfer of facilities to Corporation**

“(a) INVENTORY OF FAA PROPERTY AND FACILITIES.—At least 1 year before the date of transfer, the Secretary, in consultation with the CEO, shall identify the licenses, patents, software rights, and real and personal property, including air navigation facilities (as defined in section 40102(a) of the United States under FAA jurisdiction, that are necessary and appropriate for the Corporation to carry out the air traffic services transferred to the Corporation under this subtitle.

“(b) TRANSFER OF FEDERAL PROPERTY.—

“(1) CONVEYANCE OF PROPERTY TO CORPORATION.—On the date of transfer, the Secretary shall convey, without charge, all right, title, and interest of the United States in, and the use, possession, and control of, properties identified under subsection (a).

“(2) SALE OF PROPERTY BY CORPORATION AFTER DATE OF TRANSFER.—If the Corporation sells any of the property conveyed to the Corporation under paragraph (1), the Corporation shall use the proceeds received from the sale of such property for the acquisition or improvement of air navigation facilities or other capital assets.

“(3) REVERSIONARY INTEREST.—Any conveyance of real property under this section located at an FAA technical facility shall be subject to the condition that all right, title, and interest in the real property shall revert to the United States and be placed under the administrative control of the Secretary if—

“(A) the Corporation determines the real property is no longer necessary to carry out the air traffic services transferred to the Corporation under this subtitle; and

“(B) the Secretary determines the reversion is necessary to protect the interests of the United States.

“(4) SAFETY AIR TRAFFIC SERVICES EQUIPMENT IN REMOTE LOCATIONS.—

“(A) MAINTENANCE BY CORPORATION.—Any equipment identified pursuant to subsection (a) and conveyed to the Corporation pursuant to paragraph (1) that is located in a noncontiguous State of the United States and is critical to the safe provision of air traffic services in that State may not be sold and shall be maintained and, as determined necessary by the Corporation, upgraded by the Corporation.

“(B) EQUIPMENT CRITICAL TO SAFE PROVISION OF AIR TRAFFIC SERVICES.—For purposes of this paragraph, equipment critical to the safe provision of air traffic services includes GPS receivers, data link transceivers, ADS-B, multi-function displays, flight information services, moving map displays, terrain databases, airport lighting, and mountain pass cameras.

“(c) CONSOLIDATION AND REALIGNMENT OF TRANSFERRED SERVICES AND FACILITIES.—

“(1) IN GENERAL.—At least 180 days before the date of transfer, and subject to section 91107, the Corporation, in consultation with representatives of labor organizations representing operations and maintenance employees of the air traffic control system, shall establish a process for the realignment and consolidation of services and facilities to be transferred to the Corporation from the FAA.

“(2) MORATORIUM.—Except as otherwise provided, there shall be a moratorium on any effort by the Administrator or the Corporation to consolidate or realign air traffic services or facilities until the process required by paragraph (1) is established.

**“§ 90318. Approval of transferred air navigation facilities and other equipment**

“On the date of transfer, the Corporation is authorized to operate all air navigation facilities and other equipment conveyed pursuant to section 90317 without additional approval or certification by the Secretary.

**“§ 90319. Use of spectrum systems and data**

“Beginning on the date of transfer, the Secretary shall provide the Corporation with such access to the spectrum systems used by the FAA before the date of transfer to provide air traffic services, and any successor spectrum systems, and to the data from such systems, as is necessary to enable the Corporation to provide air traffic services under this subtitle.

**“§ 90320. Transition plan**

“(a) **TRANSITION TEAM.**—Not later than 120 days after the date of enactment of this subtitle, the Secretary, after meeting and conferring with the CEO or Interim CEO, shall establish a transition team to develop, consistent with this subtitle, a transition plan to be reviewed by the Secretary and, if approved, utilized by the Department of Transportation during the period in which air traffic services are transferred from the FAA to the Corporation.

“(b) **MEMBERSHIP.**—The transition team shall consist of 12 individuals, who are citizens of the United States, as follows:

“(1) 5 representatives appointed by the Secretary, including—

“(A) the Deputy Administrator of the FAA;

“(B) the Director of the FAA Mike Monroney Aeronautical Center;

“(C) the Director of the FAA William J. Hughes Technical Center; and

“(D) 2 representatives from the Office of Management and Budget, appointed with the concurrence of the Director of the Office of Management and Budget.

“(2) 1 representative appointed by the exclusive bargaining representative of air traffic controllers certified under section 7111 of title 5.

“(3) 1 representative appointed by the exclusive bargaining representative for airway transportation systems specialists in the Air Traffic Organization technical operations services certified under section 7111 of title 5.

“(4) 5 representatives appointed by the CEO.

“(c) **TRANSITION PLAN.**—

“(1) **IN GENERAL.**—Not later than 45 days after the establishment of the transition team, the transition team shall develop and submit to the Secretary an executable transition plan.

“(2) **CONTENTS.**—The transition plan shall set forth a plan for the Secretary, in consultation with the CEO or Interim CEO, to—

“(A) identify property, facilities, equipment, and obligations, contractual or otherwise, related to the provision of air traffic services; and

“(B) safely and efficiently transfer Federal personnel, property, facilities, equipment, and obligations, contractual and otherwise, related to the provision of air traffic services to the Corporation on or before the date of transfer.

“(d) **SECRETARIAL REVIEW.**—

“(1) **IN GENERAL.**—Not later than 30 days after receipt of the transition plan, the Secretary shall review and, if appropriate, approve the plan.

“(2) **DISAPPROVAL.**—If the Secretary does not approve a submitted transition plan, the transition team shall revise the plan and resubmit it to the Secretary not later than 30 days after receiving notice of the disapproval by the Secretary.

“(e) **TERMINATION.**—The transition team shall terminate upon approval of a transition plan by the Secretary.

**“CHAPTER 905—REGULATION OF AIR TRAFFIC SERVICES PROVIDER**

“Sec.

“90501. Safety oversight and regulation of Corporation.

“90502. Resolution of disputes concerning air traffic services charges and fees.

“90503. International agreements and activities.

“90504. Availability of safety information.

“90505. Reporting of safety violations to FAA.

“90506. Insurance requirements.

**“§ 90501. Safety oversight and regulation of Corporation**

“(a) **PERFORMANCE-BASED REGULATIONS AND MINIMUM SAFETY STANDARDS.**—After consultation with the Corporation and the FAA’s certified bargaining representatives and before the date of transfer, the Secretary shall—

“(1) prescribe performance-based regulations and minimum safety standards for the operation of air traffic services by the Corporation;

“(2) prescribe performance-based regulations and minimum safety standards for the certification and operation of air navigation facilities (other than facilities that may be operated without additional approval or certification pursuant to section 90318); and



“(3) identify policies and other administrative materials of the FAA in effect before the date of transfer for providing air traffic services that will apply to the Corporation.

“(b) SAFETY MANAGEMENT SYSTEM.—

“(1) IN GENERAL.—The regulations and standards prescribed pursuant to subsection (a) shall include a safety management system for air traffic services provided by the Corporation.

“(2) FOUNDATION.—The safety management system shall be based on the safety management system used by the Air Traffic Organization of the FAA before the date of transfer.

“(3) USE BY CORPORATION.—Beginning on the date of transfer, the Corporation shall use the safety management system, including any changes thereto, when assessing and managing risks in all procedures, processes, and practices necessary to provide air traffic services.

“(4) FAA OVERSIGHT.—To the maximum extent practicable, for at least 2 years after the date of transfer, the Air Traffic Safety Oversight Service of the FAA shall employ the same oversight processes and procedures in use before the date of transfer.

“(c) PROPOSALS TO MODIFY AIR TRAFFIC MANAGEMENT PROCEDURES, ASSIGNMENTS, AND CLASSIFICATIONS OF AIRSPACE.—

“(1) SUBMISSION OF PROPOSALS TO SECRETARY.—The Corporation or another interested party may submit to the Secretary a proposal to modify—

“(A) air traffic management procedures, assignments, classifications of airspace, or other actions affecting airspace access that are developed pursuant to the safety management system; and

“(B) FAA policies and other administrative materials identified under subsection (a)(2).

“(2) REVIEW AND APPROVAL OF PROPOSALS.—The regulations and standards prescribed under subsection (a)(1) shall include a process for expedited review and approval of a proposal received under paragraph (1).

“(3) STANDARD FOR APPROVAL.—The Secretary shall approve a proposal received under paragraph (1) if the Secretary determines that the proposal complies with the regulations and standards prescribed under subsection (a)(1) and is otherwise consistent with the public interest, including that the proposal would not materially reduce access to a public-use airport.

“(4) APPROVALS AND DISAPPROVALS.—

“(A) IN GENERAL.—During the 45-day period beginning on the date of receipt of a proposal under paragraph (1), the Secretary shall approve or disapprove the proposal.

“(B) WRITTEN EXPLANATION.—If the Secretary disapproves the proposal, the Secretary shall provide—

“(i) a written explanation of the Secretary’s decision, including—

“(I) any instances of inconsistency with the regulations and standards prescribed under subsection (a)(1); and

“(II) any other information that formed the basis for the Secretary’s decision; and

“(ii) a description of any modifications to the proposal that are necessary to obtain approval.

“(5) FAILURE TO ACT.—If the Secretary fails to act on a proposal received under paragraph (1) during the 45-day period described in paragraph (4)(A), the Corporation or other party making the proposal shall be entitled to a writ of mandamus in a Federal district court with venue.

“(d) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any decision made by the Secretary to approve or disapprove a proposal received under subsection (c)(1) shall be subject to judicial review pursuant to subsections (a), (b), (d), and (e) of section 46110.

“(2) STANDARD OF REVIEW.—

“(A) DISAPPROVALS.—In the case of a petition filed under section 46110(a) to review a decision of the Secretary that disapproves a proposal received from the Corporation under subsection (c)(1), the court shall, without deference to the Secretary’s determination, review de novo the record to determine if the Secretary’s determination is consistent with the regulations and standards prescribed under subsection (a)(1).

“(B) APPROVALS.—In the case of a petition filed under section 46110(a) to review a decision of the Secretary that approves a proposal received from the Corporation under subsection (c)(1), the court may overturn the approval only upon a finding of clear error or an abuse of discretion.

“(e) COMPILATION.—

“(1) ESTABLISHMENT.—The Corporation shall establish and maintain a compilation of the policies and other materials identified under subsection (a)(2).

“(2) UPDATES.—The Corporation shall update the compilation each time a proposal described in subsection (c)(1)(B) is approved.

“(3) PUBLICATION.—The Corporation shall make the compilation available to the public.

“(f) SPECIAL RULES FOR PROPOSALS AFFECTING CERTAIN AIRSPACE.—The regulations and standards prescribed under subsection (a)(1) shall include procedures (including advance submission of necessary supporting data, analysis, and documentation) for the Secretary to evaluate, at least 180 days before its submission under subsection (c)(1), a proposal for an airspace change that would affect airspace that is—

“(1) within an area designated as a ‘Metroplex’ by the FAA as of March 30, 2017;

“(2) within an area subject to a major, large-scale airspace redesign project; or

“(3) adjacent to or containing special use airspace.

“(g) EXEMPTED AIRSPACE ACTIONS.—The requirements of this section shall not apply to—

“(1) temporary airspace actions directed by the Administrator or Secretary;

“(2) airspace actions as described in section 90904; or

“(3) certain emergency circumstances, as defined by the Secretary by regulation.

“(h) DELEGATION.—Notwithstanding section 90303(b), and except for the process and procedures required by section 90703(b), the Secretary may delegate safety oversight functions to the Administrator.

**“§ 90502. Resolution of disputes concerning air traffic services charges and fees**

“(a) AUTHORITY TO REQUEST SECRETARY’S DETERMINATION.—

“(1) IN GENERAL.—The Secretary shall issue a determination as to whether a charge or fee assessed by the Corporation for the use of air traffic services in United States airspace or international airspace delegated to the United States is correct if a written complaint for such determination is filed with the Secretary by an air traffic services user not later than 60 days after the air traffic services user receives an assessment or invoice from the Corporation.

“(2) TREATMENT OF INTEREST AND PENALTIES.—In this section, the terms ‘charge’ and ‘fee’ include any interest and penalty relating thereto.

“(b) PROCEDURAL REGULATIONS.—At least 270 days before the date of transfer, the Secretary shall publish in the Federal Register final regulations, policy statements, or guidelines establishing the procedures for acting upon written complaints filed under subsection (a)(1) and requests of the Corporation pursuant to subsection (e)(3).

“(c) DETERMINATION OF CORRECTNESS.—In determining under subsection (a)(1) whether a charge or fee is correct, the Secretary shall determine only if the charge or fee is consistent with approved charges or fees pursuant to section 90313.

“(d) DECISIONS BY SECRETARY.—The final regulations, policy statements, or guidelines required in subsection (b) shall provide for the following:

“(1) Not later than 90 days after an air traffic services user files with the Secretary a written complaint relating to an assessed or invoiced air traffic services charge or fee, the Secretary shall issue a final order determining whether the charge or fee is correct.

“(2) Not later than 30 days after such complaint is filed with the Secretary, the Secretary shall dismiss the complaint if no significant dispute exists or shall assign the matter to an administrative law judge. Thereafter, the matter shall be handled in accordance with part 302 of title 14, Code of Federal Regulations, or as modified by the Secretary, to ensure an orderly disposition of the matter within the 90-day period referred to in paragraph (1) and any specifically applicable provisions of this section.

“(3) The administrative law judge shall issue a recommended decision not later than 45 days after the complaint is assigned or within such shorter period as the Secretary may specify.

“(4) If the Secretary, upon the expiration of 90 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.

“(5) Any party to the dispute may seek review of a final order of the Secretary under this subsection in the Circuit Court of Appeals for the District of Columbia Circuit or the court of appeals in the circuit with venue.

“(6) Any findings of fact in a final order of the Secretary 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 may be considered by the court unless objection was urged before an administrative law judge or the Secretary at a proceeding under this subsection or, if not so urged, unless there were reasonable grounds for failure to do so.

“(e) PAYMENT UNDER PROTEST; GUARANTEE OF AIR TRAFFIC SERVICES USER ACCESS.—

“(1) PAYMENT UNDER PROTEST.—

“(A) IN GENERAL.—Any charge or fee that is the subject of a complaint that is not dismissed by the Secretary shall be paid by the complainant air traffic services user to the Corporation under protest.

“(B) REFERRAL OR CREDIT.—Any amounts paid under this subsection by a complainant air traffic services user to the Corporation under protest shall be subject to refund or credit to the air traffic services user in accordance with directions in the final order of the Secretary within 30 days of such order.

“(C) TIMELY REPAYMENT.—In order to ensure the timely repayment, with interest, of amounts in dispute determined not to be correct by the Secretary, the Corporation 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 90-day period referred to in subsection (d)(1), plus interest, unless the Corporation and the air traffic services user agree otherwise.

“(D) DEADLINE.—The letter of credit, or surety bond, or other suitable credit facility shall be provided to the Secretary not later than 20 days after the filing of the complaint and shall remain in effect for 30 days after the issuance of a timely final order by the Secretary determining whether such charge or fee is correct.

“(2) GUARANTEE OF AIR TRAFFIC SERVICES USER ACCESS.—Contingent upon an air traffic services user’s compliance with the requirements of paragraph (1) and pending the issuance of a final order by the Secretary determining the correctness of a charge or fee that is the subject of a complaint filed under subsection (a)(1), the Corporation may not withhold air traffic services as a means of enforcing the charge or fee.

“(3) NONCOMPLIANCE.—Prior to the issuance of a final order by the Secretary determining the correctness of a charge or fee that is the subject of a complaint filed under subsection (a)(1), if an air traffic services user does not comply with the requirements of paragraph (1), the Corporation shall withhold air traffic services from the user if the Corporation requests and receives approval from the Secretary to withhold air traffic services.

**“§ 90503. International agreements and activities**

“(a) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND LAWS OF OTHER COUNTRIES.—The Corporation shall provide air traffic services under this subtitle in a manner that is consistent with any obligation assumed by the United States in a treaty, convention, or agreement that may be in force between the United States and a foreign country or foreign countries or between the United States and an international organization, and shall take into consideration any applicable laws and requirements of foreign countries.

“(b) PROHIBITION.—The Corporation may not negotiate on behalf of or otherwise represent the United States before any foreign government or international organization.

**“§ 90504. Availability of safety information**

“(a) SAFETY INFORMATION.—The Corporation shall make available to air traffic services users and the public—

“(1) the same type of safety information made available by the FAA before the date of transfer;

“(2) any additional safety information needed by air traffic services users to operate safely; and

“(3) any updates or revisions to the safety information referred to in paragraphs (1) and (2).

“(b) METEOROLOGICAL SERVICES; AERONAUTICAL CHARTS.—The Corporation may provide for the dissemination of available aviation-related meteorological information and aeronautical charts to air traffic services users.

**“§ 90505. Reporting of safety violations to FAA**

“(a) IN GENERAL.—In a manner, form, and process prescribed by the Administrator, the Corporation shall report to the Administrator complaints or instances of—

“(1) noncompliance with or deviations from air traffic control clearances or instructions;

“(2) noncompliant operations in controlled airspace or special use airspace; and

“(3) any other observed activities endangering persons or property in the air or on the ground.

“(b) ASSISTANCE IN ENFORCEMENT ACTIONS.—The Corporation shall provide necessary assistance in any enforcement action taken by the Administrator resulting from a report of the Corporation or another person or entity.

“(c) STATUTORY CONSTRUCTION.—This section may not be construed to limit the authority of the Administrator to undertake enforcement actions upon the Administrator’s initiative.

**“§ 90506. Insurance requirements**

“The Corporation shall maintain adequate liability insurance policies and coverages, as determined by the Secretary, including complete indemnification of employees of the Corporation for acts within the scope of employment.

**“CHAPTER 907—GENERAL RIGHTS OF ACCESS TO AIRSPACE, AIRPORTS, AND AIR TRAFFIC SERVICES VITAL FOR ENSURING SAFE OPERATIONS FOR ALL USERS**

“Sec.

“90701. Access to airspace.

“90702. Access to airports.

“90703. Contract tower service after date of transfer.

“90704. Availability of safety information to general aviation operators.

“90705. Special rules and appeals process for air traffic management procedures, assignments, and classifications of airspace.

“90706. Definitions.

**“§ 90701. Access to airspace**

“The Secretary shall take such actions as are necessary to ensure that an air traffic services user is not denied access to airspace or air traffic services on the basis that the user is exempt from charges and fees under section 90313.

**“§ 90702. Access to airports**

“In carrying out section 90501(c)(3), the Secretary shall determine whether a proposal would materially reduce access to a public-use airport, including a general aviation or rural airport.

**“§ 90703. Contract tower service after date of transfer**

“(a) TRANSFER OF CONTRACT TOWER AGREEMENTS TO CORPORATION.—In carrying out section 91302(e), the Secretary shall take such actions as are necessary to ensure that the Corporation assumes the contract and other obligations associated with the operation of an air traffic control tower that, prior to the date of transfer, was operated under a contract pursuant to section 47124.

“(b) SPECIAL RULES FOR PROPOSALS RELATING TO OPERATION OF CONTRACT TOWERS.—

“(1) IN GENERAL.—The regulations and standards prescribed under section 90501(a)(1) shall include procedures for the Secretary to evaluate, under section 90501(c), a proposal for an airspace change, including an airspace reclassification, that results from the proposed closure of a tower that is operating under a contract with the Corporation and that, prior to the date of transfer, was operated under a contract with the Secretary pursuant to section 47124.

“(2) PROCEDURES.—The procedures required pursuant to paragraph (1) shall include—

“(A) the advance submission by the Corporation of necessary supporting data, analysis, and documentation related to—

“(i) the safety risk management assessment of the proposed contract tower closure;

“(ii) an assessment of the impact of the proposed closure on the operation of the national airspace system;

“(iii) an assessment of the impact of the proposed closure on local communities, including with respect to air service;

“(iv) an assessment, in consultation with the Secretary of Defense and the Secretary of Homeland Security, as appropriate, of any impact of the proposed closure on military aviation readiness and training, homeland security aviation operations, emergency management and disaster aviation operations, and law enforcement aviation operations; and

“(v) any other safety or operational information the Secretary determines to be necessary to understand the safety impact of the proposed closure; and

“(B) a process to receive input from the public, impacted air traffic services users, local communities, and the airport operator of the airport where the contract tower proposed to be closed is located.

**“§ 90704. Availability of safety information to general aviation operators**

“In carrying out section 90504, the Corporation shall ensure that the safety information referenced in that section is made available to general aviation operators.

**“§ 90705. Special rules and appeals process for air traffic management procedures, assignments, and classifications of airspace**

“(a) IN GENERAL.—If the Corporation proposes to modify, reduce, decommission, or eliminate an air traffic service or air navigation facility that would result in the loss of or material reduction in access to a public-use airport or adjacent airspace for any class, category, or type of aircraft or aircraft operation, as determined by the Secretary, the Secretary shall designate an officer to issue a notice in the Federal Register and establish a docket that includes—

“(1) a copy of the Corporation’s proposal;

“(2) available data on the usage of the affected air traffic service or air navigation facility;

“(3) an assessment of the designated officer on the effects of the proposal; and

“(4) an assessment of the designated officer on any proposed action to mitigate the loss of or material reduction in access to the public-use airport or adjacent airspace.

“(b) PROCEEDING.—The designated officer shall provide an opportunity for public comment on the proposal for a period of at least 60 days.

“(c) DECISION.—Not later than 30 days after the last day of the public comment period, the designated officer shall—

“(1) determine whether the proposal is in the public interest, including whether any material reduction in access to a public-use airport or adjacent airspace has been mitigated to the maximum extent practicable; and

“(2) approve or disapprove the proposal on that basis.

“(d) RELATIONSHIP TO OTHER REQUIREMENTS.—Notwithstanding section 90501(c), a proposal described in subsection (a)—

“(1) shall be subject to the process established in this section; and

“(2) may not be implemented unless approved under this section.

“(e) APPEALS AND SECRETARIAL REVIEW.—

“(1) WRITTEN PETITION FOR REVIEW.—A petition for an appeal of a decision of the designated officer under subsection (c) shall be submitted in writing to the Secretary not later than 30 days after the date of the decision.

“(2) SECRETARIAL REVIEW.—The Secretary shall review and make a determination with respect to a timely filed petition under paragraph (1) not later than 30 days after the date of receipt of the petition.

“(f) DECISIONAL STANDARDS.—In making a determination under this section, neither the Secretary nor the designated officer may consider any factor not directly germane to—

“(1) the safe operation or navigation of an aircraft; or

“(2) the sufficiency of mitigation efforts related to a material reduction in access to a public-use airport or adjacent airspace.

“(g) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any determination made by the Secretary under subsection (e)(2) shall be subject to judicial review pursuant to subsections (a), (b), (d), and (e) of section 46110.

“(2) STANDARD OF REVIEW.—

“(A) DISAPPROVALS.—In the case of a petition filed under section 46110(a) to review a determination of the Secretary that disapproves a proposal, the court shall, without deference to the Secretary’s determination, review de novo the record to determine if the Secretary’s determination is in the public interest.

“(B) APPROVALS.—In the case of a petition filed under section 46110(a) to review a determination of the Secretary that approves a proposal, the court may overturn the approval only upon a finding of clear error or an abuse of discretion.

**“§ 90706. Definitions**

“In this chapter, the following definitions apply:

“(1) MATERIAL REDUCTION.—The term ‘material reduction’ means, with respect to access to a public-use airport, including a general aviation or rural air-

port, a materially diminished ability to safely operate or navigate to or from the airport or adjacent airspace during a time of day, weather condition, or season of the year.

“(2) RURAL AIRPORT.—The term ‘rural airport’ means a public-use airport located in a rural area (as that term is defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490)).

#### **“CHAPTER 909—CONTINUITY OF AIR TRAFFIC SERVICES TO DEPARTMENT OF DEFENSE AND OTHER PUBLIC AGENCIES**

“Sec.

“90901. Continuity of air traffic services provided by Department of Defense.

“90902. Military and other public aircraft exempt from user fees.

“90903. Air traffic services for Federal agencies.

“90904. Emergency powers of Armed Forces.

“90905. Adherence to international agreements related to operations of Armed Forces.

“90906. Primacy of Armed Forces in times of war.

“90907. Cooperation with Department of Defense and other Federal agencies after date of transfer.

##### **“§ 90901. Continuity of air traffic services provided by Department of Defense**

“After the date of transfer, the Department of Defense, as directed by the President, is authorized and permitted to provide air traffic services within United States airspace and international airspace delegated to the United States.

##### **“§ 90902. Military and other public aircraft exempt from user fees**

“The Corporation may not impose charges or fees for operations of aircraft owned or operated by the Armed Forces or other aircraft that qualify as public aircraft under sections 40102(a) and 40125.

##### **“§ 90903. Air traffic services for Federal agencies**

“Before the date of transfer, the Secretary shall establish processes, requirements, procedures, and regulations and take any other measure necessary, consistent with the purposes of this subtitle, to ensure that all United States Government activities supported by the FAA’s operation of air traffic services as of the date of transfer receive support from the Corporation after the date of transfer and on an ongoing basis.

##### **“§ 90904. Emergency powers of Armed Forces**

“The requirements of section 90501 shall not apply to airspace actions necessitated by an exercise of authority under section 40106.

##### **“§ 90905. Adherence to international agreements related to operations of Armed Forces**

“In carrying out section 90503, the Corporation shall ensure that the obligations described in that section include obligations related to operations of the Armed Forces.

##### **“§ 90906. Primacy of Armed Forces in times of war**

“The President may make temporary transfers to the Secretary of Defense pursuant to section 40107(b).

##### **“§ 90907. Cooperation with Department of Defense and other Federal agencies after date of transfer**

“At least 1 year prior to the date of transfer, the Corporation, the Department of Transportation, and each Federal department or agency supported by the FAA’s operation of air traffic services, including the Armed Forces, shall enter into a tripartite agreement to—

“(1) ensure cooperation between the Corporation and the department or agency on the delivery of air traffic services;

“(2) facilitate the safe provision of air traffic services to the department or agency; and

“(3) address how the Corporation and the department or agency will coordinate and communicate on the day-to-day operations of the national airspace system.

#### **“CHAPTER 911—EMPLOYEE MANAGEMENT**

“Sec.

“91101. Definitions.

“91102. Employee management and benefits election.

“91103. Labor and employment policy.

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“91106. Collective-bargaining agreements.

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 “91108. Potential and pending grievances, arbitrations, and settlements.  
 “91109. Prohibition on striking and other activities.  
 “91110. Legal action.

**“§ 91101. Definitions**

“In this chapter, the following definitions apply:

“(1) AGENCY.—The term ‘Agency’ means, as the context requires, the Department of Transportation or the FAA.

“(2) AIR TRAFFIC CONTROLLER.—

“(A) IN GENERAL.—The term ‘air traffic controller’ means an employee of the Corporation who, in an air traffic control facility or flight service station facility—

“(i) 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

“(ii) is the immediate supervisor of any employee described in clause (i).

“(B) LIMITATION.—Notwithstanding subparagraph (A), the definition of ‘air traffic controller’ for purposes of section 8336(e) of chapter 83 of title 5 and section 8412(e) of chapter 84 of such title shall mean only employees actively engaged in the separation of air traffic and the immediate supervisors of such employees, as set forth in section 8331(30) of such title, and section 8401(35) of such title.

“(3) AUTHORITY.—The term ‘Authority’ means the Federal Labor Relations Authority, as described in section 7104(a) of title 5.

“(4) SERVICE.—The term ‘Service’ means the Federal Mediation and Conciliation Service established by section 202 of the Labor Management Relations Act, 1947 (29 U.S.C. 172).

**“§ 91102. Employee management and benefits election**

“(a) AUTHORITY OF CEO.—

“(1) IN GENERAL.—Except as otherwise provided by law, the CEO shall classify and fix the compensation and benefits of employees in the Corporation.

“(2) NEGOTIATIONS.—In developing, making changes to, and implementing wages, hours, and other terms and conditions of employment, including when establishing the compensation and benefits program under section 90316(c), the Corporation shall negotiate with exclusive representatives recognized under section 91105.

“(3) BEFORE DATE OF TRANSFER.—For purposes of paragraph (2), before the date of transfer, the term ‘exclusive representatives recognized under section 91105’ shall refer to labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees.

“(b) FORMER FEDERAL EMPLOYEES.—

“(1) FEDERAL RETIREMENT BENEFITS.—

“(A) ELECTION OF RETIREMENT BENEFITS.—At least 90 days before the date of transfer, an employee transferring to the Corporation who will be subject to either the Civil Service Retirement System under chapter 83 of title 5 (in this section referred to as ‘CSRS’) or the Federal Employees Retirement System under chapter 84 of title 5 (in this section referred to as ‘FERS’) on the day immediately preceding the date of transfer shall elect either to—

“(i) retain the employee’s coverage under either CSRS or FERS, as applicable, in lieu of coverage by the Corporation’s employee benefits system established under section 90316(c); or

“(ii) receive a deferred annuity, lump-sum benefit, or any other benefit available to the employee under CSRS or FERS, in the same manner that would have been available to the employee if the employee had voluntarily separated from Federal employment on the day before the date of transfer.

“(B) THRIFT SAVINGS PLAN ACCOUNTS.—An employee who makes the election under subparagraph (A)(ii) shall have the option to transfer the balance in the employee’s Thrift Savings Plan account to the plan under the Corporation’s retirement system, consistent with applicable law and the terms of the Corporation’s plan.

“(C) PERIODIC ELECTION.—The Corporation shall provide for periodic election seasons during which an employee who transferred to the Corporation on the date of transfer may become eligible for retirement benefits under the Corporation’s employee benefits system established under section 90316(c) by making an election under subparagraph (A)(ii).

“(D) CONTINUITY OF ANNUITANT BENEFITS.—Notwithstanding any other provision of law, any individual who is receiving an annuity under chapter 83 or chapter 84 of title 5 may continue to receive such annuity while employed by the Corporation.

“(E) HIGH-3 DETERMINATION.—With respect to any employee who retains CSRS or FERS coverage pursuant to subparagraph (A), such employee’s basic pay while with the Corporation shall be included in any determination of such employee’s average pay under section 8331(4) or 8401(3), as the case may be, of title 5 when calculating the annuity (if any) of such employee. For purposes of this section, an employee’s basic pay shall be defined as such employee’s total annual salary or wages from the Corporation, including any location-based adjustment.

“(2) PAYMENTS TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—For employees of the Corporation who elect to retain their coverage under either CSRS or FERS pursuant to paragraph (1), the Corporation shall only be required to pay to the Civil Service Retirement and Disability Fund—

“(A) such employee deductions and agency contributions as are required by sections 8334, 8422, and 8423 of title 5; and

“(B) such additional amounts, not to exceed 2 percent of the amounts under subparagraph (A), as are determined necessary by the Office of Personnel Management to pay the cost of administering retirement benefits for employees who retire from the Corporation after the date of transfer under either CSRS or FERS, for their survivors, and for survivors of employees of the Corporation who die after the date of transfer (which amounts shall be available to the Office of Personnel Management as provided in section 8348(a)(1)(B) of title 5).

“(3) THRIFT SAVINGS FUND.—The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by section 8432 of title 5 for employees who elect to retain their coverage under FERS pursuant to paragraph (1).

“(4) HEALTH BENEFITS PLAN ELECTION.—Any employee of the Corporation who was subject to the Federal Employees Health Benefits Program under chapter 89 of title 5 (in this section referred to as ‘FEHBP’) on the day immediately preceding the date of transfer shall have the option to receive health benefits from a health benefit plan established by the Corporation under section 90316(c) or to continue coverage under FEHBP without interruption.

“(5) PAYMENTS TO EMPLOYEES HEALTH BENEFITS FUND.—For employees of the Corporation who elect to retain their coverage under FEHBP pursuant to paragraph (4), the Corporation shall pay to the Employees Health Benefits Fund—

“(A) such employee deductions and agency contributions as are required by subsections (a) through (f) of section 8906 of title 5; and

“(B) such amounts as are determined necessary by the Office of Personnel Management under paragraph (6) to reimburse the Office of Personnel Management for contributions under section 8906(g)(1) of title 5.

“(6) REIMBURSEMENT AMOUNTS.—The amounts required to be paid by the Corporation under paragraph (5)(B) shall be equal to the amount of Government contributions for retired employees who retire from the Corporation after the date of transfer under either CSRS or FERS, for survivors of such retired employees, and for survivors of employees of the Corporation who die after the date of transfer, with said amounts prorated to reflect only that portion of the total service of such employees and retired persons that was performed for the Corporation after the date of transfer.

“(7) ADDITIONAL BENEFITS.—Subject to the provisions of this chapter, any employee of the Corporation who was subject to the provisions of subchapter I of chapter 85 (concerning unemployment compensation) and chapters 87 (concerning life insurance), 89A (concerning enhanced dental benefits), and 89B (concerning enhanced vision benefits) of title 5 shall have the option to continue coverage under such provisions without interruption in lieu of applicable coverage by the Corporation’s employee benefits system established under section 90316(c). The Corporation shall withhold from pay, and shall make contributions, under the provisions of title 5 referred to in this subsection at the same rates applicable to agencies of the Federal Government for such employees.

“(8) WORKERS COMPENSATION.—Officers and employees of the Corporation shall be covered by, and shall be considered employees for purposes of, subchapter I of chapter 81 of title 5 (concerning compensation for work injuries). The Corporation shall make contributions to the Employees’ Compensation Fund under the provisions of section 8147 of title 5 at the same rates applicable to agencies of the Federal Government.



“(9) NON-FOREIGN AREA.—To the extent consistent with law, the Non-Foreign Area Retirement Equity Assurance Act of 2009 shall apply to officers and employees of the Corporation transferred under section 90316.

“(10) TRANSFER OF LEAVE.—Sick and annual leave, credit hours, and compensatory time of officers and employees of the Corporation, whether accrued before or after the date of transfer, shall be obligations of the Corporation under the provisions of this chapter.

“(11) WHISTLEBLOWER PROTECTION.—Neither the Corporation, nor any officer or employee of the Corporation, may take any action described in subsection (b)(8), (b)(9), or (b)(13), or the final paragraph of subsection (b), of section 2302 of title 5 (relating to whistleblower protection).

**“§ 91103. Labor and employment policy**

“(a) APPLICATION OF CHAPTER 71 OF TITLE 5.—To the extent not inconsistent with this chapter, labor-management relations shall be subject to the provisions of chapter 71 of title 5, provided that the obligation of the Corporation and an exclusive bargaining representative recognized under section 91105 to bargain collectively in good faith over conditions of employment shall mean to bargain over the same wages, hours, and other terms and conditions of employment as are negotiable under section 8(d) of the Act of July 5, 1935, as amended (29 U.S.C. 158(d)), and without application of section 7103(a)(14) of title 5 and section 7117 of title 5, which shall not apply.

“(b) APPLICABILITY.—To the limited extent necessary for the implementation of this chapter, the Corporation shall have the rights and obligations of an agency under chapter 71 of title 5.

“(c) APPLICATION OF FAIR LABOR STANDARDS ACT.—The provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply to the Corporation and to its officers and employees.

“(d) REPORTING AND DISCLOSURE.—The provisions of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.) shall be applicable to labor organizations that have or are seeking to attain recognition under section 91105, and to such organizations’ officers, agents, shop stewards, other representatives, and members.

“(e) RIGHT TO COLLECTIVELY BARGAIN.—Each employee of the Corporation shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Such right shall include the right to engage in collective bargaining with respect to the same wages, hours, and other terms and conditions of employment as are negotiable under section 8(d) of the Act of July 5, 1935, as amended (29 U.S.C. 158(d)).

**“§ 91104. Bargaining units**

“(a) IN GENERAL.—Pursuant to section 7112 of title 5 and subject to the requirements of this chapter, the Authority shall decide in each case the unit appropriate for collective bargaining with the Corporation.

“(b) PREVIOUSLY CERTIFIED UNITS.—Notwithstanding subsection (a), the Authority may not adopt, certify, or decide upon bargaining units that include employees in bargaining units previously certified by the Authority that are smaller in geographic scope than such previously certified bargaining units, unless the Authority finds by compelling evidence that such previously certified units would not, absent modification, remain units appropriate for collective bargaining with the Corporation.

“(c) OTHER UNITS.—

“(1) PREVIOUS CERTIFICATIONS.—Notwithstanding subsection (a) or (b), the Authority shall not recognize or certify any bargaining unit different than the bargaining units previously certified by the Authority prior to the date described in section 91105(g).

“(2) SUPERVISORS AND MANAGEMENT OFFICIALS.—Notwithstanding section 7135(a)(2) of title 5, a bargaining unit may not include, or be modified to include, any supervisor or management official, as those terms are defined in section 7103(a) of title 5.

**“§ 91105. Recognition of labor organizations**

“(a) APPLICATION OF CHAPTER 71 OF TITLE 5.—To the extent not inconsistent with this chapter, section 7111 of title 5 shall apply to the recognition and certification of labor organizations for the employees of the Corporation and the Corporation shall accord exclusive recognition to and bargain collectively with a labor organization when the organization has been selected by a majority of the employees in an appropriate unit as their representative.

“(b) RECOGNITION OF EXCLUSIVE REPRESENTATIVE.—Notwithstanding subsection (a), each labor organization that, immediately before the date of transfer, was recog-

nized as the exclusive representative for a bargaining unit of employees of the Agency shall be deemed to be recognized on the date of transfer or thereafter as the exclusive representative for those employees of the Corporation in the same or similar bargaining unit unless another representative for a bargaining unit of employees is certified pursuant to section 7111 of title 5 and this section.

“(c) EXPIRATION OF TERM.—Every collective-bargaining agreement or arbitration award that applies to an employee of the Agency and that is in force immediately before the date of transfer continues in force until its term expires. To the extent that the Corporation assumes the functions and responsibilities that, prior to the date of transfer, were conducted by the Agency, agreements and supplements (including any arbitration award, as applicable) covering employees of the Agency that are in effect on the date of transfer shall continue to be recognized by and binding on the Corporation, the bargaining representative, and all covered employees until altered or amended pursuant to law. Any agreement, supplement, or arbitration award continued by this section is deemed to be an agreement, supplement, or arbitration award binding on the Corporation, the bargaining representative, and all covered employees for purposes of this chapter and title 5.

“(d) LIMITATION ON APPLICATION.—Notwithstanding section 91103, sections 7106 and 7113 of title 5 shall not apply to this chapter.

“(e) CONTINUATION OF BARGAINING.—If an exclusive representative and the Agency are engaged in bargaining (whether concerning a collective-bargaining agreement, issues related to the transfer of functions and responsibilities from the Agency to the Corporation, or otherwise) prior to the date of transfer, such bargaining shall continue between the exclusive representative and the Corporation, and the Corporation shall be bound by any commitments made during bargaining by the Agency.

“(f) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Authority.

“(g) LIMITATION.—Notwithstanding any other provision of this chapter or any provision of title 5, no bargaining unit or part of a bargaining unit consisting of employees of the Corporation represented by a labor organization pursuant to subsection (b) may be reviewed, rescinded, amended, altered, or varied, other than—

- “(1) to include in the unit any employees who are not represented by a labor organization, or
- “(2) to merge bargaining units that are represented by the same labor organization,

before the first day of the last 3 months of the first collective agreement entered into after the date of transfer that applies to those employees and that has resulted from collective bargaining between such labor organization and the Corporation.

“(h) DEDUCTION.—

“(1) IN GENERAL.—Notwithstanding section 91103, section 7115 of title 5 shall not apply to this chapter.

“(2) DUES.—When a labor organization holds exclusive recognition, the Corporation shall deduct the regular and periodic dues, initiation fees, and assessments (not including fines and penalties) of the organization from the pay of all members of the organization in the unit of recognition if the Corporation (or, before the date of transfer, the Agency) has received from each employee, on whose account such deductions are made, a written assignment which shall be irrevocable for a period of not more than 1 year.

“(3) CONTINUATION.—Any agreement described in subsection (c) that provides for deduction by the Agency of the regular and periodic dues, initiation fees, and assessments (not including fines and penalties) of the labor organization from the pay of its members shall continue in full force and effect and the obligation for such deductions shall be assumed by the Corporation. No such deduction may be made from the pay of any employee except on the employee’s written assignment, which shall be irrevocable for a period of not more than 1 year.

#### “§ 91106. Collective-bargaining agreements

“(a) IN GENERAL.—Except as provided under section 91105(c), collective-bargaining agreements between the Corporation and bargaining representatives shall be effective for not less than 2 years.

“(b) PROCEDURES.—Collective-bargaining agreements between the Corporation and bargaining representatives recognized under section 91105 may include procedures for resolution by the parties of grievances and adverse actions arising under the agreement, including procedures culminating in binding third-party arbitration, or the parties may adopt such procedures by mutual agreement in the event of a dispute. Such procedures shall be applicable to disputes arising under section 91109.

“(c) LIMITATION ON APPLICATION.—Notwithstanding section 91103, section 7121(c) of title 5 shall not apply to this chapter.

“(d) DISPUTE RESOLUTION PROCEDURES.—The Corporation and bargaining representatives recognized under section 91105 may by mutual agreement adopt procedures for the resolution of disputes or impasses arising in the negotiation of a collective-bargaining agreement.

**“§ 91107. Collective-bargaining dispute resolution**

“(a) RESOLUTION OF DISPUTES.—

“(1) IN GENERAL.—If, prior to 90 days after the expiration of the term collective-bargaining agreement or 90 days after the parties begin mid-term negotiations, the Corporation and the exclusive bargaining representative of the employees of the Corporation (in this section referred to collectively as the ‘parties’) do not reach an agreement under sections 7114(a)(1), 7114(a)(4), and 7114(b) of title 5 (as such sections apply to the Corporation under this chapter), or section 91106(d) of this chapter, the Corporation and the bargaining representative shall use the mediation services of the Service to attempt to reach such agreement in accordance with part 1425 of title 29, Code of Federal Regulations (as in effect on the date of enactment of this subtitle).

“(2) MEDIATION PERIOD.—The mediation period under paragraph (1) may not exceed 60 days unless extended by written agreement of the parties.

“(b) BINDING ARBITRATION FOR TERM BARGAINING.—

“(1) THREE MEMBER PRIVATE ARBITRATION BOARD.—If the mediation services of the Service under subsection (a)(1) do not lead to the resolution of issues in controversy arising from the negotiation of a term collective-bargaining agreement, the parties shall submit their issues in controversy to a private arbitration board consisting of 3 members.

“(2) APPOINTMENT OF ARBITRATION BOARD.—

“(A) PREPARATION OF LIST OF ARBITRATORS.—The Director of the Service shall provide for the appointment of the 3 members of an arbitration board by—

“(i) preparing a list of not fewer than 15 names of arbitrators of nationwide reputation and professional stature with at least 20 years of experience in labor-management arbitration and considerable experience in interest arbitration in major industries; and

“(ii) providing the list to the parties.

“(B) SELECTION OF ARBITRATORS BY PARTIES.—Not later than 10 days after receiving a list of names under subparagraph (A), the parties shall each select one arbitrator. The arbitrators selected by the parties do not need to be arbitrators whose names appear on the list.

“(C) SELECTION OF THIRD ARBITRATOR.—Not later than 7 days after the date on which the 2 arbitrators are selected by the parties under subparagraph (B), the 2 arbitrators, acting jointly, shall select a third person from the list prepared under subparagraph (A).

“(D) FAILURE TO ACT.—If either of the parties fails to select a person or if the 2 arbitrators are unable to agree on the third person in 7 days, the parties shall make the selection by alternately striking names on the list prepared under subparagraph (A), beginning with the party chosen on a random basis, until one arbitrator remains.

“(3) FRAMING ISSUES IN CONTROVERSY.—If the parties do not agree on the framing of the issues to be submitted for arbitration, the arbitration board shall frame the issues.

“(4) HEARINGS.—The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence and witnesses in support of their claims and an opportunity to present their case in person, by counsel, or by other representative as they may elect.

“(5) DECISIONS.—The arbitration board shall render its written decision not later than 90 days after the date of its appointment. Decisions of the arbitration board shall be conclusive and binding upon the parties.

“(6) EVIDENCE.—The arbitration board shall consider and afford the proper weight to all of the evidence presented by the parties.

“(7) COSTS.—The parties shall share costs of the arbitration equally.

“(c) RATIFICATION OF AGREEMENTS.—Upon reaching a voluntary agreement or at the conclusion of the binding arbitration under subsection (b), the final agreement, except for those matters decided by a private arbitration board, shall be—

“(1) subject to ratification by the exclusive bargaining representative of the employees, if so requested by the bargaining representative; and

“(2) subject to approval by the head of the Corporation in accordance with section 7114(c) of title 5.

“(d) MID-TERM BARGAINING.—

“(1) PREPARATION OF LIST OF ARBITRATORS.—If the mediation services of the Service under subsection (a) do not lead to the resolution of issues in controversy arising from the negotiation of a mid-term collective-bargaining agreement, the Director shall provide the parties a list of not fewer than 10 names of arbitrators of nationwide reputation and professional stature with at least 20 years of experience in labor-management arbitration and considerable experience in interest arbitration in major industries.

“(2) SELECTION OF ARBITRATOR.—The parties shall alternately strike names on the list, beginning with the party chosen on a random basis, until one arbitrator remains.

“(3) DECISION.—The arbitrator shall hold a hearing, and not later than 90 days after date of the appointment of the arbitrator, issue a written decision resolving the issues in controversy. The decision shall be conclusive and binding upon the parties.

“(e) ENFORCEMENT.—To enforce this section, either party may bring suit in the United States District Court for the District of Columbia, which shall hear and resolve the enforcement action on an expedited basis.

“(f) APPLICATION.—Notwithstanding section 91103(a), section 7119 of title 5 shall not apply to this chapter.

“§ 91108. Potential and pending grievances, arbitrations, and settlements

“(a) IN GENERAL.—The Corporation is deemed to be the employer referred to in any agreement or supplement referred to in section 91105(c) for the purpose of any arbitration proceeding or arbitration award. Any agreement concerning any employee that resolves a potential or filed grievance that is binding on the Agency shall, to the extent that the employee becomes an employee of the Corporation, become binding on the Corporation.

“(b) EXISTING BINDING AGREEMENTS.—Any agreement or supplement referred to in section 91105(c) is binding on—

“(1) the Corporation as if it were the employer referred to in such agreement or supplement;

“(2) the bargaining representative that is a party to the agreement or supplement; and

“(3) the employees of the Corporation in the bargaining unit with respect to whom that bargaining representative has been certified.

“(c) JURISDICTION.—Subject to section 91103, the Authority shall retain jurisdiction over all matters arising before the date of transfer in relation to the interpretation and application of any agreement or supplement referred to in section 91105(c), whether or not such agreement or supplement has expired.

“(d) EXISTING GRIEVANCES OR ARBITRATIONS.—Grievances or arbitrations that were filed or commenced before the date of transfer with respect to any agreement or supplement referred to in section 91105(c) shall be continued as though the Corporation were the employer referred to in the agreement or supplement.

“(e) PROCEEDINGS AFTER DATE OF TRANSFER.—Where events giving rise to a grievance under any agreement or supplement referred to in section 91105(c) occurred before the date of transfer but the proceedings had not commenced before that date, the proceedings may be commenced on or after the date of transfer in accordance with such agreement or supplement as though the Corporation were the employer referred to in such agreement or supplement.

“(f) ACTIONS DEEMED TO BE BY CORPORATION.—For the purposes of subsections (c), (d), and (e), anything done, or not done, by the Agency is deemed to have been done, or to have not been done, as the case may be, by the Corporation.

“(g) EXCEPTIONS TO ARBITRAL AWARDS.—

“(1) IN GENERAL.—Notwithstanding section 91103, section 7122 of title 5 shall not apply to this chapter.

“(2) ACTIONS TO VACATE.—Either party to grievance arbitration under this chapter may file an action pursuant to section 91110(a) to enforce the arbitration process or to vacate or enforce an arbitration award. An arbitration award may only be vacated on the grounds, and pursuant to the standards, that would be applicable to an action to vacate an arbitration award brought in the Federal courts under section 301 of the Labor Management Relations Act, 1947 (29 U.S.C. 185).

“§ 91109. Prohibition on striking and other activities

“(a) IN GENERAL.—Employees of the Corporation are prohibited from—

“(1) participating in a strike, work stoppage, or slowdown against the Corporation; or

“(2) picketing the Corporation in a labor-management dispute if such picketing interferes with the Corporation’s operations.

“(b) **TERMINATION.**—An employee who participates in an activity described in subsection (a) shall be terminated from employment with the Corporation.

**“§ 91110. Legal action**

“(a) **IN GENERAL.**—Consistent with the requirements of section 90315, actions to enforce the arbitration process or vacate or enforce an arbitral award under section 91108(g)(2) between the Corporation and a labor organization representing Corporation employees, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy.

“(b) **AUTHORIZED ACTS.**—A labor organization recognized under section 91105 and the Corporation shall be bound by the authorized acts of their agents. Any labor organization may sue or be sued as an entity and on behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

“(c) **JURISDICTION.**—Under this subtitle, for the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization—

“(1) in the district in which such organization maintains its principal offices;

or

“(2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

“(d) **SUMMONS OR SUBPOENA.**—The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

**“CHAPTER 913—OTHER MATTERS**

<sup>“Sec.</sup>

<sup>“91301. Termination of Government functions.</sup>

<sup>“91302. Savings provisions.</sup>

**“§ 91301. Termination of Government functions**

“Except as otherwise provided in this subtitle, whenever any function vested by law in the Secretary, Administrator, Department of Transportation, or FAA has been transferred to the Corporation pursuant to this subtitle, it shall no longer be a function of the Government.

**“§ 91302. Savings provisions**

“(a) **COMPLETED ADMINISTRATIVE ACTIONS.**—

“(1) **IN GENERAL.**—Completed administrative actions of the Department of Transportation or the FAA shall not be affected by the enactment of this subtitle, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law.

“(2) **COMPLETED ADMINISTRATIVE ACTION DEFINED.**—In paragraph (1), the term ‘completed administrative action’ includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

“(b) **CONTINUED EFFECTIVENESS OF PENDING ACTIONS.**—

“(1) **PENDING ACTIONS AND PROCEEDINGS.**—The provisions of this subtitle shall not affect any proceedings of the Department of Transportation or the FAA pending on the date of transfer, including—

“(A) notices of proposed rulemaking related to activities of the FAA, without regard to whether the activities are transferred to the Corporation; and

“(B) an application for a license, a permit, a certificate, or financial assistance pending on the date of transfer before the Department of Transportation or the FAA, or any officer thereof, with respect to activities of the Department or the FAA, without regard to whether the activities are transferred to the Corporation.

“(2) **EFFECT OF ORDERS.**—Orders issued in any proceedings referred to in paragraph (1) shall continue in effect until modified, terminated, superseded, or revoked in accordance with law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

“(c) **CONTINUED EFFECTIVENESS OF ADMINISTRATIVE AND JUDICIAL ACTIONS.**—No causes of action or actions by or against the Department of Transportation or the FAA arising from acts or omissions occurring before the date of transfer shall abate by reason of the enactment of this subtitle.

“(d) **SUBSTITUTION OR ADDITION OF PARTIES TO JUDICIAL ACTIONS.**—Except as provided by subsection (e)(2), if, on the date of transfer, the Department of Transportation or the FAA, or any officer thereof in the officer’s capacity, is a party to an action and, under this subtitle, the performance of that activity of the Department, FAA, or officer is transferred to the Corporation, such action shall be continued with the CEO substituted or added as a party.

“(e) **AIR TRAFFIC SERVICES LIABILITIES AND OBLIGATIONS.**—

“(1) **ASSUMPTION OF OBLIGATIONS.**—Except as provided in paragraph (2), the Corporation shall assume—

“(A) all obligations (tangible and incorporeal, present, and executory) associated with the air traffic services transferred under this subtitle on the date of transfer, including leases, permits, licenses, contracts, agreements, accounts receivable, and accounts payable; and

“(B) all claims and liabilities associated with the air traffic services transferred under this subtitle pending on the date of transfer.

“(2) **CLAIMS AND ACTIONS THAT REMAIN LIABILITIES OF UNITED STATES.**—

“(A) **CLAIMS AND ACTIONS ARISING IN TORT.**—All claims and actions arising in tort pending on the date of transfer and arising out of the alleged acts or omissions of employees of the FAA who transfer to the Corporation shall remain liabilities of the United States.

“(B) **CONTINGENT LIABILITIES.**—All contingent liabilities existing on the date of transfer shall remain with the United States, including (without limitation) environmental and intellectual property infringement claims.

“(C) **OTHER CLAIMS AND LIABILITIES.**—All other claims and liabilities arising out of the alleged acts or omissions of the United States before the date of transfer (including those arising under an agreement referred to in section 91105(c)) whose remedy is financial or monetary in nature shall remain liabilities of the United States.

“(D) **ACCESS OF FEDERAL REPRESENTATIVES TO EMPLOYEES AND RECORDS.**—The Secretary shall ensure that, before the date of transfer, the Corporation has agreed to allow representatives of the Secretary and the Attorney General such access as they may require to employees and records of the Corporation for all purposes relating to the handling of such claims under this paragraph.

## **“CHAPTER 915—CONGRESSIONAL OVERSIGHT OF AIR TRAFFIC SERVICES PROVIDER**

“Sec.

“91501. Inspector General reports to Congress on transition.

“91502. State of air traffic services.

“91503. Submission of annual financial report.

“91504. Submission of strategic plan.

“91505. Submission of annual action plan.

### **“§ 91501. Inspector General reports to Congress on transition**

“(a) **IN GENERAL.**—Before the date of transfer, the Inspector General of the Department of Transportation shall submit regular reports to Congress on the progress of the preparation of the Department of Transportation and of the Corporation for the transfer of operational control of air traffic services under this subtitle.

“(b) **TIMING.**—The reports described in subsection (a) shall be submitted, at a minimum, on a quarterly basis until the date of transfer.

“(c) **SUNSET.**—This section shall expire on the date of transfer.

“(d) **STATUTORY CONSTRUCTION.**—Nothing in this section may be construed to limit the authority of the Inspector General of the Department of Transportation to conduct oversight of the Department of Transportation’s interactions with the Corporation after the date of transfer.

### **“§ 91502. State of air traffic services**

“(a) **REPORT.**—Not later than 2 years after the date of transfer, and on or before March 31 of every second year beginning thereafter—

“(1) the Corporation shall submit to the Secretary a report on the state of air traffic services; and

“(2) the Secretary shall submit the report to Congress.

“(b) **CONTENTS.**—The report shall include, as appropriate, information on—

“(1) access to airports and services for all users, including access with respect to rural areas;

“(2) charges and fees, safety, and areas in which the Corporation has identified efficiencies in the system, including staffing and facilities realignment or consolidation;

“(3) the safe, fair, and timely provision of air traffic services by the Corporation;

“(4) the sound operation of the Corporation and the impact of any activities of the Corporation on United States airspace;

“(5) the cooperation and interaction of the Corporation with the Department of Defense, the Department of Transportation, the FAA, and other Federal departments and agencies, including any agreements between the Corporation and those departments and agencies;

“(6) compliance of the Corporation with United States obligations under international treaties and agreements;

“(7) compliance of the Corporation with Federal safety, environmental, corporate, and tax laws and regulations;

“(8) compliance of the Corporation with Federal laws related to employees of the Corporation;

“(9) follow-up on Inspector General and Government Accountability Office audits, investigations, and reports involving the Corporation, including any recommendations included in such reports;

“(10) compliance of the Corporation with other Federal requirements, including requirements relating to public disclosure, publication of fees, annual reporting, and establishment of the Advisory Board and other committees;

“(11) actions and activities of the CEO and Board and their adherence to their duties and responsibilities;

“(12) compliance of the Corporation with requirements related to rural, remote, and small community air traffic services;

“(13) compliance of the Corporation with requirements related to claims of incorrect fees and resolution of fee disputes;

“(14) compliance of the Corporation with requirements to report safety violations to the FAA, cooperate with FAA investigations, and assist in FAA enforcement actions;

“(15) actions in times of emergencies and times of war;

“(16) progress made by the Corporation in implementing system modernization efforts and ongoing capital investments, plans of the Corporation for next steps in implementing such efforts and investments, current efficiencies and benefits of previously implemented systems improvements, and current needs for improvement; and

“(17) such other matters as the Secretary, in consultation with the Administrator, determines appropriate.

**“§ 91503. Submission of annual financial report**

“(a) ANNUAL FINANCIAL REPORT.—

“(1) IN GENERAL.—Not later than 1 year after the date of transfer, and annually thereafter, the Corporation shall publish a report on the activities of the Corporation during the prior year.

“(2) CONTENTS; AVAILABILITY.—The annual report shall contain financial and operational performance information regarding the Corporation, as well as information on the compensation (including bonuses and other financial incentives) of each Director, the CEO, and officers of the Corporation, and shall be made publicly available.

“(3) PROPRIETY INFORMATION.—The Corporation shall ensure that any propriety information that may be contained in the annual report is not made public.

“(b) SUBMISSION.—Each year, on the date the annual report required pursuant to subsection (a) is published—

“(1) the Corporation shall submit the report to the Secretary; and

“(2) the Secretary shall submit the report to Congress.

**“§ 91504. Submission of strategic plan**

“(a) SUBMISSION OF STRATEGIC PLAN.—Not later than 15 days after the initial strategic plan is approved by the Board pursuant to section 90308(c)—

“(1) the Corporation shall submit the strategic plan to the Secretary; and

“(2) the Secretary shall submit the strategic plan to Congress.

“(b) UPDATES TO STRATEGIC PLAN.—Not later than 15 days after an update to the strategic plan is approved by the Board pursuant to section 90308(c)—

“(1) the Corporation shall submit the updated strategic plan to the Secretary; and

“(2) the Secretary shall submit the updated strategic plan to Congress.

**“§ 91505. Submission of annual action plan**

“(a) IN GENERAL.—The Corporation shall develop an annual report on the goals of the Corporation for the following year.

“(b) CONTENTS.—The report shall contain goals for the Corporation to meet that are specific, tangible, and actionable, in order to expedite improvements to, and maintain the integrity of, air traffic services provided by the Corporation.

“(c) SUBMISSION.—Not later than 1 year after the date of transfer, and annually thereafter—

“(1) the Corporation shall submit the report to the Secretary; and

“(2) the Secretary shall submit the report to Congress.

“(d) PUBLIC AVAILABILITY.—The Corporation shall publish, and make available to the public, each report submitted to the Secretary under subsection (c).

“(e) PROPRIETARY INFORMATION.—In carrying out this section, the Corporation may take necessary actions to prevent the public disclosure of proprietary information.”

(b) ANALYSIS FOR TITLE 49.—The analysis for title 49, United States Code, is amended by adding at the end the following:

“**XI. American Air Navigation Services Corporation** .....90101”.

## **Subtitle B—Amendments to Federal Aviation Laws**

### **SEC. 221. DEFINITIONS.**

Section 40102(a) of title 49, United States Code, is amended by adding at the end the following:

“(48) ‘American Air Navigation Services Corporation’ means the American Air Navigation Services Corporation established by subtitle XI.”

### **SEC. 222. SUNSET OF FAA AIR TRAFFIC ENTITIES AND OFFICERS.**

(a) AIR TRAFFIC SERVICES COMMITTEE.—Section 106(p) of title 49, United States Code, is amended—

(1) in paragraph (7) by adding at the end the following:

“(I) SUNSET.—The Committee shall terminate and this paragraph shall cease to be effective beginning on the date of transfer (as defined in section 90101(a)).”; and

(2) by adding at the end the following:

“(9) SUNSET OF AIR TRAFFIC ADVISORY ROLE.—Beginning on the date of transfer (as defined in section 90101(a)), the Council shall not develop or submit comments, recommended modifications, or dissenting views directly regarding the American Air Navigation Services Corporation or air traffic services.”

(b) CHIEF OPERATING OFFICER.—Section 106(r) of title 49, United States Code, is amended by adding at the end the following:

“(6) SUNSET.—The position of Chief Operating Officer shall terminate and this subsection shall cease to be effective beginning on the date of transfer (as defined in section 90101(a)).”

(c) CHIEF NEXTGEN OFFICER.—Section 106(s) of title 49, United States Code, is amended by adding at the end the following:

“(8) SUNSET.—The position of Chief NextGen Officer shall terminate and this subsection shall cease to be effective beginning on the date of transfer (as defined in section 90101(a)).”

### **SEC. 223. ROLE OF ADMINISTRATOR.**

Section 40103(b) of title 49, United States Code, is amended—

(1) in paragraph (1) by striking “The Administrator” each place it appears and inserting “Before the date of transfer (as defined in section 90101(a)), the Administrator”;

(2) by striking paragraph (2) and inserting the following:

“(2) The Administrator shall—

“(A) before the date of transfer (as defined in section 90101(a)), prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

“(i) navigating, protecting, and identifying aircraft;

“(ii) protecting individuals and property on the ground;

“(iii) using the navigable airspace efficiently; and

“(iv) preventing collisions between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects; and

“(B) on and after the date of transfer (as defined in section 90101(a)), prescribe safety regulations on the flight of aircraft (including regulations on safe altitudes) for—

“(i) navigating, protecting, and identifying aircraft;

“(ii) protecting individuals and property on the ground;



- “(iii) ensuring equitable access to and use of airspace; and
- “(iv) preventing collisions between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.”; and
- (3) in paragraph (3) by striking “Administrator” each place it appears and inserting “Secretary”.

**SEC. 224. EMERGENCY POWERS.**

Section 40106(a) of title 49, United States Code, is amended—

- (1) in the matter preceding paragraph (1) by striking “air traffic”;
- (2) in paragraph (1) by inserting “and the American Air Navigation Services Corporation” after “Administration”; and
- (3) in paragraph (2) by inserting “and the American Air Navigation Services Corporation” after “Administrator”.

**SEC. 225. PRESIDENTIAL TRANSFERS IN TIME OF WAR.**

Section 40107(b) of title 49, United States Code, is amended to read as follows:

“(b) DURING WAR.—If war occurs, the President by Executive order may temporarily transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator or the American Air Navigation Services Corporation. In making the transfer, the President may temporarily transfer records, property, officers, and employees of the Administration or the American Air Navigation Services Corporation to the Department of Defense.”.

**SEC. 226. AIRWAY CAPITAL INVESTMENT PLAN BEFORE DATE OF TRANSFER.**

Section 44501(b) of title 49, United States Code, is amended—

- (1) in the first sentence by striking “The Administrator” and inserting “Before the date of transfer (as defined in section 90101(a)), the Administrator”;
- (2) in paragraph (4)(B) by striking “and” at the end;
- (3) in paragraph (5) by striking the period at the end and inserting “; and”;
- and
- (4) by adding at the end the following:
  - “(6) for fiscal years 2017 through 2020, a process under which the Administrator shall continue to comply with the requirements of this section before the date of transfer (as defined in section 90101(a)).”.

**SEC. 227. AVIATION FACILITIES BEFORE DATE OF TRANSFER.**

(a) GENERAL AUTHORITY.—Section 44502(a) of title 49, United States Code, is amended—

- (1) in paragraph (1) by striking “The Administrator of the Federal Aviation Administration may” and inserting “Before the date of transfer (as defined in section 90101(a)), the Secretary of Transportation may”;
- (2) in paragraph (2) by striking “The cost” and inserting “Before the date of transfer (as defined in section 90101(a)), the cost”;
- (3) in paragraph (3) by striking “The Secretary” and inserting “Before the date of transfer (as defined in section 90101(a)), the Secretary”;
- (4) by striking paragraph (4);
- (5) by redesignating paragraph (5) as paragraph (4); and
- (6) in paragraph (4) (as so redesignated) by striking “The Administrator” and inserting “Before the date of transfer (as defined in section 90101(a)), the Secretary of Transportation”.

(b) CERTIFICATION OF NECESSITY.—Section 44502(b) of title 49, United States Code, is amended—

- (1) by striking “Except” and inserting “Before the date of transfer (as defined in section 90101(a)), except”; and
- (2) by striking “the Administrator of the Federal Aviation Administration” and inserting “the Secretary of Transportation”.

(c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—Section 44502(c) of title 49, United States Code, is amended—

- (1) in paragraph (1)—
  - (A) by striking “Administrator of the Federal Aviation Administration” the second, third, and fourth places it appears and inserting “Secretary of Transportation”;
  - (B) by striking “by the Administrator of the Federal Aviation Administration under section 40103(b)(1) of this title”; and
  - (C) by striking “Congress” and inserting “Congress, the American Air Navigation Services Corporation,”; and
- (2) in paragraph (2)—
  - (A) by striking “Administrator of the Federal Aviation Administration” and inserting “Secretary of Transportation”; and
  - (B) by striking “that the Administrator” and inserting “that the Secretary”.

(d) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.—Section 44502(e) of title 49, United States Code, is amended by striking “An airport may transfer” and inserting “Before the date of transfer (as defined in section 90101(a)), an airport may transfer”.

**SEC. 228. JUDICIAL REVIEW.**

Section 46110(a) of title 49, United States Code, is amended by striking “or subsection (l) or (s) of section 114” and inserting “subsection (l) or (s) of section 114, or section 90501”.

**SEC. 229. CIVIL PENALTIES.**

Section 46301(a)(1)(A) of title 49, United States Code, is amended by striking “or section 47133” and inserting “section 47133, or section 90501(b)(3)”.

## Subtitle C—Other Matters

**SEC. 241. USE OF FEDERAL TECHNICAL FACILITIES.**

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration shall make Administration technical facilities available to the American Air Navigation Services Corporation for air traffic control research and development projects.

(b) COOPERATIVE AGREEMENT.—

(1) IN GENERAL.—To ensure the safe transition of air traffic services, not later than 180 days prior to the date of transfer (as defined in section 90101(a) of title 49, United States Code, as added by this Act), the Administrator shall enter into an agreement with the American Air Navigation Services Corporation, for a period of not less than 5 years, concerning services that could be provided at the Federal Aviation Administration technical center, including the integrated air traffic control laboratories.

(2) SERVICES DEFINED.—In this subsection, the term “services” includes—

(A) activities associated with the approval of a safety management system under chapter 905 of title 49, United States Code, as added by this Act; and

(B) any other activity the Secretary considers necessary to promote safety in air traffic services, including verification of the safety functions of new air traffic control technologies.

(c) STATUTORY CONSTRUCTION.—Nothing in this title, or the amendments made by this title, may be construed to limit the safety regulatory authority of the Department of Transportation, including the research and development functions of the Department.

(d) SAFETY.—Before the date of transfer (as defined by section 90101(a) of title 49, United States Code, as added by this Act) all operational testing and integration of air traffic control systems conducted by the Administration shall continue.

**SEC. 242. ENSURING PROGRESS ON NEXTGEN PRIORITIES BEFORE DATE OF TRANSFER.**

(a) NEAR-TERM NEXTGEN PRIORITIES.—Prior to the date of transfer (as defined by section 90101(a) of title 49, United States Code, as added by this Act), the Administrator of the Federal Aviation Administration, in consultation with the NextGen Advisory Committee, shall prioritize the implementation of the following programs:

- (1) Multiple runway operations.
- (2) Performance-based navigation.
- (3) Surface operations and data sharing.
- (4) Data communications.

(b) NEAR-TERM NEXTGEN PERFORMANCE GOALS.—

(1) IN GENERAL.—The Administrator, in consultation with the NextGen Advisory Committee, shall establish quantifiable near-term NextGen performance goals for each of the programs prioritized under subsection (a).

(2) TRACKING.—The Administrator shall track the performance goals in a publicly available and transparent manner.

(3) MEASURING BENEFITS.—The Administrator shall establish the performance goals in a manner that allows Congress, stakeholders, and the public to clearly measure the delivery of NextGen benefits between 2018 and 2020, including with respect to—

- (A) increasing safety;
- (B) reducing aviation’s impact on the environment;
- (C) enhancing controller productivity; and
- (D) increasing predictability, airspace capacity, and efficiency.

(c) NEXTGEN METRICS REPORT.—Section 106(s)(5) of title 49, United States Code, is amended by adding at the end the following:

“(I) Developing, as part of the annual report required under paragraph (4), a description of the progress made in meeting the near-term NextGen performance goals required pursuant to section 242 of the 21st Century AIRR Act and delivering near-term NextGen benefits.”.

(d) CHIEF NEXTGEN OFFICER RESPONSIBILITY FOR MEETING NEAR-TERM NEXTGEN GOALS.—Section 106(s)(3) of title 49, United States Code, is amended by adding at the end the following: “In evaluating the performance of the Chief NextGen Officer, the Administrator shall consider the progress made in meeting the near-term NextGen performance goals required pursuant to section 242 of the 21st Century AIRR Act and delivering near-term NextGen benefits.”.

**SEC. 243. SEVERABILITY.**

If a provision of this title (including any amendment made by this title) or its application to any person or circumstance is held invalid, neither the remainder of this title nor the application of the provision to other persons or circumstances shall be affected.

**SEC. 244. PROHIBITION ON RECEIPT OF FEDERAL FUNDS.**

Notwithstanding any other provision of law, the Corporation established under section 90301 of title 49, United States Code, as added by this Act, may not accept or receive any funds from the uncommitted balance of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502).

## **TITLE III—FAA SAFETY CERTIFICATION REFORM**

### **Subtitle A—General Provisions**

**SEC. 301. DEFINITIONS.**

In this title, the following definitions apply:

- (1) FAA.—The term “FAA” means the Federal Aviation Administration.
- (2) SAFETY OVERSIGHT AND CERTIFICATION ADVISORY COMMITTEE.—The term “Safety Oversight and Certification Advisory Committee” means the Safety Oversight and Certification Advisory Committee established under section 302.
- (3) SYSTEMS SAFETY APPROACH.—The term “systems safety approach” means the application of specialized technical and managerial skills to the systematic, forward-looking identification and control of hazards throughout the lifecycle of a project, program, or activity.

**SEC. 302. SAFETY OVERSIGHT AND CERTIFICATION ADVISORY COMMITTEE.**

(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall establish a Safety Oversight and Certification Advisory Committee (in this section referred to as the “Advisory Committee”).

(b) DUTIES.—The Advisory Committee shall provide advice to the Secretary on policy-level issues facing the aviation community that are related to FAA certification and safety oversight programs and activities, including, at a minimum, the following:

- (1) Aircraft and flight standards certification processes, including efforts to streamline those processes.
- (2) Implementation and oversight of safety management systems.
- (3) Risk-based oversight efforts.
- (4) Utilization of delegation and designation authorities.
- (5) Regulatory interpretation standardization efforts.
- (6) Training programs.
- (7) Expediting the rulemaking process and giving priority to rules related to safety.

(c) FUNCTIONS.—The Advisory Committee shall carry out the following functions (as the functions relate to FAA certification and safety oversight programs and activities):

- (1) Foster industry collaboration in an open and transparent manner.
- (2) Consult with, and ensure participation by—
  - (A) the private sector, including representatives of—
    - (i) general aviation;
    - (ii) commercial aviation;
    - (iii) aviation labor;
    - (iv) aviation maintenance;

- (v) aviation, aerospace, and avionics manufacturing;
  - (vi) unmanned aircraft systems operators and manufacturers; and
  - (vii) the commercial space transportation industry;
  - (B) members of the public; and
  - (C) other interested parties.
- (3) Establish consensus national goals, strategic objectives, and priorities for the most efficient, streamlined, and cost-effective certification and oversight processes in order to maintain the safety of the aviation system and, at the same time, allow the FAA to meet future needs and ensure that aviation stakeholders remain competitive in the global marketplace.
- (4) Provide policy guidance for the FAA's certification and safety oversight efforts.
- (5) Provide ongoing policy reviews of the FAA's certification and safety oversight efforts.
- (6) Make appropriate legislative, regulatory, and guidance recommendations for the air transportation system and the aviation safety regulatory environment.
- (7) Establish performance objectives for the FAA and industry.
- (8) Establish performance metrics and goals for the FAA and the regulated aviation industry to be tracked and reviewed as streamlining and certification reform and regulation standardization efforts progress.
- (9) Provide a venue for tracking progress toward national goals and sustaining joint commitments.
- (10) Develop recruiting, hiring, training, and continuing education objectives for FAA aviation safety engineers and aviation safety inspectors.
- (11) Provide advice and recommendations to the FAA on how to prioritize safety rulemaking projects.
- (12) Improve the development of FAA regulations by providing information, advice, and recommendations related to aviation issues.
- (13) Facilitate the validation of United States products abroad.
- (d) MEMBERSHIP.—
- (1) IN GENERAL.—The Advisory Committee shall be composed of the following members:
- (A) The Administrator of the FAA (or the Administrator's designee).
  - (B) Individuals appointed by the Secretary to represent the following interests:
    - (i) Aircraft and engine manufacturers.
    - (ii) Avionics and equipment manufacturers.
    - (iii) Labor organizations, including collective bargaining representatives of FAA aviation safety inspectors and aviation safety engineers.
    - (iv) General aviation operators.
    - (v) Air carriers.
    - (vi) Business aviation operators.
    - (vii) Unmanned aircraft systems manufacturers and operators.
    - (viii) Aviation safety management expertise.
    - (ix) Aviation maintenance.
- (2) NONVOTING MEMBERS.—
- (A) IN GENERAL.—In addition to the members appointed under paragraph (1), the Advisory Committee shall be composed of nonvoting members appointed by the Secretary from among individuals representing FAA safety oversight program offices.
- (B) DUTIES.—The nonvoting members shall—
- (i) take part in deliberations of the Advisory Committee; and
  - (ii) provide input with respect to any final reports or recommendations of the Advisory Committee.
- (C) LIMITATION.—The nonvoting members may not represent any stakeholder interest other than FAA safety oversight program offices.
- (3) TERMS.—Each member and nonvoting member of the Advisory Committee appointed by the Secretary shall be appointed for a term of 2 years.
- (4) COMMITTEE CHARACTERISTICS.—The Advisory Committee shall have the following characteristics:
- (A) An executive-level membership, with members who can represent and enter into commitments for their organizations.
  - (B) The ability to obtain necessary information from experts in the aviation and aerospace communities.
  - (C) A membership size that enables the Committee to have substantive discussions and reach consensus on issues in a timely manner.

- (D) Appropriate expertise, including expertise in certification and risk-based safety oversight processes, operations, policy, technology, labor relations, training, and finance.
- (5) LIMITATION ON STATUTORY CONSTRUCTION.—Public Law 104–65 (2 U.S.C. 1601 et seq.) may not be construed to prohibit or otherwise limit the appointment of any individual as a member of the Advisory Committee.
- (e) CHAIRPERSON.—
- (1) IN GENERAL.—The Chairperson of the Advisory Committee shall be appointed by the Secretary from among those members of the Advisory Committee that are executive-level members of the aviation industry.
- (2) TERM.—Each member appointed under paragraph (1) shall serve a term of 1 year as Chairperson.
- (f) MEETINGS.—
- (1) FREQUENCY.—The Advisory Committee shall meet at least twice each year at the call of the Chairperson.
- (2) PUBLIC ATTENDANCE.—The meetings of the Advisory Committee shall be open to the public.
- (g) SPECIAL COMMITTEES.—
- (1) ESTABLISHMENT.—The Advisory Committee may establish special committees composed of private sector representatives, members of the public, labor representatives, and other interested parties in complying with consultation and participation requirements under this section.
- (2) RULEMAKING ADVICE.—A special committee established by the Advisory Committee may—
- (A) provide rulemaking advice and recommendations to the Administrator with respect to aviation-related issues;
- (B) afford the FAA additional opportunities to obtain firsthand information and insight from those parties that are most affected by existing and proposed regulations; and
- (C) expedite the development, revision, or elimination of rules without circumventing public rulemaking processes and procedures.
- (3) APPLICABLE LAW.—Public Law 92–463 shall not apply to a special committee established by the Advisory Committee.
- (h) SUNSET.—The Advisory Committee shall terminate on the last day of the 6-year period beginning on the date of the initial appointment of the members of the Advisory Committee.
- (i) TERMINATION OF AIR TRAFFIC PROCEDURES ADVISORY COMMITTEE.—The Air Traffic Procedures Advisory Committee established by the FAA shall terminate on the date of the initial appointment of the members of the Advisory Committee.

## Subtitle B—Aircraft Certification Reform

### SEC. 311. AIRCRAFT CERTIFICATION PERFORMANCE OBJECTIVES AND METRICS.

- (a) IN GENERAL.—Not later than 120 days after the date on which the Safety Oversight and Certification Advisory Committee is established under section 302, the Administrator of the FAA shall establish performance objectives and apply and track metrics for the FAA and the aviation industry relating to aircraft certification in accordance with this section.
- (b) COLLABORATION.—The Administrator shall carry out this section in collaboration with the Safety Oversight and Certification Advisory Committee.
- (c) PERFORMANCE OBJECTIVES.—In carrying out subsection (a), the Administrator shall establish performance objectives for the FAA and the aviation industry to ensure that, with respect to aircraft certification, progress is made toward, at a minimum—
- (1) eliminating certification delays and improving cycle times;
  - (2) increasing accountability for both FAA and industry entities;
  - (3) achieving full utilization of FAA delegation and designation authorities;
  - (4) fully implementing risk management principles and a systems safety approach;
  - (5) reducing duplication of effort;
  - (6) increasing transparency;
  - (7) establishing and providing training, including recurrent training, in auditing and a systems safety approach to certification oversight;
  - (8) improving the process for approving or accepting certification actions between the FAA and bilateral partners;
  - (9) maintaining and improving safety;
  - (10) streamlining the hiring process for—

(A) qualified systems safety engineers to support FAA efforts to implement a systems safety approach; and

(B) qualified systems engineers to guide the engineering of complex systems within the FAA; and

(11) maintaining the leadership of the United States in international aviation and aerospace.

(d) PERFORMANCE METRICS.—In carrying out subsection (a), the Administrator shall apply and track performance metrics for the FAA and the regulated aviation industry established by the Safety Oversight and Certification Advisory Committee.

(e) DATA GENERATION.—

(1) BASELINES.—Not later than 1 year after the date on which the Safety Oversight and Certification Advisory Committee establishes initial performance metrics for the FAA and the regulated aviation industry under section 302, the Administrator shall generate initial data with respect to each of the metrics applied and tracked under this section.

(2) MEASURING PROGRESS TOWARD GOALS.—The Administrator shall use the metrics applied and tracked under this section to generate data on an ongoing basis and to measure progress toward the achievement of national goals established by the Safety Oversight and Certification Advisory Committee.

(f) PUBLICATION.—The Administrator shall make data generated using the metrics applied and tracked under this section available to the public in a searchable, sortable, and downloadable format through the internet website of the FAA and other appropriate methods and shall ensure that the data is made available in a manner that—

(1) does not provide identifying information regarding an individual or entity; and

(2) protects proprietary information.

#### SEC. 312. ORGANIZATION DESIGNATION AUTHORIZATIONS.

(a) IN GENERAL.—Chapter 447 of title 49, United States Code, is amended by adding at the end the following:

##### “§ 44736. Organization designation authorizations

“(a) DELEGATIONS OF FUNCTIONS.—

“(1) IN GENERAL.—Except as provided in paragraph (3), when overseeing an ODA holder, the Administrator of the FAA shall—

“(A) require, based on an application submitted by the ODA holder and approved by the Administrator (or the Administrator’s designee), a procedures manual that addresses all procedures and limitations regarding the functions to be performed by the ODA holder;

“(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, unless the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to 1 or more of the functions; and

“(C) conduct regular oversight activities by inspecting the ODA holder’s delegated functions and taking action based on validated inspection findings.

“(2) DUTIES OF ODA HOLDERS.—An ODA holder shall—

“(A) perform each function delegated to the ODA holder in accordance with the approved procedures manual for the delegation;

“(B) make the procedures manual available to each member of the appropriate ODA unit; and

“(C) cooperate fully with oversight activities conducted by the Administrator in connection with the delegation.

“(3) EXISTING ODA HOLDERS.—With regard to an ODA holder operating under a procedures manual approved by the Administrator before the date of enactment of this section, the Administrator shall—

“(A) at the request of the ODA holder and in an expeditious manner, approve revisions to the ODA holder’s procedures manual;

“(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, unless the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to one or more of the functions; and

“(C) conduct regular oversight activities by inspecting the ODA holder delegated functions and taking action based on validated inspection findings.

“(b) ODA OFFICE.—

“(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this section, the Administrator of the FAA shall identify, within the FAA Office of Aviation Safety, a centralized policy office to be known as the Organization Designation Authorization Office or the ODA Office.

“(2) PURPOSE.—The purpose of the ODA Office shall be to oversee and ensure the consistency of the FAA’s audit functions under the ODA program across the FAA.

“(3) FUNCTIONS.—The ODA Office shall—

“(A) improve performance and ensure full utilization of the authorities delegated under the ODA program;

“(B) create a more consistent approach to audit priorities, procedures, and training under the ODA program;

“(C) review, in a timely fashion, a random sample of limitations on delegated authorities under the ODA program to determine if the limitations are appropriate;

“(D) ensure national consistency in the interpretation and application of the requirements of the ODA program, including any limitations, and in the performance of the ODA program; and

“(E) at the request of an ODA holder, review and approve new limitations to ODA functions.

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

“(1) FAA.—The term ‘FAA’ means the Federal Aviation Administration.

“(2) ODA HOLDER.—The term ‘ODA holder’ means an entity authorized to perform functions pursuant to a delegation made by the Administrator of the FAA under section 44702(d).

“(3) ODA UNIT.—The term ‘ODA unit’ means a group of 2 or more individuals who perform, under the supervision of an ODA holder, authorized functions under an ODA.

“(4) ORGANIZATION.—The term ‘organization’ means a firm, partnership, corporation, company, association, joint-stock association, or governmental entity.

“(5) ORGANIZATION DESIGNATION AUTHORIZATION; ODA.—The term ‘Organization Designation Authorization’ or ‘ODA’ means an authorization by the FAA under section 44702(d) for an organization comprised of 1 or more ODA units to perform approved functions on behalf of the FAA.”

(b) CLERICAL AMENDMENT.—The analysis for chapter 447 of title 49, United States Code, is amended by adding at the end the following:

“44736. Organization designation authorizations.”.

**SEC. 313. ODA REVIEW.**

(a) ESTABLISHMENT OF EXPERT REVIEW PANEL.—

(1) EXPERT PANEL.—Not later than 60 days after the date of enactment of this Act, the Administrator of the FAA shall convene a multidisciplinary expert review panel (in this section referred to as the “Panel”).

(2) COMPOSITION OF PANEL.—

(A) APPOINTMENT OF MEMBERS.—The Panel shall be composed of not more than 20 members appointed by the Administrator.

(B) QUALIFICATIONS.—The members appointed to the Panel shall—

(i) each have a minimum of 5 years of experience in processes and procedures under the ODA program; and

(ii) represent, at a minimum, ODA holders, aviation manufacturers, safety experts, and FAA labor organizations, including labor representatives of FAA aviation safety inspectors and aviation safety engineers.

(b) SURVEY.—The Panel shall conduct a survey of ODA holders and ODA program applicants to document and assess FAA certification and oversight activities, including use of the ODA program and the timeliness and efficiency of the certification process.

(c) ASSESSMENT AND RECOMMENDATIONS.—The Panel shall assess and make recommendations concerning—

(1) the FAA’s processes and procedures under the ODA program and whether the processes and procedures function as intended;

(2) the best practices of and lessons learned by ODA holders and individuals who provide oversight of ODA holders;

(3) performance incentive policies related to the ODA program for FAA personnel;

(4) training activities related to the ODA program for FAA personnel and ODA holders;

(5) the impact, if any, that oversight of the ODA program has on FAA resources and the FAA’s ability to process applications for certifications outside of the ODA program; and

(6) the results of the survey conducted under subsection (b).

(d) REPORT.—Not later than 180 days after the date the Panel is convened under subsection (a), the Panel shall submit to the Administrator, the Safety Oversight and Certification Advisory Committee, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate a report on the findings and recommendations of the Panel.

(e) DEFINITIONS.—The definitions contained in section 44736 of title 49, United States Code, as added by this Act, apply to this section.

(f) APPLICABLE LAW.—Public Law 92–463 shall not apply to the Panel.

(g) SUNSET.—The Panel shall terminate on the date of submission of the report under subsection (d), or on the date that is 1 year after the Panel is convened under subsection (a), whichever occurs first.

**SEC. 314. TYPE CERTIFICATION RESOLUTION PROCESS.**

(a) IN GENERAL.—Section 44704(a) of title 49, United States Code, is amended by adding at the end the following:

“(6) TYPE CERTIFICATION RESOLUTION PROCESS.—

“(A) IN GENERAL.—Not later than 15 months after the date of enactment of this paragraph, the Administrator shall establish an effective, timely, and milestone-based issue resolution process for type certification activities under this subsection.

“(B) PROCESS REQUIREMENTS.—The resolution process shall provide for—

“(i) resolution of technical issues at pre-established stages of the certification process, as agreed to by the Administrator and the type certificate applicant;

“(ii) automatic elevation to appropriate management personnel of the Federal Aviation Administration and the type certificate applicant of any major certification process milestone that is not completed or resolved within a specific period of time agreed to by the Administrator and the type certificate applicant; and

“(iii) resolution of a major certification process milestone elevated pursuant to clause (ii) within a specific period of time agreed to by the Administrator and the type certificate applicant.

“(C) MAJOR CERTIFICATION PROCESS MILESTONE DEFINED.—In this paragraph, the term ‘major certification process milestone’ means a milestone related to a type certification basis, type certification plan, type inspection authorization, issue paper, or other major type certification activity agreed to by the Administrator and the type certificate applicant.”

(b) TECHNICAL AMENDMENT.—Section 44704 of title 49, United States Code, is amended in the section heading by striking “**airworthiness certificates,**” and inserting “**airworthiness certificates,**”.

**SEC. 315. SAFETY ENHANCING EQUIPMENT AND SYSTEMS FOR SMALL GENERAL AVIATION AIRPLANES.**

(a) POLICY.—Not later than 180 days after the date of enactment of this Act, the Administrator of the FAA shall establish and begin implementation of a risk-based policy that streamlines the installation of safety enhancing equipment and systems for small general aviation airplanes in a manner that reduces regulatory delays and significantly improves safety.

(b) INCLUSION OF CERTAIN EQUIPMENT AND SYSTEMS.—The safety enhancing equipment and systems for small general aviation airplanes referred to in subsection (a) shall include, at a minimum, the replacement or retrofit of primary flight displays, auto pilots, engine monitors, and navigation equipment.

(c) COLLABORATION.—In carrying out this section, the Administrator shall collaborate with general aviation operators, general aviation manufacturers, and appropriate FAA labor groups, including representatives of FAA aviation safety inspectors and aviation safety engineers certified under section 7111 of title 5, United States Code.

(d) SMALL GENERAL AVIATION AIRPLANE DEFINED.—In this section, the term “small general aviation airplane” means an airplane that—

(1) is certified to the standards of part 23 of title 14, Code of Federal Regulations;

(2) has a seating capacity of fewer than 9 passengers; and

(3) is not used in scheduled passenger-carrying operations under part 121 or 135 of title 14, Code of Federal Regulations.

**SEC. 316. REVIEW OF CERTIFICATION PROCESS FOR SMALL GENERAL AVIATION AIRPLANES.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Inspector General of the Department of Transportation shall initiate a review



of the Federal Aviation Administration's implementation of the final rule titled "Revision of Airworthiness Standards for Normal, Utility, Acrobatic, and Commuter Category Airplanes" (81 Fed. Reg. 96572).

(b) CONSIDERATIONS.—In carrying out the review, the Inspector General shall assess—

(1) how the rule puts into practice the Administration's efforts to implement performance and risk-based safety standards;

(2) whether the Administration's implementation of the rule has improved safety and reduced the regulatory cost burden for the Administration and the aviation industry; and

(3) if there are lessons learned from, and best practices developed as a result of, the rule that could be applied to airworthiness standards for other categories of aircraft.

(c) REPORT.—Not later than 180 days after the date of initiation of the review, the Inspector General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review, including findings and recommendations.

## Subtitle C—Flight Standards Reform

### SEC. 331. FLIGHT STANDARDS PERFORMANCE OBJECTIVES AND METRICS.

(a) IN GENERAL.—Not later than 120 days after the date on which the Safety Oversight and Certification Advisory Committee is established under section 302, the Administrator of the FAA shall establish performance objectives and apply and track metrics for the FAA and the aviation industry relating to flight standards activities in accordance with this section.

(b) COLLABORATION.—The Administrator shall carry out this section in collaboration with the Safety Oversight and Certification Advisory Committee.

(c) PERFORMANCE OBJECTIVES.—In carrying out subsection (a), the Administrator shall establish performance objectives for the FAA and the aviation industry to ensure that, with respect to flight standards activities, progress is made toward, at a minimum—

(1) eliminating delays with respect to such activities;

(2) increasing accountability for both FAA and industry entities;

(3) achieving full utilization of FAA delegation and designation authorities;

(4) fully implementing risk management principles and a systems safety approach;

(5) reducing duplication of effort;

(6) eliminating inconsistent regulatory interpretations and inconsistent enforcement activities;

(7) improving and providing greater opportunities for training, including recurrent training, in auditing and a systems safety approach to oversight;

(8) developing and allowing utilization of a single master source for guidance;

(9) providing and utilizing a streamlined appeal process for the resolution of regulatory interpretation questions;

(10) maintaining and improving safety; and

(11) increasing transparency.

(d) METRICS.—In carrying out subsection (a), the Administrator shall apply and track performance metrics for the FAA and the regulated aviation industry established by the Safety Oversight and Certification Advisory Committee.

(e) DATA GENERATION.—

(1) BASELINES.—Not later than 1 year after the date on which the Safety Oversight and Certification Advisory Committee establishes initial performance metrics for the FAA and the regulated aviation industry under section 302, the Administrator shall generate initial data with respect to each of the metrics applied and tracked under this section.

(2) MEASURING PROGRESS TOWARD GOALS.—The Administrator shall use the metrics applied and tracked under this section to generate data on an ongoing basis and to measure progress toward the achievement of national goals established by the Safety Oversight and Certification Advisory Committee.

(f) PUBLICATION.—The Administrator shall make data generated using the metrics applied and tracked under this section available to the public in a searchable, sortable, and downloadable format through the internet website of the FAA and other appropriate methods and shall ensure that the data is made available in a manner that—

(1) does not provide identifying information regarding an individual or entity; and

(2) protects proprietary information.

**SEC. 332. FAA TASK FORCE ON FLIGHT STANDARDS REFORM.**

(a) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this Act, the Administrator of the FAA shall establish the FAA Task Force on Flight Standards Reform (in this section referred to as the “Task Force”).

(b) **MEMBERSHIP.**—

(1) **APPOINTMENT.**—The membership of the Task Force shall be appointed by the Administrator.

(2) **NUMBER.**—The Task Force shall be composed of not more than 20 members.

(3) **REPRESENTATION REQUIREMENTS.**—The membership of the Task Force shall include representatives, with knowledge of flight standards regulatory processes and requirements, of—

- (A) air carriers;
- (B) general aviation;
- (C) business aviation;
- (D) repair stations;
- (E) unmanned aircraft systems operators;
- (F) flight schools;
- (G) labor unions, including those representing FAA aviation safety inspectors; and
- (H) aviation safety experts.

(c) **DUTIES.**—The duties of the Task Force shall include, at a minimum, identifying best practices and providing recommendations, for current and anticipated budgetary environments, with respect to—

- (1) simplifying and streamlining flight standards regulatory processes;
- (2) reorganizing Flight Standards Services to establish an entity organized by function rather than geographic region, if appropriate;
- (3) FAA aviation safety inspector training opportunities;
- (4) FAA aviation safety inspector standards and performance; and
- (5) achieving, across the FAA, consistent—
  - (A) regulatory interpretations; and
  - (B) application of oversight activities.

(d) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Task Force shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report detailing—

- (1) the best practices identified and recommendations provided by the Task Force under subsection (c); and
- (2) any recommendations of the Task Force for additional regulatory action or cost-effective legislative action.

(e) **APPLICABLE LAW.**—Public Law 92–463 shall not apply to the Task Force.

(f) **TERMINATION.**—The Task Force shall terminate on the earlier of—

- (1) the date on which the Task Force submits the report required under subsection (d); or
- (2) the date that is 18 months after the date on which the Task Force is established under subsection (a).

**SEC. 333. CENTRALIZED SAFETY GUIDANCE DATABASE.**

(a) **ESTABLISHMENT.**—Not later than 1 year after the date of enactment of this Act, the Administrator of the FAA shall establish a centralized safety guidance database that will—

- (1) encompass all of the regulatory guidance documents of the FAA Office of Aviation Safety;
- (2) contain, for each such guidance document, a link to the Code of Federal Regulations provision to which the document relates; and
- (3) be publicly available in a manner that—
  - (A) does not provide identifying information regarding an individual or entity; and
  - (B) protects proprietary information.

(b) **DATA ENTRY TIMING.**—

(1) **EXISTING DOCUMENTS.**—Not later than 14 months after the date of enactment of this Act, the Administrator shall begin entering into the database established under subsection (a) all of the regulatory guidance documents of the Office of Aviation Safety that are in effect and were issued before the date on which the Administrator begins such entry process.

(2) **NEW DOCUMENTS AND CHANGES.**—On and after the date on which the Administrator begins the document entry process under paragraph (1), the Administrator shall ensure that all new regulatory guidance documents of the Office

of Aviation Safety and any changes to existing documents are included in the database established under subsection (a).

(c) **CONSULTATION REQUIREMENT.**—In establishing the database under subsection (a), the Administrator shall consult and collaborate with appropriate stakeholders, including labor organizations (including those representing aviation workers and FAA aviation safety inspectors) and industry stakeholders.

(d) **REGULATORY GUIDANCE DOCUMENTS DEFINED.**—In this section, the term “regulatory guidance documents” means all forms of written information issued by the FAA that an individual or entity may use to interpret or apply FAA regulations and requirements, including information an individual or entity may use to determine acceptable means of compliance with such regulations and requirements.

**SEC. 334. REGULATORY CONSISTENCY COMMUNICATIONS BOARD.**

(a) **ESTABLISHMENT.**—Not later than 180 days after the date of enactment of this Act, the Administrator of the FAA shall establish a Regulatory Consistency Communications Board (in this section referred to as the “Board”).

(b) **CONSULTATION REQUIREMENT.**—In establishing the Board, the Administrator shall consult and collaborate with appropriate stakeholders, including FAA labor organizations (including labor organizations representing FAA aviation safety inspectors) and industry stakeholders.

(c) **MEMBERSHIP.**—The Board shall be composed of FAA representatives, appointed by the Administrator, from—

- (1) the Flight Standards Service;
- (2) the Aircraft Certification Service; and
- (3) the Office of the Chief Counsel.

(d) **FUNCTIONS.**—The Board shall carry out the following functions:

- (1) Establish, at a minimum, processes by which—
  - (A) FAA personnel and regulated entities may submit anonymous regulatory interpretation questions without fear of retaliation; and
  - (B) FAA personnel may submit written questions, and receive written responses, as to whether a previous approval or regulatory interpretation issued by FAA personnel in another office or region is correct or incorrect.
- (2) Meet on a regular basis to discuss and resolve questions submitted pursuant to paragraph (1) and the appropriate application of regulations and policy with respect to each question.
- (3) Provide to an individual or entity that submitted a question pursuant to paragraph (1) a timely response to the question.
- (4) Establish a process to make resolutions of common regulatory interpretation questions publicly available to FAA personnel and regulated entities without providing any identifying data of the individuals or entities that submitted the questions and in a manner that protects any proprietary information.
- (5) Ensure the incorporation of resolutions of questions submitted pursuant to paragraph (1) into regulatory guidance documents.

(e) **PERFORMANCE METRICS, TIMELINES, AND GOALS.**—Not later than 180 days after the date on which the Safety Oversight and Certification Advisory Committee establishes performance metrics for the FAA and the regulated aviation industry under section 302, the Administrator, in collaboration with the Advisory Committee, shall—

- (1) establish performance metrics, timelines, and goals to measure the progress of the Board in resolving regulatory interpretation questions submitted pursuant to subsection (d)(1); and
- (2) implement a process for tracking the progress of the Board in meeting the metrics, timelines, and goals established under paragraph (1).

## Subtitle D—Safety Workforce

**SEC. 341. SAFETY WORKFORCE TRAINING STRATEGY.**

(a) **SAFETY WORKFORCE TRAINING STRATEGY.**—Not later than 60 days after the date of enactment of this Act, the Administrator of the FAA shall establish a safety workforce training strategy that—

- (1) allows employees participating in organization management teams or conducting ODA program audits to complete, in a timely fashion, appropriate training, including recurrent training, in auditing and a systems safety approach to oversight;
- (2) seeks knowledge-sharing opportunities between the FAA and the aviation industry regarding new equipment and systems, best practices, and other areas of interest;
- (3) functions within the current and anticipated budgetary environments; and

(4) includes milestones and metrics for meeting the requirements of paragraphs (1), (2), and (3).

(b) **REPORT.**—Not later than 270 days after the date of establishment of the strategy required under subsection (a), the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the implementation of the strategy and progress in meeting any milestones and metrics included in the strategy.

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

(1) **ODA; ODA HOLDER.**—The terms “ODA” and “ODA holder” have the meanings given those terms in section 44736 of title 49, United States Code, as added by this Act.

(2) **ORGANIZATION MANAGEMENT TEAM.**—The term “organization management team” means a team consisting of FAA aviation safety engineers, flight test pilots, and aviation safety inspectors overseeing an ODA holder and its certification activity.

**SEC. 342. WORKFORCE REVIEW.**

(a) **WORKFORCE REVIEW.**—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a review to assess the workforce and training needs of the FAA Office of Aviation Safety in the anticipated budgetary environment.

(b) **CONTENTS.**—The review required under subsection (a) shall include—

(1) a review of current aviation safety inspector and aviation safety engineer hiring, training, and recurrent training requirements;

(2) an analysis of the skills and qualifications required of aviation safety inspectors and aviation safety engineers for successful performance in the current and future projected aviation safety regulatory environment, including the need for a systems engineering discipline within the FAA to guide the engineering of complex systems, with an emphasis on auditing designated authorities;

(3) a review of current performance incentive policies of the FAA, as applied to the Office of Aviation Safety, including awards for performance;

(4) an analysis of ways the FAA can work with industry and labor, including labor groups representing FAA aviation safety inspectors and aviation safety engineers, to establish knowledge-sharing opportunities between the FAA and the aviation industry regarding new equipment and systems, best practices, and other areas of interest; and

(5) recommendations on the most effective qualifications, training programs (including e-learning training), and performance incentive approaches to address the needs of the future projected aviation safety regulatory system in the anticipated budgetary environment.

(c) **REPORT.**—Not later than 270 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review required under subsection (a).

## Subtitle E—International Aviation

**SEC. 351. PROMOTION OF UNITED STATES AEROSPACE STANDARDS, PRODUCTS, AND SERVICES ABROAD.**

Section 40104 of title 49, United States Code, is amended by adding at the end the following:

“(d) **PROMOTION OF UNITED STATES AEROSPACE STANDARDS, PRODUCTS, AND SERVICES ABROAD.**—The Administrator shall take appropriate actions to—

“(1) promote United States aerospace safety standards abroad;

“(2) facilitate and vigorously defend approvals of United States aerospace products and services abroad;

“(3) with respect to bilateral partners, utilize bilateral safety agreements and other mechanisms to improve validation of United States type certificated aeronautical products and appliances and enhance mutual acceptance in order to eliminate redundancies and unnecessary costs; and

“(4) with respect to foreign safety authorities, streamline validation and coordination processes.”

**SEC. 352. BILATERAL EXCHANGES OF SAFETY OVERSIGHT RESPONSIBILITIES.**

Section 44701(e) of title 49, United States Code, is amended by adding at the end the following:

“(5) FOREIGN AIRWORTHINESS DIRECTIVES.—

“(A) ACCEPTANCE.—The Administrator may accept an airworthiness directive issued by an aeronautical safety authority of a foreign country, and leverage that authority’s regulatory process, if—

“(i) the country is the state of design for the product that is the subject of the airworthiness directive;

“(ii) the United States has a bilateral safety agreement relating to aircraft certification with the country;

“(iii) as part of the bilateral safety agreement with the country, the Administrator has determined that such aeronautical safety authority has a certification system relating to safety that produces a level of safety equivalent to the level produced by the system of the Federal Aviation Administration;

“(iv) the aeronautical safety authority of the country utilizes an open and transparent notice and comment process in the issuance of airworthiness directives; and

“(v) the airworthiness directive is necessary to provide for the safe operation of the aircraft subject to the directive.

“(B) ALTERNATIVE APPROVAL PROCESS.—Notwithstanding subparagraph (A), the Administrator may issue a Federal Aviation Administration airworthiness directive instead of accepting an airworthiness directive otherwise eligible for acceptance under such subparagraph, if the Administrator determines that such issuance is necessary for safety or operational reasons due to the complexity or unique features of the Federal Aviation Administration airworthiness directive or the United States aviation system.

“(C) ALTERNATIVE MEANS OF COMPLIANCE.—The Administrator may—

“(i) accept an alternative means of compliance, with respect to an airworthiness directive accepted under subparagraph (A), that was approved by the aeronautical safety authority of the foreign country that issued the airworthiness directive; or

“(ii) notwithstanding subparagraph (A), and at the request of any person affected by an airworthiness directive accepted under such subparagraph, approve an alternative means of compliance with respect to the airworthiness directive.

“(D) LIMITATION.—The Administrator may not accept an airworthiness directive issued by an aeronautical safety authority of a foreign country if the airworthiness directive addresses matters other than those involving the safe operation of an aircraft.”.

**SEC. 353. FAA LEADERSHIP ABROAD.**

(a) IN GENERAL.—To promote United States aerospace safety standards, reduce redundant regulatory activity, and facilitate acceptance of FAA design and production approvals abroad, the Administrator of the FAA shall—

(1) attain greater expertise in issues related to dispute resolution, intellectual property, and export control laws to better support FAA certification and other aerospace regulatory activities abroad;

(2) work with United States companies to more accurately track the amount of time it takes foreign authorities, including bilateral partners, to validate United States type certificated aeronautical products;

(3) provide assistance to United States companies that have experienced significantly long foreign validation wait times;

(4) work with foreign authorities, including bilateral partners, to collect and analyze data to determine the timeliness of the acceptance and validation of FAA design and production approvals by foreign authorities and the acceptance and validation of foreign-certified products by the FAA;

(5) establish appropriate benchmarks and metrics to measure the success of bilateral aviation safety agreements and to reduce the validation time for United States type certificated aeronautical products abroad; and

(6) work with foreign authorities, including bilateral partners, to improve the timeliness of the acceptance and validation of FAA design and production approvals by foreign authorities and the acceptance and validation of foreign-certified products by the FAA.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Administrator of the FAA shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(1) describes the FAA’s strategic plan for international engagement;

(2) describes the structure and responsibilities of all FAA offices that have international responsibilities, including the Aircraft Certification Office, and all the activities conducted by those offices related to certification and production;

(3) describes current and forecasted staffing and travel needs for the FAA's international engagement activities, including the needs of the Aircraft Certification Office in the current and forecasted budgetary environment;

(4) provides recommendations, if appropriate, to improve the existing structure and personnel and travel policies supporting the FAA's international engagement activities, including the activities of the Aviation Certification Office, to better support the growth of United States aerospace exports; and

(5) identifies cost-effective policy initiatives, regulatory initiatives, or legislative initiatives needed to improve and enhance the timely acceptance of United States aerospace products abroad.

(c) **INTERNATIONAL TRAVEL.**—The Administrator of the FAA, or the Administrator's designee, may authorize international travel for any FAA employee, without the approval of any other person or entity, if the Administrator determines that the travel is necessary—

(1) to promote United States aerospace safety standards; or

(2) to support expedited acceptance of FAA design and production approvals.

**SEC. 354. REGISTRATION, CERTIFICATION, AND RELATED FEES.**

Section 45305 of title 49, United States Code, is amended—

(1) in subsection (a) by striking “Subject to subsection (b)” and inserting “Subject to subsection (c)”;

(2) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(3) by inserting after subsection (a) the following:

“(b) **CERTIFICATION SERVICES.**—Subject to subsection (c), and notwithstanding section 45301(a), the Administrator may establish and collect a fee from a foreign government or entity for services related to certification, regardless of where the services are provided, if the fee—

“(1) is established and collected in a manner consistent with aviation safety agreements; and

“(2) does not exceed the estimated costs of the services.”.

## **TITLE IV—SAFETY**

### **Subtitle A—General Provisions**

**SEC. 401. FAA TECHNICAL TRAINING.**

(a) **E-LEARNING TRAINING PILOT PROGRAM.**—Not later than 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration, in collaboration with the exclusive bargaining representatives of covered FAA personnel, shall establish an e-learning training pilot program in accordance with the requirements of this section.

(b) **CURRICULUM.**—The pilot program shall—

(1) include a recurrent training curriculum for covered FAA personnel to ensure that the personnel receive instruction on the latest aviation technologies, processes, and procedures;

(2) focus on providing specialized technical training for covered FAA personnel, as determined necessary by the Administrator;

(3) include training courses on applicable regulations of the Federal Aviation Administration; and

(4) consider the efficacy of instructor-led online training.

(c) **PILOT PROGRAM TERMINATION.**—The pilot program shall terminate 1 year after the date of establishment of the pilot program.

(d) **E-LEARNING TRAINING PROGRAM.**—Upon termination of the pilot program, the Administrator shall establish an e-learning training program that incorporates lessons learned for covered FAA personnel as a result of the pilot program.

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

(1) **COVERED FAA PERSONNEL.**—The term “covered FAA personnel” means airway transportation systems specialists and aviation safety inspectors of the Federal Aviation Administration.

(2) **E-LEARNING TRAINING.**—The term “e-learning training” means learning utilizing electronic technologies to access educational curriculum outside of a traditional classroom.

**SEC. 402. SAFETY CRITICAL STAFFING.**

(a) **UPDATE OF FAA'S SAFETY CRITICAL STAFFING MODEL.**—Not later than 270 days after the date of enactment of this Act, and at least 2 years before the date of transfer, the Administrator of the Federal Aviation Administration shall update the safety critical staffing model of the Administration to determine the number of aviation safety inspectors that will be needed to fulfill the safety oversight mission of the Administration before and after the date of transfer, including safety oversight of the American Air Navigation Services Corporation.

(b) **AUDIT BY DOT INSPECTOR GENERAL.**—

(1) **IN GENERAL.**—Not later than 90 days after the date on which the Administrator has updated the safety critical staffing model under subsection (a), the Inspector General of the Department of Transportation shall conduct an audit of the staffing model.

(2) **CONTENTS.**—The audit shall include, at a minimum—

(A) a review of the assumptions and methodologies used in devising and implementing the staffing model to assess the adequacy of the staffing model in predicting the number of aviation safety inspectors needed—

(i) to properly fulfill the mission of the Administration before and after the date of transfer;

(ii) to meet the future growth of the aviation industry; and

(iii) to provide proper oversight of air traffic services after the date of transfer; and

(B) a determination on whether the staffing model takes into account the Administration's authority to fully utilize designees before and after the date of transfer.

(3) **REPORT ON AUDIT.**—

(A) **REPORT TO SECRETARY.**—Not later than 30 days after the date of completion of the audit, the Inspector General shall submit to the Secretary a report on the results of the audit.

(B) **REPORT TO CONGRESS.**—Not later than 60 days after the date of receipt of the report, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a copy of the report, together with, if appropriate, a description of any actions taken or to be taken to address the results of the audit.

(c) **DATE OF TRANSFER DEFINED.**—In this section, the term “date of transfer” has the meaning given that term in section 90101(a) of title 49, United States Code, as added by this Act.

**SEC. 403. INTERNATIONAL EFFORTS REGARDING TRACKING OF CIVIL AIRCRAFT.**

The Administrator of the Federal Aviation Administration shall exercise leadership on creating a global approach to improving aircraft tracking by working with—

(1) foreign counterparts of the Administrator in the International Civil Aviation Organization and its subsidiary organizations;

(2) other international organizations and fora; and

(3) the private sector.

**SEC. 404. AIRCRAFT DATA ACCESS AND RETRIEVAL SYSTEMS.**

(a) **ASSESSMENT.**—Not later than 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall initiate an assessment of aircraft data access and retrieval systems for part 121 air carrier aircraft that are used in extended overwater operations to—

(1) determine if the systems provide improved access and retrieval of aircraft data and cockpit voice recordings in the event of an aircraft accident; and

(2) assess the cost effectiveness of each system assessed.

(b) **SYSTEMS TO BE EXAMINED.**—The systems to be examined under this section shall include, at a minimum—

(1) automatic deployable flight recorders;

(2) emergency locator transmitters; and

(3) satellite-based solutions.

(c) **REPORT.**—Not later than 1 year after the date of initiation of the assessment, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the assessment.

(d) **PART 121 AIR CARRIER DEFINED.**—In this section, the term “part 121 air carrier” means an air carrier that holds a certificate issued under part 121 of title 14, Code of Federal Regulations.

**SEC. 405. ADVANCED COCKPIT DISPLAYS.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall initiate a review of heads-up display systems, heads-down display systems employing synthetic vision systems, and enhanced vision systems (in this section referred to as “HUD systems”, “SVS”, and “EVS”, respectively).

(b) **CONTENTS.**—The review shall—

(1) evaluate the impacts of single- and dual-installed HUD systems, SVS, and EVS on the safety and efficiency of aircraft operations within the national airspace system; and

(2) review a sufficient quantity of commercial aviation accidents or incidents in order to evaluate if HUD systems, SVS, and EVS would have produced a better outcome in that accident or incident.

(c) **CONSULTATION.**—In conducting the review, the Administrator shall consult with aviation manufacturers, representatives of pilot groups, aviation safety organizations, and any government agencies the Administrator considers appropriate.

(d) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the results of the review, the actions the Administrator plans to take with respect to the systems reviewed, and the associated timeline for such actions.

**SEC. 406. MARKING OF TOWERS.**

Section 2110 of the FAA Extension, Safety, and Security Act of 2016 (49 U.S.C. 44718 note) is amended—

(1) by striking subsections (a) through (c) and inserting the following:

“(a) **APPLICATION.**—

“(1) **IN GENERAL.**—Except as provided by paragraph (2), not later than 1 year after the date of enactment of the 21st Century AIRR Act or the availability of the database developed by the Administrator of the Federal Aviation Administration pursuant to subsection (c), whichever is later, all covered towers shall be either—

“(A) clearly marked consistent with applicable guidance in the advisory circular of the Federal Aviation Administration issued December 4, 2015 (AC 70/7460–IL); or

“(B) included in the database described in subsection (c).

“(2) **METEOROLOGICAL EVALUATION TOWER.**—A covered tower that is a meteorological evaluation tower shall be subject to the requirements of paragraphs (1)(A) and (1)(B).”;

(2) by redesignating subsections (d) and (e) as subsections (b) and (c), respectively;

(3) in subsection (b)(1)(A) (as so redesignated)—

(A) in clause (i)(I) by striking “self-standing or” and inserting “a meteorological evaluation tower or tower”; and

(B) in clause (ii)—

(i) in subclause (IV) by striking “or” at the end;

(ii) in subclause (V) by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following:

“(VI) is located within the right-of-way of a rail carrier, including within the boundaries of a rail yard, and is used for a railroad purpose;

“(VII) is determined by the Administrator to pose no hazard to air navigation; or

“(VIII) has already mitigated any hazard to aviation safety in accordance with Federal Aviation Administration guidance or as otherwise approved by the Administrator.”; and

(4) in subsection (c) (as so redesignated)—

(A) by striking paragraph (1) and inserting the following:

“(1) develop a database that contains the location and height of each covered tower that, pursuant to subsection (a), the owner or operator of such tower elects not to mark, except that meteorological evaluation towers shall be marked and contained in the database.”;

(B) in paragraph (3) by striking “and” at the end;

(C) in paragraph (4) by striking the period at the end and inserting a semicolon; and

(D) by adding at the end the following:



“(5) ensure that the tower information in the database is de-identified and that the information only includes the location and height of covered towers; and

“(6) make the database available for use not later than 1 year after the date of enactment of the 21st Century AIRR Act.”.

**SEC. 407. CABIN EVACUATION.**

(a) REVIEW.—The Administrator of the Federal Aviation Administration shall review—

(1) evacuation certification of transport-category aircraft used in air transportation, with regard to—

(A) emergency conditions, including impacts into water;

(B) crew procedures used for evacuations under actual emergency conditions; and

(C) any relevant changes to passenger demographics and legal requirements (including the Americans with Disabilities Act of 1990) that affect emergency evacuations; and

(2) recent accidents and incidents where passengers evacuated such aircraft.

(b) CONSULTATION; REVIEW OF DATA.—In conducting the review, the Administrator shall—

(1) consult with the National Transportation Safety Board, transport-category aircraft manufacturers, air carriers, and other relevant experts and Federal agencies, including groups representing passengers, airline crewmembers, maintenance employees, and emergency responders; and

(2) review relevant data with respect to evacuation certification of transport-category aircraft.

(c) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review and related recommendations, if any, including any recommendations for revisions to the assumptions and methods used for assessing evacuation certification of transport-category aircraft.

**SEC. 408. ODA STAFFING AND OVERSIGHT.**

(a) REPORT TO CONGRESS.—Not later than 270 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the Administration’s progress with respect to—

(1) determining what additional model inputs and labor distribution codes are needed to identify ODA oversight staffing needs prior to and after the date of transfer;

(2) developing and implementing system-based evaluation criteria and risk-based tools to aid ODA team members in targeting their oversight activities;

(3) developing agreements and processes for sharing resources to ensure adequate oversight of ODA personnel performing certification and inspection work at supplier and company facilities; and

(4) ensuring full utilization of ODA authority prior to and after the date of transfer.

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

(1) DATE OF TRANSFER.—The term “date of transfer” has the meaning given that term in section 90101(a) of title 49, United States Code, as added by this Act.

(2) ODA.—the term “ODA” has the meaning given that term in section 44736 of title 49, United States Code, as added by this Act.

**SEC. 409. FUNDING FOR ADDITIONAL SAFETY NEEDS.**

Section 44704 of title 49, United States Code, is amended by adding at the end the following:

“(f) FUNDING FOR ADDITIONAL SAFETY NEEDS.—

“(1) ACCEPTANCE OF APPLICANT-PROVIDED FUNDS.—Notwithstanding any other provision of law, the Administrator may accept funds from an applicant for a certificate under this section to hire additional staff or obtain the services of consultants and experts to facilitate the timely processing, review, and issuance of certificates under this section.

“(2) RULES OF CONSTRUCTION.—

“(A) IN GENERAL.—Nothing in this section may be construed as permitting the Administrator to grant priority or afford any preference to an applicant providing funds under paragraph (1).

“(B) POLICIES AND PROCEDURES.—The Administrator shall implement such policies and procedures as may be required to ensure that the acceptance of funds under paragraph (1) does not prejudice the Administrator in the issuance of any certificate to an applicant.

“(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this subsection—

“(A) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

“(B) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

“(C) shall remain available until expended.”

**SEC. 410. FUNDING FOR ADDITIONAL FAA LICENSING NEEDS.**

(a) IN GENERAL.—Chapter 509 of title 51, United States Code, is amended by adding at the end the following:

**“§ 50924. Funding to facilitate FAA licensing**

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation may accept funds from a person applying for a license or permit under this chapter to hire additional staff or obtain the services of consultants and experts—

“(1) to facilitate the timely processing, review, and issuance of licenses or permits issued under this chapter;

“(2) to conduct environmental activities, studies, or reviews associated with such licenses or permits; or

“(3) to conduct additional activities associated with or necessitated by such licenses or permits, including pre-application consultation, hazard area determination, or on-site inspection.

“(b) RULES OF CONSTRUCTION.—

“(1) IN GENERAL.—Nothing in this section may be construed as permitting the Secretary to grant priority or afford any preference to an applicant providing funds under subsection (a).

“(2) POLICIES AND PROCEDURES.—The Secretary shall implement such policies and procedures as may be required to ensure that the acceptance of funds under subsection (a) does not prejudice the Secretary in the issuance of any license or permit to an applicant.

“(c) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any funds accepted under this section—

“(1) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

“(2) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

“(3) shall remain available until expended.”

(b) CLERICAL AMENDMENT.—The analysis for chapter 509 of title 51, United States Code, is amended by adding at the end the following:

“50924. Funding to facilitate FAA licensing.”

**SEC. 411. EMERGENCY MEDICAL EQUIPMENT ON PASSENGER AIRCRAFT.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall evaluate and revise, as appropriate, regulations in part 121 of title 14, Code of Federal Regulations, regarding emergency medical equipment, including the contents of first-aid kits, applicable to all certificate holders operating passenger aircraft under that part.

(b) CONSIDERATION.—In carrying out subsection (a), the Administrator shall consider whether the minimum contents of approved emergency medical kits, including approved first-aid kits, include appropriate medications and equipment to meet the emergency medical needs of children.

**SEC. 412. HIMS PROGRAM.**

Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall conduct a human intervention motivation study (HIMS) program for flight crewmembers employed by commercial air carriers operating in United States airspace.

**SEC. 413. ACCEPTANCE OF VOLUNTARILY PROVIDED SAFETY INFORMATION.**

(a) IN GENERAL.—There shall be a presumption that an individual’s voluntary disclosure of an operational or maintenance issue related to aviation safety under an aviation safety action program meets the criteria for acceptance as a valid disclosure under such program.

(b) DISCLAIMER REQUIRED.—Any dissemination of a disclosure that was submitted and accepted under an aviation safety action program pursuant to the presumption

under subsection (a), but that has not undergone review by an event review committee, shall be accompanied by a disclaimer stating that the disclosure—

(1) has not been reviewed by an event review committee tasked with reviewing such disclosures; and

(2) may subsequently be determined to be ineligible for inclusion in the aviation safety action program.

(c) **REJECTION OF DISCLOSURE.**—A disclosure described under subsection (a) shall be rejected from an aviation safety action program if, after a review of the disclosure, an event review committee tasked with reviewing such disclosures determines that the disclosure fails to meet the criteria for acceptance under such program.

(d) **AVIATION SAFETY ACTION PROGRAM DEFINED.**—In this section, the term “aviation safety action program” means a program established in accordance with Federal Aviation Administration Advisory Circular 120–66B, issued November 15, 2002 (including any similar successor advisory circular), to allow an individual to voluntarily disclose operational or maintenance issues related to aviation safety.

**SEC. 414. FLIGHT ATTENDANT DUTY PERIOD LIMITATIONS AND REST REQUIREMENTS.**

(a) **MODIFICATION OF FINAL RULE.**—

(1) **IN GENERAL.**—Not later than 30 days after the date of enactment of this Act, the Secretary of Transportation shall modify the final rule of the Federal Aviation Administration published in the Federal Register on August 19, 1994 (59 Fed. Reg. 42974; relating to flight attendant duty period limitations and rest requirements) in accordance with the requirements of this subsection.

(2) **CONTENTS.**—The final rule, as modified under paragraph (1), shall ensure that—

(A) a flight attendant scheduled to a duty period of 14 hours or less is given a scheduled rest period of at least 10 consecutive hours; and

(B) the rest period is not reduced under any circumstances.

(b) **FATIGUE RISK MANAGEMENT PLAN.**—

(1) **SUBMISSION OF PLAN BY PART 121 AIR CARRIERS.**—Not later than 90 days after the date of enactment of this Act, each air carrier operating under part 121 of title 14, Code of Federal Regulations (in this section referred to as a “part 121 air carrier”), shall submit to the Administrator of the Federal Aviation Administration for review and acceptance a fatigue risk management plan for the carrier’s flight attendants.

(2) **CONTENTS OF PLAN.**—A fatigue risk management plan submitted by a part 121 air carrier under paragraph (1) shall include the following:

(A) Current flight time and duty period limitations.

(B) A rest scheme consistent with such limitations that enables the management of flight attendant fatigue, including annual training to increase awareness of—

(i) fatigue;

(ii) the effects of fatigue on flight attendants; and

(iii) fatigue countermeasures.

(C) Development and use of a methodology that continually assesses the effectiveness of implementation of the plan, including the ability of the plan—

(i) to improve alertness; and

(ii) to mitigate performance errors.

(3) **REVIEW.**—Not later than 1 year after the date of enactment of this Act, the Administrator shall review and accept or reject each fatigue risk management plan submitted under this subsection. If the Administrator rejects a plan, the Administrator shall provide suggested modifications for resubmission of the plan.

(4) **PLAN UPDATES.**—

(A) **IN GENERAL.**—A part 121 air carrier shall update its fatigue risk management plan under paragraph (1) every 2 years and submit the update to the Administrator for review and acceptance.

(B) **REVIEW.**—Not later than 1 year after the date of submission of a plan update under subparagraph (A), the Administrator shall review and accept or reject the update. If the Administrator rejects an update, the Administrator shall provide suggested modifications for resubmission of the update.

(5) **COMPLIANCE.**—A part 121 air carrier shall comply with the fatigue risk management plan of the air carrier that is accepted by the Administrator under this subsection.

(6) **CIVIL PENALTIES.**—A violation of this subsection by a part 121 air carrier shall be treated as a violation of chapter 447 of title 49, United States Code, for purposes of the application of civil penalties under chapter 463 of that title.

**SEC. 415. SECONDARY COCKPIT BARRIERS.**

Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue an order requiring the installation of a secondary cockpit barrier on each aircraft that is manufactured for delivery to a passenger air carrier in the United States operating under the provisions of part 121 of title 14, Code of Federal Regulations.

**SEC. 416. AVIATION MAINTENANCE INDUSTRY TECHNICAL WORKFORCE.**

(a) **STUDY.**—The Comptroller General of the United States shall conduct a study on technical workers in the aviation maintenance industry.

(b) **CONTENTS.**—In conducting the study, the Comptroller General shall—

(1) analyze the current Standard Occupational Classification system with regard to the aviation profession, particularly technical workers in the aviation maintenance industry;

(2) analyze how changes to the Federal employment classification of aviation maintenance industry workers might affect government data on unemployment rates and wages;

(3) analyze how changes to the Federal employment classification of aviation maintenance industry workers might affect projections for future aviation maintenance industry workforce needs and project technical worker shortfalls;

(4) analyze the impact of Federal regulation, including Federal Aviation Administration oversight of certification, testing, and education programs, on employment of technical workers in the aviation maintenance industry;

(5) develop recommendations on how Federal Aviation Administration regulations and policies could be improved to address aviation maintenance industry needs for technical workers; and

(6) develop recommendations for better coordinating actions by government, educational institutions, and businesses to support workforce growth in the aviation maintenance industry.

(c) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

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

(1) **AVIATION MAINTENANCE INDUSTRY.**—The term “aviation maintenance industry” means repair stations certificated under part 145 of title 14, Code of Federal Regulations.

(2) **TECHNICAL WORKER.**—The term “technical worker” means an individual authorized under part 43 of title 14, Code of Federal Regulations, to maintain, rebuild, alter, or perform preventive maintenance on an aircraft, airframe, aircraft engine, propeller, appliance, or component part or employed by an entity so authorized to perform such a function.

**SEC. 417. CRITICAL AIRFIELD MARKINGS.**

Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue a request for proposal for a study that includes—

(1) an independent, third party study to assess the durability of Type III and Type I glass beads applied to critical markings over a 2-year period at not fewer than 2 primary airports in varying weather conditions to measure the retroreflectivity levels of such markings on a quarterly basis; and

(2) a study at 2 other airports carried out by applying Type III beads on half of the centerline and Type I beads to the other half and providing for assessments from pilots through surveys administered by a third party as to the visibility and performance of the Type III glass beads as compared to the Type I glass beads over a 1-year period.

## **Subtitle B—Unmanned Aircraft Systems**

**SEC. 431. DEFINITIONS.**

Except as otherwise provided, the definitions contained in section 45501 of title 49, United States Code (as added by this Act), shall apply to this subtitle.

**SEC. 432. CODIFICATION OF EXISTING LAW; ADDITIONAL PROVISIONS.**

(a) **IN GENERAL.**—Subtitle VII of title 49, United States Code, is amended by inserting after chapter 453 the following:

**“CHAPTER 455—UNMANNED AIRCRAFT SYSTEMS**

“Sec.

“45501. Definitions.

“45502. Integration of civil unmanned aircraft systems into national airspace system.

“45503. Risk-based permitting of unmanned aircraft systems.

“45504. Public unmanned aircraft systems.

“45505. Special rules for certain unmanned aircraft systems.

“45506. Certification of new air navigation facilities for unmanned aircraft and other aircraft.

“45507. Special rules for certain UTM and low-altitude CNS.

“45508. Operation of small unmanned aircraft.

“45509. Special rules for model aircraft.

“45510. Carriage of property for compensation or hire.

“45511. Micro UAS operations.

**“§ 45501. Definitions**

“In this chapter, the following definitions apply:

“(1) AERIAL DATA COLLECTION.—The term ‘aerial data collection’ means the gathering of data by a device aboard an unmanned aircraft during flight, including imagery, sensing, and measurement by such device.

“(2) ARCTIC.—The term ‘Arctic’ means the United States zone of the Chukchi Sea, Beaufort Sea, and Bering Sea north of the Aleutian chain.

“(3) CERTIFICATE OF WAIVER; CERTIFICATE OF AUTHORIZATION.—The terms ‘certificate of waiver’ and ‘certificate of authorization’ mean a Federal Aviation Administration grant of approval for a specific flight operation.

“(4) CNS.—The term ‘CNS’ means a communication, navigation, or surveillance system or service.

“(5) MODEL AIRCRAFT.—the term ‘model aircraft’ means an unmanned aircraft that is—

“(A) capable of sustained flight in the atmosphere;

“(B) flown within visual line of sight of the person operating the aircraft;

and

“(C) flown for hobby or recreational purposes.

“(6) PERMANENT AREAS.—The term ‘permanent areas’ means areas on land or water that provide for launch, recovery, and operation of small unmanned aircraft.

“(7) PUBLIC UNMANNED AIRCRAFT SYSTEM.—The term ‘public unmanned aircraft system’ means an unmanned aircraft system that meets the qualifications and conditions required for operation of a public aircraft (as defined in section 40102(a)).

“(8) SENSE-AND-AVOID CAPABILITY.—The term ‘sense-and-avoid capability’ means the capability of an unmanned aircraft to remain a safe distance from and to avoid collisions with other airborne aircraft.

“(9) SMALL UNMANNED AIRCRAFT.—The term ‘small unmanned aircraft’ means an unmanned aircraft weighing less than 55 pounds, including everything that is on board the aircraft.

“(10) UNMANNED AIRCRAFT.—The term ‘unmanned aircraft’ means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

“(11) UNMANNED AIRCRAFT SYSTEM.—The term ‘unmanned aircraft system’ means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the pilot in command to operate safely and efficiently in the national airspace system.

“(12) UTM.—The term ‘UTM’ means an unmanned aircraft traffic management system or service.

**“§ 45502. Integration of civil unmanned aircraft systems into national airspace system**

“(a) REQUIRED PLANNING FOR INTEGRATION.—

“(1) COMPREHENSIVE PLAN.—Not later than November 10, 2012, the Secretary of Transportation, in consultation with representatives of the aviation industry, Federal agencies that employ unmanned aircraft systems technology in the national airspace system, and the unmanned aircraft systems industry, shall develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national airspace system.

“(2) CONTENTS OF PLAN.—The plan required under paragraph (1) shall contain, at a minimum, recommendations or projections on—

“(A) the rulemaking to be conducted under subsection (b), with specific recommendations on how the rulemaking will—

“(i) define the acceptable standards for operation and certification of civil unmanned aircraft systems;

“(ii) ensure that any civil unmanned aircraft system includes a sense-and-avoid capability; and

“(iii) establish standards and requirements for the operator and pilot of a civil unmanned aircraft system, including standards and requirements for registration and licensing;

“(B) the best methods to enhance the technologies and subsystems necessary to achieve the safe and routine operation of civil unmanned aircraft systems in the national airspace system;

“(C) a phased-in approach to the integration of civil unmanned aircraft systems into the national airspace system;

“(D) a timeline for the phased-in approach described under subparagraph (C);

“(E) creation of a safe airspace designation for cooperative manned and unmanned flight operations in the national airspace system;

“(F) establishment of a process to develop certification, flight standards, and air traffic requirements for civil unmanned aircraft systems at test ranges where such systems are subject to testing;

“(G) the best methods to ensure the safe operation of civil unmanned aircraft systems and public unmanned aircraft systems simultaneously in the national airspace system; and

“(H) incorporation of the plan into the annual NextGen Implementation Plan document (or any successor document) of the Federal Aviation Administration.

“(3) DEADLINE.—The plan required under paragraph (1) shall provide for the safe integration of civil unmanned aircraft systems into the national airspace system as soon as practicable, but not later than September 30, 2015.

“(4) REPORT TO CONGRESS.—Not later than February 14, 2013, the Secretary shall submit to Congress a copy of the plan required under paragraph (1).

“(5) ROADMAP.—Not later than February 14, 2013, the Secretary shall approve and make available in print and on the Administration’s internet website a 5-year roadmap for the introduction of civil unmanned aircraft systems into the national airspace system, as coordinated by the Unmanned Aircraft Program Office of the Administration. The Secretary shall update the roadmap annually.

“(b) RULEMAKING.—Not later than 18 months after the date on which the plan required under subsection (a)(1) is submitted to Congress under subsection (a)(4), the Secretary shall publish in the Federal Register—

“(1) a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under section 45508;

“(2) a notice of proposed rulemaking to implement the recommendations of the plan required under subsection (a)(1), with the final rule to be published not later than 16 months after the date of publication of the notice; and

“(3) an update to the Administration’s most recent policy statement on unmanned aircraft systems, contained in Docket No. FAA–2006–25714.

“(c) EXPANDING USE OF UNMANNED AIRCRAFT SYSTEMS IN ARCTIC.—

“(1) IN GENERAL.—Not later than August 12, 2012, the Secretary shall develop a plan and initiate a process to work with relevant Federal agencies and national and international communities to designate permanent areas in the Arctic where small unmanned aircraft may operate 24 hours per day for research and commercial purposes. The plan for operations in these permanent areas shall include the development of processes to facilitate the safe operation of unmanned aircraft beyond line of sight. Such areas shall enable over-water flights from the surface to at least 2,000 feet in altitude, with ingress and egress routes from selected coastal launch sites.

“(2) AGREEMENTS.—To implement the plan under paragraph (1), the Secretary may enter into an agreement with relevant national and international communities.

“(3) AIRCRAFT APPROVAL.—Not later than 1 year after the entry into force of an agreement necessary to effectuate the purposes of this subsection, the Secretary shall work with relevant national and international communities to establish and implement a process, or may apply an applicable process already established, for approving the use of unmanned aircraft in the designated permanent areas in the Arctic without regard to whether an unmanned aircraft is used as a public aircraft, a civil aircraft, or a model aircraft.

**“§ 45503. Risk-based permitting of unmanned aircraft systems**

“(a) IN GENERAL.—Not later than 120 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish procedures for issuing permits under this section with respect to certain unmanned aircraft systems and operations thereof.

“(b) PERMITTING STANDARDS.—Upon the submission of an application in accordance with subsection (d), the Administrator shall issue a permit with respect to the proposed operation of an unmanned aircraft system if the Administrator determines that the unmanned aircraft system and the proposed operation achieve a level of safety that is equivalent to—

“(1) other unmanned aircraft systems and operations permitted under regulation, exemption, or other authority granted by the Administrator; or

“(2) any other aircraft operation approved by the Administrator with similar risk characteristics or profiles.

“(c) SAFETY CRITERIA FOR CONSIDERATION.—In determining whether a proposed operation meets the standards described in subsection (b), the Administrator shall consider the following safety criteria:

“(1) The kinetic energy of the unmanned aircraft system.

“(2) The location of the proposed operation, including the proximity to—

“(A) structures;

“(B) congested areas;

“(C) special-use airspace; and

“(D) persons on the ground.

“(3) The nature of the operation, including any proposed risk mitigation.

“(4) Any known hazard of the proposed operation and the severity and likelihood of such hazard.

“(5) Any known failure modes of the unmanned aircraft system, failure mode effects and criticality, and any mitigating features or capabilities.

“(6) The operational history of relevant technologies, if available.

“(7) Any history of civil penalties or certificate actions by the Administrator against the applicant seeking the permit.

“(8) Any other safety criteria the Administrator considers appropriate.

“(d) APPLICATION.—An application under this section shall include evidence that the unmanned aircraft system and the proposed operation thereof meet the standards described in subsection (b) based on the criteria described in subsection (c).

“(e) SCOPE OF PERMIT.—A permit issued under this section shall—

“(1) be valid for 5 years;

“(2) constitute approval of both the airworthiness of the unmanned aircraft system and the proposed operation of such system;

“(3) be renewable for additional 5-year periods; and

“(4) contain any terms necessary to ensure aviation safety.

“(f) NOTICE.—Not later than 120 days after the Administrator receives a complete application under subsection (d), the Administrator shall provide the applicant written notice of a decision to approve or disapprove of the application or to request a modification of the application that is necessary for approval of the application.

“(g) PERMITTING PROCESS.—The Administrator shall issue a permit under this section without regard to subsections (b) through (d) of section 553 of title 5 and chapter 35 of title 44 if the Administrator determines that the operation permitted will not occur near a congested area.

“(h) EXEMPTION FROM CERTAIN REQUIREMENTS.—To the extent consistent with aviation safety, the Administrator may exempt applicants under this section from paragraphs (1) through (3) of section 44711(a).

“(i) WITHDRAWAL.—The Administrator may, at any time, modify or withdraw a permit issued under this section.

“(j) APPLICABILITY.—This section shall not apply to small unmanned aircraft systems and operations authorized by the final rule on small unmanned aircraft systems issued pursuant to section 45502(b)(1).

“(k) EXPEDITED REVIEW.—The Administrator shall review and act upon applications under this section on an expedited basis for unmanned aircraft systems and operations thereof to be used primarily in, or primarily in direct support of, emergency preparedness, emergency response, or disaster recovery efforts, including efforts in connection with natural disasters and severe weather events.

**“§ 45504. Public unmanned aircraft systems**

“(a) GUIDANCE.—Not later than November 10, 2012, the Secretary of Transportation shall issue guidance regarding the operation of public unmanned aircraft systems to—

“(1) expedite the issuance of a certificate of authorization process;

“(2) provide for a collaborative process with public agencies to allow for an incremental expansion of access to the national airspace system as technology matures and the necessary safety analysis and data become available, and until standards are completed and technology issues are resolved;

“(3) facilitate the capability of public agencies to develop and use test ranges, subject to operating restrictions required by the Federal Aviation Administration, to test and operate unmanned aircraft systems; and

“(4) provide guidance on a public entity’s responsibility when operating an unmanned aircraft without a civil airworthiness certificate issued by the Administration.

“(b) STANDARDS FOR OPERATION AND CERTIFICATION.—Not later than December 31, 2015, the Administrator shall develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system.

“(c) AGREEMENTS WITH GOVERNMENT AGENCIES.—

“(1) IN GENERAL.—Not later than May 14, 2012, the Secretary shall enter into agreements with appropriate government agencies to simplify the process for issuing certificates of waiver or authorization with respect to applications seeking authorization to operate public unmanned aircraft systems in the national airspace system.

“(2) CONTENTS.—The agreements shall—

“(A) with respect to an application described in paragraph (1)—

“(i) provide for an expedited review of the application;

“(ii) require a decision by the Administrator on approval or disapproval within 60 business days of the date of submission of the application; and

“(iii) allow for an expedited appeal if the application is disapproved;

“(B) allow for a one-time approval of similar operations carried out during a fixed period of time; and

“(C) allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less, if operated—

“(i) within the line of sight of the operator;

“(ii) less than 400 feet above the ground;

“(iii) during daylight conditions;

“(iv) within Class G airspace; and

“(v) outside of 5 statute miles from any airport, heliport, seaplane base, spaceport, or other location with aviation activities.

**“§ 45505. Special rules for certain unmanned aircraft systems**

“(a) IN GENERAL.—Notwithstanding any other requirement of this subtitle, and not later than August 12, 2012, the Secretary of Transportation shall determine if certain unmanned aircraft systems may operate safely in the national airspace system before completion of the plan and rulemaking required by section 45502 or the guidance required under section 45504.

“(b) ASSESSMENT OF UNMANNED AIRCRAFT SYSTEMS.—In making the determination under subsection (a), the Secretary shall determine, at a minimum—

“(1) which types of unmanned aircraft systems, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national airspace system or the public or pose a threat to national security; and

“(2) whether a certificate of waiver, certificate of authorization, or airworthiness certification under section 44704 is required for the operation of unmanned aircraft systems identified under paragraph (1).

“(c) REQUIREMENTS FOR SAFE OPERATION.—If the Secretary determines under this section that certain unmanned aircraft systems may operate safely in the national airspace system, the Secretary shall establish requirements for the safe operation of such aircraft systems in the national airspace system.

**“§ 45506. Certification of new air navigation facilities for unmanned aircraft and other aircraft**

“(a) IN GENERAL.—Not later than 18 months after the date of enactment of this section, and notwithstanding section 2208 of the FAA Extension, Safety, and Security Act of 2016 (49 U.S.C. 40101 note), the Administrator of the Federal Aviation Administration shall initiate a rulemaking to establish procedures for issuing air navigation facility certificates pursuant to section 44702 to operators of—

“(1) UTM for unmanned aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below; and

“(2) low-altitude CNS for aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below.



“(b) MINIMUM REQUIREMENTS.—In issuing a final rule pursuant to subsection (a), the Administrator, at a minimum, shall provide for the following:

“(1) CERTIFICATION STANDARDS.—The Administrator shall issue an air navigation facility certificate under the final rule if the Administrator determines that a UTM or low-altitude CNS facilitates or improves the safety of unmanned aircraft or other aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below, including operations conducted under a waiver issued pursuant to subpart D of part 107 of title 14, Code of Federal Regulations.

“(2) CRITERIA FOR CONSIDERATION.—In determining whether a UTM or low-altitude CNS meets the standard described in paragraph (1), the Administrator shall, as appropriate, consider—

- “(A) protection of persons and property on the ground;
- “(B) remote identification of aircraft;
- “(C) collision avoidance with respect to obstacles and aircraft;
- “(D) deconfliction of aircraft trajectories;
- “(E) safe and reliable interoperability or noninterference with air traffic control and other systems operated in the national airspace system;
- “(F) detection of noncooperative aircraft;
- “(G) geographic and local factors;
- “(H) aircraft equipage; and
- “(I) qualifications, if any, necessary to operate the UTM or low-altitude CNS.

“(3) APPLICATION.—An application for an air navigation facility certificate under the final rule shall include evidence that the UTM or low-altitude CNS meets the standard described in paragraph (1) based on the criteria described in paragraph (2).

“(4) SCOPE OF CERTIFICATE.—The Administrator shall ensure that an air navigation facility certificate issued under the final rule—

- “(A) constitutes approval of the UTM or low-altitude CNS for the duration of the term of the certificate;
- “(B) constitutes authorization to operate the UTM or low-altitude CNS for the duration of the term of the certificate; and
- “(C) contains such limitations and conditions as may be necessary to ensure aviation safety.

“(5) NOTICE.—Not later than 120 days after the Administrator receives a complete application under the final rule, the Administrator shall provide the applicant with a written approval, disapproval, or request to modify the application.

“(6) LOW RISK AREAS.—Under the final rule, the Administrator shall establish expedited procedures for approval of UTM or low-altitude CNS operated in—

- “(A) airspace away from congested areas; or
- “(B) other airspace above areas in which operations of unmanned aircraft pose very low risk.

“(7) EXEMPTION FROM CERTAIN REQUIREMENTS.—To the extent consistent with aviation safety, the Administrator may exempt applicants under the final rule from requirements under sections 44702, 44703, and 44711.

“(8) CERTIFICATE MODIFICATIONS AND REVOCATIONS.—A certificate issued under the final rule may, at any time, be modified or revoked by the Administrator.

“(c) CONSULTATION.—In carrying out this section, the Administrator shall consult with other Federal agencies, as appropriate.

**“§ 45507. Special rules for certain UTM and low-altitude CNS**

“(a) IN GENERAL.—Notwithstanding any other requirement of this chapter, and not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall determine if certain UTM and low-altitude CNS may operate safely in the national airspace system before completion of the rulemaking required by section 45506.

“(b) ASSESSMENT OF UTM AND LOW-ALTITUDE CNS.—In making the determination under subsection (a), the Secretary shall determine, at a minimum, which types of UTM and low-altitude CNS, if any, as a result of their operational capabilities, reliability, intended use, and areas of operation, and the characteristics of the aircraft involved, do not create a hazard to users of the national airspace system or the public.

“(c) REQUIREMENTS FOR SAFE OPERATION.—If the Secretary determines that certain UTM and low-altitude CNS may operate safely in the national airspace system, the Secretary shall establish requirements for their safe operation in the national airspace system.

“(d) EXPEDITED PROCEDURES.—The Secretary shall provide expedited procedures for reviewing and approving UTM or low-altitude CNS operated to monitor or control aircraft operated primarily or exclusively in airspace above—

“(1) croplands;

“(2) areas other than congested areas; and

“(3) other areas in which the operation of unmanned aircraft poses very low risk.

“(e) CONSULTATION.—In carrying out this section, the Administrator shall consult with other Federal agencies, as appropriate.

**“§ 45508. Operation of small unmanned aircraft**

“(a) EXEMPTION AND CERTIFICATE OF WAIVER OR AUTHORIZATION FOR CERTAIN OPERATIONS.—Not later than 270 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish a procedure for granting an exemption and issuing a certificate of waiver or authorization for the operation of a small unmanned aircraft system in United States airspace for the purposes described in section 45501(1).

“(b) OPERATION OF EXEMPTION AND CERTIFICATE OF WAIVER OR AUTHORIZATION.—

“(1) EXEMPTION.—An exemption granted under this section shall—

“(A) exempt the operator of a small unmanned aircraft from the provisions of title 14, Code of Federal Regulations, that are exempted in Exemption No. 11687, issued on May 26, 2015, Regulatory Docket Number FAA–2015–0117, or in a subsequent exemption; and

“(B) contain conditions and limitations described in paragraphs 3 through 31 of such Exemption No. 11687, or conditions and limitations of a subsequent exemption.

“(2) CERTIFICATE OF WAIVER OR AUTHORIZATION.—A certificate of waiver or authorization issued under this section shall allow the operation of small unmanned aircraft according to—

“(A) the standard provisions and air traffic control special provisions of the certificate of waiver or authorization FAA Form 7711–1 (7–74); or

“(B) the standard and special provisions of a subsequent certificate of waiver or authorization.

“(c) NOTICE TO ADMINISTRATOR.—Before operating a small unmanned aircraft pursuant to a certificate of waiver or authorization granted under this section, the operator shall provide written notice to the Administrator, in a form and manner specified by the Administrator, that contains such information and assurances as the Administrator determines necessary in the interest of aviation safety and the efficiency of the national airspace system, including a certification that the operator has read, understands, and will comply with all terms, conditions, and limitations of the certificate of waiver or authorization.

“(d) WAIVER OF AIRWORTHINESS CERTIFICATE.—Notwithstanding section 44711(a)(1), the holder of a certificate of waiver or authorization granted under this section may operate a small unmanned aircraft under the terms, conditions, and limitations of such certificate without an airworthiness certificate.

“(e) PROCEDURE.—The granting of an exemption or the issuance of a certificate of waiver or authorization, or any other action authorized by this section, shall be made without regard to—

“(1) section 553 of title 5; or

“(2) chapter 35 of title 44.

“(f) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to—

“(1) affect the issuance of a rule by or any other activity of the Secretary of Transportation or the Administrator under any other provision of law; or

“(2) invalidate an exemption or certificate of waiver or authorization issued by the Administrator before the date of enactment of this section.

“(g) EFFECTIVE PERIODS.—An exemption or certificate of waiver or authorization issued under this section, or an amendment of such exemption or certificate, shall cease to be valid on the effective date of a final rule on small unmanned aircraft systems issued under section 45502(b)(1).

**“§ 45509. Special rules for model aircraft**

“(a) IN GENERAL.—Notwithstanding any other provision of law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies, including this subtitle, the Administrator of the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft or an aircraft being developed as a model aircraft (other than the registration of certain model aircraft pursuant to section 44103), if—

“(1) the aircraft is flown strictly for hobby or recreational use;

“(2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a community-based organization;

“(3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;

“(4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft;

“(5) the aircraft is not operated over or within the property of a fixed site facility that operates amusement rides available for use by the general public or the property extending 500 lateral feet beyond the perimeter of such facility unless the operation is authorized by the owner of the amusement facility; and

“(6) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

“(b) COMMERCIAL OPERATION FOR INSTRUCTIONAL OR EDUCATIONAL PURPOSES.—A flight of an unmanned aircraft shall be treated as a flight of a model aircraft for purposes of subsection (a) (regardless of any compensation, reimbursement, or other consideration exchanged or incidental economic benefit gained in the course of planning, operating, or supervising the flight), if the flight is—

“(1) conducted for instructional or educational purposes; and

“(2) operated or supervised by a member of a community-based organization recognized pursuant to subsection (e).

“(c) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to limit the authority of the Administrator to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system.

“(d) COMMUNITY-BASED ORGANIZATION DEFINED.—In this section, the term ‘community-based organization’ means an entity that—

“(1) is described in section 501(c)(3) of the Internal Revenue Code of 1986;

“(2) is exempt from tax under section 501(a) of the Internal Revenue Code of 1986;

“(3) the mission of which is demonstrably the furtherance of model aviation;

“(4) provides a comprehensive set of safety guidelines for all aspects of model aviation addressing the assembly and operation of model aircraft and that emphasize safe aeromodeling operations within the national airspace system and the protection and safety of individuals and property on the ground;

“(5) provides programming and support for any local charter organizations, affiliates, or clubs; and

“(6) provides assistance and support in the development and operation of locally designated model aircraft flying sites.

“(e) RECOGNITION OF COMMUNITY-BASED ORGANIZATIONS.—Not later than 180 days after the date of enactment of this section, the Administrator shall establish, and make available to the public, a process for recognizing community-based organizations that meet the eligibility criteria under subsection (d).

**“§ 45510. Carriage of property for compensation or hire**

“(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation shall issue a final rule authorizing the carriage of property by operators of small unmanned aircraft systems for compensation or hire within the United States.

“(b) CONTENTS.—The final rule required under subsection (a) shall provide for the following:

“(1) SMALL UAS AIR CARRIER CERTIFICATE.—The Administrator of the Federal Aviation Administration, at the direction of the Secretary, shall establish a small UAS air carrier certificate for persons that undertake directly, or by lease or other arrangement, the operation of small unmanned aircraft systems to carry property in air transportation, including commercial fleet operations with highly automated unmanned aircraft systems. The requirements to obtain a small UAS air carrier certificate shall—

“(A) account for the unique characteristics of highly automated small unmanned aircraft systems; and

“(B) include only those obligations necessary for the safe operation of small unmanned aircraft systems.

“(2) SMALL UAS AIR CARRIER CERTIFICATION PROCESS.—The Administrator, at the direction of the Secretary, shall establish a process for the issuance of a small UAS air carrier certificate described in paragraph (1) that is streamlined, simple, performance-based, and risk-based. Such certification process shall consider—

“(A) safety and the mitigation of operational risks from highly automated small unmanned aircraft systems to the safety of other aircraft, and persons and property on the ground;

“(B) the safety and reliability of highly automated small unmanned aircraft system design, including technological capabilities and operational limitations to mitigate such risks; and

“(C) the competencies and compliance programs of manufacturers, operators, and companies that both manufacture and operate small unmanned aircraft systems and components.

“(3) SMALL UAS AIR CARRIER CLASSIFICATION.—The Secretary shall develop a classification system for small unmanned aircraft systems air carriers to establish economic authority for the carriage of property by small unmanned aircraft systems for compensation or hire. Such classification shall only require—

“(A) registration with the Department of Transportation; and

“(B) a valid small UAS air carrier certificate as described in paragraph (1).

#### “§ 45511. Micro UAS operations

“(a) IN GENERAL.—Not later than 60 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall charter an aviation rulemaking advisory committee to develop recommendations for regulations under which any person may operate a micro unmanned aircraft system, the aircraft component of which weighs 4.4 pounds or less, including payload, without the person operating the system being required to pass any airman certification requirement, including any requirements under section 44703, part 61 of title 14, Code of Federal Regulations, or any other rule or regulation relating to airman certification.

“(b) CONSIDERATIONS.—In developing recommendations for the operation of micro unmanned aircraft systems under subsection (a), the members of the aviation rulemaking advisory committee shall consider rules for operation of such systems—

“(1) at an altitude of less than 400 feet above ground level;

“(2) with an airspeed of not greater than 40 knots;

“(3) within the visual line of sight of the operator;

“(4) during the hours between sunrise and sunset;

“(5) by an operator who has passed an aeronautical knowledge and safety test administered by the Federal Aviation Administration online specifically for the operation of micro unmanned aircraft systems, with such test being of a length and difficulty that acknowledges the reduced operational complexity and low risk of micro unmanned aircraft systems;

“(6) not over unprotected persons uninformed in its operation; and

“(7) at least 5 statute miles from the geographic center of a tower-controlled airport or airport denoted on a current Federal Aviation Administration-published aeronautical chart, except that a micro unmanned aircraft system may be operated closer than 5 statute miles to the airport if the operator—

“(A) provides prior notice to the airport operator; and

“(B) receives, for a tower-controlled airport, prior approval from the air traffic control facility located at the airport.

“(c) CONSULTATION.—

“(1) IN GENERAL.—In developing recommendations for recommended regulations under subsection (a), the aviation rulemaking advisory committee shall consult with—

“(A) unmanned aircraft systems stakeholders, including manufacturers of micro unmanned aircraft systems;

“(B) community-based aviation organizations;

“(C) the Center of Excellence for Unmanned Aircraft Systems; and

“(D) appropriate Federal agencies.

“(2) FACILITY.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to an aviation rulemaking advisory committee chartered under this section.

“(d) RULEMAKING.—Not later than 180 days after the date of receipt of the recommendations under subsection (a), the Administrator shall issue regulations incorporating recommendations of the aviation rulemaking advisory committee that provide for the operation of micro unmanned aircraft systems in the United States—

“(1) without an airman certificate; and

“(2) without an airworthiness certificate for the associated unmanned aircraft.

“(e) SCOPE OF REGULATIONS.—

“(1) IN GENERAL.—In determining whether a person may operate an unmanned aircraft system under 1 or more of the circumstances described under paragraphs (1) through (3) of subsection (b), the Administrator shall use a risk-

based approach and consider, at a minimum, the physical and functional characteristics of the unmanned aircraft system.

“(2) LIMITATION.—The Administrator may only issue regulations under this section for unmanned aircraft systems that the Administrator determines may be operated safely in the national airspace system pursuant to those regulations.

“(f) RULES OF CONSTRUCTION.—Nothing in this section may be construed—

“(1) to prohibit a person from operating an unmanned aircraft system under a circumstance described under paragraphs (1) through (3) of subsection (b) if—

“(A) the circumstance is allowed by regulations issued under this section; and

“(B) the person operates the unmanned aircraft system in a manner prescribed by the regulations; or

“(2) to limit or affect in any way the Administrator’s authority to conduct a rulemaking, make a determination, or carry out any activity related to unmanned aircraft or unmanned aircraft systems under any other provision of law.”.

(b) CONFORMING AMENDMENTS.—

(1) REPEALS.—

(A) IN GENERAL.—Sections 332(a), 332(b), 332(d), 333, 334, and 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note) are repealed.

(B) CLERICAL AMENDMENT.—The items relating to sections 333, 334, and 336 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note) in the table of contents contained in section 1(b) of that Act are repealed.

(2) PENALTIES.—Section 46301 of title 49, United States Code, is amended—

(A) in subsection (a)—

(i) in paragraph (1)(A) by inserting “chapter 455,” after “chapter 451,”; and

(ii) in paragraph (5)(A)(i) by striking “or chapter 451,” and inserting “chapter 451, chapter 455,”;

(B) in subsection (d)(2) by inserting “chapter 455,” after “chapter 451,”; and

(C) in subsection (f)(1)(A)(i) by striking “or chapter 451” and inserting “chapter 451, or chapter 455”.

(3) CLERICAL AMENDMENT.—The analysis for subtitle VII of title 49, United States Code, is amended by inserting after the item relating to chapter 453 the following:

“455. Unmanned aircraft systems ..... 45501”.

**SEC. 433. UNMANNED AIRCRAFT TEST RANGES.**

(a) EXTENSION OF PROGRAM.—Section 332(c)(1) of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note) is amended by striking “September 30, 2019” and inserting “the date that is 6 years after the date of enactment of the 21st Century AIRR Act”.

(b) SENSE-AND-AVOID AND BEYOND LINE OF SIGHT SYSTEMS AT TEST RANGES.—

(1) IN GENERAL.—To the extent consistent with aviation safety, the Administrator of the Federal Aviation Administration shall permit and encourage flights of unmanned aircraft equipped with sense-and-avoid and beyond line of sight systems at the 6 test ranges designated under section 332(c) of the FAA Modernization and Reform Act of 2012.

(2) WAIVERS.—In carrying out paragraph (1), the Administrator may waive the requirements of section 44711 of title 49, United States Code, including related regulations, to the extent consistent with aviation safety.

(c) TEST RANGE DEFINED.—In this section, the term “test range” means a defined geographic area where research and development are conducted.

**SEC. 434. SENSE OF CONGRESS REGARDING UNMANNED AIRCRAFT SAFETY.**

It is the sense of Congress that—

(1) the unauthorized operation of unmanned aircraft near airports presents a serious hazard to aviation safety;

(2) a collision between an unmanned aircraft and a conventional aircraft in flight could jeopardize the safety of persons aboard the aircraft and on the ground;

(3) Federal aviation regulations, including sections 91.126 through 91.131 of title 14, Code of Federal Regulations, prohibit unauthorized operation of an aircraft in controlled airspace near an airport;

(4) Federal aviation regulations, including section 91.13 of title 14, Code of Federal Regulations, prohibit the operation of an aircraft in a careless or reckless manner so as to endanger the life or property of another;

(5) the Administrator of the Federal Aviation Administration should pursue all available civil and administrative remedies available to the Administrator, including referrals to other government agencies for criminal investigations, with respect to persons who operate unmanned aircraft in an unauthorized manner;

(6) the Administrator should place particular priority on continuing measures, including partnerships with nongovernmental organizations, to educate the public about the dangers to the public safety of operating unmanned aircraft near airports without the appropriate approvals or authorizations; and

(7) manufacturers and retail sellers of small unmanned aircraft systems should take steps to educate consumers about the safe and lawful operation of such systems.

**SEC. 435. UAS PRIVACY REVIEW.**

(a) REVIEW.—The Secretary of Transportation, in consultation with the heads of appropriate Federal agencies, appropriate State and local officials, and subject-matter experts and in consideration of relevant efforts led by the National Telecommunications and Information Administration, shall carry out a review to identify any potential reduction of privacy specifically caused by the integration of unmanned aircraft systems into the national airspace system.

(b) CONSULTATION.—In carrying out the review, the Secretary shall consult with the National Telecommunications and Information Administration of the Department of Commerce on its ongoing efforts responsive to the Presidential memorandum titled “Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems” and dated February 15, 2015.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review required under subsection (a).

**SEC. 436. PUBLIC UAS OPERATIONS BY TRIBAL GOVERNMENTS.**

(a) PUBLIC UAS OPERATIONS BY TRIBAL GOVERNMENTS.—Section 40102(a)(41) of title 49, United States Code, is amended by adding at the end the following:

“(F) An unmanned aircraft that is owned and operated by, or exclusively leased for at least 90 continuous days by, an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in section 40125(b).”.

(b) CONFORMING AMENDMENT.—Section 40125(b) of title 49, United States Code, is amended by striking “or (D)” and inserting “(D), or (F)”.

**SEC. 437. EVALUATION OF AIRCRAFT REGISTRATION FOR SMALL UNMANNED AIRCRAFT.**

(a) METRICS.—Beginning not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall develop and track metrics to assess compliance with and effectiveness of the registration of small unmanned aircraft systems by the Federal Aviation Administration pursuant to the interim final rule issued on December 16, 2015, entitled “Registration and Marking Requirements for Small Unmanned Aircraft” (80 Fed. Reg. 78593) and any subsequent final rule, including metrics with respect to—

(1) the levels of compliance with the interim final rule and any subsequent final rule;

(2) the number of enforcement actions taken by the Administration for violations of or noncompliance with the interim final rule and any subsequent final rule, together with a description of the actions; and

(3) the effect of the interim final rule and any subsequent final rule on compliance with any fees associated with the use of small unmanned aircraft systems.

(b) EVALUATION.—The Inspector General of the Department of Transportation shall evaluate—

(1) the Administration’s progress in developing and tracking the metrics set forth in subsection (a); and

(2) the reliability, effectiveness, and efficiency of the Administration’s registration program for small unmanned aircraft.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Inspector General of the Department of Transportation shall submit to the Com-

mittee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

- (1) the results of the evaluation required under subsection (b); and
- (2) recommendations to the Administrator and Congress for improvements to the registration process for small unmanned aircraft.

**SEC. 438. STUDY ON ROLES OF GOVERNMENTS RELATING TO LOW-ALTITUDE OPERATION OF SMALL UNMANNED AIRCRAFT.**

(a) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act, the Inspector General of the Department of Transportation shall initiate a study on—

- (1) the regulation and oversight of the low-altitude operations of small unmanned aircraft and small unmanned aircraft systems; and
- (2) the appropriate roles and responsibilities of Federal, State, local, and Tribal governments in regulating and overseeing the operations of small unmanned aircraft in airspace 400 feet above ground level and below.

(b) **CONSIDERATIONS.**—In carrying out the study, the Inspector General shall consider, at a minimum—

- (1) the recommendations of Task Group 1 of the Drone Advisory Committee chartered by the Federal Aviation Administration on August 31, 2016;
- (2) the legal and policy requirements necessary for the safe and financially viable development and growth of the unmanned aircraft industry;
- (3) the interests of Federal, State, local, and Tribal governments affected by low-altitude operations of small unmanned aircraft;
- (4) the existing authorities of Federal, State, local, and Tribal governments to protect the interests referenced in paragraph (3);
- (5) the degree of regulatory consistency required for the safe and financially viable growth and development of the unmanned aircraft industry;
- (6) the degree of local variance possible among regulations consistent with the safe and financially viable growth and development of the unmanned aircraft industry;
- (7) the appropriate roles of State, local, and Tribal governments in regulating the operations of small unmanned aircraft within the lateral boundaries of their jurisdiction in the categories of airspace described in subsection (a)(2);
- (8) the subjects and types of regulatory authority that should remain with the Federal Government;
- (9) the infrastructure requirements necessary for monitoring the low-altitude operations of small unmanned aircraft and enforcing applicable laws;
- (10) the number of small businesses involved in the various sectors of the unmanned aircraft industry and operating as primary users of small unmanned aircraft; and
- (11) any best practices, lessons learned, or policies of jurisdictions outside the United States relating to local or regional regulation and oversight of small unmanned aircraft and other emergent technologies.

(c) **REPORT TO CONGRESS.**—Not later than 180 days after initiating the study, the Inspector General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

**SEC. 439. STUDY ON FINANCING OF UNMANNED AIRCRAFT SERVICES.**

(a) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act, the Comptroller General of the United States shall initiate a study on appropriate fee mechanisms to recover the costs of—

- (1) the regulation and safety oversight of unmanned aircraft and unmanned aircraft systems; and
- (2) the provision of air navigation services to unmanned aircraft and unmanned aircraft systems.

(b) **CONSIDERATIONS.**—In carrying out the study, the Comptroller General shall consider, at a minimum—

- (1) the recommendations of Task Group 3 of the Drone Advisory Committee chartered by the Federal Aviation Administration on August 31, 2016;
- (2) the total annual costs incurred by the Federal Aviation Administration for the regulation and safety oversight of activities related to unmanned aircraft;
- (3) the annual costs attributable to various types, classes, and categories of unmanned aircraft activities;
- (4) air traffic services provided to unmanned aircraft operating under instrument flight rules, excluding public aircraft;
- (5) the number of full-time Federal Aviation Administration employees dedicated to unmanned aircraft programs;

(6) the use of privately operated UTM and other privately operated unmanned aircraft systems;

(7) the projected growth of unmanned aircraft operations for various applications and the estimated need for regulation, oversight, and other services;

(8) the number of small businesses involved in the various sectors of the unmanned aircraft industry and operating as primary users of unmanned aircraft; and

(9) any best practices or policies utilized by jurisdictions outside the United States relating to partial or total recovery of regulation and safety oversight costs related to unmanned aircraft and other emergent technologies.

(c) REPORT TO CONGRESS.—Not later than 180 days after initiating the study, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommendations on appropriate fee mechanisms to recover the costs of regulating and providing air navigation services to unmanned aircraft and unmanned aircraft systems.

**SEC. 440. UPDATE OF FAA COMPREHENSIVE PLAN.**

(a) IN GENERAL.—Not later than 270 days after the date of enactment of this Act, the Secretary of Transportation shall update the comprehensive plan required by section 332 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 40101 note) to develop a concept of operations for the integration of unmanned aircraft into the national airspace system.

(b) CONSIDERATIONS.—In carrying out the update, the Secretary shall consider, at a minimum—

(1) the potential use of UTM and other technologies to ensure the safe and lawful operation of unmanned aircraft in the national airspace system;

(2) the appropriate roles, responsibilities, and authorities of government agencies and the private sector in identifying and reporting unlawful or harmful operations and operators of unmanned aircraft;

(3) the use of models, threat assessments, probabilities, and other methods to distinguish between lawful and unlawful operations of unmanned aircraft; and

(4) appropriate systems, training, intergovernmental processes, protocols, and procedures to mitigate risks and hazards posed by unlawful or harmful operations of unmanned aircraft systems.

(c) CONSULTATION.—The Secretary shall carry out the update in consultation with representatives of the aviation industry, Federal agencies that employ unmanned aircraft systems technology in the national airspace system, and the unmanned aircraft systems industry.

**SEC. 441. COOPERATION RELATED TO CERTAIN COUNTER-UAS TECHNOLOGY.**

In matters relating to the use of systems in the national airspace system intended to mitigate threats posed by errant or hostile unmanned aircraft system operations, the Secretary of Transportation shall consult with the Secretary of Defense to streamline deployment of such systems by drawing upon the expertise and experience of the Department of Defense in acquiring and operating such systems consistent with the safe and efficient operation of the national airspace system.

## **TITLE V—AIR SERVICE IMPROVEMENTS**

### **Subtitle A—Airline Customer Service Improvements**

**SEC. 501. RELIABLE AIR SERVICE IN AMERICAN SAMOA.**

Section 40109(g) of title 49, United States Code, is amended—

(1) in paragraph (2) by striking subparagraph (C) and inserting the following:

“(C) review the exemption at least every 30 days (or, in the case of an exemption that is necessary to provide and sustain air transportation in American Samoa between the islands of Tutuila and Manu’a, at least every 180 days) to ensure that the unusual circumstances that established the need for the exemption still exist.”; and

(2) by striking paragraph (3) and inserting the following:

“(3) RENEWAL OF EXEMPTIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days.



“(B) EXCEPTION.—The Secretary may renew an exemption (including renewals) under this subsection that is necessary to provide and sustain air transportation in American Samoa between the islands of Tutuila and Manu’a for not more than 180 days.

“(4) CONTINUATION OF EXEMPTIONS.—An exemption granted by the Secretary under this subsection may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.”.

**SEC. 502. CELL PHONE VOICE COMMUNICATION BAN.**

(a) IN GENERAL.—Subchapter I of chapter 417 of title 49, United States Code, is amended by adding at the end the following:

**“§ 41725. Prohibition on certain cell phone voice communications**

“(a) PROHIBITION.—The Secretary of Transportation shall issue regulations—

“(1) to prohibit an individual on an aircraft from engaging in voice communications using a mobile communications device during a flight of that aircraft in scheduled passenger interstate or intrastate air transportation; and

“(2) that exempt from the prohibition described in paragraph (1) any—

“(A) member of the flight crew on duty on an aircraft;

“(B) flight attendant on duty on an aircraft; and

“(C) Federal law enforcement officer acting in an official capacity.

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

“(1) FLIGHT.—The term ‘flight’ means, with respect to an aircraft, the period beginning when the aircraft takes off and ending when the aircraft lands.

“(2) MOBILE COMMUNICATIONS DEVICE.—

“(A) IN GENERAL.—The term ‘mobile communications device’ means any portable wireless telecommunications equipment utilized for the transmission or reception of voice data.

“(B) LIMITATION.—The term ‘mobile communications device’ does not include a phone installed on an aircraft.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 417 of title 49, United States Code, is amended by inserting after the item relating to section 41724 the following:

“41725. Prohibition on certain cell phone voice communications.”.

**SEC. 503. ADVISORY COMMITTEE FOR AVIATION CONSUMER PROTECTION.**

Section 411 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 42301 prec. note) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(B) by inserting after paragraph (2) the following:

“(3) independent distributors of travel;”;

(2) in subsection (g) by striking “first 2 calendar years” and inserting “first 6 calendar years”; and

(3) in subsection (h) by striking “September 30, 2017” and inserting “September 30, 2023”.

**SEC. 504. IMPROVED NOTIFICATION OF INSECTICIDE USE.**

Section 42303(b) of title 49, United States Code, is amended to read as follows:

“(b) REQUIRED DISCLOSURES.—An air carrier, foreign air carrier, or ticket agent selling, in the United States, a ticket for a flight in foreign air transportation to a country listed on the internet website established under subsection (a) shall—

“(1) disclose, on its own internet website or through other means, that the destination country may require the air carrier or foreign air carrier to treat an aircraft passenger cabin with insecticides prior to the flight or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers; and

“(2) refer the purchaser of the ticket to the internet website established under subsection (a) for additional information.”.

**SEC. 505. ADVERTISEMENTS AND DISCLOSURE OF FEES FOR PASSENGER AIR TRANSPORTATION.**

(a) FULL FARE ADVERTISING.—

(1) IN GENERAL.—Section 41712 of title 49, United States Code, is amended by adding at the end the following:

“(d) FULL FARE ADVERTISING.—

“(1) IN GENERAL.—It shall not be an unfair or deceptive practice under subsection (a) for a covered entity to state in an advertisement or solicitation for passenger air transportation the base airfare for the air transportation if the covered entity clearly and separately discloses—

“(A) the government-imposed fees and taxes associated with the air transportation; and

“(B) the total cost of the air transportation.

“(2) FORM OF DISCLOSURE.—

“(A) IN GENERAL.—For purposes of paragraph (1), the information described in paragraphs (1)(A) and (1)(B) shall be disclosed in the advertisement or solicitation in a manner that clearly presents the information to the consumer.

“(B) INTERNET ADVERTISEMENTS AND SOLICITATIONS.—For purposes of paragraph (1), with respect to an advertisement or solicitation for passenger air transportation that appears on an internet website or a mobile application, the information described in paragraphs (1)(A) and (1)(B) may be disclosed through a link or pop-up, as such terms may be defined by the Secretary, that displays the information in a manner that is easily accessible and viewable by the consumer.

“(3) DEFINITIONS.—In this subsection, the following definitions apply:

“(A) BASE AIRFARE.—The term ‘base airfare’ means the cost of passenger air transportation, excluding government-imposed fees and taxes.

“(B) COVERED ENTITY.—The term ‘covered entity’ means an air carrier, including an indirect air carrier, foreign air carrier, ticket agent, or other person offering to sell tickets for passenger air transportation or a tour or tour component that must be purchased with air transportation.”

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in the amendment made by paragraph (1) may be construed to affect any obligation of a person that sells air transportation to disclose the total cost of the air transportation, including government-imposed fees and taxes, prior to purchase of the air transportation.

(3) REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Secretary of Transportation shall issue final regulations to carry out the amendment made by paragraph (1).

(4) EFFECTIVE DATE.—This subsection, and the amendments made by this subsection, shall take effect on the earlier of—

(A) the effective date of regulations issued under paragraph (3); and

(B) the date that is 180 days after the date of enactment of this Act.

(b) DISCLOSURE OF FEES.—Section 41712 of title 49, United States Code, as amended by this section, is further amended by adding at the end the following:

“(e) DISCLOSURE OF FEES.—

“(1) IN GENERAL.—It shall be an unfair or deceptive practice under subsection (a) for any air carrier, foreign air carrier, or ticket agent to fail to include, in an internet fare quotation for a specific itinerary in air transportation selected by a consumer—

“(A) a clear and prominent statement that additional fees for checked baggage and carry-on baggage may apply; and

“(B) a prominent link that connects directly to a list of all such fees.

“(2) SAVINGS PROVISION.—Nothing in this subsection may be construed to derogate or limit any responsibilities of an air carrier, foreign air carrier, or ticket agent under section 399.85 of title 14, Code of Federal Regulations, or any successor provision.”

**SEC. 506. INVOLUNTARILY BUMPING PASSENGERS AFTER AIRCRAFT BOARDED.**

Section 41712 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following:

“(f) INVOLUNTARILY DENIED BOARDING AFTER AIRCRAFT BOARDED.—

“(1) IN GENERAL.—It shall be an unfair or deceptive practice under subsection (a) for an air carrier or foreign air carrier subject to part 250 of title 14, Code of Federal Regulations, to involuntarily deplane a revenue passenger onboard an aircraft, if the revenue passenger—

“(A) is traveling on a confirmed reservation; and

“(B) checked-in for the relevant flight prior to the check-in deadline.

“(2) SAVINGS PROVISION.—Nothing in this subsection may be construed to limit the authority of an air carrier, foreign air carrier, or airman to remove a passenger in accordance with—

“(A) section 91.3, 121.533(d), or 121.580 of title 14, Code of Federal Regulations, or any successor provision; or

“(B) any other applicable Federal, State, or local law.”

**SEC. 507. AVAILABILITY OF CONSUMER RIGHTS INFORMATION.**

Section 42302(b) of title 49, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking “on the” and inserting “in a prominent place on the homepage of the primary”;

- (2) in paragraph (2) by striking “and” at the end;
- (3) in paragraph (3) by striking the period at the end and inserting “; and”;
- and
- (4) by adding at the end the following:
  - “(4) the air carrier’s customer service plan.”

**SEC. 508. CONSUMER COMPLAINTS HOTLINE.**

Section 42302 of title 49, United States Code, is amended by adding at the end the following:

“(d) USE OF NEW TECHNOLOGIES.—The Secretary shall periodically evaluate the benefits of using mobile phone applications or other widely used technologies to provide new means for air passengers to communicate complaints in addition to the telephone number established under subsection (a) and shall provide such new means as the Secretary determines appropriate.”

**SEC. 509. WIDESPREAD DISRUPTIONS.**

(a) IN GENERAL.—Chapter 423 of title 49, United States Code, is amended by adding at the end the following:

**“§ 42304. Widespread disruptions**

“(a) GENERAL REQUIREMENTS.—In the event of a widespread disruption, a covered air carrier shall immediately publish, via a prominent link on the air carrier’s public internet website, a clear statement indicating whether, with respect to a passenger of the air carrier whose travel is interrupted as a result of the widespread disruption, the air carrier will—

- “(1) provide for hotel accommodations;
- “(2) arrange for ground transportation;
- “(3) provide meal vouchers;
- “(4) arrange for air transportation on another air carrier or foreign air carrier to the passenger’s destination; and
- “(5) provide for sleeping facilities inside the airport terminal.

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

“(1) WIDESPREAD DISRUPTION.—The term ‘widespread disruption’ means, with respect to a covered air carrier, the interruption of all or the overwhelming majority of the air carrier’s systemwide flight operations, including flight delays and cancellations, as the result of the failure of 1 or more computer systems or computer networks of the air carrier.

“(2) COVERED AIR CARRIER.—The term ‘covered air carrier’ means an air carrier that provides scheduled passenger air transportation by operating an aircraft that as originally designed has a passenger capacity of 30 or more seats.

“(c) SAVINGS PROVISION.—Nothing in this section may be construed to modify, abridge, or repeal any obligation of an air carrier under section 42301.”

(b) CONFORMING AMENDMENT.—The analysis for chapter 423 of title 49, United States Code, is amended by adding at the end the following:

“42304. Widespread disruptions.”

**SEC. 510. INVOLUNTARILY DENIED BOARDING COMPENSATION.**

Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall issue a final rule to revise part 250 of title 14, Code of Federal Regulations, to clarify that—

- (1) there is not a maximum level of compensation an air carrier or foreign air carrier may pay to a passenger who is involuntarily denied boarding as the result of an oversold flight;
- (2) the compensation levels set forth in that part are the minimum levels of compensation an air carrier or foreign air carrier must pay to a passenger who is involuntarily denied boarding as the result of an oversold flight; and
- (3) an air carrier or foreign air carrier must proactively offer to pay compensation to a passenger who is voluntarily or involuntarily denied boarding on an oversold flight, rather than waiting until the passenger requests the compensation.

**SEC. 511. CONSUMER INFORMATION ON ACTUAL FLIGHT TIMES.**

(a) STUDY.—The Secretary of Transportation shall conduct a study on the feasibility and advisability of modifying regulations contained in section 234.11 of title 14, Code of Federal Regulations, to ensure that—

- (1) a reporting carrier (including its contractors), during the course of a reservation or ticketing discussion or other inquiry, discloses to a consumer upon reasonable request the projected period between the actual wheels-off and wheels-on times for a reportable flight; and

(2) a reporting carrier displays, on the public internet website of the carrier, information on the actual wheels-off and wheels-on times during the most recent calendar month for a reportable flight.

(b) DEFINITIONS.—In this section, the terms “reporting carrier” and “reportable flight” have the meanings given those terms in section 234.2 of title 14, Code of Federal Regulations (as in effect on the date of enactment of this Act).

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

**SEC. 512. ADVISORY COMMITTEE FOR TRANSPARENCY IN AIR AMBULANCE INDUSTRY.**

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall establish an advisory committee to make recommendations for a rulemaking—

(1) to require air ambulance operators to clearly disclose charges for air transportation services separately from charges for non-air transportation services within any invoice or bill; and

(2) to provide other consumer protections for customers of air ambulance operators.

(b) COMPOSITION OF THE ADVISORY COMMITTEE.—The advisory committee shall be composed of the following members:

(1) The Secretary of Transportation.

(2) 1 representative, to be appointed by the Secretary, of each of the following:

(A) Each relevant Federal agency, as determined by the Secretary.

(B) Air ambulance operators.

(C) State insurance regulators.

(D) Health insurance providers.

(E) Consumer groups.

(c) RECOMMENDATIONS.—The advisory committee shall make recommendations with respect to each of the following:

(1) Cost-allocation methodologies needed to ensure that charges for air transportation services are separated from charges for non-air transportation services.

(2) Cost- or price-allocation methodologies to prevent commingling of charges for air transportation services and charges for non-air transportation services in bills and invoices.

(3) Formats for bills and invoices to ensure that customers and State insurance regulators can clearly distinguish between charges for air transportation services and charges for non-air transportation services.

(4) Data or industry references related to aircraft operating costs to be used in determining the proper allocation of charges for air transportation services and charges for non-air transportation services.

(5) Guidance materials to instruct States, political subdivisions of States, and political authorities of 2 or more States on referring to the Secretary allegations of unfair or deceptive practices or unfair methods of competition by air ambulance operators.

(6) Protections for customers of air ambulance operators, after consideration of the circumstances in which the services of air ambulance operators are used.

(7) Protections of proprietary cost data from inappropriate public disclosure.

(8) Such other matters as the Secretary determines necessary or appropriate.

(d) REPORT.—Not later than 180 days after the date of the first meeting of the advisory committee, the advisory committee shall submit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate a report containing the recommendations made under subsection (c).

(e) RULEMAKING.—Not later than 180 days after the date of receipt of the report under subsection (d), the Secretary shall consider the recommendations of the advisory committee and issue a final rule—

(1) to require air ambulance operators to clearly disclose charges for air transportation services separately from charges for non-air transportation services within any invoice or bill; and

(2) to provide other consumer protections for customers of air ambulance operators.

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

(1) AIR AMBULANCE OPERATOR.—The term “air ambulance operator” means an air carrier operating pursuant to part 135 of title 14, Code of Federal Regulations, that provides medical, ambulance, or related services.

(2) **NON-AIR TRANSPORTATION SERVICES.**—The term “non-air transportation services” means those services provided by air ambulance operators but not other air carriers operating pursuant to part 135 of title 14, Code of Federal Regulations.

(g) **TERMINATION.**—The advisory committee shall terminate on the date of submission of the report under subsection (d).

(h) **NATURE OF AIR AMBULANCE SERVICES.**—The non-air transportation services of air ambulance operators and prices thereof are neither services nor prices of an air carrier for purposes of section 41713 of title 49, United States Code.

**SEC. 513. AIR AMBULANCE COMPLAINTS.**

(a) **CONSUMER COMPLAINTS.**—Section 42302 of title 49, United States Code, is amended—

(1) in subsection (a) by inserting “(including transportation by air ambulance)” after “air transportation”;

(2) in subsection (b)—

(A) in the matter preceding paragraph (1)—

(i) by inserting “, and an air ambulance operator,” after “passenger seats”; and

(ii) by inserting “or operator” after “Internet Web site of the carrier”; and

(B) in paragraph (2) by inserting “or operator” after “mailing address of the air carrier”; and

(3) by striking subsection (c) and inserting the following:

“(c) **NOTICE TO PASSENGERS ON BOARDING OR BILLING DOCUMENTATION.**—

“(1) **AIR CARRIERS AND FOREIGN AIR CARRIERS.**—An air carrier or foreign air carrier providing scheduled air transportation using any aircraft that as originally designed has a passenger capacity of 30 or more passenger seats shall include the hotline telephone number established under subsection (a) on—

“(A) prominently displayed signs of the carrier at the airport ticket counters in the United States where the air carrier operates; and

“(B) any electronic confirmation of the purchase of a passenger ticket for air transportation issued by the air carrier.

“(2) **AIR AMBULANCE OPERATORS.**—An air ambulance operator shall include the hotline telephone number established under subsection (a) on any invoice, bill, or other communication provided to a passenger or customer of the operator.”.

(b) **UNFAIR AND DECEPTIVE PRACTICES AND UNFAIR METHODS OF COMPETITION.**—Section 41712(a) of title 49, United States Code, is amended—

(1) by inserting “air ambulance customer,” after “foreign air carrier,” the first place it appears; and

(2) by adding at the end the following: “In this subsection, the term ‘air carrier’ includes an air ambulance operator and the term ‘air transportation’ includes any transportation provided by an air ambulance.”.

**SEC. 514. PASSENGER RIGHTS.**

(a) **GUIDELINES.**—Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall require each air carrier to submit for approval a 1-page document that accurately describes the rights of passengers in air transportation, including guidelines for the following:

(1) Compensation (regarding rebooking options, refunds, meals, and lodging) for flight delays of various lengths.

(2) Compensation (regarding rebooking options, refunds, meals, and lodging) for flight cancellations.

(3) Compensation for mishandled baggage, including delayed, damaged, pilfered, or lost baggage.

(4) Voluntary relinquishment of a ticketed seat due to overbooking or priority of other passengers.

(5) Involuntary denial of boarding and forced removal for whatever reason, including for safety and security reasons.

(b) **APPROVAL OF GUIDELINES.**—Not later than 90 days after each air carrier submits its guidelines for approval to the Secretary under subsection (a), the air carrier shall make available such 1-page document on its website.

## Subtitle B—Aviation Consumers With Disabilities

### SEC. 541. SELECT SUBCOMMITTEE.

Section 411 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 42301 prec. note), as amended by this Act, is further amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

(2) by inserting after subsection (f) the following:

“(g) SELECT SUBCOMMITTEE FOR AVIATION CONSUMERS WITH DISABILITIES.—

“(1) IN GENERAL.—The Secretary shall establish a select subcommittee of the advisory committee to advise the Secretary and the advisory committee on issues related to the air travel needs of passengers with disabilities.

“(2) DUTIES.—The select subcommittee shall—

“(A) identify the disability-related access barriers encountered by passengers with disabilities;

“(B) determine the extent to which the programs and activities of the Department of Transportation are addressing the barriers identified under subparagraph (A);

“(C) recommend consumer protection improvements related to the air travel experience of passengers with disabilities;

“(D) advise the Secretary with regard to the implementation of section 41705 of title 49, United States Code; and

“(E) conduct such other activities as the Secretary considers necessary to carry out this subsection.

“(3) MEMBERSHIP.—

“(A) COMPOSITION.—The select subcommittee shall be composed of members appointed by the Secretary, including at least 1 individual representing each of the following:

“(i) National disability organizations.

“(ii) Air carriers and foreign air carriers with flights in air transportation.

“(iii) Airport operators.

“(iv) Contractor service providers.

“(B) INCLUSION.—A member of the select subcommittee may also be a member of the advisory committee.

“(4) REPORTS.—

“(A) IN GENERAL.—Not later than 1 year after the date of establishment of the select subcommittee, the select subcommittee shall submit to the advisory committee and the Secretary a report on the air travel needs of passengers with disabilities that includes—

“(i) an assessment of existing disability-related access barriers and any emerging disability-related access barriers that will likely be an issue in the next 5 years;

“(ii) an evaluation of the extent to which the programs and activities of the Department of Transportation are eliminating disability-related access barriers;

“(iii) a description of consumer protection improvements related to the air travel experience of passengers with disabilities; and

“(iv) any recommendations for legislation, regulations, or other actions that the select subcommittee considers appropriate.

“(B) REPORT TO CONGRESS.—Not later than 60 days after the date on which the Secretary receives the report under subparagraph (A), the Secretary shall submit to Congress a copy of the report, including any additional findings or recommendations that the Secretary considers appropriate.

“(5) CHAIRPERSON.—The Secretary shall designate, from among the individuals appointed under paragraph (3), an individual to serve as chairperson of the select subcommittee.

“(6) VACANCIES AND TRAVEL EXPENSES.—Subsections (c) and (d) shall apply to the select subcommittee.

“(7) TERMINATION.—The select subcommittee established under this subsection shall terminate upon submission of the report required under paragraph (4)(A).”

### SEC. 542. AVIATION CONSUMERS WITH DISABILITIES STUDY.

(a) STUDY.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study that includes—

(1) a review of airport accessibility best practices for individuals with disabilities, including best practices that improve infrastructure facilities and communications methods, including those related to wayfinding, amenities, and passenger care;

(2) a review of air carrier and airport training policies related to section 41705 of title 49, United States Code;

(3) a review of air carrier training policies related to properly assisting passengers with disabilities; and

(4) a review of accessibility best practices that exceed those recommended under Public Law 90–480 (popularly known as the Architectural Barriers Act of 1968; 42 U.S.C. 4151 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Air Carrier Access Act of 1986 (Public Law 99–435; 100 Stat. 1080 et seq.), and the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Secretary of Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate a report on the study, including findings and recommendations.

**SEC. 543. FEASIBILITY STUDY ON IN-CABIN WHEELCHAIR RESTRAINT SYSTEMS.**

(a) STUDY.—Not later than 2 years after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Architectural and Transportation Barriers Compliance Board, aircraft manufacturers, and air carriers, shall conduct a study to determine—

(1) the feasibility of in-cabin wheelchair restraint systems; and

(2) if feasible, the ways in which individuals with significant disabilities using wheelchairs, including power wheelchairs, can be accommodated with in-cabin wheelchair restraint systems.

(b) REPORT.—Not later than 1 year after the initiation of the study under subsection (a), the Secretary of Transportation shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the findings of the study.

**SEC. 544. ACCESS ADVISORY COMMITTEE RECOMMENDATIONS.**

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation shall issue a notice of proposed rulemaking addressing—

(1) accommodations for air travelers with disabilities with respect to in-flight entertainment;

(2) accessible lavatories on single-aisle aircraft; and

(3) service animals.

(b) RULEMAKING.—Not later than 1 year after the date on which the notice of proposed rulemaking is issued, the Secretary shall publish a final rule based on such notice.

## Subtitle C—Small Community Air Service

**SEC. 551. ESSENTIAL AIR SERVICE AUTHORIZATION.**

Section 41742(a)(2) of title 49, United States Code, is amended by striking “\$150,000,000 for fiscal year 2011” and all that follows before “to carry out” and inserting “\$178,000,000 for fiscal year 2018, \$182,000,000 for fiscal year 2019, \$185,000,000 for fiscal year 2020, \$327,000,000 for fiscal year 2021, \$337,000,000 for fiscal year 2022, and \$347,000,000 for fiscal year 2023”.

**SEC. 552. EXTENSION OF FINAL ORDER ESTABLISHING MILEAGE ADJUSTMENT ELIGIBILITY.**

Section 409(d) of the Vision 100—Century of Aviation Reauthorization Act (49 U.S.C. 41731 note) is amended by striking “September 30, 2017” and inserting “September 30, 2023”.

**SEC. 553. STUDY ON ESSENTIAL AIR SERVICE REFORM.**

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the effects of section 6 of the Airport and Airway Extension Act of 2011, Part IV (Public Law 112–27), section 421 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95), and other relevant Federal laws enacted after 2010, including the amendments made by those laws, on the Essential Air Service program.

(2) SCOPE.—In conducting the study under paragraph (1), the Comptroller General shall analyze, at a minimum—

- (A) the impact of each relevant Federal law, including the amendments made by each law, on the Essential Air Service program;
- (B) what actions communities and air carriers have taken to reduce ticket prices or increase enplanements as a result of each law;
- (C) the issuance of waivers by the Secretary under section 41731(e) of title 49, United States Code;
- (D) whether budgetary savings resulted from each law; and
- (E) options for further reform of the Essential Air Service program.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study conducted under subsection (a).

**SEC. 554. SMALL COMMUNITY AIR SERVICE.**

(a) ELIGIBILITY.—Section 41743(c) of title 49, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) SIZE.—On the date of submission of the relevant application under subsection (b), the airport serving the community or consortium—

“(A) is not larger than a small hub airport, as determined using the Department of Transportation’s most recently published classification; and

“(B) has—

- “(i) insufficient air carrier service; or
- “(ii) unreasonably high air fares.”;

(2) in paragraph (4)—

- (A) by striking “once,” and inserting “once in a 10-year period,”; and
- (B) by inserting “at any time” after “different project”;

(3) in paragraph (5)—

- (A) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and
- (B) by inserting after subparagraph (D) the following:
 

“(E) the assistance will be used to help restore scheduled passenger air service that has been terminated.”

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 41743(e)(2) of title 49, United States Code, is amended to read as follows:

“(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$10,000,000 for each of fiscal years 2018 through 2023 to carry out this section, of which \$4,800,000 per fiscal year shall be used to carry out the pilot program established under subsection (i). Such sums shall remain available until expended.”

(c) REGIONAL AIR TRANSPORTATION PILOT PROGRAM.—Section 41743 of title 49, United States Code, is amended by adding at the end the following:

“(i) REGIONAL AIR TRANSPORTATION PILOT PROGRAM.—

“(1) ESTABLISHMENT.—The Secretary shall establish a regional air transportation pilot program to provide operating assistance to air carriers in order to provide air service to communities not receiving sufficient air carrier service.

“(2) GRANTS.—The Secretary shall provide grants under the program to encourage and maintain air service at reasonable airfares between communities that have experienced, as determined by the Secretary, significant declines in air service.

“(3) APPLICATION REQUIRED.—In order to participate in the program, a State, local government, economic development authority, or other public entity shall submit to the Secretary an application, in a manner that the Secretary prescribes, that contains—

- “(A) an identification of an air carrier that has provided a written agreement to provide the air service in partnership with the applicant;
- “(B) assurances that the applicant will provide the non-Federal share and that the non-Federal share is not derived from airport revenue;
- “(C) a proposed route structure serving not more than 8 communities; and
- “(D) a timeline for commencing the air service to the communities within the proposed route structure.

“(4) CRITERIA FOR PARTICIPATION.—The Secretary may approve up to 3 applications each fiscal year, subject to the availability of funds, if the Secretary determines that—

- “(A) the proposal of the applicant can reasonably be expected to encourage and improve levels of air service between the relevant communities;



“(B) the applicant has adequate financial resources to ensure the commitment to the communities;

“(C) the airports serving the communities are nonhub, small hub, or medium hub airports, as determined using the Department of Transportation’s most recently published classifications; and

“(D) the air carrier commits to serving the communities for at least 2 years.

“(5) PRIORITIES.—The Secretary shall prioritize applications that—

“(A) would initiate new or reestablish air service in communities where air fares are higher than the average air fares for all communities;

“(B) are more likely to result in self-sustaining air service at the end of the program;

“(C) request a Federal share lower than 50 percent; and

“(D) propose to use grant funds in a timely fashion.

“(6) FEDERAL SHARE.—The Federal share of the cost of operating assistance provided under the program may not exceed 50 percent.

“(7) SUNSET.—This subsection shall cease to be effective on October 1, 2023.”.

**SEC. 555. AIR TRANSPORTATION TO NONELIGIBLE PLACES.**

(a) DEFINITIONS.—Section 41731(a)(1)(A)(ii) of title 49, United States Code, is amended by striking “Wendell H. Ford Aviation Investment and Reform Act for the 21st Century,” and inserting “FAA Extension, Safety, and Security Act of 2016 (Public Law 114–190)”.

(b) PROGRAM SUNSET.—Section 41736 of title 49, United States Code, is amended by adding at the end the following:

“(h) SUNSET.—

“(1) PROPOSALS.—No proposal under subsection (a) may be accepted by the Secretary after the date of enactment of this subsection.

“(2) PROGRAM.—The Secretary may not provide any compensation under this section after the date that is 2 years after the date of enactment of this subsection.”.

## TITLE VI—MISCELLANEOUS

**SEC. 601. REVIEW OF FAA STRATEGIC CYBERSECURITY PLAN.**

(a) IN GENERAL.—Not later than 120 days after the date on which the Interim Chief Executive Officer (CEO) of the American Air Navigation Services Corporation is hired, the Administrator of the Federal Aviation Administration, in consultation with the Interim CEO (or the CEO of the American Air Navigation Services Corporation, as appropriate), shall initiate a review of the comprehensive and strategic framework of principles and policies (referred to in this section as the “framework”) developed pursuant to section 2111 of the FAA Extension, Safety, and Security Act of 2016 (49 U.S.C. 44903 note).

(b) CONTENTS.—In undertaking the review, the Administrator shall—

(1) determine how the framework should be updated to reflect the transfer from the Federal Aviation Administration to the American Air Navigation Services Corporation of operational control of air traffic services within United States airspace and international airspace delegated to the United States; and

(2) modify the framework to support the Federal Aviation Administration in establishing cybersecurity standards to assist the American Air Navigation Services Corporation in responsibilities associated with managing air traffic services in a secure manner after the date of transfer (as defined in section 90101(a) of title 49, United States Code, as added by this Act).

(c) REPORT TO CONGRESS.—Not later than 120 days after initiating the review required by subsection (a), the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review, including a description of any modifications made to the framework.

**SEC. 602. CONSOLIDATION AND REALIGNMENT OF FAA SERVICES AND FACILITIES.**

(a) IN GENERAL.—Section 804(a) of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 44501 note) is amended—

(1) in paragraph (2) by striking “The purpose of the report shall be—” and all that follows through “(B) to reduce” and inserting “The purpose of the report shall be to reduce”; and

(2) by striking paragraph (4) and inserting the following:

“(4) INPUT.—The report shall be prepared by the Administrator (or the Administrator’s designee) with the participation of—

“(A) representatives of labor organizations representing air traffic control system employees of the FAA; and  
 “(B) industry stakeholders.”.

(b) **FAA AIR TRAFFIC CONTROL FACILITY CONSOLIDATION AND REALIGNMENT PROJECTS.**—Notwithstanding section 90317(c) of title 49, United States Code, as added by this Act, the Secretary of Transportation shall continue to carry out any consolidation or realignment project commenced under section 804 of the FAA Modernization and Reform Act of 2012.

**SEC. 603. FAA REVIEW AND REFORM.**

(a) **AGENCY REPORT.**—Not later than 60 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a detailed analysis of any actions taken to address the findings and recommendations included in the report required under section 812(d) of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 106 note), including—

- (1) consolidating, phasing-out, or eliminating duplicative positions, programs, roles, or offices;
- (2) eliminating or streamlining wasteful practices;
- (3) eliminating or phasing-out redundant, obsolete, or unnecessary functions;
- (4) reforming and streamlining inefficient processes so that the activities of the Administration are completed in an expedited and efficient manner; and
- (5) reforming or eliminating ineffectual or outdated policies.

(b) **ADDITIONAL REVIEW.**—Not later than 1 year after the date of transfer, as defined in section 90101(a) of title 49, United States Code, as added by this Act, the Administrator shall undertake and complete a thorough review of each program, office, and organization within the Administration to identify—

- (1) duplicative positions, programs, roles, or offices;
- (2) wasteful practices;
- (3) redundant, obsolete, or unnecessary functions;
- (4) inefficient processes; and
- (5) ineffectual or outdated policies.

(c) **ACTIONS TO STREAMLINE AND REFORM FAA.**—Not later than 60 days after the date of completion of the review under subsection (b), the Administrator shall undertake such actions as may be necessary to address the findings of the Administrator under such subsection.

(d) **REPORT TO CONGRESS.**—Not later than 120 days after the date of completion of the review under subsection (b), the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the actions taken by the Administrator pursuant to subsection (c), including any recommendations for legislative or administrative actions.

**SEC. 604. AVIATION FUEL.**

(a) **USE OF UNLEADED AVIATION GASOLINE.**—The Administrator of the Federal Aviation Administration shall allow the use of an unleaded aviation gasoline in an aircraft as a replacement for a leaded gasoline if the Administrator—

- (1) determines that an unleaded aviation gasoline qualifies as a replacement for an approved leaded gasoline;
- (2) identifies the aircraft and engines that are eligible to use the qualified replacement unleaded gasoline; and
- (3) adopts a process (other than the traditional means of certification) to allow eligible aircraft and engines to operate using qualified replacement unleaded gasoline in a manner that ensures safety.

(b) **TIMING.**—The Administrator shall adopt the process described in subsection (a)(3) not later than 180 days after the later of—

- (1) the date of completion of the Piston Aviation Fuels Initiative of the Administration; or
- (2) the date of publication of an American Society for Testing and Materials Production Specification for an unleaded aviation gasoline.

(c) **SENSE OF CONGRESS.**—It is the sense of Congress that the Piston Aviation Fuels Initiative of the Administration and the American Society for Testing and Materials should work to find an appropriate unleaded aviation gasoline by January 1, 2023.

**SEC. 605. RIGHT TO PRIVACY WHEN USING AIR TRAFFIC CONTROL SYSTEM.**

Notwithstanding any other provision of law, the Administrator of the Federal Aviation Administration shall, upon request of a private aircraft owner or operator, block the registration number of the aircraft of the owner or operator from any pub-

lic dissemination or display, except in data made available to a Government agency, for the noncommercial flights of the owner or operator.

**SEC. 606. AIR SHOWS.**

On an annual basis, the Administrator of the Federal Aviation Administration shall work with representatives of Administration-approved air shows, the general aviation community, and stadiums and other large outdoor events and venues to identify and resolve, to the maximum extent practicable, scheduling conflicts between Administration-approved air shows and large outdoor events and venues where—

- (1) flight restrictions will be imposed pursuant to section 521 of title V of division F of Public Law 108–199 (118 Stat. 343); or
- (2) any other restriction will be imposed pursuant to Federal Aviation Administration Flight Data Center Notice to Airmen 4/3621 (or any successor notice to airmen).

**SEC. 607. PART 91 REVIEW, REFORM, AND STREAMLINING.**

(a) **ESTABLISHMENT OF TASK FORCE.**—Not later than 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall establish a task force comprised of representatives of the general aviation industry who regularly perform part 91 operations, labor unions (including those representing FAA aviation safety inspectors and FAA aviation safety engineers), manufacturers, and the Government to—

- (1) conduct an assessment of the FAA oversight and authorization processes and requirements for aircraft under part 91; and
- (2) make recommendations to streamline the applicable authorization and approval processes, improve safety, and reduce regulatory cost burdens and delays for the FAA and aircraft owners and operators who operate pursuant to part 91.

(b) **CONTENTS.**—In conducting the assessment and making recommendations under subsection (a), the task force shall consider—

- (1) process reforms and improvements to allow the FAA to review and approve applications in a fair and timely fashion;
- (2) the appropriateness of requiring an authorization for each experimental aircraft rather than using a broader all makes and models approach;
- (3) ways to improve the timely response to letters of authorization applications for aircraft owners and operators who operate pursuant to part 91, including setting deadlines and granting temporary or automatic authorizations if deadlines are missed by the FAA;
- (4) methods for enhancing the effective use of delegation systems;
- (5) methods for training the FAA’s field office employees in risk-based and safety management system oversight; and
- (6) such other matters related to streamlining part 91 authorization and approval processes as the task force considers appropriate.

(c) **REPORT TO CONGRESS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the task force’s assessment.

(2) **CONTENTS.**—The report shall include an explanation of how the Administrator will—

- (A) implement the recommendations of the task force;
- (B) measure progress in implementing the recommendations; and
- (C) measure the effectiveness of the implemented recommendations.

(d) **IMPLEMENTATION OF RECOMMENDATIONS.**—Not later than 18 months after the date of enactment of this Act, the Administrator shall implement the recommendations made under this section.

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

- (1) **FAA.**—The term “FAA” means the Federal Aviation Administration.
- (2) **PART 91.**—The term “part 91” means part 91 of title 14, Code of Federal Regulations.

(f) **APPLICABLE LAW.**—Public Law 92–463 shall not apply to the task force.

(g) **SUNSET.**—The task force shall terminate on the day the Administrator submits the report required under subsection (c).

**SEC. 608. AIRCRAFT REGISTRATION.**

Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall initiate a rulemaking to increase the

duration of aircraft registrations for noncommercial general aviation aircraft to 10 years.

**SEC. 609. AIR TRANSPORTATION OF LITHIUM CELLS AND BATTERIES.**

(a) **COOPERATIVE EFFORTS TO ENSURE COMPLIANCE WITH SAFETY REGULATIONS.**—

(1) **IN GENERAL.**—The Secretary of Transportation, in coordination with appropriate Federal agencies, shall carry out cooperative efforts to ensure that shippers who offer lithium ion and lithium metal batteries for air transport to or from the United States comply with U.S. Hazardous Materials Regulations and ICAO Technical Instructions.

(2) **COOPERATIVE EFFORTS.**—The cooperative efforts the Secretary shall carry out pursuant to paragraph (1) include the following:

(A) Encouraging training programs at locations outside the United States from which substantial cargo shipments of lithium ion or lithium metal batteries originate for manufacturers, freight forwarders, and other shippers and potential shippers of lithium ion and lithium metal batteries.

(B) Working with Federal, regional, and international transportation agencies to ensure enforcement of U.S. Hazardous Materials Regulations and ICAO Technical Instructions with respect to shippers who offer non-compliant shipments of lithium ion and lithium metal batteries.

(C) Sharing information, as appropriate, with Federal, regional, and international transportation agencies regarding noncompliant shipments.

(D) Pursuing a joint effort with the international aviation community to develop a process to obtain assurances that appropriate enforcement actions are taken to reduce the likelihood of noncompliant shipments, especially with respect to jurisdictions in which enforcement activities historically have been limited.

(E) Providing information in brochures and on the internet in appropriate foreign languages and dialects that describes the actions required to comply with U.S. Hazardous Materials Regulations and ICAO Technical Instructions.

(F) Developing joint efforts with the international aviation community to promote a better understanding of the requirements of and methods of compliance with U.S. Hazardous Materials Regulations and ICAO Technical Instructions.

(3) **REPORTING.**—Not later than 120 days after the date of enactment of this Act, and annually thereafter for 2 years, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on compliance with the policy set forth in subsection (e) and the cooperative efforts carried out, or planned to be carried out, under this subsection.

(b) **LITHIUM BATTERY AIR SAFETY ADVISORY COMMITTEE.**—

(1) **ESTABLISHMENT.**—Not later than 60 days after the date of enactment of this Act, the Secretary shall establish, in accordance with the requirements of the Federal Advisory Committee Act (5 U.S.C. App.), a lithium ion and lithium metal battery air safety advisory committee (in this subsection referred to as the “Committee”).

(2) **DUTIES.**—The Committee shall—

(A) facilitate communication between manufacturers of lithium ion and lithium metal cells and batteries, manufacturers of products incorporating both large and small lithium ion and lithium metal batteries, air carriers, and the Federal Government regarding the safe air transportation of lithium ion and lithium metal cells and batteries and the effectiveness and economic and social impacts of the regulation of such transportation;

(B) provide the Secretary, the Federal Aviation Administration, and the Pipeline and Hazardous Materials Safety Administration with timely information about new lithium ion and lithium metal battery technology and transportation safety practices and methodologies;

(C) provide a forum for the Secretary to provide information on and to discuss the activities of the Department of Transportation relating to lithium ion and lithium metal battery transportation safety, the policies underlying the activities, and positions to be advocated in international forums;

(D) provide a forum for the Secretary to provide information and receive advice on—

(i) activities carried out throughout the world to communicate and enforce relevant United States regulations and the ICAO Technical Instructions; and

(ii) the effectiveness of the activities;

(E) provide advice and recommendations to the Secretary with respect to lithium ion and lithium metal battery air transportation safety, including how best to implement activities to increase awareness of relevant requirements and their importance to travelers and shippers; and

(F) review methods to decrease the risk posed by air shipment of undeclared hazardous materials and efforts to educate those who prepare and offer hazardous materials for shipment via air transport.

(3) MEMBERSHIP.—The Committee shall be composed of the following members:

(A) Individuals appointed by the Secretary to represent—

(i) large volume manufacturers of lithium ion and lithium metal cells and batteries;

(ii) domestic manufacturers of lithium ion and lithium metal batteries or battery packs;

(iii) manufacturers of consumer products powered by lithium ion and lithium metal batteries;

(iv) manufacturers of vehicles powered by lithium ion and lithium metal batteries;

(v) marketers of products powered by lithium ion and lithium metal batteries;

(vi) cargo air service providers based in the United States;

(vii) passenger air service providers based in the United States;

(viii) pilots and employees of air service providers described in clauses (vi) and (vii);

(ix) shippers of lithium ion and lithium metal batteries for air transportation;

(x) manufacturers of battery-powered medical devices or batteries used in medical devices; and

(xi) employees of the Department of Transportation, including employees of the Federal Aviation Administration and the Pipeline and Hazardous Materials Safety Administration.

(B) Representatives of such other Government departments and agencies as the Secretary determines appropriate.

(C) Any other individuals the Secretary determines are appropriate to comply with Federal law.

(4) REPORT.—

(A) IN GENERAL.—Not later than 180 days after the establishment of the Committee, the Committee shall submit to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate a report that—

(i) describes and evaluates the steps being taken in the private sector and by international regulatory authorities to implement and enforce requirements relating to the safe transportation by air of bulk shipments of lithium ion cells and batteries; and

(ii) identifies any areas of enforcement or regulatory requirements for which there is consensus that greater attention is needed.

(B) INDEPENDENT STATEMENTS.—Each member of the Committee shall be provided an opportunity to submit an independent statement of views with the report submitted pursuant to subparagraph (A).

(5) MEETINGS.—

(A) IN GENERAL.—The Committee shall meet at the direction of the Secretary and at least twice a year.

(B) PREPARATION FOR ICAO MEETINGS.—Notwithstanding subparagraph

(A), the Secretary shall convene a meeting of the Committee in connection with and in advance of each meeting of the International Civil Aviation Organization, or any of its panels or working groups, addressing the safety of air transportation of lithium ion and lithium metal batteries to brief Committee members on positions to be taken by the United States at such meeting and provide Committee members a meaningful opportunity to comment.

(6) TERMINATION.—The Committee shall terminate on the date that is 6 years after the date on which the Committee is established.

(7) TERMINATION OF FUTURE OF AVIATION ADVISORY COMMITTEE.—The Future of Aviation Advisory Committee shall terminate on the date on which the lithium ion battery air safety advisory committee is established.

(c) MEDICAL DEVICE BATTERIES.—

(1) LIMITED EXCEPTIONS TO RESTRICTIONS ON AIR TRANSPORTATION OF MEDICAL DEVICE BATTERIES.—The Secretary shall issue limited exceptions to the restrictions on transportation of lithium ion and lithium metal batteries to allow the

shipment on a passenger aircraft of not more than 2 replacement batteries specifically used for a medical device if—

(A) the intended destination of the batteries is not serviced daily by cargo aircraft if a battery is required for medically necessary care; or

(B) with regard to a shipper of lithium ion or lithium metal batteries for medical devices that cannot comply with a charge limitation in place at the time, each battery is—

- (i) individually packed in an inner packaging that completely encloses the battery;
- (ii) placed in a rigid outer packaging; and
- (iii) protected to prevent a short circuit.

(2) **MEDICAL DEVICE DEFINED.**—In this subsection, the term “medical device” means an instrument, apparatus, implement, machine, contrivance, implant, or in vitro reagent, including any component, part, or accessory thereof, which is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in a person.

(3) **SAVINGS CLAUSE.**—Nothing in this subsection may be construed as expanding or restricting any authority of the Secretary under section 828 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 44701 note).

(d) **PACKAGING IMPROVEMENTS.**—Not later than 180 days after the date of enactment of this Act, the Secretary, in consultation with interested stakeholders, shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate an evaluation of current practices for the packaging of lithium ion batteries and cells for air transportation, including recommendations, if any, to improve the packaging of such batteries and cells for air transportation in a safe, efficient, and cost-effective manner.

(e) **DEPARTMENT OF TRANSPORTATION POLICY ON INTERNATIONAL REPRESENTATION.**—It shall be the policy of the Department of Transportation to support the participation of industry in all panels and working groups of the Dangerous Goods Panel of the International Civil Aviation Organization and any other international test or standard setting organization that considers proposals on the safety or transportation of lithium ion and lithium metal batteries in which the United States participates.

(f) **HARMONIZATION WITH ICAO TECHNICAL INSTRUCTIONS.**—Pursuant to section 828 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 44701 note), not later than 30 days after the date of enactment of this Act, the Secretary shall conform United States regulations on the air transport of lithium cells and batteries with the lithium cells and batteries requirements in the 2015–2016 edition of the ICAO Technical Instructions (including all addenda), including the revised standards adopted by the International Civil Aviation Organization that became effective on April 1, 2016.

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

(1) **ICAO TECHNICAL INSTRUCTIONS.**—The term “ICAO Technical Instructions” has the meaning given that term in section 828(c) of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 44701 note).

(2) **U.S. HAZARDOUS MATERIALS REGULATIONS.**—The term “U.S. Hazardous Materials Regulations” means the regulations in parts 100 through 177 of title 49, Code of Federal Regulations (including amendments adopted after the date of enactment of this Act).

**SEC. 610. REMOTE TOWER PILOT PROGRAM FOR RURAL AND SMALL COMMUNITIES.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall establish a pilot program under which, upon approval of an application submitted by an operator of a public-use airport, the Secretary shall install and operate at the airport a remote air traffic control tower in order to assess the operational benefits of remote air traffic control towers.

(b) **APPLICATIONS.**—The operator of an airport seeking to participate in the pilot program shall submit to the Secretary for approval an application that is in such form and contains such information as the Secretary may require.

(c) **SELECTION CRITERIA.**—

(1) **SELECTION OF AIRPORTS.**—From among the applications submitted under subsection (b), the Secretary, after consultation with representatives of labor organizations representing operators and employees of the air traffic control system, shall select for participation in the pilot program 7 airports as follows:

- (A) 1 nonhub, primary airport.
- (B) 3 nonprimary airports without existing air traffic control towers.
- (C) 2 airports with air traffic control towers participating in a program established under section 47124 of title 49, United States Code.

(D) 1 airport selected at the discretion of the Secretary.

(2) PRIORITY SELECTION.—In selecting from among the applications submitted under subsection (b), the Secretary shall give priority to applicants that can best demonstrate the capabilities and potential of remote air traffic control towers, including applicants proposing to operate multiple remote air traffic control towers from a single facility.

(3) AUTHORITY TO REALLOCATE AIRPORT SELECTION.—If the Secretary receives an insufficient number of applications, the Secretary may reallocate the distribution of airport sites described in paragraph (1).

(d) ASSET CLASSIFICATION.—For purposes of section 90317 of title 49, United States Code, as added by this Act, a remote air traffic control tower, including ancillary equipment, installed with Government funds pursuant to this section shall be considered to be an air navigation facility.

(e) SAFETY RISK MANAGEMENT PANEL.—

(1) SAFETY RISK MANAGEMENT PANEL MEETING.—Prior to the operational use of a remote air traffic control tower, the Secretary shall convene a safety risk management panel for the tower to address any safety issues with respect to the tower.

(2) SAFETY RISK MANAGEMENT PANEL BEST PRACTICES.—The safety risk management panels shall be created and utilized in a manner similar to that of safety risk management panels previously established for remote air traffic control towers, taking into account—

(A) best practices that have been developed; and

(B) operational data from remote air traffic control towers located in the United States.

(f) AIRPORT IMPROVEMENT PROGRAM.—The pilot program shall be eligible for airport improvement funding under chapter 471 of title 49, United States Code.

(g) POSSIBLE EXPANSION OF PROGRAM.—Not later than 30 days after the date that the first remote air traffic control tower is commissioned, the Administrator of the Federal Aviation Administration shall establish a repeatable process by which future certified remote air traffic control tower systems may be commissioned at additional airports.

(h) DEFINITIONS.—

(1) IN GENERAL.—In this section, the following definitions apply:

(A) AIR NAVIGATION FACILITY.—The term “air navigation facility” has the meaning given that term in section 40102(a) of title 49, United States Code.

(B) REMOTE AIR TRAFFIC CONTROL TOWER.—The term “remote air traffic control tower” means a remotely operated air navigation facility, including all necessary system components, that provides the functions and capabilities of an air traffic control tower.

(2) APPLICABILITY OF OTHER DEFINITIONS.—The terms “nonhub airport”, “primary airport”, and “public-use airport” have the meanings given such terms in section 47102 of title 49, United States Code.

(i) SUNSET.—The pilot program shall terminate on the day before the date of transfer, as defined in section 90101(a) of title 49, United States Code, as added by this Act.

**SEC. 611. ENSURING FAA READINESS TO PROVIDE SEAMLESS OCEANIC OPERATIONS.**

Not later than September 30, 2018, the Secretary of Transportation shall make a final investment decision for the implementation of a reduced oceanic separation capability that, by March 31, 2019, shall be operational and in use providing capabilities at least equivalent to that offered in neighboring airspace, and such service shall be provided in the same manner as terrestrial surveillance is provided.

**SEC. 612. SENSE OF CONGRESS REGARDING WOMEN IN AVIATION.**

It is the sense of Congress that the aviation industry should explore all opportunities, including pilot training, science, technology, engineering, and mathematics education, and mentorship programs, to encourage and support female students and aviators to pursue a career in aviation.

**SEC. 613. OBSTRUCTION EVALUATION AERONAUTICAL STUDIES.**

The Secretary of Transportation may implement the policy set forth in the notice of proposed policy titled “Proposal to Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies” published by the Department of Transportation on April 28, 2014 (79 Fed. Reg. 23300), only if the policy is adopted pursuant to a notice and comment rulemaking and, for purposes of Executive Order 12866 (5 U.S.C. 601 note; relating to regulatory planning and review), is treated as a significant regulatory action within the scope of section 3(f)(1) of such Order.

**SEC. 614. AIRCRAFT LEASING.**

Section 44112(b) of title 49, United States Code, is amended—

- (1) by striking “on land or water”; and
- (2) by inserting “operational” before “control”.

**SEC. 615. REPORT ON OBSOLETE TEST EQUIPMENT.**

(a) **REPORT.**—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the National Test Equipment Program of the Federal Aviation Administration (in this section referred to as the “Program”).

(b) **CONTENTS.**—The report shall include—

- (1) a list of all known outstanding requests for test equipment, cataloged by type and location, under the Program;
- (2) a description of the current method under the Program of ensuring calibrated equipment is in place for utilization;
- (3) a plan by the Administrator for appropriate inventory of such equipment;
- (4) the Administrator’s recommendations for increasing multifunctionality in future test equipment and all known and foreseeable manufacturer technological advances; and
- (5) a plan to replace, as appropriate, obsolete test equipment throughout the service areas.

**SEC. 616. RETIRED MILITARY CONTROLLERS.**

Section 44506(f) of title 49, United States Code, is amended—

- (1) in paragraph (3) by inserting “except for individuals covered by a program described in paragraph (4),” after “section 3307 of title 5;” and
- (2) by adding at the end the following:

“(4) **RETIRED MILITARY CONTROLLERS.**—The Administrator may establish a program to provide an original appointment to a position as an air traffic controller for individuals who—

“(A) are on terminal leave pending retirement from active duty military service or have retired from active duty military service within 5 years of applying for the appointment; and

“(B) within 5 years of applying for the appointment, have held either an air traffic control specialist certification or a facility rating according to Administration standards.”.

**SEC. 617. PILOTS SHARING FLIGHT EXPENSES WITH PASSENGERS.**

(a) **GUIDANCE.**—

(1) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall make publicly available, in a clear and concise format, advisory guidance that describes how a pilot may share flight expenses with passengers in a manner consistent with Federal law, including regulations.

(2) **EXAMPLES INCLUDED.**—The guidance shall include examples of—

- (A) flights for which pilots and passengers may share expenses;
- (B) flights for which pilots and passengers may not share expenses;
- (C) the methods of communication that pilots and passengers may use to arrange flights for which expenses are shared; and
- (D) the methods of communication that pilots and passengers may not use to arrange flights for which expenses are shared.

(b) **REPORT.**—

(1) **IN GENERAL.**—Not later than 180 days after the date on which guidance is made publicly available under subsection (a), the Comptroller General of the United States shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report analyzing Federal policy with respect to pilots sharing flight expenses with passengers.

(2) **EVALUATIONS INCLUDED.**—The report submitted under paragraph (1) shall include an evaluation of—

- (A) the rationale for such Federal policy;
- (B) safety and other concerns related to pilots sharing flight expenses with passengers; and
- (C) benefits related to pilots sharing flight expenses with passengers.

**SEC. 618. AVIATION RULEMAKING COMMITTEE FOR PART 135 PILOT REST AND DUTY RULES.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall convene an aviation



rulemaking committee to review, and develop findings and recommendations regarding, pilot rest and duty rules under part 135 of title 14, Code of Federal Regulations.

(b) DUTIES.—The Administrator shall—

(1) not later than 2 years after the date of enactment of this Act, submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report based on the findings of the aviation rulemaking committee; and

(2) not later than 1 year after the date of submission of the report under paragraph (1), issue a notice of proposed rulemaking based on any consensus recommendations reached by the aviation rulemaking committee.

(c) COMPOSITION.—The aviation rulemaking committee shall consist of members appointed by the Administrator, including—

(1) representatives of industry;

(2) representatives of aviation labor organizations, including collective bargaining units representing pilots who are covered by part 135 of title 14, Code of Federal Regulations, and subpart K of part 91 of such title; and

(3) aviation safety experts with specific knowledge of flight crewmember education and training requirements under part 135 of such title.

(d) CONSIDERATIONS.—The Administrator shall direct the aviation rulemaking committee to consider—

(1) recommendations of prior part 135 rulemaking committees;

(2) accommodations necessary for small businesses;

(3) scientific data derived from aviation-related fatigue and sleep research;

(4) data gathered from aviation safety reporting programs;

(5) the need to accommodate the diversity of operations conducted under part 135; and

(6) other items, as appropriate.

**SEC. 619. METROPOLITAN WASHINGTON AIRPORTS AUTHORITY.**

(a) FINDINGS.—Congress finds that—

(1) the Metropolitan Washington Airports Authority (in this section referred to as “MWAA”), which operates Ronald Reagan Washington National Airport and Dulles International Airport by lease with the Department of Transportation, has routinely performed poorly on audits conducted by the Inspector General of the Department of Transportation;

(2) the responsible stewardship of taxpayer-owned assets by MWAA is of great concern to Congress;

(3) a March 20, 2015, audit conducted by the Inspector General titled “MWAA’s Office of Audit Does Not Have an Adequate Quality Assurance and Improvement Program” (Report No. ZA-2015-035) found that MWAA’s quality assurance and improvement program did not conform with the standards of the Institute of Internal Auditors; and

(4) the Inspector General’s audit made 7 recommendations to strengthen MWAA governance, its Office of Audit, and its quality assurance and improvement program.

(b) IMPLEMENTING AUDIT RECOMMENDATIONS.—

(1) STUDY.—The Inspector General of the Department of Transportation shall conduct a study on MWAA’s progress in implementing the recommendations of the audit referred to in subsection (a).

(2) REPORT.—The Inspector General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the study, including the Inspector General’s findings, conclusions, and recommendations for strengthening and improving MWAA’s Office of Audit.

**SEC. 620. TERMINAL AERODROME FORECAST.**

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration shall permit a covered air carrier to operate to or from a location in a noncontiguous State without a Terminal Aerodrome Forecast or Meteorological Aerodrome Report if—

(1) such location is determined to be under visual meteorological conditions;

(2) a current Area Forecast, supplemented by other local weather observations or reports, is available; and

(3) an alternate airport that has an available Terminal Aerodrome Forecast and weather report is specified.

(b) PROCEDURES.—A covered air carrier shall—

(1) have approved procedures for dispatch or release and enroute weather evaluation; and

(2) operate under instrument flight rules enroute to the destination.

(c) COVERED AIR CARRIER DEFINED.—In this section, the term “covered air carrier” means an air carrier operating in a noncontiguous State under part 121 of title 14, Code of Federal Regulations.

**SEC. 621. FEDERAL AVIATION ADMINISTRATION EMPLOYEES STATIONED ON GUAM.**

It is the sense of Congress that—

(1) the Administrator of the Federal Aviation Administration and the Secretary of Defense should seek an agreement that would enable Federal Aviation Administration employees stationed on Guam to have access to Department of Defense hospitals, commissaries, and exchanges on Guam;

(2) access to these facilities is important to ensure the health and well-being of Federal Aviation Administration employees and their families; and

(3) in exchange for this access, the Federal Aviation Administration should make payments to cover the applicable administrative costs incurred by the Department of Defense in carrying out the agreement.

**SEC. 622. TECHNICAL CORRECTIONS.**

(a) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—Section 40104(c) of title 49, United States Code, is amended by striking “section 47176” and inserting “section 47175”.

(b) PASSENGER FACILITY CHARGES.—Section 40117(a)(5) of title 49, United States Code, is amended by striking “charge or charge” and inserting “charge”.

(c) OVERFLIGHTS OF NATIONAL PARKS.—Section 40128(a)(3) of title 49, United States Code, is amended by striking “under part 91 of the title 14,” and inserting “under part 91 of title 14,”.

(d) PLANS TO ADDRESS NEEDS OF FAMILIES OF PASSENGERS INVOLVED IN FOREIGN AIR CARRIER ACCIDENTS.—Section 41313(c)(16) of title 49, United States Code, is amended by striking “An assurance that the foreign air carrier” and inserting “An assurance that”.

(e) OPERATIONS OF CARRIERS.—The analysis for chapter 417 of title 49, United States Code, is amended by striking the item relating to section 41718 and inserting the following:

“41718. Special rules for Ronald Reagan Washington National Airport.”.

(f) SCHEDULES FOR CERTAIN TRANSPORTATION OF MAIL.—Section 41902(a) of title 49, United States Code, is amended by striking “section 41906” and inserting “section 41905”.

(g) WEIGHING MAIL.—Section 41907 of title 49, United States Code, is amended by striking “and -administrative” and inserting “and administrative”.

(h) STRUCTURES INTERFERING WITH AIR COMMERCE OR NATIONAL SECURITY.—Section 44718(b)(1) of title 49, United States Code, is amended—

(1) in the matter preceding subparagraph (A) by striking “air navigation facilities and equipment” and inserting “air or space navigation facilities and equipment”; and

(2) in subparagraph (A)—

(A) in clause (v) by striking “and” at the end;

(B) by redesignating clause (vi) as clause (vii); and

(C) by inserting after clause (v) the following:

“(vi) the impact on launch and reentry for launch and reentry vehicles arriving or departing from a launch site or reentry site licensed by the Secretary of Transportation; and”.

(i) FEES INVOLVING AIRCRAFT NOT PROVIDING AIR TRANSPORTATION.—Section 45302 of title 49, United States Code, is amended by striking “44703(f)(2)” each place it appears and inserting “44703(g)(2)”.

(j) CHAPTER 465.—The analysis for chapter 465 of title 49, United States Code, is amended by striking the following:

“46503. Repealed.”.

(k) SOLICITATION AND CONSIDERATION OF COMMENTS.—Section 47171(l) of title 49, United States Code, is amended by striking “4371” and inserting “4321”.

(l) ADJUSTMENTS TO COMPENSATION FOR SIGNIFICANTLY INCREASED COSTS.—Section 426 of the FAA Modernization and Reform Act of 2012 is amended—

(1) in subsection (a) (49 U.S.C. 41737 note) by striking “Secretary” and inserting “Secretary of Transportation”; and

(2) in subsection (c) (49 U.S.C. 41731 note) by striking “the Secretary may waive” and inserting “the Secretary of Transportation may waive”.

(m) AIRCRAFT DEPARTURE QUEUE MANAGEMENT PILOT PROGRAM.—Section 507(a) of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 44505 note) is amended by striking “section 48101(a)” and inserting “section 48101(a) of title 49, United States Code.”.

**SEC. 623. APPLICATION OF VETERANS' PREFERENCE TO FEDERAL AVIATION ADMINISTRATION PERSONNEL MANAGEMENT SYSTEM.**

Section 40122(g)(2)(B) of title 49, United States Code, is amended—

- (1) by inserting “3304(f),” before “3308-3320”; and
- (2) by inserting “3330a, 3330b, 3330c, and 3330d,” before “relating”.

**SEC. 624. PUBLIC AIRCRAFT ELIGIBLE FOR LOGGING FLIGHT TIMES.**

The Administrator of the Federal Aviation Administration shall issue regulations modifying section 61.51(j)(4) of title 14, Code of Federal Regulations, so as to include aircraft under the direct operational control of forestry and fire protection agencies as public aircraft eligible for logging flight times.

**SEC. 625. FEDERAL AVIATION ADMINISTRATION WORKFORCE REVIEW.**

(a) **IN GENERAL.**—Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a review to assess the workforce and training needs of the Federal Aviation Administration (in this section referred to as the “FAA”) in the anticipated budgetary environment.

(b) **CONTENTS.**—In conducting the review, the Comptroller General shall—

- (1) identify the long-term workforce and training needs of the FAA workforce;
- (2) assess the impact of automation, digitalization, and artificial intelligence on the FAA workforce;
- (3) analyze the skills and qualifications required of the FAA workforce for successful performance in the current and future projected aviation environment;
- (4) review current performance incentive policies of the FAA, including awards for performance;
- (5) analyze ways in which the FAA can work with industry and labor, including labor groups representing the FAA workforce, to establish knowledge-sharing opportunities between the FAA and the aviation industry regarding new equipment and systems, best practices, and other areas of interest; and
- (6) develop recommendations on the most effective qualifications, training programs (including e-learning training), and performance incentive approaches to address the needs of the future projected aviation regulatory system in the anticipated budgetary environment.

(c) **REPORT.**—Not later than 270 days after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review.

**SEC. 626. STATE TAXATION.**

Section 40116(d)(2)(A) of title 49, United States Code, is amended by adding at the end the following:

“(v) except as otherwise provided under section 47133, levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that State, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.”.

**SEC. 627. AVIATION AND AEROSPACE WORKFORCE OF THE FUTURE.**

(a) **FINDINGS.**—Congress finds that—

- (1) in 2016, United States air carriers carried a record high number of passengers on domestic flights, 719 million passengers;
- (2) the United States aerospace and defense industry employed 1.7 million workers in 2015, or roughly 2 percent of the Nation’s total employment base;
- (3) the average salary of an employee in the aerospace and defense industry is 44 percent above the national average;
- (4) in 2015, the aerospace and defense industry contributed nearly \$202.4 billion in value added to the United States economy;
- (5) an effective aviation industry relies on individuals with unique skill sets, many of which can be directly obtained through career and technical education opportunities; and
- (6) industry and the Federal Government have taken some actions to attract qualified individuals to careers in aviation and aerospace and to retain qualified individuals in such careers.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

- (1) public and private education institutions should make available to students and parents information on approved programs of study and career pathways, including career exploration, work-based learning opportunities, dual and concurrent enrollment opportunities, and guidance and advisement resources;

(2) public and private education institutions should partner with aviation and aerospace companies to promote career paths available within the industry and share information on the unique benefits and opportunities the career paths offer;

(3) aviation companies, including air carriers, manufacturers, commercial space companies, unmanned aircraft system companies, and repair stations, should create opportunities, through apprenticeships or other mechanisms, to attract young people to aviation and aerospace careers and to enable individuals to gain the critical skills needed to thrive in such professions; and

(4) the Federal Government should consider the needs of men and women interested in pursuing careers in the aviation and aerospace industry, the long-term personnel needs of the aviation and aerospace industry, and the role of aviation in the United States economy in the creation and administration of educational and financial aid programs.

**SEC. 628. FUTURE AVIATION AND AEROSPACE WORKFORCE STUDY.**

(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study—

(1) to identify the factors influencing the supply of individuals pursuing a career in the aviation or aerospace industry; and

(2) to identify best practices or programs to incentivize, recruit, and retain young people in aviation and aerospace professions.

(b) **CONSULTATION.**—The Comptroller General shall conduct the study in consultation with—

(1) appropriate Federal agencies; and

(2) the aviation and aerospace industry, institutions of higher education, and labor stakeholders.

(c) **REPORT TO CONGRESS.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study and related recommendations.

**SEC. 629. FAA LEADERSHIP ON CIVIL SUPERSONIC AIRCRAFT.**

(a) **IN GENERAL.**—The Administrator of the Federal Aviation Administration shall exercise leadership in the creation of Federal and international policies, regulations, and standards relating to the certification and safe and efficient operation of civil supersonic aircraft.

(b) **EXERCISE OF LEADERSHIP.**—In carrying out subsection (a), the Administrator shall—

(1) consider the needs of the aerospace industry and other stakeholders when creating policies, regulations, and standards that enable the safe commercial deployment of civil supersonic aircraft technology and the safe and efficient operation of civil supersonic aircraft; and

(2) obtain the input of aerospace industry stakeholders regarding—

(A) the appropriate regulatory framework and timeline for permitting the safe and efficient operation of civil supersonic aircraft within United States airspace, including updating or modifying existing regulations on such operation;

(B) issues related to standards and regulations for the type certification and safe operation of civil supersonic aircraft, including noise certification, including—

(i) the operational differences between subsonic aircraft and supersonic aircraft;

(ii) costs and benefits associated with landing and takeoff noise requirements for civil supersonic aircraft, including impacts on aircraft emissions;

(iii) public and economic benefits of the operation of civil supersonic aircraft and associated aerospace industry activity; and

(iv) challenges relating to ensuring that standards and regulations aimed at relieving and protecting the public health and welfare from aircraft noise and sonic booms are economically reasonable, technologically practicable, and appropriate for civil supersonic aircraft; and

(C) other issues identified by the Administrator or the aerospace industry that must be addressed to enable the safe commercial deployment and safe and efficient operation of civil supersonic aircraft.

(c) **INTERNATIONAL LEADERSHIP.**—The Administrator, in the appropriate international forums, shall take actions that—

(1) demonstrate global leadership under subsection (a);

- (2) address the needs of the aerospace industry identified under subsection (b); and
- (3) protect the public health and welfare.

(d) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report detailing—

- (1) the Administrator’s actions to exercise leadership in the creation of Federal and international policies, regulations, and standards relating to the certification and safe and efficient operation of civil supersonic aircraft;
- (2) planned, proposed, and anticipated actions to update or modify existing policies and regulations related to civil supersonic aircraft, including those identified as a result of industry consultation and feedback; and
- (3) a timeline for any actions to be taken to update or modify existing policies and regulations related to civil supersonic aircraft.

**SEC. 630. OKLAHOMA REGISTRY OFFICE.**

The Administrator of the Federal Aviation Administration shall consider the aircraft registry office in Oklahoma City, Oklahoma, as excepted during a Government shutdown or emergency (as it provides excepted services) to ensure that it remains open during any Government shutdown or emergency.

**SEC. 631. FOREIGN AIR TRANSPORTATION UNDER UNITED STATES-EUROPEAN UNION AIR TRANSPORT AGREEMENT.**

(a) CERTAIN FOREIGN AIR TRANSPORTATION PERMITS.—The Secretary of Transportation may not issue a permit under section 41302 of title 49, United States Code, or an exemption under section 40109 of such title, authorizing a person to provide foreign air transportation as a foreign air carrier under the United States-European Union Air Transport Agreement of April 2007 (as amended) in a proceeding in which the applicability of Article 17 bis of such Agreement has been raised by an interested person, unless the Secretary—

- (1) finds that issuing the permit or exemption would be consistent with the intent set forth in Article 17 bis of the Agreement, that opportunities created by the Agreement do not undermine labor standards or the labor-related rights and principles contained in the laws of the respective parties to the Agreement; and
- (2) imposes on the permit or exemption such conditions as may be necessary to ensure that the person complies with the intent of Article 17 bis.

(b) PUBLIC INTEREST TEST.—Section 41302(2) of title 49, United States Code, is amended—

- (1) in subparagraph (A) by striking “under an agreement with the United States Government; or” and inserting “, and”; and
- (2) in subparagraph (B) by striking “the foreign air transportation” and inserting “after considering the totality of the circumstances, including the factors set forth in section 40101(a), the foreign air transportation”.

(c) PUBLIC INTEREST REQUIREMENTS.—

- (1) POLICY.—Section 40101(a) of title 49, United States Code, is amended by adding at the end the following:

“(17) preventing entry into United States markets by flag of convenience carriers.”

(2) INTERNATIONAL AIR TRANSPORTATION.—Section 40101(e)(9) of title 49, United States Code, is amended—

- (A) in subparagraph (D) by striking “and” at the end;
- (B) in subparagraph (E) by striking the period at the end and inserting “, and”; and
- (C) by adding at the end the following:

“(F) erosion of labor standards associated with flag of convenience carriers.”

(3) FLAG OF CONVENIENCE CARRIER DEFINED.—Section 40102(a) of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following:

“(49) ‘flag of convenience carrier’ means a foreign air carrier that is established in a country other than the home country of its majority owner or owners in order to avoid regulations of the home country.”

**SEC. 632. TRAINING ON HUMAN TRAFFICKING FOR CERTAIN STAFF.**

(a) IN GENERAL.—Chapter 447 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following:

**“§ 44737. Training on human trafficking for certain staff**

“In addition to other training requirements, each air carrier shall provide training—

“(1) to ticket counter agents, gate agents, and other air carrier workers whose jobs require regular interaction with passengers; and

“(2) on recognizing and responding to potential human trafficking victims.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 447 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following:

“44737. Training on human trafficking for certain staff.”.

**SEC. 633. PART 107 IMPLEMENTATION IMPROVEMENTS.**

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall publish a direct final rule—

(1) revising section 107.205 of title 14, Code of Federal Regulations, by striking the second sentence of subsections (a) and (c); and

(2) revising section 107.25 of such title by striking “and is not transporting another person’s property for compensation or hire”.

(b) DETERMINATION OF WAIVER.—In determining whether to grant a waiver under part 107 of title 14, Code of Federal Regulations, to authorize transportation of another’s property for compensation or hire beyond the visual line of sight of the remote pilot, from a moving vehicle, or over people, the Administrator shall consider the technological capabilities of the unmanned aircraft system, the qualifications of the remote pilot, and the operational environment.

**SEC. 634. PART 107 TRANSPARENCY AND TECHNOLOGY IMPROVEMENTS.**

(a) TRANSPARENCY.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall publish on the Federal Aviation Administration website a representative sample of the safety justifications, offered by applicants for small unmanned aircraft system waivers and airspace authorizations, that have been approved by the Administration for each regulation waived or class of airspace authorized, except that any published justification shall not reveal proprietary or commercially sensitive information.

(b) TECHNOLOGY IMPROVEMENTS.—Not later than 90 days after the date of enactment of this Act, the Administrator shall revise the online waiver and certificates of authorization processes—

(1) to provide real time confirmation that an application filed online has been received by the Administration; and

(2) to provide an applicant with an opportunity to review the status of the applicant’s application.

**SEC. 635. PROHIBITIONS AGAINST SMOKING ON PASSENGER FLIGHTS.**

Section 41706 of title 49, United States Code, is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) ELECTRONIC CIGARETTES.—

“(1) INCLUSION.—The use of an electronic cigarette shall be treated as smoking for purposes of this section.

“(2) ELECTRONIC CIGARETTE DEFINED.—In this section, the term ‘electronic cigarette’ means a device that delivers nicotine to a user of the device in the form of a vapor that is inhaled to simulate the experience of smoking.”.

**SEC. 636. CONSUMER PROTECTION REQUIREMENTS RELATING TO LARGE TICKET AGENTS.**

(a) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary of Transportation shall issue a final rule to require large ticket agents to adopt minimum customer service standards.

(b) PURPOSE.—The purpose of the final rule shall be to ensure that, to the maximum extent practicable, there is a consistent level of consumer protection regardless of where consumers purchase air fares and related air transportation services.

(c) STANDARDS.—In issuing the final rule, the Secretary shall consider, at a minimum, establishing standards for—

(1) providing prompt refunds when ticket refunds are due, including fees for optional services that consumers purchased but were not able to use due to a flight cancellation or oversale situation;

(2) providing an option to hold a reservation at the quoted fare without payment, or to cancel without penalty, for 24 hours;

(3) disclosing cancellation policies, seating configurations, and lavatory availability with respect to flights;

(4) notifying customers in a timely manner of itinerary changes; and

(5) responding promptly to customer complaints.

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

(1) TICKET AGENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the term “ticket agent” has the meaning given that term in section 40102(a) of title 49, United States Code.

(B) INCLUSION.—The term “ticket agent” includes a person who acts as an intermediary involved in the sale of air transportation directly or indirectly to consumers, including by operating an electronic airline information system, if the person—

(i) holds the person out as a source of information about, or reservations for, the air transportation industry; and

(ii) receives compensation in any way related to the sale of air transportation.

(2) LARGE TICKET AGENT.—The term “large ticket agent” means a ticket agent with annual revenues of \$100,000,000 or more.

**SEC. 637. AGENCY PROCUREMENT REPORTING REQUIREMENTS.**

Section 40110(d) of title 49, United States Code, is amended by adding at the end the following:

“(5) ANNUAL REPORT ON THE PURCHASE OF FOREIGN MANUFACTURED ARTICLES.—

“(A) REPORT.—Not later than 90 days after the end of the fiscal year, the Secretary of Transportation shall submit a report to Congress on the dollar amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in such fiscal year.

“(B) CONTENTS.—The report required by subparagraph (A) shall separately indicate—

“(i) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States; and

“(ii) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.

“(C) AVAILABILITY OF REPORT.—The Secretary shall make the report under subparagraph (A) publicly available on the agency’s website not later than 30 days after submission to Congress.”.

**SEC. 638. ZERO-EMISSION VEHICLES AND TECHNOLOGY.**

(a) PASSENGER FACILITY CHARGE ELIGIBILITY.—Section 40117(a)(3) of title 49, United States Code, is amended by adding at the end the following:

“(H) A project for—

“(i) converting or retrofitting vehicles and ground support equipment into eligible zero-emission vehicles and equipment (as defined in section 47102); or

“(ii) acquiring, by purchase or lease, eligible zero-emission vehicles and equipment (as defined in section 47102).”.

(b) AIRPORT IMPROVEMENT PROGRAM ELIGIBILITY.—

(1) AIRPORT DEVELOPMENT DEFINED.—Section 47102(3) of title 49, United States Code, is amended by adding at the end the following:

“(P) converting or retrofitting vehicles and ground support equipment into eligible zero-emission vehicles and equipment or acquiring, by purchase or lease, eligible zero-emission vehicles and equipment.

“(Q) constructing or modifying airport facilities to install a microgrid in order to provide increased resilience to severe weather, terrorism, and other causes of grid failures.”.

(2) ADDITIONAL DEFINITIONS.—Section 47102 of title 49, United States Code, as amended by this Act, is further amended by adding at the end the following:

“(30) ‘eligible zero-emission vehicle and equipment’ means a zero-emission vehicle, equipment related to such a vehicle, and ground support equipment that includes zero-emission technology that is—

“(A) used exclusively at a commercial service airport; or

“(B) used exclusively to transport people or materials to and from a commercial service airport.

“(31) ‘microgrid’ means a localized grouping of electricity sources and loads that normally operates connected to and synchronous with the traditional centralized electrical grid, but can disconnect and function autonomously as physical or economic conditions dictate.

“(32) ‘zero-emission vehicle’ means a zero-emission vehicle as defined in section 88.102–94 of title 40, Code of Federal Regulations, or a vehicle that pro-

duces zero exhaust emissions of any criteria pollutant (or precursor pollutant) under any possible operational modes and conditions.”.

(3) SPECIAL APPORTIONMENT CATEGORIES.—Section 47117(e)(1)(A) of title 49, United States Code, is amended by inserting “for airport development described in section 47102(3)(P),” after “under section 47141.”.

(c) ZERO-EMISSION PROGRAM.—Chapter 471 of title 49, United States Code, is amended—

(1) by striking section 47136;

(2) by redesignating section 47136a as section 47136; and

(3) in section 47136, as so redesignated, by striking subsections (a) and (b) and inserting the following:

“(a) IN GENERAL.—The Secretary of Transportation may establish a pilot program under which the sponsors of not less than 10 public-use airports may use funds made available under this chapter or section 48103 for use at such airports to carry out—

“(1) activities associated with the acquisition, by purchase or lease, and operation of zero-emission vehicles, including removable power sources for such vehicles; and

“(2) the construction or modification of infrastructure to facilitate the delivery of fuel and services necessary for the use of such vehicles.

“(b) ELIGIBILITY.—A public-use airport is eligible for participation in the program if the vehicles or ground support equipment are—

“(1) used exclusively at the airport; or

“(2) used exclusively to transport people or materials to and from the airport.”;

(4) in section 47136, as so redesignated, by striking subsections (d) and (e) and inserting the following:

“(d) FEDERAL SHARE.—The Federal share of the cost of a project carried out under the program shall be the Federal share specified in section 47109.

“(e) TECHNICAL ASSISTANCE.—

“(1) IN GENERAL.—The sponsor of a public-use airport may use not more than 10 percent of the amounts made available to the sponsor under the program in any fiscal year for—

“(A) technical assistance; and

“(B) project management support to assist the airport with the solicitation, acquisition, and deployment of zero-emission vehicles, related equipment, and supporting infrastructure.

“(2) PROVIDERS OF TECHNICAL ASSISTANCE.—To receive the technical assistance or project management support described in paragraph (1), participants in the program may use—

“(A) a nonprofit organization selected by the Secretary; or

“(B) a university transportation center receiving grants under section 5505 in the region of the airport.”;

(5) in section 47136, as so redesignated, in subsection (f) by striking “section 47136” and inserting “the inherently low emission airport vehicle pilot program”; and

(6) in section 47136, as so redesignated, by adding at the end the following:

“(g) ALLOWABLE PROJECT COST.—The allowable project cost for the acquisition of a zero-emission vehicle shall be the total cost of purchasing or leasing the vehicle, including the cost of technical assistance or project management support described in subsection (e).

“(h) FLEXIBLE PROCUREMENT.—A sponsor of a public-use airport may use funds made available under the program to acquire, by purchase or lease, a zero-emission vehicle and a removable power source in separate transactions, including transactions by which the airport purchases the vehicle and leases the removable power source.

“(i) TESTING REQUIRED.—A sponsor of a public-use airport may not use funds made available under the program to acquire a zero-emission vehicle unless that make, model, or type of vehicle has been tested by a Federal vehicle testing facility acceptable to the Secretary.

“(j) REMOVABLE POWER SOURCE DEFINED.—In this section, the term ‘removable power source’ means a power source that is separately installed in, and removable from, a zero-emission vehicle and may include a battery, a fuel cell, an ultra-capacitor, or other advanced power source used in a zero-emission vehicle.”.

(d) CLERICAL AMENDMENT.—The analysis for chapter 471 of title 49, United States Code, is amended by striking the items relating to sections 47136 and 47136a and inserting the following:

“47136. Zero-emission airport vehicles and infrastructure.”.



**SEC. 639. EMPLOYEE ASSAULT PREVENTION AND RESPONSE PLANS.**

(a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, each air carrier operating under part 121 of title 14, Code of Federal Regulations (in this section referred to as a “part 121 air carrier”), shall submit to the Administrator of the Federal Aviation Administration for review and acceptance an Employee Assault Prevention and Response Plan related to the customer service agents of the air carrier and that is developed in consultation with the labor union representing such agents.

(b) **CONTENTS OF PLAN.**—An Employee Assault Prevention and Response Plan submitted under subsection (a) shall include the following:

(1) Reporting protocols for air carrier customer service agents who have been the victim of a verbal or physical assault.

(2) Protocols for the immediate notification of law enforcement after an incident of verbal or physical assault committed against an air carrier customer service agent.

(3) Protocols for informing Federal law enforcement with respect to violations of section 46503 of title 49, United States Code.

(4) Protocols for ensuring that a passenger involved in a violent incident with a customer service agent of an air carrier is not allowed to move through airport security or board an aircraft until appropriate law enforcement has had an opportunity to assess the incident and take appropriate action.

(5) Protocols for air carriers to inform passengers of Federal laws protecting Federal, airport, and air carrier employees who have security duties within an airport.

(c) **EMPLOYEE TRAINING.**—A part 121 air carrier shall conduct initial and recurrent training for all employees, including management, of the air carrier with respect to the plan required under subsection (a), which shall include training on de-escalating hostile situations, written protocols on dealing with hostile situations, and the reporting of relevant incidents.

**SEC. 640. STUDY ON TRAINING OF CUSTOMER-FACING AIR CARRIER EMPLOYEES.**

(a) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall conduct a study on the training received by customer-facing employees of air carriers.

(b) **CONTENTS.**—The study shall include—

(1) an analysis of the training received by customer-facing employees with respect to the management of disputes on aircraft; and

(2) an examination of how institutions of higher learning, in coordination with air carriers, customer-facing employees and their representatives, consumer advocacy organizations, and other stakeholders, could—

(A) review such training and related practices;

(B) produce recommendations; and

(C) if determined appropriate, provide supplemental training.

(c) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the study.

**SEC. 641. MINIMUM DIMENSIONS FOR PASSENGER SEATS.**

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, and after providing notice and an opportunity for comment, the Administrator of the Federal Aviation Administration shall issue regulations that establish minimum dimensions for passenger seats on aircraft operated by air carriers in interstate air transportation or intrastate air transportation, including minimums for seat pitch, width, and length, and that are necessary for the safety and health of passengers.

(b) **DEFINITIONS.**—The definitions contained in section 40102(a) of title 49, United States Code, apply to this section.

**SEC. 642. STUDY OF GROUND TRANSPORTATION OPTIONS.**

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study that examines the ground transportation options at the Nation’s 10 busiest airports in order to—

(1) understand the impact of new and emerging transportation options for travelers to get into and out of airports;

(2) determine whether it is appropriate to use airport improvement funds and revenues from passenger facility charges to address traffic congestion and passenger travel times between urban commercial centers and airports; and

(3) review guidelines and requirements for airport improvement funds and passenger facility charges to determine under what conditions such funds may

be used to address traffic congestion in urban commercial centers for travel to airports.

#### PURPOSE OF LEGISLATION

H.R. 2997, the 21st Century Aviation Innovation, Reform, and Reauthorization Act (21st Century AIRR Act), as amended, reauthorizes the Nation's aviation programs, including the Federal Aviation Administration's (FAA) safety and infrastructure programs, the Department of Transportation's (DOT) aviation consumer protection programs, and other aviation-related programs. It transfers operation of air traffic control (ATC) services currently provided by the FAA to an independent, not-for-profit corporate entity. H.R. 2997, as amended, establishes a stable, self-sustaining, cost-based user fee structure to finance the entity. The bill includes provisions to guide the transition from an FAA-operated service to one provided by the new entity. H.R. 2997, as amended, also reforms and streamlines the FAA's various safety, oversight, and certification programs to foster the more efficient use of government and private sector resources and makes various conforming amendments for purposes of consistency.

#### BACKGROUND AND NEED FOR LEGISLATION

Aviation is a major driver of economic growth and the ATC system is an essential component of this important sector of the economy. According to the FAA, civil aviation contributes roughly \$1.6 trillion in total economic activity and supports over 11 million jobs.<sup>1</sup> United States airspace, the busiest and most expansive in the world, covers roughly 30 million square miles—constituting more than 17 percent of the world's airspace.<sup>2</sup> The ATC system is operated by the FAA's more than 14,000 federal air traffic controllers in 317 air traffic control facilities.<sup>3</sup> Every day, air traffic controllers safely handle more than 50,000 operations.<sup>4</sup> The FAA also has safety oversight of civil aviation, including regulatory oversight of airlines, airports, aviation manufacturers, pilots, controllers, flight attendants, general aviation operators, commercial space operators and launch sites, and unmanned aircraft systems and their operators.

While the United States has one of the safest ATC systems in the world, the system has struggled to keep up with increasing demand. According to the FAA, airline delays and cancellations cost passengers, shippers, and airlines nearly \$33 billion annually.<sup>5</sup> The FAA projects passenger growth to average two percent per year,

<sup>1</sup>Federal Aviation Administration, *The Economic Impact of Civil Aviation on the U.S. Economy*, November 2016, p. 3, available at [https://www.faa.gov/air\\_traffic/publications/media/2016-economic-impact-report\\_FINAL.pdf](https://www.faa.gov/air_traffic/publications/media/2016-economic-impact-report_FINAL.pdf).

<sup>2</sup>Federal Aviation Administration, *The Economic Impact of Civil Aviation on the U.S. Economy*, January 2015, p. 1. [https://www.faa.gov/air\\_traffic/publications/media/2015-economic-impact-report.pdf](https://www.faa.gov/air_traffic/publications/media/2015-economic-impact-report.pdf).

<sup>3</sup>Federal Aviation Administration, *A Plan for the Future: 10-Year Strategy for the Air Traffic Control Workforce*, 2015–2014, p. 10, and [https://www.faa.gov/jobs/career\\_fields/aviation\\_careers/atc\\_roles](https://www.faa.gov/jobs/career_fields/aviation_careers/atc_roles).

<sup>4</sup>FAA Press Release, July 6, 2011. [https://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=12903](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=12903).

<sup>5</sup>Nextor, *Total Delay Impact Study: A Comprehensive Assessment of the Costs and Impacts of Flight Delay in the United States*, Final Report, October 2010, p. vii [http://www.isr.umd.edu/NEXTOR/pubs/TDI\\_Report\\_Final\\_10\\_18\\_10\\_V3.pdf](http://www.isr.umd.edu/NEXTOR/pubs/TDI_Report_Final_10_18_10_V3.pdf).

reaching one billion passengers by 2029.<sup>6</sup> To help the ATC system better prepare for this forecasted growth, the FAA has been working for decades to modernize the system, which remains based on World War II-era radar technology. Without modernization, controllers and aircraft operators will continue to be forced to use the airspace in a very inefficient way.

#### NEXTGEN

In 2003, the FAA began its most recent effort to modernize the Nation’s ATC system, known as “NextGen.” Originally, NextGen was intended to transform the ATC system from a radar-based system to a satellite-based system. However, according to government reports, NextGen, initially marketed as a 20-year, \$40 billion program, has been plagued by decades of cost and schedule overruns and has produced only incremental improvements in capacity and safety. Passengers and aircraft operators have seen limited benefits from recent FAA modernization programs and those benefits are certainly not in line with taxpayer dollars invested in NextGen—over \$7 billion to date.<sup>7</sup>

According to the Department of Transportation Inspector General (DOT IG), “since its inception a decade ago, FAA’s progress in implementing NextGen has not met the expectations of Congress and industry stakeholders, and key modernization efforts have experienced significant cost increases and schedule delays.”<sup>8</sup> In looking at what the FAA has promised NextGen would achieve over the years, Calvin Scovel, the DOT IG, has warned, “the initial estimates from nine or 10 years back called for \$20 billion in federal investments, \$20 billion in private investments with a stated goal of completing implementation of the program by 2025. . . . We’re clearly not going to make it with a total of \$40 billion in investments, federal and private. We’re probably looking at years beyond 2025—perhaps another 10 even. We’re probably also looking at total expenditures on the magnitude two to three times that of the initial \$40 billion.”<sup>9</sup>

Government auditing reports outline ongoing troubles with the FAA’s delivery and implementation of ATC modernization programs. In a 2016 report, the DOT IG found that eight of FAA’s 15 ongoing major system acquisitions experienced a cumulative cost increase of \$3.8 billion beyond original estimates and delays ranging from seven to 174 months, with an average delay of 51 months.<sup>10</sup> Similarly, according to the Government Accountability Office (GAO), “[t]he three [ATC] programs with the largest cost in-

<sup>6</sup>FAA Press Release, March 16, 2015. [https://www.faa.gov/news/press\\_releases/news\\_story.cfm?newsId=18434](https://www.faa.gov/news/press_releases/news_story.cfm?newsId=18434).

<sup>7</sup>Letter from Calvin Scovel, Inspector General, U.S. Department of Transportation, to Bill Shuster, Chairman, House Committee on Transportation and Infrastructure, September 30, 2016.

<sup>8</sup>Office of Inspector General, U.S. Department of Transportation, *FAA Made Limited Progress in Implementing NextGen Provisions of the FAA Modernization and Reform Act of 2012*, AV-2014-027, Jan. 28, 2014, p. 2.

<sup>9</sup>Statement of Calvin Scovel, Inspector General, U.S. Department of Transportation, before the House Aviation Subcommittee, *Hearing on ATC Modernization*, February 5, 2014; see also, Statement of Calvin Scovel, Inspector General, U.S. Department of Transportation, before the House Transportation and Infrastructure Committee, *The Need to Reform FAA and Air Traffic Control to Build a 21st Century Aviation System for America*, May 17, 2017.

<sup>10</sup>Office of the Inspector General, U.S. Department of Transportation, *FAA Reforms Have Not Achieved Expected Cost, Efficiency and Modernization Outcomes*, AV-2016-15, January 20, 2016, p. 13.

creases—more than \$4 billion—are key to ATC modernization.”<sup>11</sup> Most recently, the DOT IG testified before the Transportation and Infrastructure Committee stating, “FAA’s reforms have also fallen short in improving its delivery of new technologies and capabilities. Major projects—including some critical to NextGen—have experienced cost increases and schedule slips . . . several systemic issues underlie FAA’s problems in delivering new technologies on time and within budget. These include overambitious plans, unreliable cost and schedule estimates, unstable requirements, software development problems, poorly defined benefits, and ineffective contract and program management.”<sup>12</sup>

The extent to which FAA realigns and consolidates ATC facilities is another important component of the agency’s NextGen implementation efforts. To comply with the law, the FAA provided Congress with a plan for consolidating and realigning its facilities. The DOT IG found that the plan is “significantly less comprehensive than previous consolidation plans . . . ,” and does not include a process for realigning and consolidating facilities that manage high-altitude traffic.<sup>13</sup> Further, in another report, the DOT IG found that despite the fact that FAA’s air traffic operations dropped 23 percent between fiscal years 2000 and 2012, the FAA’s ATC facility footprint has remained essentially unchanged.<sup>14</sup>

Finally, the DOT IG found “. . . FAA’s organizational culture . . . has been slow to embrace NextGen’s transformational vision.”<sup>15</sup> Gaps in leadership have further undermined the Agency’s efforts to advance NextGen.”<sup>16</sup> A recent GAO survey found that aviation stakeholders lack confidence in FAA’s ability to implement ATC modernization.<sup>17</sup> More than three times as many of the stakeholders said that FAA’s overall implementation of NextGen was not going well than those who said it was going well.<sup>18</sup>

#### OVERVIEW OF PREVIOUS AIR TRAFFIC CONTROL REFORM EFFORTS IN THE UNITED STATES

In 1981, the FAA began an effort to modernize the ATC system by updating facilities and equipment to meet the anticipated demands of a growing volume of post-deregulation air traffic.<sup>19</sup> At the time, the modernization was estimated to cost roughly \$12 billion<sup>20</sup>

<sup>11</sup>U.S. Government Accountability Office, *Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation*, GAO-12-223, February 2012, p. 12.

<sup>12</sup>Statement of Calvin Scovel, Inspector General, U.S. Department of Transportation, before the House Transportation and Infrastructure Committee, *The Need to Reform FAA and Air Traffic Control to Build a 21st Century Aviation System for America*, May 17, 2017.

<sup>13</sup>Office of the Inspector General, U.S. Department of Transportation, *FAA’s Implementation of the FAA Modernization and Reform Act of 2012 Remains Incomplete*, CC-2014-010, February 5, 2014, p. 3.

<sup>14</sup>Office of the Inspector General, U.S. Department of Transportation, *FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes*, January 15, 2016, AV-2016-015, pp. 8-9.

<sup>15</sup>*Id.*

<sup>16</sup>*Supra* note 12, p. 3.

<sup>17</sup>U.S. Government Accountability Office, *Air Traffic Control System: Selected Stakeholders’ Perspectives on Operations, Modernization, and Structure*, September 2014, GAO-14-770, p. 11.

<sup>18</sup>*Id.*

<sup>19</sup>This included plans to replace the computers at air route traffic control centers with new software, consoles and displays, facility consolidation, new secondary radars, upgraded weather services and a new landing system. U.S. Government Accountability Office, *FAA’s Plan to Improve the Air Traffic Control System*, AFMD-83-34, 1983 available at: <http://www.gao.gov/assets/140/139683.pdf>.

<sup>20</sup>U.S. Government Accountability Office, *Transportation: Examination of the Federal Aviation Administration’s Plan for the National Airspace System—Interim Report*, AFMD-82-66, 1982,

and take more than 10 years to complete.<sup>21</sup> However, in the ensuing years the effort encountered cost overruns, schedule delays, and performance shortfalls, which resulted in calls to reform the FAA. There have been previous bipartisan ATC reform recommendations calling for an independent, nongovernmental, self-financing entity, including:

—In 1988, the Aviation Safety Commission urged creation of a self-financing air navigation service provider free of federal personnel and procurement rules, to be overseen by a board that would include industry stakeholders.<sup>22</sup>

—In its 1993 report, the National Commission to Ensure a Strong Competitive Airline Industry, chaired by former Virginia Governor Gerald Baliles, recommended that the FAA be “reinvented” and restructured as an independent federal corporate entity, with its expenditures and revenues removed from the federal budget.<sup>23</sup>

—Also in 1993, then-Vice President Al Gore’s task force on government reorganization proposed a detailed plan for shifting ATC to a user-fee supported government corporation to be called the U.S. Air Traffic Services Corporation (USATS).

—In 1997, the National Civil Aviation Review Commission, chaired by former Secretary of Transportation Norman Mineta, recommended a financially self-supporting ATC entity within the FAA.<sup>24</sup> Cost-based user fees from airlines would provide a revenue stream outside the federal budget process and support bonding to finance large-scale modernization.<sup>25</sup>

—In 2007, the Bush administration called for a hybrid, cost-based system for financing FAA programs, under which commercial airlines and business jet operators would pay direct charges for ATC services while general aviation (GA) non-jet operators would continue to pay the GA fuel tax.<sup>26</sup>

Congress responded by enacting only portions of the Baliles and Mineta commissions’ recommendations.<sup>27</sup> In 1995, Congress passed legislation exempting FAA from most federal personnel rules and allowed the agency to implement a new personnel management system that provided greater flexibility in hiring, training, and compensating personnel.<sup>28</sup> In 1996, other legislation was passed that included additional personnel reforms and required the agency

p.2. This report claims initial estimates to be roughly \$10 billion; however, a later GAO report states the \$12 billion figure.

<sup>21</sup>Gerald L. Dillingham, U.S. Government Accountability Office, Testimony before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, House of Representatives, *FAA’s Modernization Efforts—Past, Present and Future*, October 30, 2003, p. 1.

<sup>22</sup>Aviation Safety Commission, *Aviation Safety Commission Final Report and Recommendations*, April 1988, p. 1 The Aviation Safety Commission was created under the *Aviation Safety Commission Act of 1986* (P.L. 99–591). The Commission was created to conduct an intensive inquiry into the safety of the nation’s aviation system.

<sup>23</sup>The National Commission to Ensure a Strong Competitive Airline Industry, *Change, Challenge and Competition: A Report to the President and Congress*, August 1993, pp. 8–9.

<sup>24</sup>National Civil Aviation Review Commission, *Avoiding Aviation Gridlock and Reducing the Accident Rate*, December 1997.

<sup>25</sup>*Id.* at 144.

<sup>26</sup>Gerald L. Dillingham, U.S. Government Accountability Office, Testimony Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, *Observations on Selected Changes to FAA’s Funding and Budget Structure in the Administration’s Reauthorization Program*, GAO–07625T, March 21, 2007, p. 5.

<sup>27</sup>Robert W. Poole, *The Urgent Need to Reform the FAA’s Air Traffic Control System*, March 2007, p. 18.

<sup>28</sup>*Fiscal Year 1996 Department of Transportation and Related Agencies Appropriations Act*, Section 347(a), P.L. 104–50, Nov. 15, 1995.

to establish a cost accounting system.<sup>29</sup> In 1995, Congress also granted FAA relief from principal federal acquisition laws and regulations.<sup>30</sup> All of the reforms were intended to allow the FAA to act more like a business. In April 2000, Congress required the appointment of a Chief Operating Officer to oversee the day-to-day operation and modernization of the ATC system.<sup>31</sup> However, Congress rejected the proposal to shift from excise taxes to user fees.<sup>32</sup> Similarly, the 110th Congress did not include the Bush administration's finance reform proposal in the FAA reauthorization legislation.

In February 2016, an FAA reauthorization bill was introduced in the House of Representatives that included a proposal to divest ATC to a not-for-profit corporation subject to arms-length federal oversight and regulation.<sup>33</sup> The proposal addressed matters including corporate governance, labor and employment policy, and transition processes. H.R. 2997, as amended, includes many of the same provisions and also, based upon feedback from stakeholder groups and those with expertise, adds or changes other provisions related to specific oversight processes, governance, and continuity of service.

#### THE CONTINUING NEED FOR ATC REFORM IN THE UNITED STATES

In a January 2016 report, the DOT IG found that previous efforts by both the executive and legislative branches to reform the FAA have failed.<sup>34</sup> Since the implementation of FAA personnel and procurement reforms in the 1990's, costs to operate the ATC system have continued to rise while operational productivity has declined.<sup>35</sup> Between fiscal years 1996 and 2012, the DOT IG found that FAA's total budget grew by 95 percent, from \$8.1 billion to \$15.9 billion, and its total costs for personnel, compensation, and benefits increased by 98 percent, from \$3.7 billion to \$7.3 billion, while air traffic dropped 23 percent.<sup>36</sup> The DOT IG attributed FAA's disappointing personnel and procurement reform outcomes largely to the agency's failure to take full advantage of its authorities when implementing new personnel systems, and not using business like practices to improve its operational efficiency and cost effectiveness.<sup>37</sup> In addition, FAA's workforce levels have remained relatively constant over the past two decades and the number of air traffic facilities the FAA operates has not changed since 2000 despite the drop in air traffic.<sup>38</sup> The DOT IG stated that FAA's organizational culture, which has been resistant to change, further deters its reform efforts.<sup>39</sup>

Today, the FAA, like other federal agencies, must conduct capital project planning, including efforts to modernize the ATC system, on

<sup>29</sup> *Federal Aviation Reauthorization Act of 1996*, Sections 253 & 276, P.L. 104-264, Oct. 9, 1996.

<sup>30</sup> *Fiscal Year 1996 Department of Transportation and Related Agencies Appropriations Act*, Section 347(a), P.L. 104-50, Nov. 15, 1995.

<sup>31</sup> *Wendell H. Ford Aviation Investment and Reform Act for the 21st Century*, Section 303, P.L. 106-181, Apr. 5, 2000.

<sup>32</sup> Robert W. Poole, *The Urgent Need to Reform the FAA's Air Traffic Control System*, March 2007, p. 18.

<sup>33</sup> H.R. 4441, 114th Cong. (2016).

<sup>34</sup> Department of Transportation, Office of Inspector General, *FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes*, January 15, 2016, AV-2016-015, p. 2.

<sup>35</sup> *Id.* at 8.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 2.

<sup>38</sup> *Id.* at 8.

<sup>39</sup> *Id.* at 2.

the basis of an annual congressional appropriations cycle. The agency is likewise impacted by sequestration, extensions, continuing resolutions, and government shutdowns. Three years of federal budget disputes; the FAA's decision in April 2013 to furlough ten percent of its air traffic controller workforce to meet sequester-driven budgetary cuts; the partial shutdown of the FAA in August 2011 due to the lapse of FAA's operating authority; and the continuing schedule delays and cost overruns that have plagued FAA's efforts to modernize the ATC system, have all helped rekindle the debate over ATC reform. The lack of a steady, predictable funding stream, as well as short-term authorization extensions, are not conducive to the long-term planning needed to deliver large, multi-year capital projects like ATC modernization.

The Reason Foundation, the Brookings Institution, and the Cato Institute have all found that aviation safety and efficiency would be enhanced by providing a steady, predictable funding stream (via direct charges paid by users) for ATC modernization, as well as more effective management.<sup>40</sup> Proponents of ATC reform argue that, under some reform scenarios, a self-financed ATC service provider would access capital through the private markets.<sup>41</sup> In addition, a self-financed ATC service provider would be free from federal procurement regulations that, according to some observers, have prevented the FAA from purchasing and deploying new technologies in a timely, cost-efficient manner in some cases.<sup>42</sup>

At a March 24, 2015 Subcommittee on Aviation hearing, witnesses urged Congress to consider comprehensive reform of how the FAA is governed and financed.<sup>43</sup> Dorothy Robyn, a former Clinton administration official, citing ongoing problems with NextGen implementation, declining budget projections for FAA, and the prospect of another sequester-related shutdown, recommended that Congress move the Air Traffic Organization out of the FAA and replace the aviation excise taxes with cost-based charges on commercial and business aircraft operators.<sup>44</sup> Citing the success of commercialized ATC service providers abroad, all the witnesses supported separating ATC services from the FAA and establishing an independent, not-for-profit corporation governed by stakeholders and financed by user fees to manage the Nation's ATC system.

Similarly, a wide range of aviation stakeholder groups have called for governance and/or finance reform of the FAA's ATC operations. In May 2015, the Eno Center for Transportation's NextGen Working Group issued a report on options for ATC reform in the

<sup>40</sup> Robert W. Poole, *Why An Air Traffic Control Corporation Makes Sense*, Reason Foundation Policy Study No. 278, February 2001, p. 15, available at: <http://reason.org/files/c1a82c766aec1c5b8ee55404ca00fb30.pdf>; Chris Edwards, *Privatize the FAA!*, Cato Institute, April 24, 2013; and Dorothy Robyn, *Air Support: Creating a Safer and More Reliable Air Traffic Control System*, The Brookings Institution, July 2008, pp. 18–19, available at: <http://www.cato.org/publications/commentary/privatize-faa>.

<sup>41</sup> Robert W. Poole, *Organization and Innovation in Air Traffic Control*, Hudson Institute Initiative on Future Innovation, 2013, p. 5.

<sup>42</sup> *Id.*

<sup>43</sup> Statements by Robert Poole, the Reason Foundation; Doug Parker, President and CEO, American Airlines, on behalf of A4A; Dorothy Robyn; and David Grizzle, former COO of the FAA, before the Subcommittee on Aviation, House Transportation and Infrastructure Committee, "Options for FAA Air Traffic Control Reform", March 24, 2015, available at: <http://transport.house.gov/calendar/eventsingle.aspx?EventID=398745>.

<sup>44</sup> Statement of Dorothy Robyn, House Committee on Transportation and Infrastructure, Subcommittee on Aviation, "Options for FAA Air Traffic Control Reform", March 24, 2015, available at: <http://transport.house.gov/calendar/eventsingle.aspx?EventID=398745>.

United States.<sup>45</sup> The Eno report recommended that ATC services should be taken out of the direct control of the federal government and be provided by a more independent organization, be it a non-profit organization or a government corporation.<sup>46</sup> Under the Eno proposal, the entity would have a non-profit mandate, and all key stakeholders would be represented in a governing board.<sup>47</sup> The Eno report called for replacing the current funding of the ATC system, with direct payments to the ATC provider.<sup>48</sup>

On February 1, 2016, a bipartisan group of former federal officials sent a letter to the House Committee on Transportation and Infrastructure calling for “bipartisan support for transformational change” of the ATC system, specifically the establishment of a federally chartered, non-profit organization that would be governed and funded by the stakeholders and users of the aviation system.<sup>49</sup> The officials asserted that Congress should enact reforms now given the fact that ATC infrastructure and technology are falling behind the world’s ATC providers.<sup>50</sup>

At a May 17, 2017 Full Committee hearing, witnesses presented views in favor of separating ATC from the government and cited the FAA’s performance record in support of ATC reform. Dorothy Robyn, the former Clinton Administration official, cited the incongruity of housing a technology service business within a federal safety regulator.<sup>51</sup> Calvin Scovel III, the DOT IG, testified that targeted reforms of FAA programs and processes did not lead to the intended results.<sup>52</sup> Finally, Paul Rinaldi, President of the National Air Traffic Controllers Association, indicated that unstable funding of the current system had resulted in systemic problems such as staffing shortfalls.<sup>53</sup>

At a June 8, 2017 Full Committee hearing, Secretary of Transportation Elaine Chao provided testimony about the need for a nimble air traffic service provider. Secretary Chao cited the lack of flexibility within government and the problems caused by reliance upon federal appropriations and procurement as impediments to modernization. She also indicated that shifting ATC out of govern-

<sup>45</sup> Eno Center for Transportation NextGen Working Group, Final Report, May 2015, available at: <https://www.enotrans.org/wp-content/uploads/upsc/downloadables/NextGen-Final-Report-12am2.pdf>.

<sup>46</sup> *Id.* at 61.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Letter from former Senators Byron Dorgan (D–ND) and Trent Lott (R–MS); former Secretaries of Transportation James Burnley, Norman Mineta, and Mary Peters; former FAA Administrator Randy Babbitt; former FAA Chief Operating Officers Russell Chew, Hank Krakowski, and David Grizzle; and former White House National Economic Council Special Assistant Dorothy Robyn to Bill Shuster, Chairman, Committee on Transportation and Infrastructure (Feb. 1, 2016).

<sup>50</sup> *Id.*

<sup>51</sup> Statement of Dorothy Robyn, House Committee on Transportation and Infrastructure, “The Need to Reform FAA and Air Traffic Control to Build a 21st Century Aviation System for America”, May 17, 2017, available at: [https://transportation.house.gov/uploadedfiles/2017-05-17\\_-\\_robyn\\_testimony.pdf](https://transportation.house.gov/uploadedfiles/2017-05-17_-_robyn_testimony.pdf).

<sup>52</sup> Statement of Calvin Scovel III, House Committee on Transportation and Infrastructure, “The Need to Reform FAA and Air Traffic Control to Build a 21st Century Aviation System for America”, May 17, 2017, available at: [https://transportation.house.gov/uploadedfiles/2017-05-17\\_-\\_scovel\\_testimony.pdf](https://transportation.house.gov/uploadedfiles/2017-05-17_-_scovel_testimony.pdf).

<sup>53</sup> Statement of Paul Rinaldi, House Committee on Transportation and Infrastructure, “The Need to Reform FAA and Air Traffic Control to Build a 21st Century Aviation System for America”, May 17, 2017, available at: [https://transportation.house.gov/uploadedfiles/2017-05-17\\_-\\_rinaldi\\_testimony.pdf](https://transportation.house.gov/uploadedfiles/2017-05-17_-_rinaldi_testimony.pdf).



ment is necessary to realize the continued innovation and modernization required to ensure U.S. leadership.<sup>54</sup>

#### OVERVIEW OF FOREIGN AIR TRAFFIC CONTROL REFORM EFFORTS

Since 1987, more than 60 nations have shifted the responsibility for providing ATC services from the aviation safety regulator to an independent, self-financed ATC service provider.<sup>55</sup> While some of these service providers are government corporations, the ATC service providers of Canada (non-profit) and the United Kingdom (for profit) are private, and their respective governments regulate them, but do not run their day-to-day operations.<sup>56</sup>

The DOT IG conducted a study on the performance of four Air Navigation Service Providers (ANSPs).<sup>57</sup> According to the DOT IG, since these countries separated their respective ANSPs, there has been no evidence of any degradation in aviation safety levels.<sup>58</sup> Similarly, in a 2005 report that studied five independent, self-financed ATC service providers, the GAO found that the safety of ATC services “remained the same or improved”; the nongovernmental, self-financing ATC service providers had lowered their costs and “improved efficiency”; and all ATC service providers also invested in new technologies and equipment.<sup>59</sup>

In October 2014, the MITRE Corporation (MITRE) prepared a report at the request of the FAA on six international civil aviation authorities (CAAs).<sup>60</sup> The six countries shared the experience of separating the ANSP from the government.<sup>61</sup> In all cases, MITRE found that the separation of the ANSP from the CAA was reasonably successful.<sup>62</sup> While there were difficulties in the shift to an independent regulator of a corporatized ANSP, adjustments were made in response to the difficulties encountered.<sup>63</sup> The CAAs interviewed by MITRE were unanimous in stating that the separation of the ATC from the CAA was worth it.<sup>64</sup> The benefits outlined in the study included increased focus on safety by the regulator and

<sup>54</sup> Statement of Secretary Elaine Chao, House Committee on Transportation and Infrastructure, “Building a 21st Century Infrastructure for America: Federal Aviation Administration Authorization”, June 8, 2017, available at: [https://transportation.house.gov/uploadedfiles/2017-06-08\\_-\\_secretary\\_chao\\_testimony.pdf](https://transportation.house.gov/uploadedfiles/2017-06-08_-_secretary_chao_testimony.pdf).

<sup>55</sup> Robert W. Poole, Reason Foundation, Testimony before the Committee on Transportation and Infrastructure, House of Representatives, *Review of Air Traffic Control Reform Proposals*, February 10, 2016, p. 3.

<sup>56</sup> Robert W. Poole, Jr., *The Urgent Need to Reform the FAA's Air Traffic Control System*, Reason Foundation, March 2007, p. 12.

<sup>57</sup> Office of the Inspector General, U.S. Department of Transportation, *There Are Significant Differences Between FAA and Foreign Countries' Processes for Operating Air Navigation Systems*, AV-2015-084, September 2, 2015. The ANSPs studied by the DOT IG included: Canada, France, Germany, and the United Kingdom.

<sup>58</sup> *Id.* at 8.

<sup>59</sup> U.S. Government Accountability Office, *Air Traffic Control: Characteristics and Performance of Selected International Air Navigation Service Providers and Lessons Learned from Their Commercialization*, GAO-05-769, July 2005, p. 4. ANSPs studied included: Australia, Canada, Germany, New Zealand and the United Kingdom.

<sup>60</sup> Dan Brown, Tom Berry, Steve Welman and E.J. Spear, The MITRE Corporation, *CAA International Structures*, October 2014.

<sup>61</sup> Studied Canada, New Zealand, Australia, France, Germany, and the United Kingdom. The CAAs were selected because their level of technological sophistication is similar to the FAA's and because their countries share many common economic and political characteristics with the United States.

<sup>62</sup> *Id.* at 9.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

the ANSP, improved efficiency of the ANSP, reduction in total cost to users, and improved participation by aviation stakeholders.<sup>65</sup>

### **21st Century Aviation Innovation, Reform, and Reauthorization Act**

The 21st Century AIRR Act creates the American Air Navigation Services Corporation (Corporation), an independent, federally chartered, *not-for-profit* corporation to operate and modernize ATC services.

#### *Corporation and Governance*

The Corporation will be an independent entity completely outside the government and exempt from taxation as a not-for-profit corporation. The federal government will not be liable for any action or inaction of the Corporation and will not explicitly or implicitly guarantee any debt or obligation of the Corporation. The Corporation, which will have all the powers and authorities of any other private corporation, will be responsible for providing ATC services and necessary safety information to ATC service users to ensure the safe and efficient management of air traffic.

The Corporation will be governed by a Board of Directors. There will be 13 Directors, consisting of two appointed by the Secretary of Transportation (Secretary), two “at-large” Directors nominated by a two-thirds vote of the other Directors, the CEO, and eight Directors nominated by eight different aviation stakeholder panels, called Nomination Panels. With regard to the Nomination Panels, the Secretary, within 30 days of enactment, will identify stakeholder groups that will appoint representatives to the eight Nomination Panels. Each of the following eight aviation stakeholder communities will have a Nomination Panel: passenger air carriers, cargo air carriers, regional air carriers, general aviation (GA), business aviation, airports, air traffic controllers, and commercial pilots.

The Board of Directors will be populated through a two-step process by which the Nomination Panels will nominate Directors to the Board. Before the date of transfer, each nomination panel submits to the Secretary a list, chosen by consensus, of four qualified individuals nominated to be Directors. The Secretary is required, no later than 30 days after the last nomination list submission, to appoint two individuals to be Directors, and select the appropriate number of individuals to be Directors from each list submitted by the nomination panels. After the date of transfer, the lists of four qualified individuals nominated to be Directors is submitted to the Board of Directors for selection. The Secretary continues the appointment of two Directors as needed to fill vacant seats.

The Board’s composition will be:

- Two Directors appointed by the Secretary of Transportation;
- The Chief Executive Officer (CEO) of the Corporation;
- One Director nominated by the Passenger Air Carrier Nomination Panel;
- One Director nominated by the Cargo Air Carrier Nomination Panel;

<sup>65</sup>*Id.* at 9–10.

—One Director nominated by the Regional Air Carrier Nomination Panel;

—One Director nominated by the General Aviation Nomination Panel;

—One Director nominated by the Business Aviation Nomination Panel;

—One Director nominated by the Air Traffic Controller Nomination Panel;

—One Director nominated by the Airport Nomination Panel;

—One Director nominated by the Commercial Pilot Nomination Panel; and

—Two “at-large” Directors nominated and selected by the other Directors on the Board.

The terms of the first Directors will expire two years after the date of transfer. Following the date of transfer, Directors will serve staggered terms. A Director can serve after the expiration of the Director’s term until a successor has taken office. Directors are term-limited to eight years.

The fiduciary duties of the Directors will be to the Corporation, *not* to the stakeholder groups that nominated them or the Nomination Panels. If a Director breaches the fiduciary duty to the Corporation, the Director must be removed, and the Board may pursue legal action. There are also certain qualifications for individuals to serve as Directors. Directors must be American citizens and are subject to restrictions that prohibit individuals with possible conflicts of interest from serving on the Board. No employees of the Corporation (except the CEO), government officials or employees, employees of any bargaining agent representing employees of the Corporation, or employees of any entity with a material interest as a user or supplier of the Corporation services can serve as a Director.

A Director may be removed by the Board in accordance with the Corporation’s bylaws. The Board is responsible for hiring a CEO to manage and direct the day-to-day operations of the Corporation, a Chief Financial Officer, and a Chief Operating Officer. The CEO, who must be an American citizen, will also be responsible for all officers and employees of the Corporation, and will serve at the pleasure of the Board. Compensation, including bonuses and other financial incentives, for the Board and CEO will be set forth in the bylaws and included in the Corporation’s annual financial report. The Corporation is also required to establish a Compensation Committee.

The Board will be responsible for corporate governance of the Corporation, and has the sole authority to amend corporate bylaws, adopt annual budgets, approve strategic plans, approve the issuance of bonds, and to hire a CEO. The Board will be required to maintain a Safety Committee composed of Directors to ensure the Corporation will maintain and improve upon the current high level of safety in the ATC system. The Board will also establish a Technology Committee.

The Corporation will have an Advisory Board consisting of no more than 15 individuals representing interested persons, including: air carriers, GA, business aviation, commercial service airports; operators and manufacturers of commercial unmanned aircraft systems; appropriate labor organizations; the Department of

Defense (DOD); and small communities. The Advisory Board will conduct activities directed by the Board of Directors and may on its own initiative study, report, and make ATC services-related recommendations to the Board of Directors. The Advisory Board will also make recommendations to the Board on the selection of “at-large” Directors.

#### *Transition*

The Secretary will manage and oversee the transfer of ATC services to the Corporation to ensure that the transition receives the proper level of attention and to ensure that the FAA Administrator remains focused on the safe operation of the ATC services, near-term NextGen projects, and other important responsibilities. The transfer of operational control of ATC services, as well as all federal personnel, facilities, and activities needed to provide those services, will occur on October 1, 2020.

Between date of enactment and date of transfer, there will be formal processes for determining which activities and personnel will move to the Corporation or be retained at the FAA. These processes include a transition team made up of different representatives from the FAA and the Corporation, to recommend processes for how the transition will be carried out. Other more informal processes will be taking place as well to ensure that inward-facing FAA protocols for ATC services are either carried over to the Corporation or rewritten as outward-facing safety regulations. The processes and negotiations will involve the Corporation, the Secretary, the FAA, and appropriate labor organizations. To ensure Congress is kept well-informed on the transition, the DOT IG will submit quarterly reports on the progress of the transition.

#### *Safety oversight and regulation of the Corporation*

The Secretary will be responsible for the performance-based safety oversight of the Corporation. Prior to the date of transfer, the Secretary will prescribe performance-based regulations and minimum safety standards for the Corporation’s operation of ATC services. The regulations will include a safety management system (SMS) for the assessment and management of risk in all procedures, processes, and practices necessary to operate ATC services. Initially, this SMS will be based on the one currently used by the FAA, but specific safety review processes with the Secretary’s approval will allow the Corporation to modify the SMS as needed over time. The safety standards combined with the SMS will ensure that the Corporation continues and improves upon the safety the ATC system currently enjoys.

The Corporation will be required to maintain adequate levels of insurance and coverage to provide complete indemnification of the Corporation’s employees and protect the Corporation from financial harm. As part of the safety oversight of the Corporation, the Secretary will determine what constitutes adequate levels of insurance.

The Corporation, as an independent, not-for-profit, private corporation, *will not exercise any regulatory authority*, meaning the Secretary will be responsible for taking any regulatory action related to ATC services, including the reclassification of airspace or imposition of required equipage standards. The Corporation, as the

provider of ATC services, will be in a unique position of being able to analyze how airspace or an air route should be configured. As part of the transition, the Secretary will establish a process for the expeditious review of proposed changes to the airspace by the Corporation. To be clear, the Corporation will only be able to suggest changes to airspace classifications or other similar changes, and the Secretary will be solely responsible for exercising regulatory power to enact those changes. The National airspace will remain a federally regulated, sovereign domain of the United States. The Corporation will simply provide ATC services to the users of the National airspace.

### *Financing*

The Corporation will be funded entirely through charges and fees assessed and collected from air traffic services users. The charges and fees must be consistent with a set of statutory charging principles including the following:

- Charges and fees must be consistent with the International Civil Aviation Organization's (ICAO) Policies on Charges for Air Navigation Services, Ninth Edition, 2012;

- Charges for certain categories of users may be charged on a flat-fee basis;

- Charges and fees may not be discriminatory;

- Charges and fees may not be structured in a manner that incentivizes unsafe operations to avoid charges and fees;

- Access to airspace cannot be based on the level of charges a user pays or whether the user is subject to charges at all; and

- Charges and fees may not violate any international obligation of the United States.

- Charges and fees may not be imposed for air traffic services provided to public use aircraft under sections 40102(a) and 40125.

- Charges may not be imposed on GA aircraft operations under Parts 91, 135, 136, and 137 of Title 14, Code of Federal Regulations.

- Charges and fees must be based on reasonable and financially sound projections of what is needed to provide the current and projected provision of air traffic services.

To reiterate, charges may not be imposed on aircraft operations under Parts 91, 135, 136, and 137 of Title 14, Code of Federal Regulations. These operations include private aviation, air ambulance, air taxi, agricultural, air tours, and certain industrial flights. GA users will support the aviation system just as they always have, through fuel taxes that are controlled by Congress. Further, military and other public aircraft flights will also be exempt from the charges.

The Corporation's Board of Directors will be responsible for setting and approving the charges and fees for ATC services. The Secretary must approve initial charges and fees as well as any increases to the charges and fees following a public comment period. The Secretary must apply statutory criteria in reviewing such charges and fees proposals by the Corporation and the Secretary will also review any charge and fee assessments under dispute. Disputed decisions of the Secretary are subject to judicial review.

As an independent, not-for-profit Corporation, the Corporation will be able to issue revenue bonds and other debt instruments in the private markets, providing more stable and effective capital financing, however, the Corporation will not be permitted to issue or sell equity shares or stock in the Corporation.

#### *Employee Management*

Over 30,000 federal personnel will transfer from the FAA to the Corporation, including more than 14,000 air traffic controllers. A central tenant of the bill is that federal employees who transfer to the Corporation will be kept whole in terms of the benefits or compensation they received and were promised as federal employees. Transferred federal employees may retain their federal retirement and health insurance plans or opt for the benefit plans offered by the Corporation. For employees retaining their federal retirement and health insurance plans, the Corporation will pay any required deductions and employer contributions.

To ensure total system continuity, many aspects of existing federal labor-management relations will be preserved through partial application of the laws that currently apply to the FAA and its labor organizations. The rights of air traffic controllers and other employees to participate in labor organizations and to collectively bargain will also be preserved. The Corporation must recognize and bargain with the labor organizations selected by the employees and comply with the terms of collective-bargaining agreements (CBAs) and arbitration awards in effect on the date of transfer until such agreements and awards expire or are lawfully altered or amended. CBAs must be effective for no less than two years.

Because ATC services are so vital to the national economy, the Corporation's employees are prohibited from engaging in any strike or other organized disruption. Disputes arising from CBAs must be resolved through mediation. If mediation fails, the dispute will be resolved through binding arbitration. There is an absolute ban on striking.

#### *Continuity of Air Service and Access*

Preserving air service and airspace access for all users of the National Airspace System (NAS), especially general and business aviation users, is critical to ensuring the success of American aviation. No airspace user may be denied access to airspace or air traffic services on the basis that a user is exempt from paying charges or fees.

If the Corporation proposes an airspace or other change that materially reduces access to airspace or an airport, it triggers a multi-step review process by the Corporation and DOT to ensure that the reduction in access is mitigated, and the change is in the public interest. The process also includes the ability for users and communities to appeal the decision to the Secretary and the judicial system.

The bill also directs the Secretary to develop a process for the Secretary to review any proposals to close an air traffic control tower that prior to the date of transfer was operated under the FAA's Contract Tower Program. The process would apply when the proposed closure would result in an airspace change and at the request of the airport sponsor. There are other types of changes or

locations where changes may occur, that will merit special attention by the Secretary. For example, changes near major airports or specific national security or defense designations will have a longer review period than other airspace modification proposals.

#### BENEFITS OF ATC REFORM

ATC reform would separate air traffic services from the federal regulator (the FAA) by transferring it to a federally chartered, independent, not-for-profit Corporation. Under the 21st Century AIRR Act, ATC service would be provided by a not-for-profit entity, while oversight and all regulation of the airspace would continue to be provided by the FAA. ATC reform will result in real benefits to the flying public, taxpayers, and other users of the aviation system, including—

—*Reducing the size of the Federal government.* ATC reform will result in more than 30,000 Federal employees moving to the private sector, reducing the size of the FAA significantly. The Federal employees will be held harmless in their transition to the private sector. But, it is important to note that the very same air traffic controllers who are providing ATC services as federal employees on the day before transition will be back at work providing ATC services as employees of the new service provider on the day after transition. Continuity of air services will be maintained, but the federal bureaucracy will be greatly reduced.

—*Ensuring the travelling public is not charged twice for ATC facilities they have already paid for.* ATC reform transfers all ATC assets to the new entity without any charge. This is because the users of the airspace and the travelling public have largely funded ATC facilities and equipment through the Airport and Airway Trust Fund. The Trust Fund receives its revenue from taxes on passengers, air cargo, and aviation fuels, meaning the users of the airspace and the travelling public have largely funded the construction of the system. Requiring payment for any property transferred to the new service provider would result in double-charging the travelling public that already paid for the property in the first place. The new service provider should use its capital to invest in new and modern technologies rather than crumbling buildings and antiquated computers.

—*Resolving the inherent conflict of interest that exists when the regulator regulates itself.* With ATC reform, the FAA will continue to regulate and be able to focus on the safety of the U.S. aviation system and airspace. The new entity will provide and modernize ATC services, nothing more. Since 1987, over 60 nations have successfully separated their ATC service provider from their government safety regulator. Overwhelming evidence from U.S. government and other reports shows that separating ATC operations has led to better performance on safety, modernization, service quality, cost, and financial stability. In 2014, the FAA asked MITRE to investigate six international regulators to determine the impact on the regulator after the service provider had been spun off. MITRE concluded,

“The collective experience . . . is quite good.”<sup>66</sup> Additionally, MITRE found that “. . . in each case the safety record of the [service provider] was equal to, or better than, the record prior to the separation. . . .”<sup>67</sup> The regulators interviewed were “unanimous in stating that the separation of the [regulator] from air traffic service provision was worth it. Among the benefits they expressed were an increased focus on safety by the Regulator and the [service provider], improved efficiency of the [service provider], reduction in total cost to users, and improved participation by aviation stakeholders.”<sup>68</sup>

—*Lowering the cost of flight and protecting the taxpayer.* International experience has shown that the efficiencies gained through ATC reform result in lower costs for all system users. In Canada, inflation-adjusted ATC fees are now 45% lower than the aviation taxes they replaced.<sup>69</sup> The new service provider will not receive Federal appropriations nor will its debt be considered to be backed by the Federal government. ATC reform also incorporates best practices and lessons learned from countries around the world by requiring the service provider to maintain sufficient capital reserves to mitigate unanticipated downturns in air traffic.

—*Reinstating the United States as the world leader in ATC services.* The United States has the most expansive and safest airspace in the world and yet it is still operating a system that is based on antiquated technologies. ATC services in the United States are certainly not the most efficient. While other countries have separated their ATC service provider from their government regulator, the United States has lagged behind. Instead, the United States has kept its ATC service provider within a government bureaucracy that is vulnerable to political instabilities. Private ATC service providers, such as UK NATS in the United Kingdom or NavCanada in Canada, have already deployed technologies that the FAA is still working to develop. While the taxes that are used to fund the FAA’s air traffic organization have stayed the same over the years, NavCanada has lowered its user fees on the traveling public four times. Still, there are significant differences between the FAA and other ATC service providers. Other ATC service providers have deployed new technologies, increased the efficiency and safety of their systems, and reduced the cost to the traveling public.<sup>70</sup> The FAA, on the other hand, has had a series of modernization programs over the past three decades that have failed to deliver promised efficiencies while its budget has increased by 95% in roughly two decades.<sup>71</sup>

—*Removing ATC modernization from onerous and bureaucratic government procurement processes and dysfunctional budgetary cycles.* Since 2003, the FAA has been undergoing its modernization initiative known as “NextGen”. At its inception,

<sup>66</sup> CAA *International Structures*, MITRE Corporation, p. 7 (October 2014).

<sup>67</sup> *Id.* at 7.

<sup>68</sup> *Id.* at 9–10.

<sup>69</sup> *Canada’s Air Traffic Provider Announces Lowered Fees; U.S. Should Embrace Same Model*, Marc Scribner, Competitive Enterprise Institute, <https://cei.org/blog/canadas-air-traffic-provider-announces-lowered-fees-us-should-embrace-same-model>, (May 30, 2017).

<sup>70</sup> *Id.*

<sup>71</sup> Office of the Inspector General, U.S. Department of Transportation, *FAA Reforms Have Not Achieved Expected Cost, Efficiency and Modernization Outcomes*, AV–2016–15 (2016).



the modernization initiative was marketed as a way to fundamentally transform how air traffic would be managed. Both the National Research Council and the DOT IG have pointed out that instead of fundamentally changing how air traffic is managed, as initially promised, the FAA's NextGen effort has shifted to replacing and updating decades-old equipment and systems.<sup>72</sup> The GAO has documented instances where budget uncertainty has affected FAA's ability to perform its mission.<sup>73</sup> Additionally, there are questions regarding how the FAA manages NextGen programs. For instance, the DOT IG has expressed concerns with the FAA's practice of dividing its programs into multiple segments and funding each segment separately.<sup>74</sup> The DOT IG points out that while this may minimize risk, it ". . . masks how much a program will ultimately cost. . ." and ". . . makes it difficult to track what capabilities or benefits will be delivered, total cost of the program, and when the program will be complete."<sup>75</sup>

ATC reform will help expedite long-term ATC system modernization by freeing the new service provider from government dysfunction, political interference, and the growing unreliability of the annual appropriations process. The new service provider will be able to avoid the risks that accompany politically-driven Federal budget and authorization processes, including resource constraints, continuing resolutions, authorization extensions, sequestration, and government shutdowns. Free of the bureaucratic red tape of the FAA's procurement processes, the new service provider will be able to access the financial markets and leverage private funding for multi-year capital projects. This in turn will allow funding to transform ATC services and still perform continuous technology refreshments to keep the technology up-to-date and competitive with that of our global peers.

—*Offering real reform rather than targeted reforms that have already been tried and have failed:* Since 1995, Congress has passed procurement, personnel, and structural reforms granting the FAA unique authorities to allow it to run more like a business. The FAA has fundamentally failed to take advantage of these reforms and its performance has simply not improved. The DOT IG determined that the agency's total budget, operations budget, and compensation costs have nearly doubled, while productivity at its network of air traffic facilities has decreased substantially.<sup>76</sup> The DOT IG also found that FAA has

<sup>72</sup> *A Review of the Next Generation Air Transportation System: Implications and Importance of System Architecture*, p. 3, National Research Council, The National Academies Press (2015); and *Total Costs, Schedules, and Benefits of FAA's NextGen Transformational Programs Remain Uncertain*, Department of Transportation Office of the Inspector General, p. 17, AV-2017-009 (November 10, 2016).

<sup>73</sup> Government Accountability Office, *Aviation Finance: Observations on the Effects of Budget Uncertainty on FAA*, GAO-16-198R p.3 (November 19, 2015).

<sup>74</sup> *Total Costs, Schedules, and Benefits of FAA's NextGen Transformational Programs Remain Uncertain*, Department of Transportation Office of the Inspector General, pp.4-5, AV-2017-009 (November 10, 2016); see also, *FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes*, Department of Transportation Office of the Inspector General, AV-2016-015, p. 12 (January 15, 2016).

<sup>75</sup> *Id.*

<sup>76</sup> Statement of Calvin Seovel III, House Committee on Transportation and Infrastructure, "The Need to Reform FAA and Air Traffic Control to Build a 21st Century Aviation System for

not accelerated delivery of new technologies and has not reduced costs or schedule as anticipated with its transition to the acquisition management system. Giving the FAA greater budgetary and procurement flexibilities would require Congress to cede greater oversight and management of NextGen programs to the very Agency that has failed to deliver on NextGen promises and benefits in the first place.

—*Ensuring continuity of ATC services to GA.* H.R. 2997 ensures the new service provider’s entire mission will be to provide the safest, most efficient, and modern ATC services possible to all system users. GA is a vital segment of our aviation community, which is why the bill includes two GA seats on the Board of Directors of the new corporation to ensure parity in corporate governance. The new ATC service provider will be legally prohibited from charging user fees to any segment of GA. Instead, GA will support the aviation system as it always has: through fuel taxes. The new service provider will be prohibited from unilaterally restricting airspace or airport access in any way. GA operators will be guided through the National airspace operating under the same rules that apply today—with safety as the first priority. Any changes to ATC procedures must be in accordance with the law and approved by the FAA before they can be implemented. H.R. 2997 requires that if the new service provider proposes to alter the airspace in a way that *might* restrict access, it would be subject to strict governmental review and approval.

—*Ensuring national defense and continuity of ATC services to public aircraft, including DoD aircraft.* Under the 21st Century AIRR Act, sole responsibility for national defense, national intelligence, and the national airspace remains with the Federal government. The new entity will provide a service, nothing more. The Corporation will support all United States government flight activities currently supported by the FAA. Every day, in the U.S. and overseas DOD and other Government aircraft operate alongside civilian aircraft in the same airspace operated by the same air traffic controllers. Under H.R. 2997, none of this would change unless approved by the FAA with the input of DOD and other Federal government stakeholders. The DOD will continue to provide ATC services within U.S. airspace same as it does today. The Corporation, DOT, and other Federal agencies supported by FAA’s current operation of ATC services, including DOD, will reach agreements to ensure cooperation, facilitate the safe provision of ATC services, and address coordination and communication of day-to-day operations after the date of transfer. The emergency powers of the Armed Forces are preserved, as is the President’s authority to temporarily transfer ATC services to the Secretary of Defense in times of war. The DOD will have a seat on the Advisory Board of the Corporation. Lastly, DOD and other government agencies are exempt from paying users fees or charges for ATC services.

## STRUCTURE AND AUTHORITY OF THE PRIVATE ATC SERVICE PROVIDER

In separating and transferring the provision of ATC services from the federal government, the bill respects the bounds of the Constitution by structuring the new ATC service provider as an independent, private entity and clearly delineating the commercial activities of the new service provider from the governmental functions that remain with the FAA and DOT. From a historical perspective, ATC began as a not-for-profit business in the 1920s that was financed through private means. In the 1930s, the ATC service provider was taken over by the federal government. Since that time, the federal government has operated ATC services and simultaneously regulated its own operation of those services.

H.R. 2997 divests the ATC service business from the government and returns it to the private sector, as a not-for-profit private corporation, called the American Air Navigation Services Corporation.<sup>77</sup> The Corporation is exclusively authorized to operate ATC services within United States airspace and international airspace delegated to the United States.<sup>78</sup> The airspace itself remains a federally regulated, sovereign domain of the United States just as it is today. The bill essentially licenses the Corporation to provide such services subject to federal economic and safety regulation. Among other things, the Corporation is prohibited from discriminating in the provision of its services and may not deny a user its services without the approval of the Secretary, much akin to common carriers in the transportation sector.<sup>79</sup>

From a Constitutional perspective, the bill ensures the Corporation will exist as a private commercial service provider subject to arms-length federal regulation and oversight in line with other sectors of aviation and aerospace industries. This structure is achieved by the precise construction of the Corporation and its authorized activities. This is evident in the Corporation's structure, ownership, oversight by the government, goals, management, and funding, all of which were crafted to ensure its private status.<sup>80</sup>

The Corporation is established as an independent not-for-profit business that will be incorporated in a State of its choosing.<sup>81</sup> It is not a department, agency, or instrumentality of the federal government, nor is it owned by the government.<sup>82</sup> It would perform no governmental functions whatsoever. As such, the Corporation is governed by a Board of Directors made up of 13 disinterested, independent directors, none of which are appointed by the President

<sup>77</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90301).

<sup>78</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90302).

<sup>79</sup> See, e.g., 49 U.S.C. 11101 (establishing the common carrier requirement for rail carriers that they provide service upon request); 49 U.S.C. 14101 (establishing the common carrier requirement for water carriers that they provide service upon request); 49 U.S.C. 15701 (establishing the common carrier requirement for certain pipeline carriers that they provide service upon request).

<sup>80</sup> See *Dept. of Transp. v. Ass'n of Am. R.R.*, 135 S. Ct. 1225, 1231–32 (2015) (*Dept. of Transp.*) (setting forth the factors the Court considered to determine whether a statutorily created entity was governmental or private in nature).

<sup>81</sup> Compare H.R. 2997 section 211 (adding 49 U.S.C. 90304) (establishing the Corporation as a not-for-profit corporation) with *Ass'n of Am. R.R. v. Dept. of Transp.*, 821 F.3d 19, 27 (D.C. Cir. 2016) (*Ass'n of Am. R.R.*) (noting that Amtrak was “operated ‘as a for-profit corporation’ charged with “undertak[ing] initiatives . . . designed to maximize its revenues.” when determining whether “an economically self-interested entity [was] exercis[ing] regulatory authority over its rivals” in violation of the Constitution).

<sup>82</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90304). Further, as a private entity, the Corporation is prohibited from negotiating on behalf of the government before any international organization. See H.R. 2997 section 211 (adding 49 U.S.C. 90503).

and confirmed by the Senate.<sup>83</sup> Of the 13 Board Members, nine are nominated by panels of stakeholders, two are selected by the Secretary of Transportation, and two selected at-large by the other Board members. All directors hold a fiduciary duty solely and exclusively to the Corporation, and are subject to removal from the Board for violating that duty. This structure will ensure the Board members, regardless of how or by whom they are selected, act in the interest of the Corporation. To further ensure its independence, the Corporation is also prohibited from issuing stock, so it will be neither owned nor controlled by the government or any other private entity.<sup>84</sup> The Corporation therefore will not be governed or owned by any of the stakeholders, nor the government, but will be independent and privately managed as a not-for-profit corporation.<sup>85</sup>

The Corporation is also free from the government's management of its day-to-day activities, and is free to operate and manage ATC services within the United States' airspace subject to federal regulation.<sup>86</sup> In that regard, the Corporation will be no different than any other regulated company in the aviation and aerospace industry. For example the Secretary will prescribe performance-based regulations, similar to those applicable to other transportation companies, to govern safety and airspace management procedures.<sup>87</sup> Further, the Corporation is required to report to the Secretary and Congress on safety performance and its financial conditions,<sup>88</sup> however, such federal reporting requirements are commonplace among regulated industries.<sup>89</sup> Finally, the Corporation will have no financial ties to the government, its debt will not be backed by the government and it will be precluded from receiving federal funding from the Airport and Airway Trust Fund, which is the primary source of funding for the FAA's current operation of ATC services

<sup>83</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90306). In *Dept. of Transp.*, the Supreme Court, in finding Amtrak to be governmental in nature, looked at its Board composition, citing that eight of the nine members were appointed by the President and confirmed by the Senate. *Dept. of Transp.*, 135 S. Ct. at 1231.

<sup>84</sup> Compare H.R. 2997 section 211 (adding 49 U.S.C. 90312 (prohibiting the Corporation from issuing equity shares)), with *Dept. of Transp.*, 135 S. Ct. at 1231 (explaining all preferred stock of Amtrak and a majority of its common stock was owned by the government).

<sup>85</sup> Compare H.R. 2997 section 211 (adding 49 U.S.C. 90304), with *Dept. of Transp.* 135 S. Ct. at 1231-32 (focusing on the ownership of Amtrak by the government, Amtrak's structure, and the government's role in appointing 8 of its 9 Directors in determining Amtrak was governmental).

<sup>86</sup> Compare H.R. 2997 section 211 (adding 49 U.S.C. 90302), with *Dept. of Transp.* 135 S. Ct. at 1232 (in determining Amtrak to be governmental, the Court focused on the significant government involvement in Amtrak's operations, including requiring certain routes, applying the Freedom of Information Act to Amtrak, requiring certain considerations when making improvements to the Northeast Corridor, and applying Buy American requirements to Amtrak purchases of \$1 million or more).

<sup>87</sup> See, generally, 49 U.S.C. Chapter 447 (establishing the federal government's regulation of aviation safety); 49 U.S.C. Subtitle VII, Part A, Subpart ii (establishing the federal government's economic regulation of air transportation); 49 U.S.C. Subtitle V, Part A (establishing the federal role in the safety regulation of rail carriers); 49 U.S.C. Chapter 601 (establishing the federal government's authority to regulate the safety of pipeline transportation and pipeline facilities); 49 U.S.C. Chapter 51 (establishing the federal government's authority to regulate the safe transportation of hazardous materials).

<sup>88</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90501 (safety regulation of the new Corporation); 90505 (requiring safety violations be reported to the Secretary); 91502-91505 (requiring certain plans be submitted to the Secretary)).

<sup>89</sup> See 49 U.S.C. 41708 (authorizing the Secretary of Transportation to require certain reports from air carriers); 49 U.S.C. 11145 (requiring annual reports of rail carriers, lessors, and associations to be filed with the Surface Transportation Board); 49 U.S.C. 11162 (requiring each rail carrier to have a cost accounting system that complies with Board rules); 49 U.S.C. 11163 (establishing uniform expense and revenue accounting and reporting for rail carriers).

and its safety oversight programs.<sup>90</sup> Instead, like other private service providers, the Corporation will raise revenue through charging fees for its services.<sup>91</sup> It will also be free to issue bonds, repaid by its fees for services.<sup>92</sup> This structure will provide the Corporation with the commercial freedom necessary to reliably operate and maintain a technology business untethered from the politically driven, and uncertain, government budgetary processes.

While created by the government, the Corporation would neither be controlled by the government, nor operated for the government's benefit.<sup>93</sup> The Corporation is established as an "autonomous private enterprise".<sup>94</sup>

As a private entity, the H.R. 2997 ensures a clear delineation of the Corporation's activities vis-a-vis the federal government. Currently, the government is acting as both the technology service-provider and the safety regulator—regulating itself. The bill carefully separates the ATC business operations of the FAA, which are fundamentally commercial in nature, from the government regulator. Thus, all "significant" or regulatory authority of the federal government remains solely with the DOT and FAA, while only those activities related to the provision of ATC service are removed from the federal government.

The Corporation is authorized to manage and operate air traffic services within the federally regulated, sovereign domain of United States airspace and international airspace assigned to the United States.<sup>95</sup> The federal government would continue in its traditional, longstanding role of aviation safety regulator. It would establish and approve performance-based regulations and minimum safety standards for the provision of air traffic services, operation of air navigation facilities, and the enforcement of safety requirements.<sup>96</sup> To the extent ATC service is currently legally necessary, that is because the obligation arises from congressionally authorized FAA regulations; it would not and cannot arise from any authority or power of the Corporation.<sup>97</sup> That constitutional reality is acknowledged and honored in this bill. Under HR 2997, while the Corporation, like any other private entity or individual, may propose changes to airspace management or related regulations, it cannot regulate when and where ATC service must be used.<sup>98</sup> Indeed, there are certain flight operations for which the Secretary has determined no ATC service is required at all. But, like other common-carriers granted license by the government to operate, the Corpora-

<sup>90</sup> Compare H.R. 2997 section 211 (adding 49 U.S.C. 90304 (prohibiting the government from being liable for the actions of the Corporation, prohibiting the government from being liable for the debt of the Corporation)) and section 244 (prohibiting the Corporation from receiving federal funds from the Airport and Airway Trust Fund), with *Dept. of Transp.*, 135 S. Ct. at 1232 (explaining Amtrak is "dependent on federal financial support" receiving over \$41 billion in federal subsidies over its then-43 year history, with "recent years [] subsidies exceed[ing] \$1 billion annually").

<sup>91</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90313).

<sup>92</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90308).

<sup>93</sup> *Dept. of Transp.*, 135 S. Ct. at 1232 ("Amtrak was created by the Government, is controlled by the Government, and operates for the Government's benefit.")

<sup>94</sup> *Id.* (stating "Amtrak is not an autonomous private enterprise").

<sup>95</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90302).

<sup>96</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90501 (continuing the Secretary's authority to establish airspace safety management and procedures); 90505 (clarifying that enforcement authority of noncompliance with air traffic procedures remains with the FAA)).

<sup>97</sup> See 14 C.F.R. 91.130.

<sup>98</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90501 (requiring the Secretary to prescribe and change the performance-based regulations and requiring the Corporation to following the safety regulations)).

tion must provide ATC services and may not deny them without governmental approval or authority to do so.<sup>99</sup>

Also, like other private entities, the Corporation is allowed to establish fees and charges, including late charges, for its services.<sup>100</sup> However, this commercial discretion to set a price for service is subject to economic regulatory processes and approvals. Under H.R. 2997, the Board has a duty to establish its own fees and charges, including late fees, penalties, and interest, for the services the Corporation provides.<sup>101</sup> Regardless of whether there are changes to increase or decrease fees and charges, the Board must approve all fees and charges taking into account certain standards, such as complying with international standards and obligations, complying with statutory fee principles, non-discrimination, not reducing air-space access, and not reducing safety.<sup>102</sup>

For the initial schedule of fees and charges, which would include any proposed late fees, penalties, and interest, the Corporation must propose the schedule 180 days before the date of transfer to the Secretary.<sup>103</sup> Then, the Secretary must review the schedule to ensure it complies with the standards of review and, if so, approve it, before the schedule takes effect.<sup>104</sup> For any subsequent increase in fees and charges, the Secretary must also review and approve the schedule to determine if it complies with the standards outlined in statute. Furthermore, any fee or charge assessed by the Corporation may be challenged by the ATC service user through a

<sup>99</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90501–90502).

<sup>100</sup> Compare H.R. 2997 section 211 (adding 49 U.S.C. 90308 and 90313 (requiring the Corporation to establish fees and charges for its services)), with 49 U.S.C. 10702 (requiring a rail carrier to establish rates for services).

<sup>101</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90308 and 90313). It is important to note that the Corporation may only set fees and charges for its own services, not fees and charges for the services or products of other private entities. See *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 398–99 (1940) (analyzing a private entity that proposed coal prices for the industry); *Carter v. Carter Coal*, 298 U.S. 238, 310–311 (evaluating a delegation to a majority of coal producers of the power to fix the hours and wages for all producers in the entire coal industry); *Pittston Co. v. United States*, 368 F.3d 385, 395–96 (4th Cir. 2004) (analyzing a private entity that was created to collect industry-wide assessments and premiums for benefits, and to manage the amount of benefits and who received the benefits for the industry).

<sup>102</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90313). Section 90308 in conjunction with 90313(d) applies principles and standards for the Board's establishment of fees and charges. Those standards include the following:

“(1) The amount or type of charges and fees paid by an air traffic services user may not—  
 “(A) be determinant of the air traffic services provided to the user; or  
 “(B) adversely impact the ability of the user to use or access any part of the national air-space system.

“(2) Charges and fees shall be consistent with the document titled ‘ICAO’s Policies on Charges for Airports and Air Navigation Services’, Ninth Edition, 2012.

“(3) Charges and fees may not be discriminatory.

“(4) Charges and fees shall be consistent with United States international obligations.

“(5) Certain categories of air traffic services users may be charged on a flat fee basis so long as the charge or fee is otherwise consistent with this subsection.

“(6) Charges and fees may not be imposed for air traffic services provided with respect to operations of aircraft that qualify as public aircraft under sections 40102(a) and 40125.

“(7) Charges and fees may not be imposed for air traffic services provided with respect to aircraft operations conducted pursuant to part 91, 133, 135, 136, or 137 of title 14, Code of Federal Regulations.

“(8) Charges and fees may not be structured such that air traffic services users have incentives to operate in ways that diminish safety to avoid the charges and fees.

“(9) Charges and fees, based on reasonable and financially sound projections, may not generate revenues exceeding the Corporation’s current and anticipated financial requirements in relation to the provision of air traffic services.”

Even where private entities are granted certain authority in statute, such power is permissible if the statute “gives detailed guidance” on how to carry-out those responsibilities. *Pittston*, 368 F.3d at 397. See also *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 539–42 (1935) (holding that the delegation of authority to draw up binding codes of competition violated the nondelegation doctrine because the statute lacked adequate standards to develop the codes).

<sup>103</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90313).

<sup>104</sup> See *Id.*

complaint process established by the Secretary.<sup>105</sup> The Secretary retains the authority to issue a final decision, however, it must be within 90 days of receiving the complaint.<sup>106</sup> While many common carriers are free to establish their own fees for service, many still are subject to economic regulatory challenge by their customers, similar to the Corporation under the bill.

The Corporation, like other private businesses, may seek redress in the courts for non-payment of fees and charges.<sup>107</sup> This mechanism to collect delinquent payments is an exercise of a limited private right of action necessary to protect the economic interests of the Corporation; it is not the enforcement of a law of general applicability on behalf of the public or the United States.<sup>108</sup> This distinction is important. The Corporation requires the same rights as other private commercial service providers, especially a common carrier, in the private sector. And, like any private person, the Corporation must be able to protect its own interests through the civil justice system. Such an exercise or invocation of a statutory, limited private right of action to protect an economic interest is not an exercise of sovereign governmental powers.

Regardless of whether a user pays fees owed or not, the Corporation cannot deny service to any user for failure to pay fees or charges without the approval of the Secretary.<sup>109</sup> Similar to other common carriers, the Corporation cannot deny any user of ATC services airspace access without governmental approval.<sup>110</sup>

The structures and mechanisms set forth in H.R. 2997 and outlined above recognize both the unique nature of the air traffic services the private Corporation will provide and the federal government's exclusive regulatory control over aviation, including ATC, and the sovereign domain of the National airspace. H.R. 2997 ensures a clear separation between the Corporation, a private entity, and the government with its ongoing and exclusive role as a regulator, and as such respects the bounds of the Constitution.

#### HEARINGS AND ROUNDTABLES

The Committee on Transportation and Infrastructure and its Subcommittee on Aviation, held the following hearings on subjects related to matters addressed in H.R. 2997, as amended, during the 115th Congress:

On June 8, 2017, the Committee on Transportation and Infrastructure held a hearing entitled *Building a 21st Century Infrastructure for America: Federal Aviation Administration Authorization*. The purpose of this hearing was to hear testimony from the Secretary of Transportation Elaine Chao on

<sup>105</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90502).

<sup>106</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90502 (requiring the Secretary to issue the final decision in a fee complaint)).

<sup>107</sup> Compare H.R. 2997 section 211 (adding 49 U.S.C. 90313 (allowing the Corporation to sue to enforce failure to pay fees)), with 49 U.S.C. 10743 (requiring shippers in the railroad industry to pay the rail carrier's rates, and allowing a rail carrier to bring an action to enforce payment of such rates) and 49 U.S.C. 11704 (granting a person injured by a rail carrier's failure to obey an order of the Surface Transportation Board the right to enforce orders of the Board in United States District Courts).

<sup>108</sup> See *Pittston*, 368 F.3d at 396–397 (noting the private entity had the “power to sue for monies owed to itself, which is not a governmental power, but a private one” and holding that such powers “clearly do not violate the nondelegation doctrine”).

<sup>109</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90502).

<sup>110</sup> See H.R. 2997 section 211 (adding 49 U.S.C. 90501–90502).

issues related to the FAA, the programs it administers, and FAA authorization and reform.

On May 17, 2017, the Committee on Transportation and Infrastructure held a hearing entitled *The Need to Reform FAA and Air Traffic Control to Build a 21st Century Aviation System for America*. The purpose of this hearing was to discuss the need for fundamental reform of the ATC system and to receive testimony from the DOT IG, the president of the National Air Traffic Controllers Association, a former Clinton and Obama administration official, the Director of Transportation Policy of the Reason Foundation, and the president of Hartzell Propeller.

On May 2, 2017, the Committee on Transportation and Infrastructure held a hearing entitled *Oversight of U.S. Airline Customer Service*. The purpose of this hearing was to hear testimony from major airlines and a consumer group concerning the state of customer services issues within the U.S. aviation system. The Committee received testimony from representatives of United Airlines, Southwest Airlines, American Airlines, Alaska Airlines, and an aviation consultant from Consumers Union.

On April 4, 2017, the Subcommittee on Aviation held a hearing entitled *Building a 21st Century Infrastructure for America: Enabling Innovation in the National Airspace*. The purpose of this hearing was to hear about new aviation and aerospace technologies, users, and business models, and to learn about the role of innovation in building a 21st century aviation transportation system. This hearing addressed any potential challenges operators may face when integrating new technology into the National airspace. The Subcommittee received testimony from representatives of the FAA, Amazon Prime Air, FlyGLO, AirMap, Virgin Galactic, and VDOS Global.

On March 8, 2017, the Subcommittee on Aviation held a hearing entitled *Building a 21st Century Infrastructure for America: Air Transportation in the United States in the 21st Century*. The purpose of this hearing was to hear about the current state of the U.S. air transportation industry from a variety of perspectives. The Subcommittee received testimony from representatives of Alaska Air Group, Inc., SkyWest, Inc., Air Transport Services Group, Association of Flight Attendants-CWA, and Travelers United.

On March 1, 2017, the Subcommittee on Aviation held a hearing entitled *Building a 21st Century Infrastructure for America: State of American Airports*. The purpose of this hearing was to hear about the current state of commercial service and general aviation airports across the Nation and discuss the challenges and opportunities associated with building a globally competitive 21st century aviation infrastructure. The Subcommittee received testimony from representatives of diversely sized airports, including Dallas/Fort Worth International Airport, Seattle-Tacoma International Airport, Pittsburgh International Airport, Asheville Regional Airport, and the Ventura County Department of Airports.

On February 15, 2017, the Subcommittee on Aviation held a hearing entitled *Building a 21st Century Infrastructure for*



*America: State of American Aviation Manufacturing.* The purpose of this hearing was to hear about the current state of civil aviation manufacturing, including the economic, regulatory, and general health of American civil aviation manufacturing. The Subcommittee also heard about the challenges being faced in the industry. The Subcommittee received testimony from representatives of the FAA, Boeing Company, Pratt and Whitney, and Textron Aviation.

On February 1, 2017, the Committee on Transportation and Infrastructure held a hearing entitled *Building a 21st Century Infrastructure for America*. The purpose of this hearing was to hear about challenges facing our Nation's current transportation infrastructure and a vision for a modern 21st century transportation infrastructure. The Committee received testimony from representatives of FedEx Corporation, Cargill, BMW North America, Vermeer Corporation, and the AFL-CIO.

The Committee on Transportation and Infrastructure and its Subcommittee on Aviation, held the following hearings and roundtables on subjects related to matters addressed in H.R. 2997, as amended, during the 114th Congress:

On February 10, 2016, the Committee on Transportation and Infrastructure held a hearing entitled *Review of ATC Reform Proposals*. The purpose of this hearing was to examine proposals to reform the ATC operations of the FAA.

On June 22, 2016, the Subcommittee on Aviation held a hearing entitled *FAA Oversight of Commercial Space Transportation*. The purpose of this hearing was to explore issues related to the FAA's oversight of the commercial space transportation industry.

On June 15, 2016, the Subcommittee on Aviation held a hearing entitled *A Review of the Federal Aviation Administration's Air Traffic Controller Hiring, Staffing and Training Plans*. The purpose of this hearing was to review the FAA's air traffic controller hiring, staffing, and training plans.

On December 8, 2015, the Subcommittee on Aviation held a roundtable entitled *Review of Federal Aviation Administration Air Traffic Controller Staffing*. The purpose of this roundtable was to examine concerns with staffing levels at major ATC facilities and discuss if the FAA's current training and hiring processes are adequate.

On May 21, 2015, the Subcommittee on Aviation held a roundtable entitled *FAA Reauthorization: Airport Financing and Development*. The purpose of this roundtable was to discuss issues related to airport financing and development.

On April 30, 2015, the Subcommittee on Aviation held a roundtable entitled *Ensuring the Safety of Our Nation's Aviation System*. The purpose of this roundtable was to discuss aviation safety issues and policies as the Committee on Transportation and Infrastructure works toward the reauthorization of the FAA.

On March 24, 2015, the Subcommittee on Aviation held a roundtable entitled *Options for FAA Air Traffic Control Reform*. The purpose of this hearing was to discuss options for reforming ATC operations at the FAA.

On March 3, 2015, the Subcommittee on Aviation held a roundtable entitled *Federal Aviation Administration Reauthorization: Enabling a 21st Century Aviation*. The purpose of the hearing was to receive testimony on issues related to the FAA and federal aviation programs with a view toward reauthorizing the programs before they expire on September 30, 2015.

On February 25, 2015, the Subcommittee on Aviation held a roundtable entitled *Issues Regarding Modernizing and Operating the Nation's Airspace System* held on February 25, 2015. The purpose of this roundtable was to discuss issues related to the FAA's modernization and operation of the Nation's airspace system.

On January 21, 2015, the Committee on Transportation and Infrastructure held a hearing entitled *FAA Reauthorization: Reforming and Streamlining the FAA's Regulatory Certification Processes*. The purpose of this hearing was to prepare for the FAA reauthorization, to hear witnesses' testimony on FAA's certification processes, to examine progress the FAA has made to streamline the processes since the last reauthorization, and to determine areas in need of additional reform.

The Committee on Transportation and Infrastructure and its Subcommittee on Aviation, held the following hearings on subjects related to matters addressed in H.R. 2997, as amended, during the 113th Congress:

On July 23, 2014, the Subcommittee on Aviation held a hearing entitled *Domestic Aviation Manufacturing: Challenges and Opportunities*. The purpose of this hearing was to review the state of American aviation manufacturing. The Subcommittee heard about the economic health of American aviation manufacturing and challenges the industry is facing.

On June 18, 2014, the Subcommittee on Aviation held a hearing entitled *Airport Finance and Development*. The hearing explored the current and future needs of aviation infrastructure and how we can fund these growing needs. Airports and airlines are at odds on increasing or lifting the passenger facility charge (PFC), so this hearing provided an opportunity to hear various stakeholders' perspectives as the Committee prepared for the next reauthorization bill.

On February 5, 2014, the Subcommittee on Aviation held a hearing entitled *The FAA Modernization and Reform Act of 2012: Two Years Later*. After nearly two years since the FAA Modernization and Reform Act of 2012 (FMRA) was signed into Public Law, the Subcommittee heard from witnesses regarding the progress the FAA had made in implementing provisions in the FMRA over the two year period.

On December 12, 2013, the Subcommittee on Aviation held a hearing entitled *The State of American Aviation*. The purpose of this hearing was to hear from government, industry, and other stakeholders on the state of American aviation and learn about any issues or policy areas they believe need to be addressed in the next FAA reauthorization.

On October 30, 2013, the Subcommittee on Aviation held a hearing entitled *Review of the FAA's Certification Process: Ensuring an Efficient, Effective, and Safe Process*. The purpose of the hearing was to review the FAA's progress in implementing

provisions in the Reform Act, which required the agency to develop plans to streamline their certification process and address regional inconsistencies.

On July 17, 2013, the Subcommittee on Aviation held a hearing entitled *Causes of Delays to the FAA's NextGen Program*. The purpose of the hearing was to address the delays in the FAA's implementation of NextGen as outlined in an audit conducted by the DOT IG.

On May 16, 2013, the Subcommittee on Aviation held a hearing entitled *Review of the FAA's Progress in Implementing the FAA Modernization and Reform Act*. The hearing was a continuation of the February 2013 hearing addressing the FAA's progress in implementing the FMRA.

On February 27, 2013, the Subcommittee on Aviation held a hearing entitled *Implementation of the FAA Reauthorization and Reform Act: One Year Later*. The purpose of the hearing was to address the progress that the FAA had made in the implementation of the FMRA.

#### LEGISLATIVE HISTORY AND CONSIDERATION

On June 22, 2017, House Committee on Transportation and Infrastructure Chairman Bill Shuster (R-PA), Subcommittee on Aviation Chairman Frank A. LoBiondo (R-NJ), Subcommittee on Highways and Transit Chairman Sam Graves (R-MO), Subcommittee on Aviation Vice Chairman Paul Mitchell (R-MI), Representative Colleen Hanabusa (D-HI), and Representative Kyrsten Sinema (D-AZ) introduced H.R. 2997, the 21st Century AIRR Act. On June 27, 2017, the Committee on Transportation and Infrastructure met in open session and ordered the bill reported, as amended, favorably to the House by a recorded vote of 32 to 25 with a quorum present.

During consideration of the bill, the Committee dispensed with amendments as follows:

*The following amendments were approved by voice vote:*

An amendment offered by Representative Barletta designated 015;

An amendment offered by Representative Davis designated 026;

An amendment offered by Representative Mitchell designated 014;

An amendment offered by Representative Comstock designated 018;

An amendment offered by Representative Garamendi designated 019;

An amendment offered by Representative Carson designated 013;

Amendments considered en bloc and consisting of:

An amendment by Representative Brownley designated 020;

An amendment by Representative Bustos designated 020; Amendments by Representative Huffman designated 055 and 057;

An amendment by Representative Johnson of Georgia designated 033;

An amendment by Representative Lawrence designated 024;

An amendment by Representative Lowenthal designated 019;  
 An amendment by Delegate Norton designated 034;  
 An amendment by Representative Payne designated 020;  
 An amendment by Representative Barletta designated 016;  
 An amendment by Representative Comstock designated 017;  
 An amendment by Representative Rodney Davis of Illinois designated 025;  
 An amendment by Representative Lewis designated 009;  
 An amendment by Representative Woodall designated 003;  
 An amendment by Representative Sanford designated 032;  
 An amendment by Representative Larsen designated 023;  
 An amendment by Representative Young designated 070;  
 An amendment by Representative Mast designated 017;  
 An amendment by Representative Rokita designated 023;  
 An amendment by Representative LoBiondo designated 020;  
 An amendment by Representative Bustos designated 021; and An amendment by Representative Brownley designated 019;  
 An amendment offered by Representative Perry designated 050;  
 An amendment offered by Delegate Norton designated 033;  
 An amendment offered by Representative Lipinski designated 027;  
 Amendments considered en bloc and consisting of:  
 An amendment by Representative Lipinski designated 043;  
 An amendment by Representative Bost designated 001, as modified;  
 An amendment by Representative Rouzer designated as 001;  
 An amendment by Representative Lipinski designated 034;  
 An amendment by Representative Barletta designated 017;  
 An amendment by Representative Garamendi designated 026;  
 An amendment by Representative Cohen designated 045;  
 An amendment by Representative Nolan designated 037, as modified;  
 An amendment by Representative Nolan designated 041, as modified;  
 An amendment by Representative Wilson designated 027, as modified; and An amendment by Representative DeSaulnier designated 023, as modified.

*The following amendment was defeated by voice vote:*

An amendment offered by Representative Cohen designated 043;

*The following amendments were approved by recorded vote:*

An amendment offered by Delegate Norton designated 033;

An amendment offered by Representative Lipinski designated 027;

*The following amendments were defeated by recorded vote:*

An amendment offered by Representative DeFazio designated 045;

An amendment offered by Delegate Norton designated 031;

An amendment offered by Representative Perry designated 051;

An amendment offered by Representative Nadler designated 022;

An amendment offered by Representative Eddie Bernice Johnson of Texas designated 016;

An amendment offered by Representative Larsen designated 021;

An amendment offered by Representative Lipinski designated 041;

An amendment offered by Representative Nolan designated 042;

An amendment offered by Representative Titus designated 013;

An amendment offered by Representative Huffman designated 056;

An amendment offered by Representative DeFazio designated 053;

An amendment offered by Representative Lipinski designated 039;

An amendment offered by Representative Lowenthal designated 018;

An amendment offered by Representative Titus designated 011;

An amendment offered by Representative DeFazio designated 051; and

An amendment offered by Representative Titus designated 012.

*The following amendments were offered and withdrawn:*

An amendment offered by Representative Rokita designated 020;

An amendment offered by Representative Rokita designated 021;

An amendment offered by Representative Rokita designated 022;

An amendment offered by Representative Rokita designated 024;

An amendment offered by Representative Capuano designated 029;

An amendment offered by Representative Lewis designated 010;

An amendment offered by Representative Johnson of Georgia designated 034;

An amendment offered by Representative Lowenthal designated 017;

An amendment offered by Representative Eddie Bernice Johnson of Texas designated 013;  
 An amendment offered by Representative Johnson of Georgia designated 035;  
 An amendment offered by Representative Johnson of Texas designated 015;  
 An amendment offered by Representative Cohen designated 042;  
 An amendment offered by Representative Garamendi designated 021;  
 An amendment offered by Representative Lipinski designated 038;  
 An amendment offered by Representative Nolan designated 044;  
 An amendment offered by Representative Lipinski designated 042;  
 An amendment offered by Representative Lipinski designated 044;  
 An amendment offered by Representative Lipinski designated 037;  
 An amendment offered by Representative Maloney designated 029;  
 An amendment offered by Representative Graves designated 015; and An amendment offered by Representative Sanford 28 designated 028.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires each committee report to include the total number of votes cast for and against on each record vote on a motion to report and on any amendment offered to the measure or matter, and the names of those members voting for and against. During Committee consideration of H.R. 2997, record votes were taken on the following amendments and final passage:

An amendment offered by Representative DeFazio designated 045;  
 An amendment offered by Delegate Norton designated 031;  
 An amendment offered by Representative Perry designated 051;  
 An amendment offered by Representative Nadler designated 022;  
 An amendment offered by Representative Eddie Bernice Johnson of Texas designated 016;  
 An amendment offered by Representative Larsen designated 021;  
 An amendment offered by Representative Lipinski designated 041;  
 An amendment offered by Representative Nolan designated 042;  
 An amendment offered by Representative Titus designated 013;  
 An amendment offered by Representative Huffman designated 056;  
 An amendment offered by Representative DeFazio designated 053;

An amendment offered by Delegate Norton designated 033;  
An amendment offered by Representative Lipinski designated 039;

An amendment offered by Representative Lowenthal designated 018;

An amendment offered by Representative Titus designated 011;

An amendment offered by Representative DeFazio designated 051;

An amendment offered by Representative Titus designated 012;

An amendment offered by Representative Lipinski designated 027; and Vote ordering H.R. 2997, as amended, reported favorably.

The Committee disposed of these votes as follows:













































## COMMITTEE OVERSIGHT FINDINGS

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in this report.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) 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 402 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.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for H.R. 2997, as amended, from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 11, 2017.*

Hon. BILL 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. 2997, the 21st Century Aviation Innovation, Reform, and Reauthorization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL, *Director.*

Enclosure.

*H.R. 2997—21st Century Aviation Innovation, Reform, and Reauthorization Act*

Summary: H.R. 2997 would establish a federally chartered, not-for-profit corporation (known as the American Air Navigation Services (AANS) Corporation) to assume responsibility for operating the U.S. air traffic control system, a function currently performed by the Federal Aviation Administration (FAA). The proposed corporation would be governed by a 13-member board of directors composed of individuals representing certain aviation stakeholder groups. To finance the costs of providing air traffic services, the bill would authorize the corporation to charge fees to users of such services and to issue debt.

The Secretary of Transportation would manage and oversee the transition of operational control over air traffic services to the proposed corporation, which would occur on October 1, 2020. Until that time, the bill would authorize appropriations for the FAA to continue to operate, maintain, and modernize the air traffic control system and carry out the agency's other traditional responsibilities related to civil aviation. After the proposed transition of all air traf-

fic control-related personnel and programs to the AANS Corporation, the bill would authorize additional appropriations for FAA and the Department of Transportation (DOT) to continue to meet traditional aviation-related responsibilities, such as performing certain regulatory and safety-related activities, making grants to airports to support capital projects, and subsidizing air service to certain rural communities.

Although the proposed corporation would be independent and autonomous, in CBO's view it would effectively act as an agent of the federal government in carrying out a regulatory function. Hence, in keeping with guidance specified by the *1967 President's Commission on Budget Concepts*, the proposed corporation's cash flows should be recorded in the federal budget. More specifically, fees charged by the proposed corporation should be recorded as federal revenues, and its expenditures should be classified as federal direct spending.

On that basis, CBO estimates that enacting H.R. 2997 would:

- Increase net direct spending by \$90.7 billion over the 2018–2027 period;
- Increase net revenues by \$70.0 billion over the 2018–2027 period;
- Increase net deficits stemming from revenues and direct spending by about \$20.7 billion over the 2018–2027 period; and
- Result in discretionary outlays totaling \$52.3 billion over the 2018–2027 period, subject to the appropriation of authorized amounts.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues. CBO estimates that enacting H.R. 2997 would increase net direct spending and on-budget deficits by more than \$5 billion in one or more of the four consecutive 10-year periods beginning in 2028.

The estimated changes in direct spending and revenues under H.R. 2997 reflect CBO's assessment of the budgetary effects of enacting H.R. 2997 as a stand-alone measure. Ultimately, however, the net budgetary impact of activities related to air traffic control under H.R. 2997 would depend on the details of additional legislation that lies beyond the scope of this cost estimate. H.R. 2997 does not address other important aspects of federal activities related to aviation—in particular, provisions of current law that govern aviation-related excise taxes that cover most of the FAA's costs related to air traffic services and other programs. Similarly, although H.R. 2997 authorizes a marked reduction in future appropriations for the FAA that comport with the envisioned transfer of operational control over the air traffic control system to the AANS Corporation, whether subsequent reductions in future discretionary funding for the agency occur would depend on appropriations enacted by future Congresses. As a result, the ultimate net budgetary impact of corporatizing air traffic control under H.R. 2997 could differ considerably from the estimates presented in this analysis, but CBO cannot provide an analysis of such potential impacts because they would depend on the details of future legislation (see the discussion below under the heading “Additional Information”).

H.R. 2997 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on operators of air ambulances. The bill also would pre-

empt state authority over air traffic control services. Based on information from the FAA, public airport operators, and state aviation agencies, CBO estimates that the cost of the mandates on public entities would fall below the annual threshold established in UMRA for intergovernmental mandates (\$78 million in 2017, adjusted annually for inflation). The bill would impose additional mandates on private entities including users of air traffic services, air carriers, manufacturers of aircraft, and ticket agents. CBO estimates that the aggregate cost of mandates on private entities would well exceed the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

**Estimated Cost to the Federal Government:** The estimated budgetary effect of H.R. 2997 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in billions of dollars—														2017– 2022	2017– 2027
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027					
INCREASES IN DIRECT SPENDING																
Estimated Budget Authority .....	0.0	0.2	0.3	0.4	13.1	13.6	14.0	14.4	14.9	15.3	15.7	27.6	102.0			
Estimated Outlays .....	0.0	0.0	0.0	*	9.3	11.6	12.7	13.6	14.1	14.5	15.0	20.8	90.7			
INCREASES IN REVENUES																
Estimated Revenues .....	0.0	0.0	0.0	0.0	9.0	9.3	9.6	10.0	10.3	10.7	11.1	18.3	70.0			
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES																
Impact on Deficit .....	0.0	0.0	0.0	*	0.3	2.3	3.1	3.6	3.8	3.8	3.9	2.6	20.7			
INCREASES IN SPENDING SUBJECT TO APPROPRIATION																
Estimated Authorization Level ....	0.0	13.2	13.5	13.8	2.5	2.5	2.6	0.0	0.0	0.0	0.0	45.6	48.2			
Estimated Outlays .....	0.0	10.5	12.4	13.4	5.0	4.0	3.6	1.2	0.9	0.7	0.7	45.2	52.3			

*Notes:* Components may not sum to totals due to rounding. \* = less than \$50 million.

*Background*

The FAA is responsible for most federal activities related to civil aviation under current law. The agency receives funding for most of its programs and activities—operations; maintaining air navigation facilities and equipment; and research, engineering, and development—in annual appropriation acts. The bulk of those funds are used to operate and maintain the air traffic control system. In addition, the FAA receives funding for the Airport Improvement Program (AIP), which makes grants to public-use airports for projects to enhance safety and increase their capacity; that funding is provided in authorization acts as contract authority (a mandatory form of budget authority). Finally, DOT receives annual appropriations to make payments to air carriers to subsidize their costs to provide service to certain small communities.

Historically, the funds for aviation programs come from the general fund of the Treasury and the Airport and Airway Trust Fund. That trust fund is an accounting mechanism in the federal budget that records receipts from certain taxes paid by users of the air transportation system—primarily excise taxes on commercial airline tickets—and spending to cover a portion of the FAA’s programs and DOT’s payments to air carriers. Annual spending from the fund is not automatically triggered by the collection of tax revenues or transfers of interest earnings but is controlled by annual appropriation acts.

In 2017, CBO estimates, revenues credited to the Airport and Airway Trust Fund will total \$15.1 billion, slightly less than the \$15.7 billion in new funding provided from the fund for FAA programs and DOT's payments to air carriers. The FAA also received \$1 billion in appropriations from the general fund for 2017, bringing total discretionary funding (including appropriations and obligation limitations on AIP contract authority) to \$16.6 billion. That amount includes:

- \$10.7 billion for the full operating and capital costs of providing air traffic control services (including ancillary support services);
- \$3.35 billion for AIP grants to airports;
- \$2.4 billion for other FAA activities, particularly those related to regulating the safety of civil aviation; and
- \$150 million for DOT to make payments to air carriers that provide service to certain rural communities through the Essential Air Service program.

If discretionary resources for FAA and DOT aviation activities (including obligation limitations) were assumed to remain at the 2017 level adjusted for inflation, CBO projects that discretionary funding would grow to \$20.4 billion in 2027. CBO also estimates that, if aviation-related excise taxes credited to the Airport and Airway Trust Fund are extended, they will grow at roughly the same rate as the economy and total \$21.3 billion in 2027.<sup>1</sup>

#### *Major provisions*

H.R. 2997 would establish the AANS Corporation, a federally chartered, not-for-profit corporation to assume responsibility for operating the U.S. air traffic control system. A 13-member board of directors (including a board-appointed chief executive officer) would govern the proposed corporation. The Secretary of Transportation would appoint two directors; eight others would be nominated by panels of individuals representing certain aviation stakeholders.<sup>2</sup> Those 10 board members would select two additional "at large" members.

Under H.R. 2997, the corporation would be the only entity authorized to provide air traffic services within U.S. airspace other than the Department of Defense and certain other entities with existing responsibilities. The corporation also would be responsible for maintaining and modernizing the infrastructure and equipment associated with the air traffic control system. To cover the costs of operating and managing that system, the bill would authorize the corporation to charge fees to users of air traffic control services, require users to pay such fees, and specify that the corporation could enforce that requirement in U.S. courts. In addition to funding from user fees, the corporation would be authorized to issue debt to finance its costs. The bill would prohibit the corporation from issuing or selling equity shares in the corporation.

<sup>1</sup>Under current law, most aviation-related excise taxes that provide funding for federal aviation programs are scheduled to expire after September 30, 2017; however, under rules governing CBO's baseline projections, revenues from excise taxes that are credited to trust funds are assumed to continue in effect beyond their scheduled expiration date.

<sup>2</sup>The eight nominating panels established under S. 2997 would represent passenger, cargo, and regional air carriers; noncommercial owners and recreational operators of general aviation; business aviation (including users of general aviation aircraft exclusively to further business interests, aviation-related businesses, and aerospace manufacturers of aircraft and equipment used in general aviation); air traffic controllers; airports; and commercial pilots.

The Secretary of Transportation would manage and oversee the transition of operational control over air traffic services to the proposed corporation, which would occur on October 1, 2020. The bill outlines procedures for identifying the federal personnel to be transferred to the corporation and specifies that certain provisions of laws related to labor-management relations that currently apply to the FAA and its labor organizations would continue to apply to all employees of the new corporation (including individuals hired after the date of transfer). Transferred employees would have the option to retain their existing federal health and retirement benefits or could choose to participate in benefit plans offered by the new corporation.

The bill also would convey to the corporation, for no consideration, any real and personal property (including air navigation facilities), and related licenses, patents, software rights, and other items deemed necessary for providing air traffic services. The conveyance would include access to systems using the dedicated portion of the electromagnetic spectrum used by the FAA to provide air traffic services and data from such systems. Under the bill, ownership of real property at FAA's technical facilities would revert to the federal government if the corporation deemed such property to be no longer needed to provide air traffic services and the Secretary of Transportation determined that a reversion was necessary to protect the national interest. The bill would authorize the corporation to sell other real property (except for certain property located in noncontiguous states) and use the proceeds to make capital investments related to air traffic control infrastructure.

Until fiscal year 2021, when the transfer would occur, the FAA would continue to operate, maintain, and modernize the air traffic control system and carry out the agency's other primary responsibilities related to regulating the safety of civil aviation and providing grants to airports to support capital projects. Starting in 2021, the corporation would assume responsibility for air traffic control. The FAA and DOT would continue to carry out certain activities related to regulating the safety of civil aviation (including air navigation services provided by the corporation), providing AIP grants to airports, and making payments to subsidize air service to rural communities.

#### *Budgetary treatment of the AANS Corporation*

Although the proposed corporation would be independent and autonomous, in CBO's view it would effectively act as an agent of the federal government in carrying out a regulatory function. In particular:

- The AANS Corporation would be the only entity authorized to provide air traffic services within U.S. airspace other than the Department of Defense and certain other entities with existing responsibilities.
- The bill would authorize the corporation to charge fees to users of air traffic control services, require users to pay such fees, and specify that the corporation could enforce that requirement in U.S. courts.

Hence, in keeping with guidance specified by the *1967 President's Commission on Budget Concepts*, the proposed corporation's cash flows should be recorded in the federal budget. Although the report

issued by that commission has no legal status, it remains the primary authoritative statement on the scope of the federal budget. The commission recommended that, “the budget should, as a general rule, be comprehensive of the full range of federal activities. Borderline agencies and transactions should be included . . . unless there are exceptionally persuasive reasons for exclusion.”<sup>3</sup>

CBO has adhered to that principle since the Congressional budget process was established.<sup>4</sup> For example, since the 1990s CBO and the Office of Management and Budget have included amounts collected and spent by the Universal Service Fund each year in the federal budget even though the company that manages the fund is not part of the federal government and the charges that telecommunications companies are required to pay do not flow through the U.S. Treasury.

More specifically, the user fees that would be assessed by the AANS Corporation should be classified as federal revenues, largely because of their compulsory nature. In CBO’s view, subsequent spending of such fees, as well as any spending financed by debt issued by the corporation (which would be backed by the entity’s authority to set fees at levels necessary to recover its costs and to compel users to pay such fees), should be classified as federal direct spending because that spending would not be contingent on any further legislation.

Basis of Estimate: H.R. 2997 would effectively reclassify, from discretionary to mandatory, federal spending related to air traffic control. Broadly speaking, CBO expects that the amount of spending for air traffic control under H.R. 2997 would be similar to the amount of spending for such activities reflected in CBO’s baseline projections. In that sense, increases in direct spending for the proposed AANS Corporation would reduce the need for future appropriations to the FAA. However, in CBO’s cost estimates for proposed legislation, changes in authorized spending subject to appropriation are not estimated relative to CBO’s baseline projections; rather, we report the differences between amounts authorized to be appropriated under proposed legislation and authorization levels specified for future years under current law. Under current law, no authorizations for federal aviation programs are in place beyond 2017.

For this estimate CBO assumes that H.R. 2997 will be enacted early in fiscal year 2018 and that appropriations will be provided as specified by the bill. Estimates of outlays are based on historical spending patterns for major activities carried out by the FAA. We also assume that the proposed transfer of operational control over air traffic control services would occur on the date specified in the legislation, that the AANS Corporation would begin to collect and spend user fees in fiscal year 2021, and that it would continue to administer spending of balances previously appropriated to the FAA for activities related to air traffic control.

Over the next 10 years, CBO estimates that enacting H.R. 2997 would increase direct spending by \$90.7 billion and increase reve-

<sup>3</sup>President’s Commission on Budget Concepts, *Report of the President’s Commission on Budget Concepts* (October 1967), p.25.

<sup>4</sup>See Congressional Budget Office, *How CBO Determines Whether to Classify an Activity as Governmental When Estimating Its Budgetary Effects* (June 2017), <https://www.cbo.gov/publication/52803>.



nues by \$70.0 billion. Additionally, discretionary spending to implement the bill would total \$52.3 billion, subject to appropriation of the authorized amounts, CBO estimates (see Table 2).

TABLE 2—EFFECTS ON DIRECT SPENDING AND REVENUES UNDER H.R. 2997

	By fiscal year, in billions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018– 2022	2018– 2027
<b>INCREASES IN DIRECT SPENDING</b>												
Operations of the AANS Corporation												
Estimated Budget Authority	0.0	0.0	0.0	12.6	13.0	13.4	13.8	14.2	14.6	15.1	25.6	96.7
Estimated Outlays	0.0	0.0	0.0	9.3	11.6	12.7	13.6	14.1	14.5	15.0	20.8	90.7
Civil Service Retirement and Health Benefits												
Estimated Budget Authority	0.0	0.0	*	*	*	*	*	*	*	*	*	*
Estimated Outlays	0.0	0.0	*	*	*	*	*	*	*	*	*	*
Airport Improvement Program												
Estimated Budget Authority	0.2	0.3	0.4	0.5	0.6	0.6	0.6	0.6	0.6	0.6	2.0	5.2
Estimated Outlays	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Changes												
Estimated Budget Authority	0.2	0.3	0.4	13.1	13.6	14.0	14.4	14.9	15.3	15.7	27.6	102.0
Estimated Outlays	0.0	0.0	*	9.3	11.6	12.7	13.6	14.1	14.5	15.0	20.8	90.7
<b>INCREASES AND DECREASES (–) IN REVENUES</b>												
Gross AANS Corporation Fees for Air Traffic Services	0.0	0.0	0.0	12.2	12.6	13.0	13.5	14.0	14.5	15.0	24.7	94.6
Reduced Revenues from Payroll and Income Taxes	0.0	0.0	0.0	–3.2	–3.3	–3.4	–3.5	–3.6	–3.8	–3.9	–6.4	–24.6
Net Changes in Revenues	0.0	0.0	0.0	9.0	9.3	9.6	10.0	10.3	10.7	11.1	18.3	70.0
<b>NET INCREASE IN THE DEFICIT FROM</b>												
<b>CHANGES IN DIRECT SPENDING AND REVENUES</b>												
Impact on Deficit	0.0	0.0	*	0.3	2.3	3.1	3.6	3.8	3.8	3.9	2.6	20.7

Note: \* = between –\$50 million and \$50 million; Components may not sum to totals due to rounding.

<sup>a</sup>Budget authority for the Airport Improvement Program is provided as contract authority, a mandatory form of budget authority; however outlays from that contract authority are subject to limitations on obligations specified in annual appropriation acts and are therefore considered discretionary.

*Direct spending*

Nearly all of the estimated increase in direct spending under H.R. 2997 represents spending by the proposed corporation. In addition, CBO estimates that transferring FAA employees to the AANS Corporation would affect federal spending for health and retirement benefits for some people. In contrast, CBO expects that conveying property related to air traffic control to the proposed corporation and authorizing the corporation to sell such property and spend the proceeds would have no significant net effect on the federal budget. Finally, H.R. 2997 would increase mandatory contract authority for the Airport Improvement Program, but because FAA's authority to spend such contract authority would be subject to obligation limitations specified in annual appropriation acts, any resulting outlays would be considered discretionary.

Operations of the AANS Corporation. Under H.R. 2997 the corporation would have authority to levy fees on users of air traffic services and to use those amounts to cover all of the entity's financial requirements, including debt service costs stemming from the corporation's authority to issue bonds. CBO estimates that resulting direct spending would total \$90.7 billion over the 2021–2027 period.

For this estimate, CBO assumes that the corporation's annual funding requirements would largely remain in line with current estimates of the FAA's full operating and capital costs related to air traffic control. According to the FAA, funding related to air traffic control totals nearly \$10.7 billion in 2017. Assuming that spending for personnel, facilities and equipment, and other expenses grow at rates of anticipated growth for wages and infrastructure-related investments, CBO estimates that the corporation would obligate roughly \$12.1 billion in 2021 to assume control of those activities.

In addition, CBO expects that the corporation would increase capital spending relative to that base amount, particularly to make additional investments in facilities, equipment, and technologies related to modernizing the air traffic control system, commonly referred to as NextGen. Over the past several years, a wide range of studies and reports prepared by the DOT's Inspector General, the Government Accountability Office (GAO), and aviation stakeholders generally characterize the FAA's existing efforts to implement projects related to NextGen as behind schedule, particularly compared to technologies used by providers of air navigation services in other countries.<sup>5</sup> In addition, representatives of organizations that would be represented on the proposed corporation's board of directors have generally called for a reprioritization of modernization activities to accelerate the adoption of technologies that would increase the efficiency of air traffic operations.

According to the FAA, under current law, the agency plans to spend roughly \$1 billion annually over the next several years for modernization activities. Under H.R. 2997, CBO expects that the corporation would exercise its authority to issue bonds to raise

<sup>5</sup> See for example: Government Accountability Office, *Air Traffic Control Modernization: Management Challenges Associated with Program Costs and Schedules Could Hinder NextGen Implementation*, February 2012, GAO-12-223, <http://www.gao.gov/assets/590/588627.pdf>; and Office of Inspector General, Department of Transportation, *Audit Report: FAA Reforms Have Not Achieved Expected Cost, Efficiency, and Modernization Outcomes* (January 15, 2016), AV-2016-015, <https://www.oig.dot.gov/sites/default/files/FAA%20Organizational%20Structure-Final%20Report%5E1-15-16.pdf>

funds to make additional investments. The timing and magnitude of such investments is highly uncertain and would depend on priorities identified by the corporation. For this estimate, CBO assumes that additional capital spending related to modernization would average between \$500 million and \$600 million annually, bringing the total amount of modernization-related spending to about \$1.5 billion per year over the 2021–2027 period.<sup>6</sup>

All told, CBO estimates that budget authority recorded for the corporation would total \$12.6 billion in 2021 and gradually increase to \$15.1 billion by 2027, for a total of nearly \$96.7 billion over the 2021–2027 period. That amount includes \$4 billion in borrowing authority stemming from the corporation’s authority to issue bonds. CBO expects that most of the funding would be derived from fees that the corporation would charge for air traffic services, as discussed below under the heading “Revenues”. (In addition, CBO assumes that in the initial years following the transition, the corporation would oversee residual spending of amounts previously appropriated to the FAA for activities related to air traffic control.)

In total, assuming that outlays of the AANS Corporation would follow historical spending patterns for the FAA, CBO estimates that resulting expenditures would total \$91 billion over the 2021–2027 period. That amount includes \$56 billion in personnel costs, \$19 billion for capital spending related to air navigation facilities and equipment (including \$3.5 billion in additional investments to modernize such facilities and equipment), and \$16 billion in other costs and ongoing expenses related to providing air traffic services. (Those amounts do not include residual spending of appropriations provided to the FAA before the proposed transition; see the discussion under the heading “Spending Subject to Appropriation.”)

Changes in Civil Service Retirement and Health Benefits. For purposes of this estimate, CBO assumes that the AANS Corporation would provide salaries and benefits that are comparable to those offered to FAA employees under current law. However, the proposed transition could cause some retirement-eligible employees to retire earlier than they would under current law. CBO estimates that about 5 percent of retirement-eligible employees in 2020 and 2021 would retire an average of one year earlier than under current law. Accelerated retirement for that group of about 500 employees (approximately one quarter of whom are estimated to be air traffic controllers) would, on net, increase mandatory spending for retirement annuities and Federal Employees Health Benefit premiums for the period of time during which those early retirees would remain employees under current law. Over the long run, however, annuity payments to such individuals—which are based in part on years of service and salary levels—would be slightly lower than they otherwise would have been if those individuals had remained in service and continued to earn pay increases. CBO projects that net increases in mandatory spending would total about \$23 million over the 2020–2027 period.

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<sup>6</sup>The authority to borrow directly from the public and then obligate amounts so borrowed is considered borrowing authority, a mandatory form of budget authority. In the case of the ATC Corporation, proceeds from the sale of bonds would be considered a means of financing and not reflected in budget totals. Rather, the budget would record obligations incurred against amounts borrowed at the time when such obligations occur, and outlays would reflect the timing and pace of capital acquisitions and related debt service costs.

Budgetary Effects of Conveying Property and Access to Spectrum-Related Data and Systems to the AANS Corporation. H.R. 2997 would specify procedures for the Secretary of Transportation to convey to the AANS Corporation, for no consideration, any real and personal property (including air navigation facilities) deemed necessary for providing air traffic services. Once the property was conveyed, the corporation could sell it and use the proceeds to make capital investments related to air traffic control infrastructure.

The proposed conveyances would affect the budget only to the extent that they would affect the timing or magnitude of cash flows that the affected assets would otherwise generate under current law. The FAA already has broad authority to sell such property and spend the proceeds; because any increase in receipts from property sales is offset by a corresponding increase in spending soon thereafter, the agency's use of such authority ultimately has no significant net effect on federal spending. Similarly, although the timing and magnitude of receipts and spending associated with transactions pursued by the corporation could differ from those that might occur under current law, CBO estimates that transactions under H.R. 2997 would ultimately have no net effect on the federal budget.

H.R. 2997 would retain the existing legal framework governing the use of the electromagnetic spectrum. As a result, the spectrum currently used by the FAA would continue to be managed as federal frequencies but would be used by the corporation. For this estimate, CBO assumes that requiring the Secretary to provide the corporation access to spectrum-related data and systems would have no significant effect on the use or disposition of FAA's spectrum assignments relative to current law. As a result, CBO estimates that the bill would have a negligible effect on direct spending for spectrum relocation or research activities and would not affect the timing or amount of offsetting receipts from future auctions of commercial licenses.

**Airport Improvement Program.** Through the AIP, the FAA provides grants to public-use airports for projects to enhance safety and increase airports' capacity for passengers and aircraft. Under H.R. 2997, the FAA would continue to operate this program after transferring operational control over air traffic control to the AANS Corporation.

H.R. 2997 would provide contract authority for the AIP through fiscal year 2023. The FAA Extension, Safety and Security Act of 2016 provided the FAA with \$3.35 billion in contract authority through September 30, 2017. Pursuant to provisions of law that govern CBO's baseline projections, funding for certain expiring programs—such as contract authority for AIP—is assumed to continue beyond the scheduled expiration date for budget projection purposes. Consistent with that practice, CBO's baseline incorporates the assumption that AIP contract authority over the 2018–2027 period will remain at the 2017 level of \$3.35 billion per year.

Relative to current law, H.R. 2997 would provide \$22.7 billion in new contract authority. That amount includes \$3.6 billion in 2018 and amounts for subsequent years that would gradually increase to just under \$4 billion by 2023. Consistent with CBO's methodology for projecting contract authority under proposed legislation, we as-

sume that contract authority for AIP would continue to be provided after 2023 and would remain at about \$4 billion annually.

Under that assumption, CBO estimates that contract authority under H.R. 2997 would exceed the levels of contract authority already projected in the CBO baseline by \$5.2 billion over the 2018–2027 period. (Because spending from contract authority is controlled by obligation limitations specified in annual appropriation acts, outlays of the AIP are considered discretionary.)

### *Revenues*

Upon assuming operational control over air traffic services, H.R. 2997 would authorize the AANS Corporation to charge fees to users of such services, require users to pay such fees, and allow the corporation to enforce that requirement in U.S. courts. The bill would specify certain requirements that the corporation must follow in setting such fees. In particular, fees must be consistent with certain policies set forth by the International Civil Aviation Organization, which generally relate to the reasonableness of fees levied by providers of air navigation services to the cost of providing such services. Under H.R. 2997, fees could not be imposed for services provided for operations that involve aircraft owned or operated by the U.S. military or operations of aircraft that are considered public aircraft. The bill also would prohibit the corporation from charging fees for services to support operations of civil aircraft related to air tours; non-scheduled service; or recreational, private, agricultural, and certain industrial activities.

The bill would require the AANS Corporation to publish the initial schedule of fees at least 180 days before the date when it would assume operational control over air traffic services and outline procedures through which users of such services could dispute the reasonableness of such fees. Under the bill, the Secretary of Transportation would have a role in overseeing any such disputes.

For this estimate, CBO assumes that the corporation would begin collecting fees on October 1, 2020, and that such fees would be set as necessary to cover its annual funding requirements (including debt service on any bonds issued). CBO estimates those amounts would initially total about \$12.2 billion in 2021 and grow to \$15.0 billion by 2027. We estimate that revenues from fees would be roughly equal to those amounts.<sup>7</sup>

Because excise taxes and other indirect business taxes (such as assessments by the AANS Corporation) reduce the base of income and payroll taxes, higher amounts of those indirect business taxes would lead to reductions in revenues from income and payroll taxes. As a result, revenues from the fees collected by the corporation would be partially offset in the federal budget by a loss of income and payroll tax receipts equal to about 26 percent of the fees each year. Thus, CBO estimates that enacting H.R. 2997 would in-

<sup>7</sup> Estimates of user fees under H.R. 2997 are equivalent to roughly 70 percent of the total amount of aviation-related revenues included in CBO's baseline projections. H.R. 2997 would not extend those taxes beyond their scheduled expiration nor would it address whether the fees would be collected or terminated once the ATC Corporation assumes responsibility for air traffic control. Under current law, most aviation-related excise taxes are scheduled to expire after March 31, 2016; however, pursuant to provisions of law that govern CBO's baseline projections, such taxes are assumed to continue beyond their scheduled expiration date for budget projection purposes (see Additional Information).

crease net revenues by about \$70 billion over the 2021–2027 period.

*Spending subject to appropriation*

H.R. 2997 would authorize appropriations totaling \$48.2 billion over the 2018–2023 period for the FAA and related DOT activities. Most of that amount—\$40.6 billion—would be specifically authorized for those agencies to continue to operate all functions, including those related to air traffic control, through fiscal year 2020. Starting in 2021, the AANS Corporation would assume operational control over the air traffic control system, and the FAA and other offices within the Department of Transportation would continue to perform certain regulatory and safety-related functions, provide grants to airports to support capital projects, make payments to air carriers that provide service to certain rural communities, and carry out other administrative requirements. For those activities, the bill would authorize appropriations totaling \$7.6 billion over the 2021–2022 period.

Assuming appropriation of the specified amounts (as well as the enactment of limitations on obligations of contract authority for the Airport Improvement Program that are consistent with funding levels provided under H.R. 2997), CBO estimates that discretionary spending to implement H.R. 2997 would total \$52.3 billion over the 2018–2027 period (see Table 3).

TABLE 3. CHANGES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 2997

	By fiscal year, in billions of dollars—											2018– 2022	2018– 2027
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027			
INCREASES IN SPENDING SUBJECT TO APPROPRIATION													
FAA Operations:													
Authorization Level .....	10.1	10.3	10.6	2.0	2.0	2.0	0.0	0.0	0.0	0.0	0.0	35.0	37.1
Estimated Outlays .....	9.0	10.0	10.4	2.9	2.3	2.1	0.2	0.1	*	*	*	34.6	37.1
Air Navigation Facilities and Equipment:													
Authorization Level .....	2.9	3.0	3.0	0.2	0.2	0.2	0.0	0.0	0.0	0.0	0.0	9.3	9.5
Estimated Outlays .....	1.3	2.0	2.5	1.5	0.9	0.6	0.3	0.1	*	*	*	8.2	9.3
Airport Improvement Program <sup>a</sup> :													
Authorization Level .....	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Estimated Outlays .....	*	0.2	0.3	0.4	0.4	0.5	0.6	0.6	0.6	0.6	0.6	1.3	4.3
Essential Air Service and Other Activities:													
Estimated Authorization Level .....	0.2	0.2	0.2	0.3	0.3	0.4	0.0	0.0	0.0	0.0	0.0	1.3	1.6
Estimated Outlays .....	0.1	0.2	0.2	0.3	0.3	0.4	0.1	*	0.0	0.0	0.0	1.1	1.6
Total Changes:													
Estimated Author- ization Level ....	13.2	13.5	13.8	2.5	2.5	2.6	0.0	0.0	0.0	0.0	0.0	45.6	48.2
Estimated Outlays	10.5	12.4	13.4	5.0	4.0	3.6	1.2	0.9	0.7	0.7	0.7	45.2	52.3

Notes: FAA = Federal Aviation Administration; \* = less than \$50 million.

<sup>a</sup> Budget authority for the Airport Improvement Program is provided as contract authority, a mandatory form of budget authority; however, outlays from that contract authority are subject to limitations on obligations specified in annual appropriation acts and are therefore considered discretionary.

**FAA Operations.** H.R. 2997 would authorize appropriations totaling \$31.1 billion over the 2018–2020 period for FAA operations, primarily for salaries and expenses related to operating the air traffic control system. (Funding for FAA operations in 2017 totals \$9.6 billion.) Starting in 2021, responsibility for most activities funded

through that account would shift to the AANS Corporation, and the FAA would remain responsible for a much smaller set of regulatory and safety-related activities. For those remaining purposes the bill would authorize appropriations totaling \$6.0 billion over the 2021–2023 period. Assuming appropriation of the amounts authorized over the 2018–2023 period, CBO estimates that resulting outlays would total \$37.1 billion over the 2018–2027 period.

**Air Navigation Facilities and Equipment.** H.R. 2997 would authorize appropriations totaling \$9.0 billion over the 2018–2020 period for programs to maintain and modernize infrastructure and systems for communication, navigation, and surveillance related to air travel. (Funding for facilities and equipment totals nearly \$2.9 billion in 2017.) Starting in 2021 the AANS Corporation would assume primary responsibility for operating, maintaining, and modernizing such infrastructure and equipment. The bill would authorize additional appropriations totaling \$580 million over the 2021–2023 period for the FAA to carry out residual responsibilities related to the safety of air navigation facilities and equipment that would not be performed by the AANS Corporation. Assuming appropriation of the authorized amounts, CBO estimates that resulting outlays would total \$9.3 billion over the 2018–2027 period (and \$243 million in later years).

**Airport Improvement Program.** The proposed transfer of control over air traffic control would not affect the AIP, which the FAA would continue to administer under H.R. 2997. CBO estimates that contract authority for AIP grants to airports under H.R. 2997 would exceed the amounts of contract authority already assumed in the CBO baseline by \$5.2 billion over the 2018–2027 period. Such grants support planning and development of capital projects to enhance the infrastructure and capacity of public-use airports.

Assuming that annual appropriations acts set obligation limitations for AIP spending that are equal to the levels of contract authority projected under H.R. 2997, CBO estimates that discretionary outlays for the program over the 2018–2027 period would total \$4.3 billion more than amounts projected in CBO’s baseline through 2027 (and \$940 million in later years).

**Essential Air Service and Other Activities.** H.R. 2997 would authorize appropriations totaling \$178 million in 2018 and \$1.6 billion over the 2018–2023 period for the Essential Air Service program, through which DOT makes payments to air carriers that provide service to certain rural communities. (Discretionary funding for such payments in 2017 totals \$150 million.) The bill also would authorize the appropriation of \$10 million annually over the 2018–2023 period for grants to help small communities enhance air service and would require DOT and the Government Accountability Office to complete various studies, reports, and administrative requirements. Assuming appropriation of amounts specified and estimated to be necessary for required studies, reports and administrative activities, CBO estimates that resulting outlays would total \$1.6 billion over the next 10 years.

**Pay-As-You-Go considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.



CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2997, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE ON  
JUNE 27, 2017

	By fiscal year, in millions of dollars—												
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2017– 2022	2017– 2027
	NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	0	0	0	9	296	2,253	3,099	3,585	3,751	3,830	3,898	2,557	20,721
Memorandum:													
Changes in Outlays .....	0	0	0	9	9,276	11,565	12,740	13,565	14,082	14,513	14,952	20,850	90,702
Changes in Revenues .....	0	0	0	0	8,981	9,312	9,641	9,980	10,331	10,683	11,054	18,292	69,980

Increase in long term direct spending and deficits: CBO estimates that enacting the legislation would increase net direct spending and on-budget deficits by more than \$5 billion in at least one of the four consecutive 10-year periods beginning in 2028. The effects in future years would be a continuation of the trends shown for the first decade.

Additional information: The estimated changes in direct spending and revenues under H.R. 2997 reflect CBO's assessment of the budgetary impacts of enacting H.R. 2997 as a stand-alone measure. Ultimately, however, the net budgetary impact of activities related to air traffic control under H.R. 2997 would depend on the details of subsequent legislation that lies beyond the scope of this cost estimate. CBO cannot predict whether such additional legislation will be enacted pursuant to H.R. 2997, but expects that the overall net budgetary impact of shifting responsibility for air traffic control to the AANS Corporation would not necessarily increase future deficits by the amounts reflected in this cost estimate *if additional legislation consistent with H.R. 2997 was enacted*.

Broadly speaking, while CBO estimates that the proposed corporation would spend more than the FAA otherwise will under current law for capital investments to modernize infrastructure and equipment related to the air traffic control system, CBO expects that underlying costs related to operating and maintaining that system would not change significantly under H.R. 2997. As a result, CBO expects that shifting responsibility for those costs to the proposed corporation would not materially change the magnitude of spending related to air traffic control *if future appropriations for the FAA's retained responsibilities were reduced accordingly* to reflect the shift—from mandatory to discretionary—of such spending. Under H.R. 2997, CBO expects that overall amounts of such federal spending would remain more or less the same, with incremental increases in spending stemming primarily from the AANS Corporation's authority to issue debt to finance additional investments related to modernization.

Similarly, if *future tax-related legislation separate from H.R. 2997* was enacted to reduce existing aviation-related excise taxes by amounts equivalent to new user fees that would be charged by the AANS Corporation under H.R. 2997, the resulting amount of revenues available to support air traffic control (and other aviation activities) would be largely unchanged and could continue to cover most, if not all aviation-related spending.

Thus, if such additional legislation were enacted—consistent with the proposed changes envisioned on H.R. 2997—to effectively keep both aviation-related spending and revenues in line with current levels, CBO expects that resulting net increases in future deficits would largely reflect increased capital spending by the AANS Corporation to finance investments related to modernization, which CBO estimates will total about \$3.5 billion over the period covered by this estimate. (That estimate of modernization spending is uncertain and could be higher or lower depending on future investment-related decisions of the AANS Corporation.)

Intergovernmental and private-sector impact: The bill contains intergovernmental and private-sector mandates as defined in UMRA. CBO estimates that the aggregate cost of the mandates on public entities would fall below the annual threshold established in

UMRA for intergovernmental mandates (\$78 million in 2017, adjusted annually for inflation). However, CBO estimates that the aggregate cost of the mandates on private entities would well exceed the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

*Mandates that apply to both public and private entities*

The bill would require operators of air ambulances to provide contact information on their website and in their communications to facilitate those consumers who may want to file complaints about service. The bill also would require air ambulance operators to disclose charges for air transportation services separately on invoices and provide consumer protections, if determined to be appropriate by the Secretary of Transportation. According to industry sources, there are about 300 air medical services in the United States. CBO estimates that the cost to comply with the requirements, which are mostly administrative, would be small.

*Mandates and other effects on public entities*

The bill would preempt state and local authority over air traffic control services. Although the preemption would limit the application of state and local laws and regulations, CBO estimates that the bill would impose no duty on state or local governments that would result in additional spending or a loss of revenues.

The bill would benefit public airports by expanding federal grant programs and the ability of airports to charge passenger fees that support airport improvement projects. Any costs those entities incur to meet grant requirements would result from complying with conditions of federal assistance.

*Mandates that apply to private entities only*

**User Fees for Air Traffic Control Services.** The bill would require users of air traffic services provided by the American Air Navigation Services Corporation to pay fees for the use of those services. Such users would include air carriers and other private entities. CBO estimates that those fees would total about \$12 billion in 2021 and gradually increase thereafter.

**Other Requirements for Air Carriers.** The bill would impose several other mandates on air carriers. Specifically, the bill would require that air carriers:

- Prepare a fatigue risk management plan for flight attendants, a document describing passengers' rights, and an employee assault prevention and response plan;
- Provide training to flight attendants and other employees and comply with requirements for pilot rest to be developed by an aviation rulemaking committee;
- Provide information on company websites or through other means about countries that may require an airplane to be treated with insecticides;
- Include links to their customer service plans on their websites and provide information about baggage fees in internet fare quotations;
- Provide information about compensation and accommodations in the event of a widespread disruption of their operations;

- Ensure medical kits contain supplies for treating children in emergencies, if determined to be appropriate by the FAA;
- Comply with prohibitions on involuntarily deplaning passengers and requirements for compensating passengers denied boarding; and
- Comply with the bill's prohibitions against in-flight voice communications on mobile devices.

On the basis of information about existing training programs and current industry practices, CBO estimates that the cost of most of the other mandates in the above list would be small and that none would impose significant additional costs on air carriers relative to UMRA's threshold.

The bill also would require air carriers to meet standards for seat dimensions established in a future FAA rulemaking. The cost of the mandate would include any loss of income stemming from a reduction in the number of seats available for passengers, which would depend on minimum dimensions that would be set forth in those regulations.

#### *Requirements for other entities*

**Manufacturers of Aircraft.** The bill would impose a mandate on manufacturers by requiring them to install a secondary cockpit barrier on aircraft that are manufactured for delivery to passenger air carriers in the United States. Such barriers would include retractable screens and would have to be installed only on new aircraft delivered to passenger air carriers in the United States. Based on information from industry sources, CBO estimates that the cost of installing such barriers would total no more than \$15 million annually.

**Ticket Agents.** The bill would impose a mandate on ticket agents with annual revenues of \$100 million or more by requiring them to meet minimum customer service standards to be established in future regulations. The bill would direct the Secretary of Transportation to consider standards for prompt refunds, options to hold fares at no cost, disclosures of cancellation policies, and notifications of itinerary changes. The cost of the mandate would depend on the standards set by the Secretary.

Estimate prepared by: Federal costs and revenues: Megan Carroll (FAA, AANS Corporation spending and fees); Lori Housman (health benefits); Amber Marcellino (retirement benefits); and Kathleen Gramp (spectrum); Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of this legislation, as amended, are to reauthorize federal aviation programs administered by the FAA, including operating and capital funding. The legislation, as amended, also seeks to reform and modernize the structure of the Nation's ATC system by transferring operation of ATC services and related personnel and assets from the FAA to an independent, not-for-profit corporate entity to provide for more efficient operation and develop-

ment of air traffic services in the United States. The legislation, as amended, also reforms and streamlines the FAA's safety certification processes and improves various aviation safety programs. Finally, H.R. 2997, as amended, addresses airline consumer issues and continues the process of integrating unmanned aircraft systems (UAS) into the National Airspace.

#### ADVISORY OF EARMARKS

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee is required to include a list of congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives. No provision in the bill, as amended, includes an earmark, limited tax benefit, or limited tariff benefit under clause 9(e), 9(f), or 9(g) of rule XXI.

#### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 2997, as amended, establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

#### DISCLOSURE OF DIRECTED RULEMAKINGS

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), the Committee estimates that enacting H.R. 2997, as amended, specifically directs the completion of specific rule makings within the meaning of section 551 of title 5, United States Code.

Section 211 of H.R. 2997, as amended, requires the Secretary to establish procedures and regulations to ensure that all government activities supported by the FAA's provision of air traffic services will receive support from the Corporation.

Section 211 of H.R. 2997, as amended, further requires the Secretary to issue performance-based regulations and safety standards for the operation of air traffic services by the Corporation, including the establishment of a safety management system. The Secretary must also establish procedures by which the Corporation would notify users of proposed charges and fees and also how the Secretary would review such proposals.

Section 211 of H.R. 2997, as amended, also requires the Secretary to prescribe regulations establishing the procedures for acting upon a written complaint disputing air traffic services charges and fees.

Section 411 of H.R. 2997, as amended, requires the Administrator to review and revise current regulations regarding first aid kits on Part 121 air carriers to ensure the needs of children are met.

Section 414 of H.R. 2997, as amended, requires the Administrator to revise current regulations regarding the flight attendant duty period limitations and rest requirements.

Section 416 of H.R. 2997, as amended, directs the Administrator to revise an ongoing rulemaking for the marking of covered towers as defined in the section.

Section 432 of H.R. 2997, as amended, requires the Administrator to issue regulations for the certification of unmanned aircraft traffic management (UTM) systems as air navigation facilities.

Section 432 of H.R. 2997, as amended, also requires the Secretary to issue safety and economic regulations for air carriers using small unmanned aircraft systems (UAS) to transport property.

Section 432 of H.R. 2997, as amended, also requires the Administrator to establish a procedure for granting authorization for certain small unmanned aircraft.

Section 432 of H.R. 2997, as amended, also requires the Administrator to issue regulations to authorize operation of small unmanned aircraft weighting 4.4 pounds or less without airman or airworthiness certifications.

Section 502 of H.R. 2997, as amended, requires the Secretary to issue regulations to prohibit certain uses of mobile devices onboard aircraft.

Section 505 of H.R. 2997, as amended, requires the Secretary to issue final regulations to amend section 41712 of title 49, United States Code, by clarifying that it is not an unfair or deceptive practice for an air carrier, indirect air carrier, foreign carrier, ticket agent, or other person offering to sell tickets for passenger air transportation, or a tour or tour component that must be purchased with air transportation, to state in an advertisement or solicitation the base fare for passenger air transportation as long as the government-imposed taxes and fees and the total costs of the air transportation are clearly and separately disclosed.

Section 510 of H.R. 2997, as amended, requires the Secretary to issue such a final rule to clarify the levels of compensation that may be paid to passengers who are involuntarily denied boarding.

Section 512 of H.R. 2997, as amended, requires the Secretary to issue regulations requiring air ambulance operators to disclose charges for air transportation services from charges for non-air transportation services and other consumer protections for users of air ambulance services.

Section 514 of H.R. 2997, as amended, requires the Secretary to approve one-page submissions from air carriers that describe compensation or other customer service policies.

Section 544 of H.R. 2997, as amended, requires the Secretary to issue regulations concerning accommodations for air travelers with disabilities relating to in-flight entertainment, accessible lavatories on single-aisle aircraft, and service animals.

Section 608 requires the Administrator to carry out a rulemaking to increase the duration of aircraft registrations for noncommercial general aviation aircraft to ten years.

Section 609 of H.R. 2997, as amended, requires the Secretary to promulgate a rulemaking to ensure that United States regulations on air transport of lithium cells and batteries are consistent with the requirements in the ICAO Technical Instructions.

Section 613 of H.R. 2997, as amended, requires the Secretary to conduct a notice and comment rulemaking before DOT can implement the policy set forth in the notice of proposed policy entitled

“Proposal To Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies” published by DOT on April 28, 2014.

Section 618 of H.R. 2997, as amended, directs the Administrator to issue a notice of proposed rulemaking based on any consensus recommendations from the aviation rulemaking committee established in the section on flight and duty times for Part 135 pilots.

Section 633 of H.R. 2997, as amended, requires the Secretary to publish a direct final rule on the expansion of waiver authority for the operation of UAS beyond visual line of sight, over people, or at night for the purposes of transporting property.

Section 636 of H.R. 2997, as amended, directs the Secretary to issue a final rule to require large ticket agents to adopt minimum customer service standards.

Section 641 of H.R. 2997, as amended, directs the Administrator to issue a rule that establishes minimum dimensions for passenger seats on aircraft operated by air carriers in interstate air transportation or intrastate air transportation, including minimums for seat pitch, width, and length, and that are necessary for the safety and health of passengers.

#### FEDERAL MANDATE STATEMENT

The Committee adopts as its own the estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt state, local, or tribal law. The Committee states that section 211 of H.R. 2997, as amended, contains a new section 90314, title 49, United States Code that clarifies and continues preemption of authority over air traffic services. Civil aviation has long been exclusively regulated by the federal government. The application of myriad and inconsistent state, local, and tribal laws to aviation would be detrimental to the safe and efficient operation of the United States aviation system.

#### ADVISORY COMMITTEE STATEMENT

Sections 302, 512, and 609 of this legislation, as amended, each establish an advisory committee, as defined by section 2 of the Federal Advisory Committee Act (5 U.S.C. app.). Pursuant to section 5 of the Federal Advisory Committee Act, the Committee determines that the functions of these advisory committees are not being carried out by existing agencies or advisory commissions. The Committee notes that section 302 specifically terminates an existing advisory committee upon the appointment of members to the newly created advisory committee. The Committee also determines that the advisory committees have a clearly defined purpose, fairly balanced membership, and meet all of the other requirements of section 5(b) of the Federal Advisory Committee Act.

## APPLICABILITY OF LEGISLATIVE BRANCH

The Committee finds section 211 of the bill, as amended specifically chapter 911 of title 49, United States Code, as added by that section does relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1). However, these provisions are not made applicable to the legislative branch, but rather apply only to the Corporation, a federally chartered, private, not-for-profit Corporation created by section 211. Applying such provisions to the legislative branch would be duplicative of laws and regulations already applicable to the legislative branch.

## SECTION-BY-SECTION ANALYSIS OF LEGISLATION

## Title I—Authorizations

## SUBTITLE A—FUNDING OF FAA PROGRAMS

*Section 101. Airport planning and development and noise compatibility planning and programs*

This section authorizes from the Airport and Airway Trust Fund the following amounts for the FAA's Airport Improvement Program (AIP) account: \$3.597 billion for fiscal year 2018; \$3.666 billion for fiscal year 2019; \$3.746 billion for fiscal year 2020; \$3.829 billion for fiscal year 2021; \$3.912 billion for fiscal year 2022; and \$3.998 billion for fiscal year 2023. In addition, this section extends the obligation authority to September 30, 2023.

The FAA has invested in an innovative and timely program known as the Airport Privatization Pilot Program (APPP). Given the current and anticipated budgetary environment, there has never been a time for greater emphasis on the need for private investment to work alongside the federal government to expedite and fund projects that are vital to the National Airspace System (NAS). The APPP offers such an opportunity. Project applications which have been preliminarily accepted will leverage considerable private capital, reduce the need for traditional federal investment in public-use infrastructure, and create new jobs for the Nation. To fulfill the intent of the APPP, FAA should expedite final processing of pending applications and provide priority funding for projects that are associated with the APPP and enable innovative financing of infrastructure projects.

*Section 102. Facilities and equipment*

This section authorizes from the Airport and Airway Trust Fund the following amounts for FAA's Facilities & Equipment (F&E) account: \$2.920 billion for fiscal year 2018; \$2.984 billion for fiscal year 2019; and \$3.049 billion for fiscal year 2020. Starting in fiscal year 2020, the Corporation will fund F&E activities related to ATC services from fees collected by the Corporation. Starting in fiscal year 2021, F&E activities, such as those related to safety oversight, that will remain with the FAA, will be funded from the General Fund. This section also authorizes from the General Fund the following for FAA's F&E account: \$189 million for fiscal year 2021;



\$193 million for fiscal year 2022; and \$198 million for fiscal year 2023.

*Section 103. FAA operations*

This section authorizes from the General Fund the following for FAA's Operations account: \$2.059 billion for fiscal year 2018; \$2.126 billion for fiscal year 2019; \$2.197 billion for fiscal year 2020; \$1.957 billion for fiscal year 2021; \$2.002 billion for fiscal year 2022; and \$2.047 billion for fiscal year 2023. This section additionally authorizes from the Airport and Airway Trust Fund the following for FAA's Operations account: \$8.073 billion for fiscal year 2018; \$8.223 billion for fiscal year 2019; and \$8.374 billion for fiscal year 2020. Starting in fiscal year 2020, the Corporation will fund all Operations activities related to ATC services from fees collected by the Corporation.

*Section 104. Adjustment to AIP program funding*

This section discontinues a formula required in the FAA Modernization and Reform Act of 2012 (Public Law 112–95) that created additional contract authority for AIP if the appropriated funding levels for the F&E program were not equal to the authorized levels included in the Act.

*Section 105. Funding for aviation programs*

This section discontinues the Airport and Airway Trust Fund guarantee included in the FAA Modernization and Reform Act of 2012, which provided a formula to determine the amount to be made available from the aviation trust fund each year to fund the FAA.

*Section 106. Applicability*

This section sets the effective date of subtitle A at October 1, 2017.

SUBTITLE B—PASSENGER FACILITY CHARGES

*Section 111. Passenger facility charge modernization*

This section eliminates the following criteria imposed on a Passenger Facility Charge (PFC) of \$4 or \$4.50: (1) that the Secretary must find, for medium or large hub airports, that a PFC of \$4 or \$4.50 will be used to fund a project that makes a “significant contribution to improving air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport;” and (2) that the Secretary must find that a PFC of \$4 or \$4.50 will be used to fund a project that cannot be expected to be funded through AIP.

*Section 112. Pilot program for PFC authorizations*

This section expands the pilot program expediting the authorization of a PFC at nonhub airports to all primary airports.

## SUBTITLE C—AIRPORT IMPROVEMENT PROGRAM MODIFICATIONS

*Section 121. Clarification of airport obligation to provide FAA airport space*

This section prohibits the FAA from requiring airports to provide the agency with construction services or building space without compensation or reimbursement, with certain exceptions.

*Section 122. Mothers' rooms at airports*

This section requires, within two years of enactment, medium and large airports to maintain a "lactation area" in the sterile areas of each passenger terminal building for mothers to feed their infants. This section also allows the Secretary to temporarily waive the requirement that the lactation area be located in the sterile area if construction activities make it impracticable or unsafe to do so. Additionally, it allows the construction or installation of lactation areas to be eligible for AIP funding at any commercial service airport.

*Section 123. Extension of competitive access reports*

This section extends the sunset date of competition access reports in section 47107(r)(3) of title 49, United States Code, through fiscal year 2023.

*Section 124. Grant assurances*

This section allows GA airports to permit the construction of exclusively recreational aircraft by private individuals in airport hangars without violating any grant assurances. Further, it permits the leasing of airport land not needed for aeronautical purposes to local governments for recreational use, provided the use is temporary and does not interfere with the safety of the airport.

*Section 125. Government share of project costs*

This section corrects an unintentional effect of section 137 of the FAA Modernization and Reform Act of 2012 by ensuring that small airports that received an AIP grant in fiscal year 2011 for a multi-phased project will be able to complete that project with the 95 percent federal share that was assumed in the project planning.

*Section 126. Updated veterans' preference*

This section updates the definition of "Afghanistan-Iraq war veteran" used for veteran's preference purposes when entering into contracts to carry out airport development projects.

*Section 127. Special rule*

This section extends for fiscal years 2018 through 2020 authority for airports without a classified status listed in the National Plan of Integrated Airport Systems to continue receiving the non-primary entitlement funding they received from AIP in fiscal year 2013.

*Section 128. Marshall Islands, Micronesia, and Palau*

This section extends AIP eligibility for discretionary grants and funding from the Small Airport Fund to airports located in the Re-

public of the Marshall Islands, the Federated States of Micronesia, and Palau.

*Section 129. Nondiscrimination*

This section ensures Indian tribes may establish employment and contracting preference for projects at tribally owned airports or airports located on Indian reservations, consistent with the Civil Rights Act of 1964.

*Section 130. State Block Grant Program expansion*

This section expands the number of states allowed to participate in the State Block Grant Program from 10 states to 20 states.

*Section 131. Midway Island Airport*

This section extends the authority of the Secretary to enter into a reimbursable agreement with the Secretary of the Interior to provide AIP discretionary funds for airport development projects at Midway Island Airport.

*Section 132. Property conveyance releases*

This section authorizes the Secretary to grant an airport, city, or county a release from any of the terms, conditions, reservations, or restrictions contained in a deed in which the United States conveyed certain property. The section also requires that the airport, city, or county receive fair market value for the sale of any property interest and dedicate any sale proceeds to airport development.

*Section 133. Minority and disadvantaged business participation*

This section declares the findings of Congress that there remains a compelling need for the continuation of the airport disadvantaged business enterprise (DBE) program and the airport concessions DBE program.

*Section 134. Contract Tower Program*

This section amends the FAA Contract Tower Programs in several ways. Before an airport is admitted into the contract tower program, the FAA performs a rigorous benefit-cost (b/c) analysis to ensure that the safety benefits will outweigh the economic costs. This section identifies the criteria that should be used to evaluate airports in the program as well as those applying to enter the program. The section also outlines the criteria that may not be used by the FAA in the b/c analysis. Additionally, except for airports in the contract tower cost-share program, it prohibits the Secretary from calculating a new b/c ratio for airports in the program unless the annual aircraft traffic at the airport decreases by more than 25 percent from the previous year or by more than 60 percent cumulatively over a three-year period. Further, this section requires the Secretary, within 90 days of receiving an application to the program, to calculate a b/c ratio for the purposes of selecting towers for participation in the program. This section requires the Secretary to automatically add a 10-percentage point margin of error to the b/c ratio to acknowledge and account for the direct and indirect economic effects and other factors that are not included in the criteria the Secretary used in calculating that ratio. This section

outlines procedures to ensure that airports have an adequate opportunity to review and appeal the FAA's b/c analysis. The section clarifies that construction and improvement of towers whose airport sponsors participated in the FAA Contract Tower Program before the date of transfer of the operation of air traffic services to the Corporation will remain eligible for AIP grant funding and outlines what the eligibility requirements will be for such grant funding both before and after the date of transfer. This section, additionally, sets forth how safety oversight of contract towers will be conducted both before and after the date of transfer to the ATC Corporation. Lastly, it eliminates the cap on the federal share of contract tower construction costs.

To ensure that airports with high levels of traffic are providing adequate levels of air traffic service, the Committee believes that the FAA should assess whether FAA contract towers at small or medium hub airports operating on the date of enactment would be more appropriately operated as FAA-staffed ATC Towers.

*Section 135. Airport access roads in remote locations*

This section expands the permissible use of AIP funds for fiscal years 2017 through 2020 to include the development of an airport access road in a non-contiguous state for the purpose of enabling the construction of new airports.

*Section 136. Buy America requirements*

This section requires the FAA to issue an informal public notice of any project-specific Buy America waiver within 10 days prior to the issuing of the waiver. The justification of the waiver determination is required to be publicly available and easily accessible on the DOT's website and the Secretary is required to provide a public comment opportunity period.

SUBTITLE D—AIRPORT NOISE AND ENVIRONMENTAL STREAMLINING

*Section 151. Recycling plans for airports*

This section clarifies that projects appearing in an airport master plan must address the feasibility of solid waste recycling, which was a requirement under the FAA Modernization and Reform Act of 2012.

*Section 152. Pilot program sunset*

This section repeals the airport ground support equipment emissions retrofit pilot program established under section 47140 of title 49, United States Code.

*Section 153. Extension of grant authority for compatible land use planning and projects by state and local governments*

This section extends the grant program for the compatible land use planning and project program through September 30, 2023.

*Section 154. Updating airport noise exposure maps*

This section revises section 47503(b) of title 49, United States Code, to clarify when airports must submit updated noise exposure maps to the Secretary in order to encourage additional participation in the Part 150 noise mitigation program.

*Section 155. Stage 3 aircraft study*

This section directs the Comptroller General to conduct a review of the benefits, costs, and other impacts of a phase out of stage 3 aircraft. The Comptroller General is required to submit a report to Congress no later than 18 months after the date of enactment.

*Section 156. Addressing community noise concerns*

This section requires the FAA to consider the feasibility of dispersal headings or other lateral track variations to address noise concerns from affected communities when proposing new area navigation departure procedures or amending an existing procedure below 6,000 feet over noise sensitive areas.

*Section 157. Study on potential health impact of overflight noise*

This section directs the Administrator to enter into an agreement with an eligible institution of higher education, to conduct a study on the health impacts of noise from aircraft flights on residents exposed to a range of noise levels focusing on a major metropolitan area. The areas that may be studied include, but are not limited to, Boston, Chicago, New York, the Northern California Metroplex, Phoenix, the Southern California Metroplex, and Washington, District of Columbia. The FAA is required to submit a report to Congress no later than 90 days after it receives the results of the study.

*Section 158. Environmental mitigation pilot program*

The section directs the Secretary to carry out a pilot program comprised of no more than six projects at public-use airports aimed at achieving the most cost-effective and measurable reductions in or mitigation of the impacts of aircraft noise, airport emissions, and water quality at the airport or within five miles of the airport.

*Section 159. Airport noise exposure*

The section directs the Administrator to conduct a review of the relationship between aircraft noise and its effect on communities surrounding airports. FAA is required to submit a report to Congress no later than two years after the date of enactment containing preliminary recommendations the Administrator determines appropriate for revising the land use compatibility guidelines in Part 150 of title 14, Code of Federal Regulations.

*Section 160. Community involvement in FAA NextGen projects located in metroplexes*

The section directs the Administrator, no later than 180 days after the date of enactment, to conduct a review of the FAA's community involvement in NextGen projects located in metroplexes. FAA is required to submit a report to Congress no later than 60 days after completion of the review on how they can improve community involvement, how they will engage airports and communities in projects, and lessons learned from NextGen projects and pilot programs.

*Section 161. Critical habitat on or near airport property*

This section directs the Secretary to work with other federal agencies and states to ensure that designations of critical habitat

on or near airports do not interfere with the safe operation of aircraft.

*Section 162. Clarification of reimbursable allowed costs of FAA memoranda of agreement*

The section amends existing law to clarify that certain noise mitigation projects are an eligible AIP expense under certain existing FAA memorandums of agreement.

Title II—American Air Navigation Services Corporation

*Section 201. Purposes*

This section establishes that the purpose of the title is to transfer air traffic services and related assets from the FAA to a separate not-for-profit corporate entity to provide more efficient operation and improvement of air traffic services in the United States.

SUBTITLE A—ESTABLISHMENT OF AIR TRAFFIC SERVICES PROVIDER

*Section 211. American Air Navigation Services Corporation*

This section amends title 49, United States Code, by inserting a new Subtitle XI—the American Air Navigation Services Corporation—at its end. The new Subtitle XI contains the following provisions:

*Chapter 901—General provisions*

Section 211 of the bill also adds a new chapter 901 of title 49, United States Code, by adding the following new section:

*Section 90101. Definitions*

This section provides a number of definitions and sets October 1, 2020, as the date on which the Corporation assumes operational control of air traffic services from the FAA.

*Chapter 903—Establishment of air traffic services provider; transfer of air traffic services*

Section 211 of the bill also adds a new chapter 903 of title 49, United States Code, by adding the following new sections:

*Section 90301. Establishment of Corporation*

This section establishes the Corporation as a federally chartered, not-for-profit corporation; entitles the Corporation to exclusive use of the name American Air Navigation Services Corporation; allows the Corporation to be incorporated in a state of its choosing; and allows it to do business under a name of its choosing.

*Section 90302. Transfer of air traffic services*

This section directs the Secretary to transfer operational control over air traffic services within the United States airspace and airspace delegated the United States to the Corporation on the date of transfer. It grants the Corporation exclusive permission to provide air traffic services within United States airspace, except for the DOD (as determined by the President), entities to which the United States has delegated certain air traffic responsibilities, entities with which the Corporation has contracted, and certain providers of unmanned aircraft traffic management systems.

*Section 90303. Role of Secretary in transferring air traffic services to Corporation*

This section directs the Secretary to manage and execute the transfer of air traffic services to the Corporation. It prohibits the Secretary from delegating authority under the subtitle to the Administrator unless otherwise provided.

*Section 90304. Status and applicable laws*

This section establishes the legal status and laws applicable to the Corporation. The section also clarifies that the federal government is not liable for any actions or inactions of the Corporation. Additionally, it directs that the Corporation be required to maintain its not-for-profit status under the Internal Revenue Code of 1986. Lastly, it clarifies that the federal government does not implicitly or explicitly guarantee the Corporation's debt.

*Section 90305. Nomination Panels for Board*

This section defines the composition, terms and qualifications of the Nomination Panels for the Board of Directors of the Corporation. The Nomination Panels will be responsible for nominating qualified persons to serve on the Board of Directors of the Corporation. The Nomination Panels will be comprised of representatives appointed by the following aviation stakeholder groups: passenger air carriers, cargo air carriers, regional air carriers, GA, business aviation, air traffic controllers, airports, and commercial pilots.

*Section 90306. Board of Directors*

This section vests the powers of the Corporation in a Board of Directors that governs the Corporation. It establishes the following composition of the Board:

- The Chief Executive Officer (CEO) of the Corporation;
- Two Directors appointed by the Secretary of Transportation;
- One Director nominated by the Passenger Air Carrier Nomination Panel;
- One Director nominated by the Cargo Air Carrier Nomination Panel;
- One Director nominated by the Regional Air Carrier Nomination Panel;
- One Director nominated by the General Aviation Nomination Panel;
- One Director nominated by the Business Aviation Nomination Panel;
- One Director nominated by the Air Traffic Controller Nomination Panel;
- One Director nominated by the Airport Nomination Panel;
- One Director nominated by the Commercial Pilot Nomination Panel; and
- Two “at-large” Directors nominated and selected by the other Directors on the Board.

This section outlines the nomination and appointment processes for both before and after the date of transfer. Before the date of transfer, each nomination panel submits to the Secretary a list, chosen by consensus, of four qualified individuals nominated to be Directors. The Secretary is required, no later than 30 days after

the last nomination list submission, to appoint two individuals to be Directors, and select the appropriate number of individuals to be Directors from each list submitted by the nomination panels. After the date of transfer, the lists of four qualified individuals nominated to be Directors is submitted to the Board of Directors for selection. The Secretary continues the appointment of two Directors as needed to fill vacant seats.

The section also outlines multiple other duties of the Board; establishes the authority, terms, requirements, and certain processes of the Board; and outlines the reporting requirements and accountability of the Corporation.

Lastly, this section directs that each Director will serve terms that are four years in duration and imposes a term limitation eight years.

*Section 90307. Fiduciary duties and qualifications of Directors*

This section outlines the qualifications necessary to serve on the Board and establishes the fiduciary duties of a Director to be solely and exclusively to the Corporation and not to the Nomination Panels, nor the stakeholder groups that nominated them. Directors must be United States citizens and may not be a government employee, employee of a union, or employee of a business that is a user of the Corporation's services or has a material interest in the Corporation. It also includes a private right of action for the Corporation in the event of breach of a Director's fiduciary duty.

*Section 90308. Bylaws and Duties*

This section outlines the required bylaws of the Corporation and the duties and responsibilities of the Board including:

- Adoption of an annual budget;
- Approval of a strategic plan and updates to that plan;
- Authorization for issuance of indebtedness;
- Assessment, modification, and collection of air traffic services charges and fees;
- Hiring and supervision of the CEO;
- Establishment and maintenance of an appropriately funded reserve fund;
- Establishment of a process to ensure the fiduciary duty of a Director is solely and exclusively to the Corporation;
- Establishment of a process to remove a Director; and
- Adoption of a process for filling vacancies on the Board.

*Section 90309. Committees of Board; independent auditors*

This section requires the Board of Directors to establish a Safety Committee, a Compensation Committee, a Technology Committee, and any other committee the Board deems necessary or appropriate to carry out the Corporation's responsibilities. It requires that the Corporation retain independent auditors to review financial statements and internal controls.

*Section 90310. Advisory Board*

This section establishes an Advisory Board to provide policy advice to the Board of Directors and gives the Advisory Board the authority to submit recommendations for independent Directors. The



Advisory Board will include not more than 15 members, including representatives of air carriers; GA; business aviation; commercial service airports; operators and manufacturers of commercial unmanned aircraft systems; appropriate labor organizations; DOD; and small communities, including those served by nonhub airports.

*Section 90311. Officers and their responsibilities*

This section requires the Board of Directors to select and hire a CEO, establishes the CEO's duties and scope of authority, and authorizes an interim CEO position to serve prior to the date of transfer and until the Board of Directors hires a CEO. It also sets forth the process for the CEO to appoint a Chief Operating Officer and a Chief Financial Officer subject to the approval of the Board.

*Section 90312. Authority of Corporation*

This section outlines the general corporate powers of the Corporation, including the ability to enter contracts, acquire property, indemnify employees, and be a party to lawsuits. The section also prohibits the Corporation from selling or issuing equity shares in the Corporation.

*Section 90313. Charges and fees for air traffic services*

This section allows the Corporation to assess and collect charges and fees from certain categories of air traffic service users beginning on the date of transfer. It also outlines the duties of the Board to approve air traffic charges and fees. The section establishes processes for providing air traffic services users notice of any changes in fees or charges. The section additionally requires the Corporation to publish an initial fee schedule at least 180 days before the date of transfer that must be approved by the Secretary. Increases in charges or fees also require Secretarial approval and must be submitted at least 90 days before the effective date. Further, the section establishes criteria for Secretarial reviews including consistency with the United States' international obligations, ICAO Policies on Charges for Air Navigation Services (Ninth Edition), non-discrimination, safety considerations, and the Corporation's financial requirements. Additionally, it prohibits charges and fees on public aircraft operations, including those operated by the armed services, and GA operations. The sections sets forth that users will incur an obligation to pay fees upon the rendering of air traffic services by the Corporation, allowing the Corporation to file suit to collect delinquent fees, and assess penalties and interest for delinquent payment.

*Section 90314. Preemption of authority over air traffic services*

This section preempts the application of state, local, and tribal law to ATC services.

*Section 90315. Actions by and against Corporation*

This section gives federal courts, rather than state or local courts, original jurisdiction over any lawsuit by or against the Corporation. This limits the ability of Corporation employees to provide expert testimony or expert opinion in certain circumstances.

*Section 90316. Transfer of federal personnel to Corporation*

This section establishes the processes and procedures for transferring federal employees to the Corporation. It is the intent of the Committee that employees who transfer from the FAA to the Corporation be guaranteed a continuation of their pay, benefits, and working conditions, unless and until they transfer into new programs that may be established or developed by the Corporation after meeting its bargaining obligations with the exclusive representatives of the employees of the Corporation.

The process of determining which employees, categories of employees and activities that will be transferred to Corporation must be completed 180 days prior to the date of transfer. In order to ensure that the Secretary's assessments and determinations are thoroughly informed, the Secretary is directed to consult with the relevant labor organizations that have first-hand knowledge of the operational needs of air traffic services. It is also essential that the Secretary consult with the CEO who is ultimately responsible for Corporation's management and performance after the date of transfer. Towards that end, Section 90316 requires the FAA, the Corporation, and labor organizations representing their employees to be proactive to resolve all transition issues in an expeditious manner.

Within 180 days of enactment, the Secretary is required to meet and confer with the Corporation and current labor organizations to determine which activities and categories of employees should be transferred to the Corporation. Similarly, during the transition to the new Corporation, Section 90316 requires the parties to engage in negotiations and reach either bipartite or tripartite agreements, as appropriate, to ensure that their collective bargaining agreements and the other working conditions that apply to FAA employees are jointly updated to reflect that the Corporation is not a Federal entity and the employees working for the Corporation are no longer Federal employees. The parties also should be proactive in resolving transition issues related to the separation of air traffic services from the FAA, including, but not limited to: Air Traffic Safety Action Plan (ATSAP), Fatigue Risk Management, Professional Standards, technology development, approval, testing, training, and implementation.

The parties are encouraged to work collaboratively to resolve all issues related to the transition and the workforce, and to implement the dispute resolution procedures on a timely basis should they be unable to reach agreement.

As part of the transition process, the Committee anticipates that the Secretary, the CEO, or both, may revisit a determination to transfer employees to the Corporation or to retain them at the FAA should be revisited. It is important that flexibility exist during the initial phase of the Corporation's existence to ensure the proper allocation of functions, activities, resources and personnel. Therefore, this section provides for a process during the first 180 days following the date of transfer, by which employees may be transferred to Corporation from the FAA or vice versa if the Secretary determines that the placement of the employee was inconsistent with the purposes of the subtitle. The section also includes protections of employment rights and benefits for employees transferred between Corporation and the FAA. These protections extend to per-

sonnel whom the Secretary decides to retain within the FAA. The inclusion of these persons is intended to ensure that their rights are protected throughout the transition.

Section 90316 includes other provisions to aid in a smooth transfer of employees to Corporation. FAA air traffic controllers and other key personnel work in restricted access environments that are owned or leased by the federal government. They are required to have specialized clearances, determinations of suitability, and medical qualifications in order to perform their duties. Therefore, in order to ensure a seamless transition and to mitigate any latent risks of lapses in credentialing, this section ensures the ongoing validity of all required credentials, certificates, clearances, and any other permissions or approvals necessary for employees transferred to Corporation to continue their work on the date of transfer and beyond. Such “grandfathered” credentials shall remain valid until equivalent or substantially equivalent credentials may be issued. However, the federal government may revoke any credential for cause.

*Section 90317. Transfer of facilities to Corporation*

This section sets forth a process by which the Secretary must identify and transfer assets necessary to carry out air traffic services to the Corporation without charge. The section requires that the Corporation use proceeds from the sale of any assets received from the government to acquire or improve new air navigation facilities or other assets. It requires maintenance by the Corporation of equipment that is located in a noncontiguous state of the United States that is determined necessary to the Corporation. It also establishes a moratorium on consolidation or realignment of air traffic services facilities until requisite processes are established, and directs the Corporation to establish a process for the consolidation or realignment of facilities, in consultation with labor, six months before the date of transfer.

*Section 90318. Approval of transferred air navigation facilities and other equipment*

This section authorizes the Corporation to operate air navigation facilities and other assets received from the FAA without separate certification or approval.

*Section 90319. Use of spectrum systems and data*

This section directs the Secretary to provide the Corporation with access to the spectrum systems (and any successor systems) and any data from those systems, that the FAA had been using before the date of transfer to provide air traffic services.

*Section 90320. Transition plan*

This section requires the Secretary, after conferring with the CEO of the Corporation, to establish a transition team whose purpose is to develop a transition plan consistent with this subtitle, to be reviewed by the Secretary, and if approved, utilized by DOT during the transition period of air traffic services from FAA to the Corporation.

*Chapter 905—Regulation of Air Traffic Services Provider*

Section 211 of the bill also adds a new chapter 905 of title 49, United States Code, by adding the following new sections:

*Section 90501. Safety oversight and regulation of Corporation*

This section directs DOT to conduct safety oversight of the Corporation, including the issuance of performance-based regulations and minimum safety standards for the operation of air traffic services as well as for the certification and operation of air navigation facilities. It directs DOT to identify the policies and administrative materials of the FAA for providing air traffic services before the date of transfer that will apply to the Corporation after the date of transfer. The section requires the Corporation to submit any proposals to change airspace or traffic management procedures to DOT, who must approve, disapprove, or modify such proposals on an expedited basis. Additionally, it allows the Secretary to delegate safety oversight functions to the Administrator. Lastly, the section brings oversight of the Corporation in line with the rest of the aviation industry.

*Section 90502. Resolution of disputes concerning air traffic services charges and fees*

This section establishes a dispute resolution mechanism for fees assessed to users. It requires that the Secretary establish a process for the handling of complaints and make determinations of correctness of fees.

*Section 90503. International agreements and activities*

This section requires that the Corporation provide air traffic services in a manner consistent with the United States' sovereign obligations under various international agreements or applicable foreign laws. The section also clarifies that the Corporation cannot represent or negotiate on behalf of the United States before any foreign government or international organization.

*Section 90504. Availability of safety information*

This section requires that the Corporation provide users with the same safety information provided to users by the FAA before the date of transfer, as well as any additional safety information necessary for safe use of air traffic services. The section also permits the Corporation to provide weather information and maps used by flight crews.

*Section 90505. Reporting of safety violations to FAA*

This section requires the Corporation to report possible safety violations it observes to the FAA, and assist the FAA in any related enforcement action.

*Section 90506. Insurance requirements*

This section requires that the Corporation obtain insurance policies and coverages sufficient to cover the anticipated liability risks of its operations, including indemnification of employees acting within their scope of employment to protect them against legal actions that may be brought against them in their individual capacity.

*Chapter 907—General Rights of Access to Airspace, Airports, and Air Traffic Services Vital to Ensuring Safe Operations for All Users*

Section 211 of the bill adds a new chapter 907 of title 49, United States Code, by adding the following new sections:

*Section 90701. Access to airspace*

This section directs the Secretary to ensure that no user is denied access to airspace on the basis of the user being exempt from charges and fees, pursuant to section 90313.

*Section 90702. Access to airports*

This section requires the Secretary to establish a determination, with respect to carrying out section 90501(c)(3), on whether a proposal would materially reduce access to a public use airport, which includes GA airports or rural airports.

*Section 90703. Contract tower service after date of transfer*

This section directs the Secretary to take necessary actions to ensure the Corporation meets all contractual obligations of FAA contract towers that were in operation before the date of transfer. This section also outlines special rules governing the proposed closure of air traffic control towers that participated in FAA Contract Tower Program before the date of transfer when the proposed closure would result in an airspace change or reclassification. It also includes a process for meaningful analysis of potential impacts of such a closure and community involvement. The section outlines the impacts that must be analyzed by the Corporation as part of the review process.

Existing contracts between contract tower operators and the FAA began on July 1, 2015, and continue for five years. The Committee is aware that current contracts may expire during the transition period to the Corporation. Given the importance of contract towers to over 250 smaller airports in rural America and major metropolitan areas, it is clear that the Contract Tower Program should continue without interruption during the transition period. As validated by the DOT IG, the Contract Tower Program is cost effective, saving the FAA and taxpayers millions of dollars each year. It plays a major role in the Nation's air transportation system, handling approximately 30 percent of all tower aircraft operations in the United States, including almost half of all military operations at civilian airports. The Committee believes that FAA and the Corporation should consider the merits of renewing the current contracts that may expire during the transition period to ensure complete continuity of air service and access for all airspace users.

Nothing in this section should be construed to limit the ability of the Corporation to convert a former FAA contract tower into the post-transfer equivalent of an FAA Air Traffic Control Tower in order to provide better air traffic services at an airport.

*Section 90704. Availability of safety information to general aviation operators*

This section requires the Corporation, in carrying out section 90504, to disclose all safety information to air traffic services users, including GA operators and the public.

*Section 90705. Special rules and appeals process for air traffic management procedures, assignments, and classifications of airspace*

This section sets forth special rules and decisional standards for the Secretary when reviewing a proposal by the Corporation to modify, reduce, decommission, or eliminate an air traffic service or navigation facility that would hinder access to a public-use airport or airspace for any class, category, or type of aircraft in operation. It outlines the judicial review process for such determinations.

*Section 90706. Definitions*

This section provides a number of definitions for this chapter.

*Chapter 909—Continuity of Air Traffic Services to DOD and Other Public Agencies*

Section 211 of the bill adds a new chapter 909 of title 49, United States Code, by adding the following new sections:

*Section 90901. Continuity of air traffic services provided by DOD*

As directed by the President, this section permits the DOD to provide air traffic services within United States airspace and international airspace delegated to the United States after the date of transfer.

*Section 90902. Military and other public aircraft exempt from user fees*

This section prohibits the Corporation from imposing any charges or fees on aircraft owned or operated by the Armed Forces and other public aircraft.

*Section 90903. Air traffic services for federal agencies*

This section requires the Secretary to establish processes ensuring that the Corporation supports all activities of the United States government supported by FAA before the date of transfer and on an ongoing basis thereafter.

*Section 90904. Emergency powers of armed forces*

This section clarifies that the safety oversight requirements outlined in section 90501 do not apply to airspace actions authorized under section 40106 of title 49, United States Code.

*Section 90905. Adherence to international agreements related to operations of armed forces*

This section requires the Corporation, in carrying out section 90503, to ensure that all obligations described in that section include obligations related to the operations of the Armed Forces.

*Section 90906. Primacy of armed forces in times of war*

This section allows for the temporary transfer of a duty, power, activity, or facility of the Administrator or the Corporation to DOD by the President during war.

*Section 90907. Cooperation with DOD and other federal agencies after date of transfer*

This section requires the Corporation, DOT, and all federal agencies supported by the FAA's operation of air traffic services enter into a tripartite agreement to ensure cooperation between the entities, facilitate the safe provision of services, and address coordination and communication of day-to-day operations after the date of transfer.

*Chapter 911—Employee Management*

Section 211 of the bill also adds a new chapter 911 of title 49, United States Code, by adding the following new sections:

*Section 91101. Definitions*

This section sets forth certain definitions relating to employee management.

*Section 91102. Employee management and benefits election*

This section establishes the CEO's authority to set wages, hours, and other terms of employment just like other private entities throughout the Nation. It ensures that employees initially transferred from the federal government to the Corporation are kept whole in terms of their benefits by allowing them to elect whether to retain federal benefits or opt for comparable benefits offered by the Corporation. To do so, the section substitutes the Corporation for the government, to ensure the government's employer obligations are transferred to the Corporation. This section also extends several important laws, including whistleblower safeguards, to the Corporation and its employees.

*Section 91103. Labor and employment policy*

This section applies much of the Federal Service Labor-Management Relations Statute (FSLMRS) that governs labor-management relations in the federal government to the Corporation and its employees. Primarily, this includes the union prohibition on the right to strike and other actions that would disrupt the operation of the air traffic control system. It preserves air traffic controllers' and other employees' existing right to participate in labor organizations or refrain from doing so, if desired, commonly referred to as an "open shop." It also continues other laws as applicable to the Corporation and its labor organizations to ensure fairness and transparency in labor relations and reporting.

*Section 91104. Bargaining units*

This section preserves the existing structure of bargaining units to ensure the units are system-wide and not divided piecemeal across the country. Further, it clearly prohibits supervisors and managers from joining a union.

*Section 91105. Recognition of labor organizations*

This section requires the Corporation to recognize and bargain with the labor organizations selected by its employees. This section is designed to maintain continuity in labor-management relations, ensure a smooth transition, and minimize the potential for disruption to the employees and the Corporation.

This section also requires the employees and the Corporation to comply with the terms of collective-bargaining agreements and arbitration awards in effect on the date of transfer until such agreements and awards expire or are lawfully altered or amended. The Committee understands that this will ensure productive labor-management relations and seamless ATC service operations throughout the transition.

*Section 91106. Collective-bargaining agreements*

This section establishes certain requirements for collective bargaining agreements, including that such agreements be effective for no less than two years.

*Section 91107. Collective-bargaining dispute resolution*

This section establishes a process by which the Corporation and labor organizations will resolve their disputes arising in collective bargaining. The need for finality in the negotiation of collective-bargaining agreements between the Corporation and its employees is important to all stakeholders. Section 91107 sets forth a process by which the Corporation and the labor organization will resolve disputes arising from negotiation impasses for both term collective-bargaining agreements and mid-term bargaining.

The first step of the process for term bargaining or mid-term bargaining is to negotiate in good faith. After 90 days of negotiation, the parties may invoke the mediation services of the Federal Mediation and Conciliation Service (FMCS). This mediation period shall last 60 days, unless extended by the parties. If no resolution is reached through negotiation, binding arbitration is invoked. This is where the term bargaining and mid-term bargaining differs slightly in process.

For term bargaining, the binding arbitration is conducted by a three-member arbitration board with one arbitrator selected by each party, and the third selected by those two arbitrators from a list of 15 well-qualified arbitrators (e.g., the National Academy of Arbitrators, the American Arbitration Association) prepared by the Director of the FMCS. Once selected, the arbitration board must hold a hearing, including presentations of evidence and witnesses. The arbitration board must give proper weight to the evidence and, not later than 90 days from appointment, issue its decision. The parties must share in the costs of arbitration. This section is enforceable in United States District Court for the District of Columbia.

Unlike term bargaining, mid-term bargaining is resolved by a single arbitrator, instead of a board. The arbitrator must be of national reputation and significant experience, just as is required for the arbitration board for term bargaining. The selection process for the arbitrator begins with the development of a list of ten arbitrators by the FMCS, from which each party strikes a name until one is left. The arbitrator must hold a hearing and issue a written decision within 90 days. This section is also enforceable in United States District Court for the District of Columbia.

Both processes for term and mid-term bargaining will help ensure peaceful labor-management relations through a prescriptive, conclusive, and binding process. The Committee prefers resolution of disputes and impasses through negotiations or mutually agreed



to terms and processes; however, when such negotiations break down, the section provides for certainty in the resolution of disputes that will ensure the safe, efficient, and continuous provision of air traffic control services.

*Section 91108. Potential and pending grievances, arbitrations, and settlements*

This section transfers existing enforceable grievance awards and arbitration awards as obligations of the Corporation, and preserves employees' and management's rights in such agreements in effect on the date of transfer. Any grievances or arbitrations pending on the date of transfer are also transferred with the Corporation stepping into the shoes of the employer; however, to the extent such proceedings require financial or monetary reward, such financial or monetary liability remains with the government by operation of this section in conjunction with section 91302. The Committee does not want to burden the Corporation with financial or monetary liability arising from the acts or omissions of the federal government. However, where a grievance or arbitration award would require the Corporation to change its practices or to take actions as the successor to the FAA as an employer, such change in practice or action should be required of the Corporation. This section permits either party to an arbitration award to seek judicial action to vacate such an award pursuant to section 91110(a).

*Section 91109. Prohibition on striking and other activities*

This section strictly prohibits employees from engaging in strikes, work stoppages, slowdowns, and picketing of the Corporation and requires termination of employees who engage in such activity. The burden of proof and other standards established in *Schapansky v. Department of Transportation*, 735 F.2d 477 (Fed. Cir. 1984) and its progeny shall apply to any resolution of disputes arising under this section.

*Section 91110. Legal action*

To ensure uniformity in legal actions and precedent across the country, given the national make-up of air traffic control services, this section establishes the jurisdiction of federal district courts to hear cases brought to enforce or vacate arbitration awards. It also establishes federal court jurisdiction for actions by and against labor organizations under this bill. In conjunction with section 90315, the federal courts shall have jurisdiction over all actions by and against the Corporation and all labor-related actions. Keeping the jurisdiction in the federal courts will ensure consistency by preventing state laws and courts from being invoked which would result in piecemeal and possibly inconsistent legal decisions. Furthermore, federal courts already have the requisite experience with regard to the federal labor statutes and processes involved in this chapter, and, therefore, are best equipped to continue interpreting and applying them.

*Chapter 913—Other Matters*

Section 211 of the bill also adds a new chapter 913 of title 49, United States Code, by adding the following new sections:

*Section 91301. Termination of government functions*

This section clarifies that any activity vested in law in the Secretary, Administrator, DOT, or the FAA that has been transferred to the Corporation pursuant to this Act shall cease to be a function of the government after the date of transfer.

*Section 91302. Savings provisions*

This section ensures the continued effectiveness of the government's pending and completed administrative actions and proceedings, including rulemakings, licensing proceedings, certain contract obligations, and various applications, until they are amended, modified, superseded, terminated, set aside or revoked. It also ensures that certain legal claims, based on the government's acts or omissions before the date of transfer, will continue to be available after the date of transfer. The section requires the Corporation to assume air traffic services related assets and liabilities from the FAA, and ensures certain liabilities, such as torts claims arising from the acts of transferred FAA employees, and environmental claims, remain with the federal government.

*Chapter 915—Congressional Oversight of Air Traffic Services Provider*

Section 211 of the bill also adds a new chapter 915 of title 49, United States Code, by adding the following new sections:

*Section 91501. Inspector General reports to congress on transition*

This section requires the DOT IG, up until the date of transfer, to submit quarterly reports to Congress on the progress of the preparation of the DOT and the Corporation for the transfer of operational control of air traffic services.

*Section 91502. State of air traffic services*

This section requires the Corporation, not later than two years after the date of transfer, and every two years thereafter, to submit a report on the state of air traffic services, covering charges and fees, safety, interaction between the Corporation and federal agencies, the Corporation's compliance with various laws, international treaties/agreements, and more.

The Committee has supported the FAA's efforts over the past decade to deploy proven, cost effective, commercial off-the-shelf integrated control and monitoring systems to improve safety, efficiency and situational awareness for controllers. However, the Committee recognizes that the FAA has been unable to deploy cost effective, safe and modern off-the-shelf technology that could improve the efficiency and safety of the NAS. The transfer of responsibility of providing ATC services to the Corporation will enable the new service provider to utilize such off-the-shelf technology more quickly should it so choose.

*Section 91503. Submission of annual financial report*

Starting not later than one year after the date of transfer, this section requires the Corporation to annually submit a report on the financial and operational performance information of the Corpora-

tion during the previous year to the Secretary, which will subsequently be submitted to Congress.

*Section 91504. Submission of a strategic plan*

This section requires the Corporation, no later than 15 days after the initial strategic plan of the Corporation is approved by the Board, to submit the strategic plan to the Secretary, who shall then submit it to Congress. Also, it requires a similar submittal process for any updates to the strategic plan.

*Section 91505. Submission of annual action plan*

This section requires the Corporation to develop an annual report on the goals of the Corporation for the following year, including specific and tangible goals to help expedite the improvement of the Corporation as a whole. Not later than one year after the date of transfer and on an annual basis thereafter, this section requires the Corporation to submit the report to the Secretary and the Secretary to submit the report to Congress.

SUBTITLE B—AMENDMENTS TO FEDERAL AVIATION LAWS

*Section 221. Definitions*

This section adds the definition of “American Air Navigation Services Corporation” to section 40102 of title 49, United States Code.

*Section 222. Sunset of FAA air traffic entities and officers*

This section sunsets the FAA’s Air Traffic Services Committee, the Air Traffic Organization Chief Operating Officer position, and the Chief NextGen Officer position on the date of transfer, and amends the authorities of the FAA’s Management Advisory Council and Aircraft Noise Ombudsman to reflect the separation of air traffic services.

*Section 223. Role of administrator*

This section clarifies that while the Corporation may conceive of and design changes to the airspace after the date of transfer as part of its provision of air traffic services, the FAA will continue prescribing regulations relating to the safe operation of aircraft, and will ensure equitable access to and use of airspace.

*Section 224. Emergency powers*

This section requires appropriate military authorities to inform the Corporation as early as possible if military aircraft will deviate from safety regulations due to an emergency or urgent military necessity.

*Section 225. Presidential transfers in time of war*

This section provides the President the same authority related to the Corporation as the President has related to the FAA if war should occur. It also clarifies that if war occurs, the President would have the power to temporarily transfer to the Secretary of Defense an activity or facility of the Corporation (or of the FAA).

*Section 226. Airway Capital Investment Plan before date of transfer*

This section terminates the requirement that the Administrator produce an annual Airway Capital Investment Plan following the date of transfer. After the date of transfer, the Corporation will be responsible for such investment planning and will be required to provide an annual report containing financial and operational performance information and to retain independent auditors to conduct annual audits of the Corporation's financial statements and internal controls.

*Section 227. Aviation facilities before date of transfer*

This section sunsets certain authorities of the Administrator relating to the purchase and maintenance of air navigation facilities on the date of transfer. Such activities will be conducted by the Corporation after the date of transfer. The section adds the Corporation to a list of entities that must be consulted before the establishment of military aviation facilities to ensure conformity with plans and policies regarding airspace.

*Section 228. Judicial review*

This section amends existing law by allowing a person disclosing a substantial interest in an order issued by the Secretary or the Administrator with respect to aviation duties and powers designated to be carried out by the Administrator to apply for judicial review of the order.

*Section 229. Civil penalties*

This section amends existing law to add section 90501 to the list of sections to which a civil penalty may be imposed. It also allows the Secretary to impose a civil penalty of not more than \$25,000 for violations of 90501.

## SUBTITLE C—OTHER MATTERS

*Section 241. Use of federal technical facilities*

This section ensures the ongoing availability of the FAA's research facilities to the Corporation.

*Section 242. Ensuring progress on NextGen priorities before date of transfer*

This section directs the Administrator, in consultation with the NextGen Advisory Committee, to prioritize the implementation of the following programs: Multiple Runway Operations; Performance-Based Navigation; Surface Operations and Data Training; and Data Communications. The section also directs the Administrator to establish near-term NextGen goals and amends existing law to require a NextGen metrics report to be included as part of the annual report required under the law.

*Section 243. Severability*

The section serves as the severability clause for the title in the event one or more parts of the title are found to be invalid.

*Section 244. Prohibition on the receipt of federal funds*

The section prohibits the Corporation from accepting or receiving any of the uncommitted balance of the Airport and Airway Trust Fund.

## Title III—FAA Safety Certification Reform

## SUBTITLE A—GENERAL PROVISIONS

*Section 301. Definitions*

This section sets forth definitions applicable to this title.

*Section 302. Safety Oversight and Certification Advisory Committee*

This section establishes the Safety Oversight and Certification Advisory Committee (SOCAC), comprised of industry stakeholders, including GA, commercial aviation, aviation labor, aviation maintenance, and more, and the Administrator. The SOCAC is responsible for providing advice to the Secretary on policy level issues related to FAA safety certification and oversight programs and activities, and establishing consensus national goals, strategic objectives and priorities to achieve the most efficient, streamlined and cost-effective certification and oversight processes. The SOCAC sunsets after six years.

## SUBTITLE B—AIRCRAFT CERTIFICATION REFORM

*Section 311. Aircraft certification performance objectives and metrics*

This section directs the Administrator to work with the SOCAC to establish performance objectives for the FAA and the aviation industry related to aircraft certification, and apply and track performance metrics for both FAA and aviation industry. These performance objectives for aircraft certification shall ensure that progress is being made in eliminating delays, increasing accountability, and achieving full utilization of delegation, while maintaining leadership of the United States in international aviation. The data for the metrics will be publicly available on the FAA's website.

*Section 312. Organization designation authorizations*

This section amends existing law by requiring that when overseeing an organization designation authorization (ODA) holder, the Administrator must require a procedures manual that addresses all procedures and limitations regarding the ODA's functions to ensure that such functions are delegated fully to the ODA (unless there is a safety or public interest reason to not delegate functions). This section establishes a centralized ODA policy office within the FAA's Office of Aviation Safety to oversee and ensure the consistency of audit functions under the ODA program across the FAA.

*Section 313. ODA review*

This section establishes a multidisciplinary expert review panel consisting of members appointed by the Administrator to conduct a survey of ODA holders and applicants to obtain feedback on the FAA's efforts involving the ODA program and make recommendations to improve the FAA's ODA-related activities. Within six months of the Panel convening, they will submit a report to the

FAA and relevant congressional committees on any findings and recommendations.

*Section 314. Type certification resolution process*

This section requires the Administrator to establish a type certification resolution process, in which the certificate applicant and FAA will establish for each project specific certification milestones and timeframes for those milestones. If the milestones are not met within the specific timeframe, the milestone will be automatically elevated to the appropriate management levels of both the applicant and FAA and resolved within a specific period of time.

*Section 315. Safety enhancing equipment and systems for small general aviation airplanes*

This section requires, within 180 days of enactment, that the Administrator establish and begin implementation of a risk-based policy that streamlines the installation of safety enhancing technologies for small GA aircraft so that the safety benefits of such technologies for small GA aircraft can be realized.

*Section 316. Review of certification process for small general aviation airplanes*

The section directs the DOT IG to review the final rule titled “Revision of Airworthiness Standards for Normal, Utility, Acrobatic and Commuter Category Airplanes.” In this review, the DOT IG will assess how the rule puts into practice the FAA’s efforts to implement performance based safety standards, if the rule has improved safety and reduced regulatory cost burden and lessons learned.

SUBTITLE C—FLIGHT STANDARDS REFORM

*Section 331. Flight standards performance objectives and metrics*

The section directs the Administrator, in collaboration with the SOCAC established in section 302, to establish performance objectives and to apply and track metrics for the FAA and aviation industry relating to flight standards activities, and achieving national goals established by the Advisory Committee.

*Section 332. FAA Task Force on Flight Standards Reform*

This section directs the FAA to establish an FAA Task Force on Flight Standards Reform (Task Force). The Task Force will be comprised of 20 industry experts and stakeholders, and be responsible for identifying best practices and providing recommendations for simplifying and streamlining flight standards processes, training for aviation safety inspectors, and to achieve consistency in FAA regulatory interpretations and oversight.

*Section 333. Centralized Safety Guidance Database*

The section directs the Administrator to establish a Central Safety Guidance Database that will include all regulatory guidance documents of the FAA Office of Aviation Safety within one year of enactment, and make the database available to the public.

*Section 334. Regulatory Consistency Communications Board*

This section requires the Administrator to establish a Regional Consistency Communications Board that will be composed of FAA representatives from Flight Standards Service, Aircraft Certification Service and Office of the Chief Counsel. The Board will be responsible for establishing a process by which FAA personnel as well as regulated entities may submit regulatory interpretation questions anonymously without fear of retaliation. The SOCAC will establish performance metrics for both industry and the FAA in regard to the actions of the Board.

SUBTITLE D—SAFETY WORKFORCE

*Section 341. Safety workforce training strategy*

This section directs the FAA to establish a safety workforce training strategy that addresses a number of goals. These goals include allowing employees participating in organization management teams or ODA program audits to complete appropriate training in auditing, identifying a systems safety approach to oversight, and seeking knowledge-sharing opportunities between the FAA and aviation industry.

*Section 342. Workforce review*

This section directs the Comptroller General of the United States to conduct a study to assess the workforce and training needs of the FAA's Office of Aviation Safety. This study will look at current hiring and training requirements for inspectors and engineers, and analyze the skills and qualifications of safety inspectors and engineers.

SUBTITLE E—INTERNATIONAL AVIATION

*Section 351. Promotion of United States aerospace standards, products, and services abroad*

This section directs the Administrator to take appropriate actions to promote United States aerospace standards abroad, to defend approvals of United States aerospace products and services abroad and to utilize bilateral safety agreements to improve validation of United States certified products.

*Section 352. Bilateral exchanges of safety oversight responsibilities*

This section grants the Administrator the ability to accept an airworthiness directive necessary to provide for safe operation of aircraft issued by the aeronautical authority of a foreign country and leverage their regulatory process, if certain criteria are met. The section also allows for an alternative approval process and alternative means of compliance under certain circumstances.

*Section 353. FAA leadership abroad*

The section directs the Administrator to promote United States aerospace safety standards abroad and to work with foreign governments to facilitate the acceptance of FAA approvals and standards internationally. The Administrator is directed to further assist American companies who have experienced significantly long foreign validation wait times and work with foreign governments to

improve the timeliness of their acceptance of FAA validations and approvals. This section requires FAA to track and analyze the amount of time it takes foreign authorities to validate certificated aeronautical product types certified in the United States and establish benchmarks and metrics to reduce the validation times.

*Section 354. Registration, certification, and related fees*

This section amends existing law by allowing the Administrator to establish and collect a fee from a foreign government or entity for certification services if the fee is consistent with aviation safety agreements and does not exceed the cost of the services.

Title IV—Safety

SUBTITLE A—GENERAL PROVISIONS

*Section 401. FAA technical training*

Within 90 days of enactment, this section requires the Administrator to establish an e-learning training pilot program to provide technical training for FAA personnel on the latest aviation technologies, processes, and procedures. The section terminates the pilot program one year after establishment. After elimination of the pilot program, the FAA will establish a permanent e-Learning program that utilizes lessons learned from the pilot.

*Section 402. Safety critical staffing*

This section directs the Administrator to update the FAA's safety critical staffing model within 270 days of the date of enactment and at least two years before the date of transfer. This section requires the DOT IG to conduct a study of the staffing model used by the FAA to determine the number of aviation safety inspectors that are needed to fulfill the mission of the FAA and adequately ensure aviation safety. Lastly, this section requires reports on the audit to both the Secretary and to Congress.

*Section 403. International efforts regarding tracking of civil aircraft*

This section directs the Administrator to exercise leadership on creating a global approach to improve aircraft tracking by working with foreign counterparts in the ICAO, other international organizations, and the private sector.

*Section 404. Aircraft data access and retrieval systems*

This section requires the FAA to initiate a study of aircraft data access and retrieval technologies for Part 121 commercial aircraft used in extended overwater operations to determine if such technologies provide improved access and retrieval of the data in the event of an accident. A report to Congress is required not later than one year after initiation of the study.

*Section 405. Advanced cockpit displays*

This section requires the FAA to review heads-up display systems, heads-down display systems employing synthetic vision systems, and enhanced vision systems and the impacts of single and dual installed heads-up systems within 180 days of enactment. A report to Congress is required no later than one year after enactment.



*Section 406. Marking of towers*

This section includes a technical correction to section 2110 of the FAA Extension, Safety and Security Act of 2016 to clarify that the term “covered towers” does not include towers located within the right-of-way of a rail carrier, including within the boundaries of a rail yard, and are used for railroad purposes. Furthermore, to ensure safety while providing flexibility to covered tower operators, section 2110 is revised to allow covered tower operators or owners to either submit the tower’s information into the database established in the section or mark the tower according to FAA marking requirements. This option does not apply to Meteorological Evaluations Towers, which must be both marked in accordance with FAA marking requirements and entered into the database.

*Section 407. Cabin evacuation*

This section requires the FAA, in consultation with National Transportation Safety Board and appropriate stakeholders, to review evacuation certification of transport category aircraft, including emergency conditions, crew procedures, relevant changes to passenger demographics, legal requirements that affect emergency evacuations, and recent accidents and incidents where passengers had to evacuate. The section also requires, not later than one year after the date of enactment, a report to be submitted to Congress on the results of the review and any associated recommendations.

*Section 408. ODA staffing and oversight*

This section directs the Administrator to report to Congress no later than 270 days after enactment on its progress in implementing specific DOT IG recommendations regarding the FAA’s staffing and oversight of ODA prior to the date of transfer. The section requires the report to contain the FAA’s progress with respect to ensuring full ODA utilization authority prior to and after the date of transfer.

*Section 409. Funding for additional safety needs*

This section allows the Administrator to accept funds from an applicant for a certificate in order to hire additional support staff or to obtain the services of consultants and experts to help streamline the review and issuance of certificates. This section outlines other policies and procedures to be implemented by the Administrator to ensure that the acceptance of funds does not prejudice the Administrator in the issuance of any certificate. The section contains a clause requiring that any funds accepted under the section shall be credited as offsetting collections.

*Section 410. Funding for additional FAA licensing needs*

This section allows the Secretary to accept funds from a person applying for a license or permit in order to hire additional staff or to obtain the services of consultants or experts to help streamline the issuances of licenses or permits. It outlines policies and procedures to be implemented by the Secretary and contains a clause requiring that any funds accepted under the section shall be credited as offsetting collections.

*Section 411. Emergency medical equipment on passenger aircraft*

This section directs the Administrator to evaluate and revise existing regulations on emergency medical equipment, and consider whether the minimum contents of approved medical kits on passenger aircraft meet the emergency needs of children.

*Section 412. HIMS program*

This section authorizes the existing human intervention motivation study (HIMS) program for flight crewmembers employed by commercial air carriers operating in the United States.

*Section 413. Acceptance of voluntarily provided safety information*

This section requires the FAA to automatically accept voluntary disclosures submitted under the Aviation Safety Action Program into the program even if they have not undergone a review by the event review committee. This requires a disclaimer be attached to the disclosure that states the disclosure has not gone through an event review committee. If the event review committee determines that the disclosure fails to meet criteria for acceptance, the disclosure will be rejected from the program.

*Section 414. Flight attendant duty period limitations and rest requirements*

This section directs the Administrator to revise the final rule issued on August 19, 1994, related to flight attendant duty period limitations and rest requirements. The revised rule must ensure that a flight attendant has at least a scheduled rest period of 10 consecutive hours, and that the rest period cannot be reduced under any circumstances. This section requires, within 90 days after enactment, all Part 121 air carriers to submit to the Administrator a fatigue risk management plan. The Administrator is required to review and accept or reject the fatigue risk management plan for each Part 121 carrier. If the Administrator rejects a plan, the Administrator must provide modifications needed for the resubmission of the plan. Part 121 air carriers must update their fatigue risk management plans every two years and resubmit them to the Administrator. If a Part 121 air carrier violates this subsection, it shall be subject to civil penalties.

*Section 415. Secondary cockpit barriers*

This section requires, not later than one year after the date of enactment, the Administrator to issue an order requiring the installation of a secondary cockpit barrier on all new passenger air carrier aircraft.

*Section 416. Aviation maintenance industry technical workforce*

This section requires the Comptroller General to conduct a study and issue recommendations on aviation workforce data and workforce needs in the aviation maintenance sector. It also requires a report to Congress no later than one year after the date of enactment.

*Section 417. Critical airfield markings*

This section requires a study on the durability of and use of Type III and Type I retroreflective glass beads on airport runways.

## SUBTITLE B—UNMANNED AIRCRAFT SYSTEMS

*Section 431. Definitions*

This section sets forth definitions applicable to this subtitle.

*Section 432. Codification of existing law; additional provisions*

This section amends existing law by inserting a new Chapter 455, “Unmanned Aircraft Systems” (UAS) in order to codify UAS-related provisions included in the *FAA Modernization and Reform Act of 2012* and to add several new UAS-related provisions to the Chapter. Chapter 455 contains the following provisions:

*Section 45501. Definitions*

This section codifies definitions from section 331 of the *FAA Modernization and Reform Act of 2012* and adds new definitions for terms used in this chapter.

*Section 45502. Integration of civil UAS into national airspace system*

This section codifies portions of section 332 of the *FAA Modernization and Reform Act of 2012* that require the Secretary to develop a comprehensive plan and roadmap for UAS integration. The provisions also require the Secretary to conduct a rulemaking relating to the operation of small UAS (sUAS) and to take actions to expand use of UAS in Arctic regions.

*Section 45503. Risk-Based permitting of UAS*

This section establishes a new basis for licensing any UAS and UAS operations not covered by regulations applicable to the operation of sUAS. This section sets forth permitting standards and certain criteria that the Administrator must consider in assessing applications, and provides the FAA with flexibility to waive certain statutory requirements if the operations will occur away from congested areas. The permits issued under this section will have a validity of five years. Further, applications for UAS operations related to disaster recovery and emergency preparedness would be handled on an expedited basis.

*Section 45504. Public UAS*

This section codifies section 334 of the *FAA Modernization and Reform Act of 2012*, which directs the Secretary to take steps to facilitate operations of UAS by government entities.

*Section 45505. Special rules for certain UAS*

This section codifies section 333 of the *FAA Modernization and Reform Act of 2012*, which directs the Secretary to determine if certain UAS may operate in the NAS. Assessment of the UAS operations will determine which types of UAS do not create a hazard to users of the NAS or to national security, and will determine whether a certificate of waiver or authorization of airworthiness is required. If the Secretary determines certain UAS may operate safely in the NAS, the Secretary shall establish requirements for the safe operation of such systems.

*Section 45506. Certification of new air navigation facilities for unmanned aircraft and other aircraft*

This section establishes a rulemaking process to develop standards for unmanned aircraft traffic management system (UTM) and other communication, navigation, and surveillance systems for low altitude airspace including expedited procedures to authorize operations posing very low risk. In the long-term, the Committee believes that use of UTM should facilitate more advanced operations of UAS including beyond visual line of sight and nighttime operations on a routine basis. The Committee also anticipates that operators could cite UTM use in support of applications for waiver from provisions of Part 107, title 14 Code of Federal Regulations and other authorizations. The Committee believes that the final rule promulgated pursuant to this section will, in the long-run, result in comprehensive authorizations for the use of UTM in a variety of scenarios. The criteria for these rules are intended to facilitate safe operation of UAS and interoperability with air traffic control and other systems used in the National Airspace.

*Section 44507. Special rules for certain UTM and low altitude Communication, Navigation, Surveillance*

This section establishes a process for the FAA to approve certain UTM and low altitude Communication, Navigation, and Surveillance prior to the completion of the rulemaking required under section 45506. This section requires the FAA to create expedited procedures for approving systems operated in airspace above croplands and other areas in which the operation of unmanned aircraft pose very low risk. The Committee believes that the operators and the FAA could use the authority of section 45507 in the near-term to begin use of UTM to enhance operations of UAS, such as beyond visual line of sight flights and nighttime flights, on a routine basis. The knowledge and experience gained under this section will inform, and ultimately improve, the FAA's regulatory framework for UTM and UAS in the long-term, including the rules required under section 45506. Furthermore, the Committee believes that advanced operations and uses of UTM should be authorized on an expedited basis in airspace above croplands and other such areas in which the risks to persons and property is very low. Croplands and other agricultural areas are often sparsely inhabited or uninhabited expanses of land and the airspace above may be ideal for demonstrating the potential of UTM to facilitate advanced operations of UAS. The Committee notes that, in certain cases, airspace above such lands may be used by manned aviation operators. In such cases, the Committee expects that the FAA will take any necessary measures to ensure aviation safety. The knowledge formed and experience gained in authorizing and conducting such operations in these areas will enable government and industry to work towards use of UAS and UTM in more complex operating environments. The Committee also anticipates that operators could cite UTM use in support of applications for waiver from provisions of Part 107, title 14 Code of Federal Regulations and other authorizations.

*Section 45508. Operation of small unmanned aircraft*

This section establishes a streamlined process for the FAA to permit the operation of sUAS used for aerial data collection prior

to the agency's completion of the rulemaking for such aircraft. Aerial data collection includes applications such as imaging, measurement, and other forms of sensing.

*Section 45509. Special rules for model aircraft*

This section codifies, in part, section 336 of the *FAA Modernization and Reform Act of 2012*, which establishes criteria under which an aircraft may be operated as a model aircraft under certain conditions. It also allows certain qualified not-for-profit organizations to receive payment for instruction in the flight of model aircraft. The section includes conforming amendments, specifically provisions that would allow the FAA to assess civil penalties for violations under chapter 455. The section allows the FAA to require aircraft registration. The section clarifies that current certification processes will remain available pending completion of the air carrier rulemaking.

*Section 45510. Carriage of property for compensation or hire*

This section requires the Secretary to issue a final rule authorizing sUAS operators to carry property for compensation or hire within the United States. This section requires the Administrator to establish the sUAS air carrier certificate, establish a streamlined, performance-based, and risk-based certification process, and create a sUAS air carrier classification, all for the purposes of carriage of property for compensation or hire.

*Section 45511. Micro UAS operations*

This section charters an aviation rulemaking committee to develop recommendations for regulations under which any person may operate a micro unmanned aircraft system. It also requires the Secretary to charter the advisory committee no later than 60 days after the date of enactment. Additionally, it requires the Secretary, no later than 180 days after receiving the recommendations, to issue regulations regarding the recommendations of the rulemaking committee.

*Section 433. Unmanned aircraft test ranges*

This section includes several provisions relating to UAS test ranges established by the *FAA Modernization and Reform Act of 2012*, and extends the authorization of the test ranges for six years. This section directs the Administrator to permit the operation of aircraft equipped with sense-and-avoid and beyond line of sight technologies at the test ranges and, in furtherance of that objective, provides the Administrator the ability to waive certain statutory requirements.

*Section 434. Sense of Congress regarding unmanned aircraft safety*

This section expresses the concern of Congress about the safety risks caused by unauthorized operation of UAS in proximity to airports and the safety risks of potential collisions between UAS and conventional passenger aircraft. It further expresses Congress' sense that the FAA should take measures to reduce such risks through enforcement actions and educational initiatives.

*Section 435. UAS privacy review*

This section directs the Secretary to conduct a study to identify potential reductions in privacy caused specifically by UAS. It also directs the Secretary to consider the efforts led by and consult with the National Telecommunications and Information Administration relating to privacy and UAS integration. Additionally, the section requires the Secretary to submit a report to Congress on the study's findings within six months of enactment of this Act.

*Section 436. Public UAS operations by tribal governments*

This section allows certain tribal governments to operate unmanned aircraft as public aircraft.

*Section 437. Evaluation of aircraft registration for small unmanned aircraft*

This section directs the Administrator to develop metrics, assess compliance and effectiveness of the agency's Interim Final Rule entitled "Registration and Marking Requirements for Small Unmanned Aircraft. (80 *Fed. Reg.* 78,593). It directs the DOT IG to evaluate the Administration's progress in developing these metrics and also the reliability, effectiveness and efficiency of the program, and provide a report to Congress.

*Section 438. Study on roles of governments relating to low-altitude operation of small unmanned aircraft*

This section requires the DOT IG to study and report to Congress on the regulation of low-altitude operations of small unmanned aircraft and the appropriate roles and responsibilities of federal, state, local, and tribal governments in regulating such activity. It also requires the DOT IG to consider various factors including recommendations of the Drone Advisory Committee, the interests of various jurisdictions, the interests of industry, and other factors.

*Section 439. Study on financing of unmanned aircraft services*

This section requires the Comptroller General to study appropriate fee mechanisms to recover the costs of the FAA regulation and oversight of unmanned aircraft. It requires the Comptroller General to consider a number of factors including resources necessary for safe unmanned aircraft operations and best practices or policies of other countries. The section requires the Comptroller General to report to Congress.

*Section 440. Update of FAA comprehensive plan*

This section requires the FAA to update the comprehensive plan required by the *FAA Modernization and Reform Act of 2012* to include a concept of operations addressing unlawful or harmful operations of unmanned aircraft.

*Section 441. Cooperation related to certain counter-UAS technology*

This section requires the Secretary to consult with the Secretary of Defense on matters related to the deployment of counter-UAS in the NAS by drawing upon the expertise and experience of the DOD.

## Title V—Air Service Improvements

## SUBTITLE A—AIRLINE CUSTOMER SERVICE IMPROVEMENTS

*Section 501. Reliable air service in American Samoa*

This section requires the Secretary to review the emergency air transportation by foreign carriers exemption, in the case of sustaining air transportation between the Islands of Tutuila and Manu'a in American Samoa, every 180 days instead of every 30 days.

*Section 502. Cell phone voice communication ban*

This section directs the Secretary to issue regulations prohibiting an individual on an aircraft from using a cell phone during a domestic scheduled passenger flight, with exemptions applying to any member of the flight crew or flight attendant on duty on an aircraft, as well as federal law enforcement acting in an official capacity.

*Section 503. Advisory Committee for Aviation Consumer Protection*

This section adds independent distributors of travel to the Advisory Committee for Aviation Consumer Protection created under the *FAA Modernization and Reform Act of 2012* and extends it through fiscal year 2023.

*Section 504. Improved notification of insecticide use*

This section requires that air carriers disclose to passengers whether a country with which they are booking a ticket to may treat the aircraft with insecticide or apply an aerosol insecticide when the cabin is occupied with passengers.

*Section 505. Advertisements and disclosure of fees for passenger air transportation*

This section states that it is not an unfair and deceptive practice for an air carrier to post the base airfare for air transportation in an advertisement or solicitation if the additional taxes, fees, and total cost of the air transportation are disclosed clearly to the consumer via a link on the air carrier's website. The section requires the Secretary to issue a final regulation no later than four months after the date of enactment. It also makes it an unfair and deceptive practice to fail to disclose additional fees for checked or carry-on baggage in a link when providing an internet fare quotation to a consumer.

*Section 506. Involuntarily bumping passengers after aircraft boarded*

This section amends existing law by making it an unfair and deceptive practice to involuntarily deplane a revenue passenger, who is traveling on a confirmed reservation, and checked-in prior to the check-in deadline of the flight, after they have boarded the aircraft.

*Section 507. Availability of consumer rights information*

This section requires air carriers to post customer service and consumer information on the homepage of the air carrier's website.

*Section 508. Consumer complaints hotline*

This section requires the Secretary to evaluate the benefits of mobile phone applications or other technologies and to utilize such technologies to supplement the consumer complaints hotline established under the *FAA Modernization and Reform Act of 2012*.

*Section 509. Widespread disruptions*

This section adds a new section to existing law to require air carriers, in the event of a widespread disruption, to immediately publish on their website whether or not the air carrier will provide accommodations and other amenities for impacted passengers. The term “widespread disruption” is defined in the section.

*Section 510. Involuntarily denied boarding compensation*

This section requires the Secretary, no later than 60 days after the date of enactment, to issue a final rule clarifying current regulation with respect to compensation offered in the event of an involuntary denied boarding of a revenue passenger.

*Section 511. Consumer information on actual flight times*

This section directs the Secretary to conduct a study on the feasibility and advisability of modifying regulations regarding the actual wheels off and wheels on times for reportable flights. Requires a report to Congress no later than one year after the date of enactment.

*Section 512. Advisory committee for transparency in air ambulance industry*

This section establishes an advisory committee to improve transparency among air ambulances in a variety of ways and requires the advisory committee to produce recommendations on various methodologies to be included in a report to Congress. When appointing federal agency representatives, the Secretary may consider a representative from the Department of Health and Human Services and the Medicare Payment Advisory Commission. The section also requires the Secretary to issue a final rule on any recommendations on the disclosure of charges.

*Section 513. Air ambulance complaints*

This section amends existing law to include air ambulance operators in the scope of certain consumer protection laws and to enable consumers to report alleged unfair and deceptive practices by air ambulances to the Secretary.

*Section 514. Passenger rights*

This section requires air carriers to submit to the Secretary a one-page document outlining the rights of passengers. The document shall include the various forms of compensation in the event of flight delays and cancellations, compensation for mishandled or lost baggage, voluntary denied boarding practices due to overbooking, and involuntary denied boarding practices. This document will be made available on the air carrier’s website.



## SUBTITLE B—AVIATION CONSUMERS WITH DISABILITIES

*Section 541. Select subcommittee*

This section establishes a Select Subcommittee for Aviation Consumers with Disabilities to the Advisory Committee for Aviation Consumer Protection that was created by the *FAA Modernization and Reform Act of 2012*. The Select Subcommittee will advise the Secretary on issues related to air travel for consumers with disabilities and will be comprised of members appointed by the Secretary from national disability organizations, air carriers and foreign air carriers, airport operators, and contract service providers. This section requires both a report to the Advisory Committee and a report to Congress.

*Section 542. Aviation consumers with disabilities study*

This section requires the Comptroller General to complete a study reviewing accessibility best practices for individuals with disabilities, specifically those recommended under the Architectural Barriers Act of 1960, the Rehabilitation Act of 1973, the Air Carrier Access Act of 1986, and the Americans with Disabilities Act of 1990. This section also requires a report to be submitted no later than one year after the date of enactment to the Secretary and to Congress with findings and recommendations.

*Section 543. Feasibility study on in-cabin wheelchair restraint systems*

This section requires the Secretary, no later than two years after enactment, to conduct a study on the feasibility of in-cabin wheelchair restraint systems and other ways air travel consumers with disabilities can be safely accommodated within them. It also requires the feasibility study to be done in consultation with the Architectural and Transportation Barriers Compliance Board, aircraft manufacturers, and air carriers, and requires a report no later than one year after the completion of the study.

*Section 544. Access advisory committee recommendations*

This section directs the Secretary to issue a notice of proposed rulemaking addressing accommodations for travelers with disabilities, specifically with respect to accommodations for in-flight entertainment, accessible lavatories on single-aisle aircraft, and service animals, and requires the Secretary to issue a final rule no later than one year thereafter.

## SUBTITLE C—SMALL COMMUNITY AIR SERVICE

*Section 551. Essential Air Service authorization*

This section authorizes the Essential Air Service Program (EAS) at the following levels: \$178 million for fiscal year 2018; \$182 million for fiscal year 2019; \$185 million for fiscal year 2020; \$327 million for fiscal year 2021; \$337 million for fiscal year 2022; and \$347 million for fiscal year 2023.

*Section 552. Extension of final order establishing mileage adjustment eligibility*

This section extends the effectiveness of a statutory clarification that the most commonly used route between an eligible place and the nearest medium or large hub airport is to be measured by highway mileage when reviewing any action to eliminate compensation for EAS to such place, or to terminate the location's compensation eligibility for such service.

*Section 553. Study on essential air service reform*

This section requires the Comptroller General to conduct a report on the effectiveness and budgetary savings of reforms made to the EAS program over the past five years, and requires that the report contain options for further reform of the program.

*Section 554. Small Community Air Service*

This section allows any airport that is a small hub or smaller to apply for a grant under the Small Community Air Service Development Program (SCASDP). Additionally, it directs the Secretary to give special consideration to communities seeking to restore scheduled air service that has been terminated. This section authorizes the appropriation for the SCASDP of \$10 million in fiscal year 2018 through fiscal year 2023, of which \$4.8 million each year is made available for a new Regional Air Transportation Pilot Program. The pilot program will focus on establishing or reestablishing air service to communities that have experienced declines in service. Allows communities to reapply for SCASDP grants after 10 years.

*Section 555. Air Transportation to Noneligible Places*

This section amends existing law to extend the definition of what constitutes an "eligible place" to receive small community air service funding through the FAA Extension, Safety, and Security Act of 2016. This section also terminates the Air Transportation to Noneligible Places program two years after the date of enactment of the subsection.

Title VI—Miscellaneous

*Section 601. Review of FAA strategic cybersecurity plan*

Not later than 120 days after the interim CEO of the Corporation is hired, the Administrator, in consultation with the interim CEO, is directed to conduct a review of the aviation cybersecurity framework that was developed as part of the FAA Extension, Safety and Security Act of 2016 (P.L. 114–190). In conducting the review, the Administrator is tasked with considering how the framework should be updated to reflect the transfer of operational control of air traffic services from the FAA to the Corporation. This section requires a report to Congress no later than 120 days after the review is initiated.

*Section 602. Consolidation and realignment of FAA services and facilities*

This section amends section 804 of the FAA Modernization and Reform Act of 2012 by clarifying the input the Administrator should receive in preparing a National Facilities Realignment and

Consolidation Report. Notwithstanding new section 90317(c), it directs the Secretary to continue to carry out any consolidation or realignment project commenced under Section 804.

*Section 603. FAA review and reform*

This section requires the FAA to complete a report on actions the agency has taken to implement reforms to eliminate wasteful, inefficient, or redundant practices, procedures, or positions as required by section 812 of the FAA Modernization and Reform Act of 2012. Requires the FAA to conduct an additional review to identify additional wasteful, inefficient, or redundant practices, procedures, or positions in need of reform.

*Section 604. Aviation fuel*

This section directs the Administrator to allow the use of qualified unleaded aviation gasoline in aircraft as a replacement for leaded gasoline, and identifies the aircraft and engines that are eligible to use the qualified replacement unleaded gasoline. It adopts a process that allows eligible aircraft and engines to operate safely with the qualified replacement unleaded gasoline. This section expresses that it is the Sense of Congress that the Piston Aviation Fuels Initiative of the Administration, in collaboration with the American Society for Testing and Materials, should work to find an appropriate unleaded fuel by January 1, 2023.

*Section 605. Right to privacy when using air traffic control system*

This section ensures that the aircraft owners will continue to be able to request that their aircraft registration information not be publicly displayed in the Aircraft Situational Display.

*Section 606. Air shows*

This section encourages the Administrator to work on an annual basis with airshows, GA communities, stadiums, and other large outdoor events and venues to identify and resolve scheduling conflicts between approved air shows and large outdoor events that have temporary flight restrictions imposed.

*Section 607. Part 91 review, reform, and streamlining*

This section directs the FAA to establish a Task Force comprised of GA aircraft owners, operators, labor, and government representatives. The Task Force will assess the oversight and authorization processes and requirements for aircraft under Part 91, title 14, Code of Federal Regulations, and make recommendations to streamline the processes and reduce regulatory cost burdens and delays. The section sunsets the program on the day the report is submitted to Congress. The Administrator is directed to implement the recommendations of the Task Force.

*Section 608. Aircraft registration*

This section directs the Administrator to initiate a rulemaking to increase the duration of registration for noncommercial GA aircraft to 10 years.

*Section 609. Air transportation of lithium cells and batteries*

This section directs the Secretary, in coordination with appropriate federal agencies, to carry out cooperative efforts to ensure shippers of lithium ion and lithium metal batteries for air transport comply with ICAO Technical Instructions and Hazardous Material Regulations in the United States and work with appropriate federal agencies and international partners to ensure enforcement of existing applicable regulations. The section establishes the Lithium Ion Battery Safety Advisory Committee to facilitate communications between manufacturers of lithium ion cells and batteries, manufacturers whose products incorporate such batteries, and the federal government on the effectiveness and economic impacts of regulation of the transportation of lithium ion cells and batteries. This section requires a review of best practices for safe transportation of these batteries and how to reduce the risk and safety threats posed by the air transportation of undeclared hazardous materials. The Advisory Committee will be comprised of industry and government representatives appointed by the Secretary and will terminate six years after the Committee has been established.

This section also directs the Secretary, in consultation with interested stakeholders, to submit to appropriate Congressional Committees an evaluation of current practices for packaging of lithium ion batteries and cells and any suggestions to improve the packaging in a safe, efficient, and cost effective manner. This section directs the Secretary to harmonize the regulations of the United States regarding air transport of lithium cells and batteries with ICAO technical standards. It additionally directs the Secretary to issue a limited exception on the restriction of the air transportation of medical device batteries with specific parameters. Lastly, this section establishes a policy for the DOT to support the participation of industry in working groups associated with ICAO addressing the safe air transportation of these batteries.

*Section 610. Remote tower pilot program for rural or small communities*

This section directs the Secretary to establish a remote ATC tower pilot program to assess the benefits of such towers. This section sets forth the criteria the Secretary, after consultation with representatives of labor organizations representing employees of the ATC system, must use in the selection of sites where remote towers will be installed. The section additionally directs the Secretary to convene safety risk management panels for each remote tower site to review best practices that have already been developed and to analyze operational data from remote towers. This section requires that the pilot program established be eligible for airport improvement funding and that the Secretary establish a repeatable process to help expand the program.

*Section 611. Ensuring FAA readiness to provide seamless oceanic operations*

No later than September 30, 2018, this section requires the Secretary to make a final investment decision on the implementation of a reduced oceanic separation capability that shall be operational by March 31, 2019.

*Section 612. Sense of Congress regarding women in aviation*

This section expresses the Sense of Congress on the importance of the aviation industry encouraging and supporting women pursuing careers in aviation.

*Section 613. Obstruction evaluation aeronautical studies*

This section requires the Secretary to pursue adoption of the proposed policy titled "Proposal to Consider the Impact of One Engine Inoperative Procedures in Obstruction Evaluation Aeronautical Studies" only if the policy is treated as a significant regulatory action pursuant to Executive Order 12866.

*Section 614. Aircraft leasing*

This section clarifies existing law to say an aircraft lessor is only liable for losses and damages when the aircraft is in operational control of said lessor.

*Section 615. Report on obsolete test equipment*

This section requires the Administrator to submit a report on the National Test Equipment Program of the FAA to identify obsolete test equipment and provide a plan to replace that equipment no later than 180 days after the date of enactment.

*Section 616. Retired military controllers*

This section amends the current statutory hiring process for air traffic controllers. It directs the Administrator to establish a program that enables military controllers to be considered for an original appointment to an air traffic controller position when the individual: (1) is on terminal leave pending retirement from active duty military or retired from active duty military service within five years of applying to the air traffic controller position; and (2) within five years of applying to the air traffic controller position, has held either an air traffic control specialist certification or a facility rating.

*Section 617. Pilots sharing flight expenses with passengers*

This section requires the Secretary to issue advisory guidance on how pilots can share flight expenses with other passengers within the parameters of existing federal law.

*Section 618. Aviation rulemaking committee for Part 135 pilot rest and duty rules*

This section establishes an aviation rulemaking committee (ARC), which will be comprised of industry representatives, labor organizations, and safety experts, to review and provide recommendations on pilot rest and duty rules for Part 135 operations. It requires the Administrator to submit a report on its findings and issue a notice of proposed rulemaking based on the consensus recommendations of the ARC not later than one year after submittal of the report to Congress. Because the men and women who operate aircraft in this environment are most affected by these rules on a day-to-day basis and have the most direct knowledge of the limitations of current rules, the Committee believes such an evaluation should include the participation of Part 135/91k pilot labor from the largest private aviation operator in the world.

*Section 619. Metropolitan Washington Airports Authority*

This section directs the DOT IG to conduct a study of the Metropolitan Washington Airports Authority (MWAA) to determine if MWAA has adopted previous DOT IG recommendations regarding MWAA's Office of Audit.

*Section 620. Terminal aerodrome forecast*

This section directs the FAA to allow a Part 121 air carrier operating in a noncontiguous state to conduct operations to a destination in a noncontiguous state if certain operational weather requirements are met. This section clarifies flight rules for a non-contiguous state to ensure Alaska receives available weather information, and intends that without a written finding of necessity, based on objective evidence of imminent threat to safety, the Administrator shall not promulgate any Operation Specification, Policy or Guidance Document that is more restrictive or requires procedures which are not expressly stated in the regulations. Furthermore, when operating in Alaska it is the intent of this provision to include a variety of weather sources, including Modulated Automated Weather Systems, when determining a visual flight rule forecast for an airport or landing area in Alaska. Lastly, it clarifies flight rules for a non-contiguous state to ensure operators receive available weather information.

*Section 621. Federal Aviation Administration employees stationed on Guam*

This section states the Sense of Congress that the Administrator and the Secretary of Defense should seek an agreement that would enable FAA employees stationed on Guam to have access to DOD hospitals, commissaries, and exchanges in Guam.

*Section 622. Technical corrections*

This section makes technical corrections to several provisions contained in the FAA Modernization and Reform Act of 2012 and title 49, United States Code.

*Section 623. Application of Veterans' Preference to Federal Aviation Administration Personnel Management System*

This section applies title 5 veterans' hiring preference to the FAA.

*Section 624. Public aircraft eligible for logging flight times*

This section directs the Administrator to update current regulations for logging of flight time to include aircraft under operational control of forest fire protection agencies.

*Section 625. Federal Aviation Administration workforce review*

This section requires the Comptroller General to conduct a review and develop recommendations to assess the long-term workforce and training needs of the FAA. It additionally requires that the review be conducted no later than 120 days after the date of enactment, and requires a report to Congress on the recommendations no later than 270 days after the date of enactment.

*Section 626. State taxation*

This section clarifies existing law to ensure non-generally applied taxes and fees generated at airports are wholly used for airport or aeronautical purposes.

*Section 627. Aviation and aerospace workforce of the future*

This section expresses the Sense of Congress on how important it is to ensure the prevalence of programs and career pathway initiatives leading to employment in the aviation sector.

*Section 628. Future Aviation and Aerospace workforce study*

This section requires the Comptroller General to conduct a study on various factors and best practices influencing the supply of young individuals in the aviation and aerospace industry. Additionally, it requires the study be conducted no later than 90 days after the date of enactment and that a report be submitted to Congress no later than one year after the date of enactment.

*Section 629. FAA Leadership on Civil Supersonic Aircraft*

This section requires the FAA to exercise leadership and produce a report to Congress on the development of civil supersonic aircraft. Additionally, it requires the Administrator to submit the report to Congress no later than one year after the date of enactment.

*Section 630. Oklahoma registry office*

This section directs the Administrator to consider the FAA's aircraft registry office located in Oklahoma City, Oklahoma, as exempted during a government shutdown or emergency to ensure it remains open.

*Section 631. Foreign Air Transportation Under United States—European Union Air Transport Agreement*

This section ensures that permits or exemptions issued by the Secretary to foreign air carriers do not undermine any labor standards and prevent market entry into the United States by "flag of convenience carriers." If an interested person raises the applicability of Article 17 bis of the United States-European Union Air Transport Agreement of 2007, the Secretary would be prohibited from issuing a foreign air carrier permit or exemption unless the Secretary finds issuance would be consistent with Article 17 bis, and imposes additional conditions on such permit or exemption to ensure compliance with Article 17 bis. Also, the section adds to the necessary required findings before the Secretary may issue a permit to a foreign air carrier from any jurisdiction.

*Section 632. Training on human trafficking for certain staff*

This section extends existing training requirements regarding human trafficking for flight attendants to other frontline airline personnel. The personnel in this section includes ticket counter agents, gate agents, and other employees who engage in regular interaction with passengers.

*Section 633. Part 107 Implementation improvements*

This section gives the Administrator the authority to grant a waiver to operate beyond visual line of sight, over people, or at

night for the purposes of transporting property. It requires the Secretary to publish a direct final rule on the expansion of waiver authority no later than 30 days after the date of enactment.

*Section 634. Part 107 Transparency and technology improvements*

This section requires FAA to publish information on approved small UAS waivers and airspace authorizations and provide real time data on application status.

*Section 635. Prohibitions against smoking on passenger flights*

This section amends the statutory definition of smoking to ban the use of e-cigarettes on commercial aircraft.

*Section 636. Consumer protection requirements relating to large ticket agents*

This section requires the Secretary to issue a final rule, no later than 90 days after the date of enactment, requiring large ticket agents to adopt minimum customer service standards. These standards include, issuing refunds for optional fees, disclosing policies on cancellation, and notifying passenger of itinerary changes, among others. This section defines the term “large ticket agent” to mean a ticket agent with an annual revenue of \$100,000,000.00 or more.

*Section 637. Agency procurement reporting requirements*

This section requires the Secretary to submit a report on the value of acquisitions made by the agency from entities that manufacture supplies outside of the United States. The report is required to indicate the dollar value of any materials or supplies purchased that were manufactured outside the United States as well as a summary of the total procurement of funds spent on said goods compared to goods manufactured in the United States. The report is required no later than 90 days after the end of the fiscal year.

*Section 638. Zero-emission vehicles and technology*

This section reforms the FAA’s Voluntary Airport Low Emissions and Zero Emissions Vehicle Programs and clarifies that airports have the option to use AIP or PFCs to fund projects under those programs.

*Section 639. Employee assault prevention and response plans*

This section requires Part 121 air carriers, in collaboration with the FAA, to establish employee assault prevention and response plans. This section requires the plans to be developed in consultation with the labor union representing customer service agents. The section also directs that the plans include reporting protocols for customer service agents who have been assaulted, for notifying law enforcement, and for informing federal law enforcement of certain violations.

*Section 640. Study on training of customer-facing air carrier employees*

This section requires the Secretary to conduct a study on training received by air carriers’ customer-facing employees and take appropriate actions to address any shortcomings in the training by



way of recommendations and, if determined appropriate, other supplemental training. Additionally, it requires the study to be conducted no later than 180 days after the date of enactment, and a report to Congress no later than one year thereafter.

*Section 641. Minimum dimensions for passenger seats*

This section requires the FAA to issue regulations establishing minimum seat dimension standards on passenger aircraft for the health and safety of airline passengers. These regulations may only be established after a public notice and opportunity for comment period.

*Section 642. Study on ground transportation options*

This section requires the Comptroller General to conduct a study on ground transportation options to and from major airports. The study should review the ground transportation options at various airports and determine whether or not it is appropriate to use AIP and PFC funds to address congestion issues to airports.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 italics, and existing law in which no change is proposed is shown in roman):

**TITLE 49, UNITED STATES CODE**

Subtitle	Sec.
<b>I Department of Transportation .....</b>	<b>101</b>
* * * * *	
<b><i>XI. American Air Navigation Services Corporation .....</i></b>	<b><i>90101</i></b>

**SUBTITLE I—DEPARTMENT OF  
TRANSPORTATION**

\* \* \* \* \*

**CHAPTER 1—ORGANIZATION**

\* \* \* \* \*

**§ 106. Federal Aviation Administration**

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

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

(c) The Administrator must—

- (1) be a citizen of the United States;
- (2) be a civilian; and
- (3) have experience in a field directly related to aviation.

(d)(1) The Administration has a Deputy Administrator, who shall be appointed by the President. In making an appointment, the President shall consider the fitness of the appointee to efficiently carry out the duties and powers of the office. The Deputy Administrator shall 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) The annual rate of basic pay of the Deputy Administrator shall be set by the Secretary but shall not exceed the annual rate of basic pay payable to the Administrator of the Federal Aviation Administration.

(3) 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.

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

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

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

(1) AUTHORITY OF THE SECRETARY.—Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activities, of the Administration. Neither the Secretary nor the Administrator may submit decisions for the approval of, or be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.

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

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

- (i) the appointment and employment of all officers and employees of the Administration (other than Presidential and political appointees);
- (ii) the acquisition and maintenance of property, services, and equipment of the Administration;

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

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

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

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

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

(3) REGULATIONS.—

(A) IN GENERAL.—In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out those functions. The issuance of such regulations shall be governed by the provisions of chapter 5 of title 5. The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 16 months after the last day of the public comment period for the regulations or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after the date of publication in the Federal Register of notice of the proposed rulemaking. On February 1 and August 1 of each year the Administrator shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a letter listing each deadline the Administrator missed under this subparagraph during the 6-month period ending on such date, including an explanation for missing the deadline and a projected date on which the action that was subject to the deadline will be taken.

(B) APPROVAL OF SECRETARY OF TRANSPORTATION.—(i) The Administrator may not issue a proposed regulation or final regulation that is likely to result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$250,000,000 or more (adjusted

annually for inflation beginning with the year following the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century) in any year, or any regulation which is significant, unless the Secretary of Transportation approves the issuance of the regulation in advance. For purposes of this paragraph, a regulation is significant if the Administrator, in consultation with the Secretary (as appropriate), determines that the regulation is likely to—

(I) have an annual effect on the economy of \$250,000,000 or more or adversely affect in a substantial and material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or

(II) raise novel or significant legal or policy issues arising out of legal mandates that may substantially and materially affect other transportation modes.

(ii) In an emergency, the Administrator may issue a regulation described in clause (i) without prior approval by the Secretary, but any such emergency regulation is subject to ratification by the Secretary after it is issued and shall be rescinded by the Administrator within 5 days (excluding Saturdays, Sundays, and legal public holidays) after issuance if the Secretary fails to ratify its issuance.

(iii) Any regulation that does not meet the criteria of clause (i), and any regulation or other action that is a routine or frequent action or a procedural action, may be issued by the Administrator without review or approval by the Secretary.

(iv) The Administrator shall submit a copy of any regulation requiring approval by the Secretary under clause (i) to the Secretary, who shall either approve it or return it to the Administrator with comments within 45 days after receiving it.

(C) PERIODIC REVIEW.—(i) Beginning on the date which is 3 years after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall review any unusually burdensome regulation issued by the Administrator after such date of enactment beginning not later than 3 years after the effective date of the regulation to determine if the cost assumptions were accurate, the benefit of the regulations, and the need to continue such regulations in force in their present form.

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

(iii) For purposes of this subparagraph, the term “unusually burdensome regulation” means any regulation that results in the annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of

\$25,000,000 or more (adjusted annually for inflation beginning with the year following the date of the enactment of the Air Traffic Management System Performance Act of 1996) in any year.

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

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

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

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

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

(g) DUTIES AND POWERS OF ADMINISTRATOR.—(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), 40113(c), 40113(d), 40113(e), 40114(a), and 40119, chapter 445 (except sections 44501(b), 44502(a)(2), 44502(a)(3), 44502(a)(4), 44503, 44506, 44509, 44510, 44514, and 44515), chapter 447 (except sections 44717, 44718(a), 44718(b), 44719, 44720, 44721(b), 44722, and 44723), chapter 449 (except sections 44903(d), 44904, 44905, 44907-44911, 44913, 44915, and 44931-44934), chapter 451, chapter 453, sections 46104, 46301(d) and (h)(2), 46303(c), 46304-46308, 46310, 46311, and 46313-46316, chapter 465, and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

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

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

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

(i) The Deputy Administrator shall carry out duties and powers prescribed by the Administrator. The Deputy Administrator acts

for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.

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

(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—

(1) SALARIES, OPERATIONS, AND MAINTENANCE FROM GENERAL FUND.—There is authorized to be appropriated to the Secretary of Transportation for salaries, operations, and maintenance of the Administration—

【(A) \$9,653,000,000 for fiscal year 2012;

【(B) \$9,539,000,000 for fiscal year 2013;

【(C) \$9,596,000,000 for fiscal year 2014;

【(D) \$9,653,000,000 for fiscal year 2015; and

【(E) \$9,909,724,000 for each of fiscal years 2016 and 2017.】

(A) \$2,059,000,000 for fiscal year 2018;

(B) \$2,126,000,000 for fiscal year 2019;

(C) \$2,197,000,000 for fiscal year 2020;

(D) \$1,957,000,000 for fiscal year 2021;

(E) \$2,002,000,000 for fiscal year 2022; and

(F) \$2,047,000,000 for fiscal year 2023.

Such sums shall remain available until expended.

【(2) AUTHORIZED EXPENDITURES.—Out of amounts appropriated under paragraph (1), the following expenditures are authorized:

【(A) Such sums as may be necessary for fiscal years 2012 through 2015 to carry out and expand the Air Traffic Control Collegiate Training Initiative.

【(B) Such sums as may be necessary for fiscal years 2012 through 2015 for the completion of the Alaska aviation safety project with respect to the 3 dimensional mapping of Alaska’s main aviation corridors.

【(C) Such sums as may be necessary for fiscal years 2012 through 2015 to carry out the Aviation Safety Reporting System and the development and maintenance of helicopter approach procedures.】

(2) SALARIES, OPERATIONS, AND MAINTENANCE FROM AIRPORT AND AIRWAY TRUST FUND.—There is authorized to be appropriated to the Secretary out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 for salaries, operations, and maintenance of the Administration—

(A) \$8,073,000,000 for fiscal year 2018;

(B) \$8,223,000,000 for fiscal year 2019; and

(C) \$8,374,000,000 for fiscal year 2020.

(3) ADMINISTERING PROGRAM WITHIN AVAILABLE FUNDING.—Notwithstanding any other provision of law, in each of 【fiscal years 2012 through 2017】 *fiscal years 2018 through 2020*, if the Secretary determines that the funds appropriated under 【paragraph (1)】 *paragraphs (1) and (2)* are insufficient to meet the salary, operations, and maintenance expenses of the Fed-

eral Aviation Administration, as authorized by this section, the Secretary shall reduce nonsafety-related activities of the Administration as necessary to reduce such expenses to a level that can be met by the funding available under [paragraph (1)] *paragraphs (1) and (2)*

(1) PERSONNEL AND SERVICES.—

(1) OFFICERS AND EMPLOYEES.—Except as provided in subsections (a) and (g) of section 40122, the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40122(a), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.

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

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

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

(5) VOLUNTARY SERVICES.—

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

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

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

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

or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

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

(n) ACQUISITION.—

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

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

(i) air traffic control facilities and equipment;

(ii) research and testing sites and facilities; and

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

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

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

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

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

(p) MANAGEMENT ADVISORY COUNCIL AND AIR TRAFFIC SERVICES BOARD.—

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



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

(2) MEMBERSHIP.—The Council shall consist of 13 members, who shall consist of—

(A) a designee of the Secretary of Transportation;

(B) a designee of the Secretary of Defense;

(C) 10 members representing aviation interests, appointed by—

(i) in the case of initial appointments to the Council, the President by and with the advice and consent of the Senate, except that initial appointments made after May 1, 2003, shall be made by the Secretary of Transportation; and

(ii) in the case of subsequent appointments to the Council, the Secretary of Transportation; and

(D) 1 member appointed, from among individuals who are the leaders of their respective unions of air traffic control system employees, by the Secretary of Transportation.

(3) QUALIFICATIONS.—No officer or employee of the United States Government may be appointed to the Council under paragraph (2)(C) or to the Air Traffic Services Committee.

(4) FUNCTIONS.—

(A) IN GENERAL.—(i) The Council shall provide advice and counsel to the Administrator on issues which affect or are affected by the operations of the Administrator. The Council shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

(ii) The Council shall review the rulemaking cost-benefit analysis process and develop recommendations to improve the analysis and ensure that the public interest is fully protected.

(iii) The Council shall review the process through which the Administration determines to use advisory circulars and service bulletins.

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

(C) ACCESS TO DOCUMENTS AND STAFF.—The Administration may give the Council or Air Traffic Services Committee appropriate access to relevant documents and personnel of the Administration, and the Administrator shall make available, consistent with the authority to withhold commercial and other proprietary information under section 552 of title 5 (commonly known as the “Freedom of Information Act”), cost data associated with the acquisition

and operation of air traffic service systems. Any member of the Council or Air Traffic Services Committee who receives commercial or other proprietary data from the Administrator shall be subject to the provisions of section 1905 of title 18, pertaining to unauthorized disclosure of such information.

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

(6) ADMINISTRATIVE MATTERS.—

(A) TERMS OF MEMBERS APPOINTED UNDER PARAGRAPH (2)(C).—Members of the Council appointed under paragraph (2)(C) shall be appointed for a term of 3 years. Of the members first appointed by the President under paragraph (2)(C)—

- (i) 3 shall be appointed for terms of 1 year;
- (ii) 4 shall be appointed for terms of 2 years; and
- (iii) 3 shall be appointed for terms of 3 years.

(B) TERM FOR AIR TRAFFIC CONTROL REPRESENTATIVE.—The member appointed under paragraph (2)(D) shall be appointed for a term of 3 years, except that the term of such individual shall end whenever the individual no longer meets the requirements of paragraph (2)(D).

(C) TERMS FOR AIR TRAFFIC SERVICES COMMITTEE MEMBERS.—The members appointed to the Air Traffic Services Committee shall be appointed for a term of 5 years, except that the first members of the Committee shall be the members of the Air Traffic Services Subcommittee of the Council on the day before the date of enactment of the Vision 100--Century of Aviation Reauthorization Act who shall serve in an advisory capacity until such time as the President appoints the members of the Committee under paragraph (7).

(D) REAPPOINTMENT.—An individual may not be appointed to the Committee to more than two 5-year terms.

(E) VACANCY.—Any vacancy on the Council or Committee shall be filled in the same manner as the original appointment, except that any vacancy caused by a member appointed by the President under paragraph (2)(C)(i) shall be filled by the Secretary in accordance with paragraph (2)(C)(ii). Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of that term.

(F) CONTINUATION IN OFFICE.—A member of the Council or Committee whose term expires shall continue to serve until the date on which the member's successor takes office.

(G) REMOVAL.—Any member of the Council appointed under paragraph (2)(D) may be removed for cause by the President or Secretary whoever makes the appointment. Any member of the Committee may be removed for cause by the Secretary.

## (H) CLAIMS AGAINST MEMBERS OF COMMITTEE.—

(i) IN GENERAL.—A member appointed to the Committee shall have no personal liability under Federal law with respect to any claim arising out of or resulting from an act or omission by such member within the scope of service as a member of the Committee.

(ii) EFFECT ON OTHER LAW.—This subparagraph shall not be construed—

(I) to affect any other immunity or protection that may be available to a member of the Subcommittee under applicable law with respect to such transactions;

(II) to affect any other right or remedy against the United States under applicable law; or

(III) to limit or alter in any way the immunities that are available under applicable law for Federal officers and employees.

## (I) ETHICAL CONSIDERATIONS.—

(i) FINANCIAL DISCLOSURE.—During the entire period that an individual is serving as a member of the Committee, such individual shall be treated as serving as an officer or employee referred to in section 101(f) of the Ethics in Government Act of 1978 for purposes of title I of such Act; except that section 101(d) of such Act shall apply without regard to the number of days of service in the position.

(ii) RESTRICTIONS ON POST-EMPLOYMENT.—For purposes of section 207(c) of title 18, an individual who is a member of the Committee shall be treated as an employee referred to in section 207(c)(2)(A)(i) of such title during the entire period the individual is a member of the Committee; except that subsections (c)(2)(B) and (f) of section 207 of such title shall not apply.

(J) CHAIRMAN; VICE CHAIRMAN.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (2)(C), each of whom shall serve for a term of 1 year. The vice chair shall perform the duties of the chairman in the absence of the chairman.

(K) TRAVEL AND PER DIEM.—Each member of the Council or 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.

(L) DETAIL OF PERSONNEL FROM THE ADMINISTRATION.—The Administrator shall make available to the Council or Committee such staff, information, and administrative services and assistance as may reasonably be required to enable the Council or Committee to carry out its responsibilities under this subsection.

## (7) AIR TRAFFIC SERVICES COMMITTEE.—

(A) ESTABLISHMENT.—The Administrator shall establish a committee that is independent of the Council by converting the Air Traffic Services Subcommittee of the Council, as in effect on the day before the date of enactment of the Vision 100--Century of Aviation Reauthorization Act,

into such committee. The committee shall be known as the Air Traffic Services Committee (in this subsection referred to as the "Committee").

(B) MEMBERSHIP AND QUALIFICATIONS.—Subject to paragraph (6)(C), the Committee shall consist of five members, one of whom shall be the Administrator and shall serve as chairperson. The remaining members shall be appointed by the President with the advice and consent of the Senate and—

- (i) shall have a fiduciary responsibility to represent the public interest;
- (ii) shall be citizens of the United States; and
- (iii) shall be appointed without regard to political affiliation and solely on the basis of their professional experience and expertise in one or more of the following areas and, in the aggregate, should collectively bring to bear expertise in all of the following areas:
  - (I) Management of large service organizations.
  - (II) Customer service.
  - (III) Management of large procurements.
  - (IV) Information and communications technology.
  - (V) Organizational development.
  - (VI) Labor relations.

(C) PROHIBITIONS ON MEMBERS OF COMMITTEE.—No member of the Committee may—

- (i) have a pecuniary interest in, or own stock in or bonds of, an aviation or aeronautical enterprise, except an interest in a diversified mutual fund or an interest that is exempt from the application of section 208 of title 18;
- (ii) engage in another business related to aviation or aeronautics; or
- (iii) be a member of any organization that engages, as a substantial part of its activities, in activities to influence aviation-related legislation.

(D) GENERAL RESPONSIBILITIES.—

- (i) OVERSIGHT.—The Committee shall oversee the administration, management, conduct, direction, and supervision of the air traffic control system.
- (ii) CONFIDENTIALITY.—The Committee shall ensure that appropriate confidentiality is maintained in the exercise of its duties.

(E) SPECIFIC RESPONSIBILITIES.—The Committee shall have the following specific responsibilities:

- (i) STRATEGIC PLANS.—To review, approve, and monitor the strategic plan for the air traffic control system, including the establishment of—
  - (I) a mission and objectives;
  - (II) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity; and
  - (III) annual and long-range strategic plans.
- (ii) MODERNIZATION AND IMPROVEMENT.—To review and approve—

- (I) methods to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control; and
- (II) procurements of air traffic control equipment in excess of \$100,000,000.
- (iii) OPERATIONAL PLANS.—To review the operational functions of the air traffic control system, including—
  - (I) plans for modernization of the air traffic control system;
  - (II) plans for increasing productivity or implementing cost-saving measures; and
  - (III) plans for training and education.
- (iv) MANAGEMENT.—To—
  - (I) review and approve the Administrator's appointment of a Chief Operating Officer under section 106(r);
  - (II) review the Administrator's selection, evaluation, and compensation of senior executives of the Administration who have program management responsibility over significant functions of the air traffic control system;
  - (III) review and approve the Administrator's plans for any major reorganization of the Administration that would impact on the management of the air traffic control system;
  - (IV) review and approve the Administrator's cost accounting and financial management structure and technologies to help ensure efficient and cost-effective air traffic control operation; and
  - (V) review the performance and compensation of managers responsible for major acquisition projects, including the ability of the managers to meet schedule and budget targets.
- (v) BUDGET.—To—
  - (I) review and make recommendations on the budget request of the Administration related to the air traffic control system prepared by the Administrator;
  - (II) submit such budget recommendations to the Secretary; and
  - (III) base such budget recommendations on the annual and long-range strategic plans.
- (F) COMMITTEE PERSONNEL MATTERS AND EXPENSES.—
  - (i) PERSONNEL MATTERS.—The Committee may appoint and terminate for purposes of employment by the Committee any personnel that may be necessary to enable the Committee to perform its duties, and may procure temporary and intermittent services under section 40122.
  - (ii) TRAVEL EXPENSES.—Each member of the Committee shall receive travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.
- (G) ADMINISTRATIVE MATTERS.—

(i) **POWERS OF CHAIR.**—Except as otherwise provided by a majority vote of the Committee, the powers of the chairperson shall include—

- (I) establishing committees;
- (II) setting meeting places and times;
- (III) establishing meeting agendas; and
- (IV) developing rules for the conduct of business.

(ii) **MEETINGS.**—The Committee shall meet at least quarterly and at such other times as the chairperson determines appropriate.

(iii) **QUORUM.**—Three members of the Committee shall constitute a quorum. A majority of members present and voting shall be required for the Committee to take action.

(H) **AUTHORIZATION.**—There are authorized to be appropriated to the Committee such sums as may be necessary for the Committee to carry out its activities.

(I) **SUNSET.**—*The Committee shall terminate and this paragraph shall cease to be effective beginning on the date of transfer (as defined in section 90101(a)).*

(8) **AIR TRAFFIC CONTROL SYSTEM DEFINED.**—In this section, the term “air traffic control system” has the meaning such term has under section 40102(a).

(9) **SUNSET OF AIR TRAFFIC ADVISORY ROLE.**—*Beginning on the date of transfer (as defined in section 90101(a)), the Council shall not develop or submit comments, recommended modifications, or dissenting views directly regarding the American Air Navigation Services Corporation or air traffic services.*

(q) **AIRCRAFT NOISE OMBUDSMAN.**—

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

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

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

(3) **NUMBER OF FULL-TIME EQUIVALENT EMPLOYEES.**—The appointment of an Ombudsman under this subsection shall not result in an increase in the number of full-time equivalent employees in the Administration.

(r) **CHIEF OPERATING OFFICER.**—

(1) **IN GENERAL.**—

(A) **APPOINTMENT.**—There shall be a Chief Operating Officer for the air traffic control system to be appointed by the Administrator, with the approval of the Air Traffic Services Committee. The Chief Operating Officer shall report directly to the Administrator and shall be subject to the authority of the Administrator.

(B) **QUALIFICATIONS.**—The Chief Operating Officer shall have a demonstrated ability in management and knowledge of or experience in aviation.

(C) TERM.—The Chief Operating Officer shall be appointed for a term of 5 years.

(D) REMOVAL.—The Chief Operating Officer shall serve at the pleasure of the Administrator, except that the Administrator shall make every effort to ensure stability and continuity in the leadership of the air traffic control system.

(E) VACANCY.—Any individual appointed to fill a vacancy in the position of Chief Operating Officer occurring before the expiration of the term for which the individual's predecessor was appointed shall be appointed for the remainder of that term.

(2) COMPENSATION.—

(A) IN GENERAL.—The Chief Operating Officer shall be paid at an annual rate of basic pay to be determined by the Administrator, with the approval of the Air Traffic Services Committee. The annual rate may not exceed the annual compensation paid under section 102 of title 3. The Chief Operating Officer shall be subject to the post-employment provisions of section 207 of title 18 as if the position of Chief Operating Officer were described in section 207(c)(2)(A)(i) of that title.

(B) BONUS.—In addition to the annual rate of basic pay authorized by subparagraph (A), the Chief Operating Officer may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator's evaluation of the Chief Operating Officer's performance in relation to the performance goals set forth in the performance agreement described in paragraph (3).

(3) ANNUAL PERFORMANCE AGREEMENT.—The Administrator and the Chief Operating Officer, in consultation with the Air Traffic Services Committee, shall enter into an annual performance agreement that sets forth measurable organization and individual goals for the Chief Operating Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis.

(4) ANNUAL PERFORMANCE REPORT.—The Chief Operating Officer shall prepare and transmit to the Secretary of Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate an annual management report containing such information as may be prescribed by the Secretary.

(5) RESPONSIBILITIES.—The Administrator may delegate to the Chief Operating Officer, or any other authority within the Administration responsibilities, including the following:

(A) STRATEGIC PLANS.—To implement the strategic plan of the Administration for the air traffic control system in order to further—

- (i) a mission and objectives;
- (ii) standards of performance relative to such mission and objectives, including safety, efficiency, and productivity;
- (iii) annual and long-range strategic plans; and

(iv) methods of the Administration to accelerate air traffic control modernization and improvements in aviation safety related to air traffic control.

(B) OPERATIONS.—To oversee the day-to-day operational functions of the Administration for air traffic control, including—

- (i) modernization of the air traffic control system;
- (ii) increasing productivity or implementing cost-saving measures;
- (iii) training and education; and
- (iv) the management of cost-reimbursable contracts.

(C) BUDGET.—To—

- (i) develop a budget request of the Administration related to the air traffic control system;
- (ii) submit such budget request to the Administrator and the Committee; and
- (iii) ensure that the budget request supports the agency's annual and long-range strategic plans for air traffic control services.

(6) *SUNSET.*—*The position of Chief Operating Officer shall terminate and this subsection shall cease to be effective beginning on the date of transfer (as defined in section 90101(a)).*

(s) CHIEF NEXTGEN OFFICER.—

(1) IN GENERAL.—

(A) APPOINTMENT.—There shall be a Chief NextGen Officer appointed by the Administrator, with the approval of the Secretary. The Chief NextGen Officer shall report directly to the Administrator and shall be subject to the authority of the Administrator.

(B) QUALIFICATIONS.—The Chief NextGen Officer shall have a demonstrated ability in management and knowledge of or experience in aviation and systems engineering.

(C) TERM.—The Chief NextGen Officer shall be appointed for a term of 5 years.

(D) REMOVAL.—The Chief NextGen Officer shall serve at the pleasure of the Administrator, except that the Administrator shall make every effort to ensure stability and continuity in the leadership of the implementation of NextGen.

(E) VACANCY.—Any individual appointed to fill a vacancy in the position of Chief NextGen Officer occurring before the expiration of the term for which the individual's predecessor was appointed shall be appointed for the remainder of that term.

(2) COMPENSATION.—

(A) IN GENERAL.—The Chief NextGen Officer shall be paid at an annual rate of basic pay to be determined by the Administrator. The annual rate may not exceed the annual compensation paid under section 102 of title 3. The Chief NextGen Officer shall be subject to the postemployment provisions of section 207 of title 18 as if the position of Chief NextGen Officer were described in section 207(c)(2)(A)(i) of that title.

(B) BONUS.—In addition to the annual rate of basic pay authorized by subparagraph (A), the Chief NextGen Officer



may receive a bonus for any calendar year not to exceed 30 percent of the annual rate of basic pay, based upon the Administrator's evaluation of the Chief NextGen Officer's performance in relation to the performance goals set forth in the performance agreement described in paragraph (3).

(3) ANNUAL PERFORMANCE AGREEMENT.—The Administrator and the Chief NextGen Officer, in consultation with the Federal Aviation Management Advisory Council, shall enter into an annual performance agreement that sets forth measurable organization and individual goals for the Chief NextGen Officer in key operational areas. The agreement shall be subject to review and renegotiation on an annual basis. *In evaluating the performance of the Chief NextGen Officer, the Administrator shall consider the progress made in meeting the near-term NextGen performance goals required pursuant to section 242 of the 21st Century AIRR Act and delivering near-term NextGen benefits.*

(4) ANNUAL PERFORMANCE REPORT.—The Chief NextGen Officer shall prepare and transmit to the Secretary of Transportation, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Science, Space, and Technology of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate an annual management report containing such information as may be prescribed by the Secretary.

(5) RESPONSIBILITIES.—The responsibilities of the Chief NextGen Officer include the following:

(A) Implementing NextGen activities and budgets across all program offices of the Federal Aviation Administration.

(B) Coordinating the implementation of NextGen activities with the Office of Management and Budget.

(C) Reviewing and providing advice on the Administration's modernization programs, budget, and cost accounting system with respect to NextGen.

(D) With respect to the budget of the Administration—  
 (i) developing a budget request of the Administration related to the implementation of NextGen;  
 (ii) submitting such budget request to the Administrator; and

(iii) ensuring that the budget request supports the annual and long-range strategic plans of the Administration with respect to NextGen.

(E) Consulting with the Administrator on the Capital Investment Plan of the Administration prior to its submission to Congress.

(F) Developing an annual NextGen implementation plan.

(G) Ensuring that NextGen implementation activities are planned in such a manner as to require that system architecture is designed to allow for the incorporation of novel and currently unknown technologies into NextGen in the future and that current decisions do not bias future decisions unfairly in favor of existing technology at the expense of innovation.

(H) Coordinating with the NextGen Joint Planning and Development Office with respect to facilitating cooperation

among all Federal agencies whose operations and interests are affected by the implementation of NextGen.

*(I) Developing, as part of the annual report required under paragraph (4), a description of the progress made in meeting the near-term NextGen performance goals required pursuant to section 242 of the 21st Century AIRR Act and delivering near-term NextGen benefits.*

(6) EXCEPTION.—If the Administrator appoints as the Chief NextGen Officer, pursuant to paragraph (1)(A), an Executive Schedule employee covered by section 5315 of title 5, then paragraphs (1)(B), (1)(C), (2), and (3) of this subsection shall not apply to such employee.

(7) NEXTGEN DEFINED.—For purposes of this subsection, the term “NextGen” means the Next Generation Air Transportation System.

*(8) SUNSET.—The position of Chief NextGen Officer shall terminate and this subsection shall cease to be effective beginning on the date of transfer (as defined in section 90101(a)).*

(t) AVIATION SAFETY WHISTLEBLOWER INVESTIGATION OFFICE.—

(1) ESTABLISHMENT.—There is established in the Federal Aviation Administration (in this subsection referred to as the “Agency”) an Aviation Safety Whistleblower Investigation Office (in this subsection referred to as the “Office”).

(2) DIRECTOR.—

(A) APPOINTMENT.—The head of the Office shall be the Director, who shall be appointed by the Secretary of Transportation.

(B) QUALIFICATIONS.—The Director shall have a demonstrated ability in investigations and knowledge of or experience in aviation.

(C) TERM.—The Director shall be appointed for a term of 5 years.

(D) VACANCIES.—Any individual appointed to fill a vacancy in the position of the Director occurring before the expiration of the term for which the individual’s predecessor was appointed shall be appointed for the remainder of that term.

(3) COMPLAINTS AND INVESTIGATIONS.—

(A) AUTHORITY OF DIRECTOR.—The Director shall—

(i) receive complaints and information submitted by employees of persons holding certificates issued under title 14, Code of Federal Regulations (if the certificate holder does not have a similar in-house whistleblower or safety and regulatory noncompliance reporting process) and employees of the Agency concerning the possible existence of an activity relating to a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety;

(ii) assess complaints and information submitted under clause (i) and determine whether a substantial likelihood exists that a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety has occurred; and

(iii) based on findings of the assessment conducted under clause (ii), make recommendations to the Ad-

ministrator of the Agency, in writing, regarding further investigation or corrective actions.

(B) DISCLOSURE OF IDENTITIES.—The Director shall not disclose the identity of an individual who submits a complaint or information under subparagraph (A)(i) unless—

(i) the individual consents to the disclosure in writing; or

(ii) the Director determines, in the course of an investigation, that the disclosure is required by regulation, statute, or court order, or is otherwise unavoidable, in which case the Director shall provide the individual reasonable advanced notice of the disclosure.

(C) INDEPENDENCE OF DIRECTOR.—The Secretary, the Administrator, or any officer or employee of the Agency may not prevent or prohibit the Director from initiating, carrying out, or completing any assessment of a complaint or information submitted under subparagraph (A)(i) or from reporting to Congress on any such assessment.

(D) ACCESS TO INFORMATION.—In conducting an assessment of a complaint or information submitted under subparagraph (A)(i), the Director shall have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material of the Agency necessary to determine whether a substantial likelihood exists that a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety may have occurred.

(4) RESPONSES TO RECOMMENDATIONS.—Not later than 60 days after the date on which the Administrator receives a report with respect to an investigation, the Administrator shall respond to a recommendation made by the Director under paragraph (3)(A)(iii) in writing and retain records related to any further investigations or corrective actions taken in response to the recommendation.

(5) INCIDENT REPORTS.—If the Director determines there is a substantial likelihood that a violation of an order, a regulation, or any other provision of Federal law relating to aviation safety has occurred that requires immediate corrective action, the Director shall report the potential violation expeditiously to the Administrator and the Inspector General of the Department of Transportation.

(6) REPORTING OF CRIMINAL VIOLATIONS TO INSPECTOR GENERAL.—If the Director has reasonable grounds to believe that there has been a violation of Federal criminal law, the Director shall report the violation expeditiously to the Inspector General.

(7) ANNUAL REPORTS TO CONGRESS.—Not later than October 1 of each year, the Director shall submit to Congress a report containing—

(A) information on the number of submissions of complaints and information received by the Director under paragraph (3)(A)(i) in the preceding 12-month period;

(B) summaries of those submissions;

(C) summaries of further investigations and corrective actions recommended in response to the submissions; and

(D) summaries of the responses of the Administrator to such recommendations.

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**SUBTITLE VII—AVIATION PROGRAMS**

PART A - AIR COMMERCE AND SAFETY

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**PART A—AIR COMMERCE AND SAFETY**

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**SUBPART I—GENERAL**

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**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 shall consider the following matters, among others, as being in the public interest and consistent with public convenience and necessity:

- (1) assigning and maintaining safety as the highest priority in air commerce.
- (2) before authorizing new air transportation services, evaluating the safety implications of those services.
- (3) preventing deterioration in established safety procedures, recognizing the clear intent, encouragement, and dedication of Congress to further the highest degree of safety in air transportation and air commerce, and to maintain the safety vigilance that has evolved in air transportation and air commerce and has come to be expected by the traveling and shipping public.
- (4) the availability of a variety of adequate, economic, efficient, and low-priced services without unreasonable discrimination or unfair or deceptive practices.
- (5) coordinating transportation by, and improving relations among, air carriers, and encouraging fair wages and working conditions.
- (6) placing maximum reliance on competitive market forces and on actual and potential competition—
  - (A) to provide the needed air transportation system; and

- (B) to encourage efficient and well-managed air carriers to earn adequate profits and attract capital, considering any material differences between interstate air transportation and foreign air transportation.
- (7) developing and maintaining a sound regulatory system that is responsive to the needs of the public and in which decisions are reached promptly to make it easier to adapt the air transportation system to the present and future needs of—
- (A) the commerce of the United States;
  - (B) the United States Postal Service; and
  - (C) the national defense.
- (8) encouraging air transportation at major urban areas through secondary or satellite airports if consistent with regional airport plans of regional and local authorities, and if endorsed by appropriate State authorities—
- (A) encouraging the transportation by air carriers that provide, in a specific market, transportation exclusively at those airports; and
  - (B) fostering an environment that allows those carriers to establish themselves and develop secondary or satellite airport services.
- (9) preventing unfair, deceptive, predatory, or anticompetitive practices in air transportation.
- (10) avoiding unreasonable industry concentration, excessive market domination, monopoly powers, and other conditions that would tend to allow at least one air carrier or foreign air carrier unreasonably to increase prices, reduce services, or exclude competition in air transportation.
- (11) maintaining a complete and convenient system of continuous scheduled interstate air transportation for small communities and isolated areas with direct financial assistance from the United States Government when appropriate.
- (12) encouraging, developing, and maintaining an air transportation system relying on actual and potential competition—
- (A) to provide efficiency, innovation, and low prices; and
  - (B) to decide on the variety and quality of, and determine prices for, air transportation services.
- (13) encouraging entry into air transportation markets by new and existing air carriers and the continued strengthening of small air carriers to ensure a more effective and competitive airline industry.
- (14) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.
- (15) strengthening the competitive position of air carriers to at least ensure equality with foreign air carriers, including the attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.
- (16) ensuring that consumers in all regions of the United States, including those in small communities and rural and remote areas, have access to affordable, regularly scheduled air service.
- (17) *preventing entry into United States markets by flag of convenience carriers.*

(b) ALL-CARGO AIR TRANSPORTATION CONSIDERATIONS.—In carrying out subpart II of this part and those provisions of subpart IV applicable in carrying out subpart II, the Secretary of Transportation shall consider the following matters, among others and in addition to the matters referred to in subsection (a) of this section, as being in the public interest for all-cargo air transportation:

(1) encouraging and developing an expedited all-cargo air transportation system provided by private enterprise and responsive to—

- (A) the present and future needs of shippers;
- (B) the commerce of the United States; and
- (C) the national defense.

(2) encouraging and developing an integrated transportation system relying on competitive market forces to decide the extent, variety, quality, and price of services provided.

(3) providing services without unreasonable discrimination, unfair or deceptive practices, or predatory pricing.

(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 shall consider the following matters, among others, as being in the public interest:

(1) assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce.

(2) regulating air commerce in a way that best promotes safety and fulfills national defense requirements.

(3) encouraging and developing civil aeronautics, including new aviation technology.

(4) controlling the use of the navigable airspace and regulating civil and military operations in that airspace in the interest of the safety and efficiency of both of those operations.

(5) consolidating research and development for air navigation facilities and the installation and operation of those facilities.

(6) developing and operating a common system of air traffic control and navigation for military and civil aircraft.

(7) providing assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

(e) INTERNATIONAL AIR TRANSPORTATION.—In formulating United States international air transportation policy, the Secretaries of State and Transportation shall develop a negotiating policy emphasizing the greatest degree of competition compatible with a well-functioning international air transportation system, including the following:

(1) strengthening the competitive position of air carriers to ensure at least equality with foreign air carriers, including the

attainment of the opportunity for air carriers to maintain and increase their profitability in foreign air transportation.

(2) freedom of air carriers and foreign air carriers to offer prices that correspond to consumer demand.

(3) the fewest possible restrictions on charter air transportation.

(4) the maximum degree of multiple and permissive international authority for air carriers so that they will be able to respond quickly to a shift in market demand.

(5) eliminating operational and marketing restrictions to the greatest extent possible.

(6) integrating domestic and international air transportation.

(7) increasing the number of nonstop United States gateway cities.

(8) opportunities for carriers of foreign countries to increase their access to places in the United States if exchanged for benefits of similar magnitude for air carriers or the traveling public with permanent linkage between rights granted and rights given away.

(9) eliminating discrimination and unfair competitive practices faced by United States airlines in foreign air transportation, including—

(A) excessive landing and user fees;

(B) unreasonable ground handling requirements;

(C) unreasonable restrictions on operations;

(D) prohibitions against change of gauge; [and]

(E) similar restrictive practices[.]; and

(F) *erosion of labor standards associated with flag of convenience carriers.*

(10) promoting, encouraging, and developing civil aeronautics and a viable, privately-owned United States air transport industry.

(f) **STRENGTHENING COMPETITION.**—In selecting an air carrier to provide foreign air transportation from among competing applicants, the Secretary of Transportation shall consider, in addition to the matters specified in subsections (a) and (b) of this section, the strengthening of competition among air carriers operating in the United States to prevent unreasonable concentration in the air carrier industry.

#### § 40102. Definitions

(a) **GENERAL DEFINITIONS.**—In this part—

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

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

(3) “air commerce” means foreign air commerce, interstate air commerce, the transportation of mail by aircraft, the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in, foreign or interstate air commerce.

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

(A) a landing area;

- (B) runway lighting and airport surface visual and other navigation aids;
  - (C) apparatus, equipment, software, or service for distributing aeronautical and meteorological information to air traffic control facilities or aircraft;
  - (D) communication, navigation, or surveillance equipment for air-to-ground or air-to-air applications;
  - (E) any structure, equipment, or mechanism for guiding or controlling flight in the air or the landing and takeoff of aircraft; and
  - (F) buildings, equipment, and systems dedicated to the national airspace system.
- (5) “air transportation” means foreign air transportation, interstate air transportation, or the transportation of mail by aircraft.
- (6) “aircraft” means any contrivance invented, used, or designed to navigate, or fly in, the air.
- (7) “aircraft engine” means an engine used, or intended to be used, to propel an aircraft, including a part, appurtenance, and accessory of the engine, except a propeller.
- (8) “airman” means an individual—
- (A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way;
  - (B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or
  - (C) who serves as an aircraft dispatcher or air traffic control-tower operator.
- (9) “airport” means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.
- (10) “all-cargo air transportation” means the transportation by aircraft in interstate air transportation of only property or only mail, or both.
- (11) “appliance” means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.
- (12) “cargo” means property, mail, or both.
- (13) “charter air carrier” means an air carrier holding a certificate of public convenience and necessity that authorizes it to provide charter air transportation.
- (14) “charter air transportation” means charter trips in air transportation authorized under this part.
- (15) “citizen of the United States” means—
- (A) an individual who is a citizen of the United States;
  - (B) a partnership each of whose partners is an individual who is a citizen of the United States; or
  - (C) a corporation or association organized under the laws of the United States or a State, the District of Columbia, or a territory or possession of the United States, of which



the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States, which is under the actual control of citizens of the United States, and in which at least 75 percent of the voting interest is owned or controlled by persons that are citizens of the United States.

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

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

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

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

- (i) paying any part of the purchase price;
- (ii) performing another condition; or
- (iii) the happening of a contingency; or

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

- (i) agrees to pay an amount substantially equal to the value of the property; and
- (ii) is to become, or has the option of becoming, the owner of the property on complying with the contract.

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

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

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

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

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

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

(A) between a place in—

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

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

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

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

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

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

(A) between a place in—

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

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

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

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

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

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

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

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

(29) “large hub airport” means a commercial service airport (as defined in section 47102) that has at least 1.0 percent of the passenger boardings.

(30) “mail” means United States mail and foreign transit mail.

(31) “medium hub airport” means a commercial service airport (as defined in section 47102) that has at least 0.25 percent but less than 1.0 percent of the passenger boardings.

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

(33) “navigate aircraft” and “navigation of aircraft” include piloting aircraft.

(34) “nonhub airport” means a commercial service airport (as defined in section 47102) that has less than 0.05 percent of the passenger boardings.

(35) “operate aircraft” and “operation of aircraft” mean using aircraft for the purposes of air navigation, including—

(A) the navigation of aircraft; and

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

(36) “passenger boardings”—

(A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and

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

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

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

(39) “price” means a rate, fare, or charge.

(40) “propeller” includes a part, appurtenance, and accessory of a propeller.

(41) “public aircraft” means any of the following:

(A) Except with respect to an aircraft described in subparagraph (E), an aircraft used only for the United States Government, except as provided in section 40125(b).

(B) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in section 40125(b).

(C) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(D) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in section 40125(b).

(E) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by section 40125(c). In the preceding sentence, the term “other commercial air service” means an aircraft operation that (i) is within the United States territorial airspace; (ii) the Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public, and (iii) must comply with all applicable civil aircraft rules under title 14, Code of Federal Regulations.

(F) *An unmanned aircraft that is owned and operated by, or exclusively leased for at least 90 continuous days by, an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122), except as provided in section 40125(b).*

(42) “small hub airport” means a commercial service airport (as defined in section 47102) that has at least 0.05 percent but less than 0.25 percent of the passenger boardings.

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

(44) “State authority” means an authority of a State designated under State law—

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

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

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

(46) “United States” means the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace.

(47) “air traffic control system” means the combination of elements used to safely and efficiently monitor, direct, control, and guide aircraft in the United States and United States-assigned airspace, including—

(A) allocated electromagnetic spectrum and physical, real, personal, and intellectual property assets making up facilities, equipment, and systems employed to detect, track, and guide aircraft movement;

(B) laws, regulations, orders, directives, agreements, and licenses;

(C) published procedures that explain required actions, activities, and techniques used to ensure adequate aircraft separation; and

(D) trained personnel with specific technical capabilities to satisfy the operational, engineering, management, and planning requirements for air traffic control.

(48) “*American Air Navigation Services Corporation*” means the *American Air Navigation Services Corporation* established by subtitle XI.

(49) “*flag of convenience carrier*” means a foreign air carrier that is established in a country other than the home country of its majority owner or owners in order to avoid regulations of the home country.

(b) LIMITED DEFINITION.—In subpart II of this part, “control” means control by any means.

#### **§ 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 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】** *Before the date of transfer (as defined in section 90101(a)), 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】** *Before the date of transfer (as defined in section 90101(a)), the Administrator* may modify or revoke an assignment when required in the public interest.

**【(2) The Administrator 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.】**

(2) *The Administrator shall—*

(A) *before the date of transfer (as defined in section 90101(a)), prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—*

- (i) navigating, protecting, and identifying aircraft;*
- (ii) protecting individuals and property on the ground;*
- (iii) using the navigable airspace efficiently; and*
- (iv) preventing collisions between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects; and*

(B) *on and after the date of transfer (as defined in section 90101(a)), prescribe safety regulations on the flight of aircraft (including regulations on safe altitudes) for—*

- (i) navigating, protecting, and identifying aircraft;*
- (ii) protecting individuals and property on the ground;*
- (iii) ensuring equitable access to and use of airspace; and*
- (iv) preventing collisions 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】** *Secretary*, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the **【Administrator】** *Secretary* 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】** *Secretary* 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.

(c) FOREIGN AIRCRAFT.—A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) AIRCRAFT OF ARMED FORCES OF FOREIGN COUNTRIES.—Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) NO EXCLUSIVE RIGHTS AT CERTAIN FACILITIES.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1) it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2) allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

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

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

(b) INTERNATIONAL ROLE OF THE FAA.—The Administrator shall promote and achieve global improvements in the safety, efficiency, and environmental effect of air travel by exercising leadership with the Administrator's foreign counterparts, in the International Civil Aviation Organization and its subsidiary organizations, and other international organizations and fora, and with the private sector.

(c) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—In carrying out subsection (a), the Administrator shall take action to encourage the construction of airport capacity enhancement projects at congested airports as those terms are defined in [section 47176] section 47175 .

(d) PROMOTION OF UNITED STATES AEROSPACE STANDARDS, PRODUCTS, AND SERVICES ABROAD.—The Administrator shall take appropriate actions to—

(1) promote United States aerospace safety standards abroad;

(2) facilitate and vigorously defend approvals of United States aerospace products and services abroad;

(3) with respect to bilateral partners, utilize bilateral safety agreements and other mechanisms to improve validation of United States type certificated aeronautical products and appli-

*ances and enhance mutual acceptance in order to eliminate redundancies and unnecessary costs; and*

*(4) with respect to foreign safety authorities, streamline validation and coordination processes.*

\* \* \* \* \*

#### **§ 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 section 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 *and the American Air Navigation Services Corporation* 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 *and the American Air Navigation Services Corporation* and arrange for the deviation in advance on a mutually agreeable basis.

(b) SUSPENSION OF AUTHORITY.—(1) When the President decides that the government of a foreign country is acting inconsistently with the Convention for the Suppression of Unlawful Seizure of Aircraft or that the government of a foreign country allows territory under its jurisdiction to be used as a base of operations or training of, or as a sanctuary for, or arms, aids, or abets, a terrorist organization that knowingly uses the unlawful seizure, or the threat of an unlawful seizure, of an aircraft as an instrument of policy, the President may suspend the authority of—

(A) an air carrier or foreign air carrier to provide foreign air transportation to and from that foreign country;

(B) a person to operate aircraft in foreign air commerce to and from that foreign country;

(C) a foreign air carrier to provide foreign air transportation between the United States and another country that maintains air service with the foreign country; and

(D) a foreign person to operate aircraft in foreign air commerce between the United States and another country that maintains air service with the foreign country.

(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 under this part.

(3) An air carrier or foreign air carrier may not provide foreign air transportation, and a person may not operate aircraft in foreign air commerce, in violation of a suspension of authority under this subsection.

### § 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.

[(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. In making the transfer, the President may transfer records, property, officers, and employees of the Administration to the Department of Defense.]

*(b) DURING WAR.—If war occurs, the President by Executive order may temporarily transfer to the Secretary of Defense a duty, power, activity, or facility of the Administrator or the American Air Navigation Services Corporation. In making the transfer, the President may temporarily transfer records, property, officers, and employees of the Administration or the American Air Navigation Services Corporation to the Department of Defense.*

\* \* \* \* \*

### § 40109. Authority to exempt

(a) AIR CARRIERS AND FOREIGN AIR CARRIERS NOT ENGAGED DIRECTLY IN OPERATING AIRCRAFT.—(1) The Secretary of Transportation may exempt from subpart II of this part—

(A) an air carrier not engaged directly in operating aircraft in air transportation; or

(B) a foreign air carrier not engaged directly in operating aircraft in foreign air transportation.

(2) The exemption is effective to the extent and for periods that the Secretary decides are in the public interest.

(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 decides the exemption is in the public interest.

(c) OTHER ECONOMIC REGULATION.—Except as provided in this section, the Secretary may exempt to the extent the Secretary considers necessary a person or class of persons from a provision of chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, and sections 44909 and 46301(b) of this title, or a regulation or term prescribed under any of those provisions, when the Secretary decides that the exemption is consistent with the public interest.

(d) LABOR REQUIREMENTS.—The Secretary may not exempt an air carrier from section 42112 of this title. However, the Secretary



may exempt from section 42112(b)(1) and (2) an air carrier not providing scheduled air transportation, and the operations conducted during daylight hours by an air carrier providing scheduled air transportation, when the Secretary decides that—

(1) because of the limited extent of, or unusual circumstances affecting, the operation of the air carrier, the enforcement of section 42112(b)(1) and (2) of this title is or would be an unreasonable burden on the air carrier that would obstruct its development and prevent it from beginning or continuing operations; and

(2) the exemption would not affect adversely the public interest.

(e) **MAXIMUM FLYING HOURS.**—The Secretary may not exempt an air carrier under this section from a provision referred to in subsection (c) of this section, or a regulation or term prescribed under any of those provisions, that sets maximum flying hours for pilots or copilots.

(f) **SMALLER AIRCRAFT.**—(1) An air carrier is exempt from section 41101(a)(1) of this title, and the Secretary may exempt an air carrier from another provision of subpart II of this part, if the air carrier—

(A)(i) provides passenger transportation only with aircraft having a maximum capacity of 55 passengers; or

(ii) provides the transportation of cargo only with aircraft having a maximum payload of less than 18,000 pounds; and

(B) complies with liability insurance requirements and other regulations the Secretary prescribes.

(2) The Secretary may increase the passenger or payload capacities when the public interest requires.

(3)(A) An exemption under this subsection applies to an air carrier providing air transportation between 2 places in Alaska, or between Alaska and Canada, only if the carrier is authorized by Alaska to provide the transportation.

(B) The Secretary may limit the number or location of places that may be served by an air carrier providing transportation only in Alaska under an exemption from section 41101(a)(1) of this title, or the frequency with which the transportation may be provided, only when the Secretary decides that providing the transportation substantially impairs the ability of an air carrier holding a certificate issued by the Secretary to provide its authorized transportation, including the minimum transportation requirement for Alaska specified under section 41732(b)(1)(B) of this title.

(g) **EMERGENCY AIR TRANSPORTATION BY FOREIGN AIR CARRIERS.**—(1) To the extent that the Secretary decides an exemption is in the public interest, the Secretary may exempt by order a foreign air carrier from the requirements and limitations of this part for not more than 30 days to allow the foreign air carrier to carry passengers or cargo in interstate air transportation in certain markets if the Secretary finds that—

(A) because of an emergency created by unusual circumstances not arising in the normal course of business, air carriers holding certificates under section 41102 of this title cannot accommodate traffic in those markets;

(B) all possible efforts have been made to accommodate the traffic by using the resources of the air carriers, including the use of—

(i) foreign aircraft, or sections of foreign aircraft, under lease or charter to the air carriers; and

(ii) the air carriers' reservations systems to the extent practicable;

(C) the exemption is necessary to avoid unreasonable hardship for the traffic in the markets that cannot be accommodated by the air carriers; and

(D) granting the exemption will not result in an unreasonable advantage to any party in a labor dispute where the inability to accommodate traffic in a market is a result of the dispute.

(2) When the Secretary grants an exemption to a foreign air carrier under this subsection, the Secretary shall—

(A) ensure that air transportation that the foreign air carrier provides under the exemption is made available on reasonable terms;

(B) monitor continuously the passenger load factor of air carriers in the market that hold certificates under section 41102 of this title; and

[(C) review the exemption at least every 30 days to ensure that the unusual circumstances that established the need for the exemption still exist.]

*(C) review the exemption at least every 30 days (or, in the case of an exemption that is necessary to provide and sustain air transportation in American Samoa between the islands of Tutuila and Manu'a, at least every 180 days) to ensure that the unusual circumstances that established the need for the exemption still exist.*

[(3) The Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days. An exemption may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.]

(3) *RENEWAL OF EXEMPTIONS.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may renew an exemption (including renewals) under this subsection for not more than 30 days.*

*(B) EXCEPTION.—The Secretary may renew an exemption (including renewals) under this subsection that is necessary to provide and sustain air transportation in American Samoa between the islands of Tutuila and Manu'a for not more than 180 days.*

*(4) CONTINUATION OF EXEMPTIONS.—An exemption granted by the Secretary under this subsection may continue for not more than 5 days after the unusual circumstances that established the need for the exemption cease.*

(h) *NOTICE AND OPPORTUNITY FOR HEARING.—*The Secretary may act under subsections (d) and (f)(3)(B) of this section only after giving the air carrier notice and an opportunity for a hearing.

#### **§ 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;

(2) may construct and improve laboratories and other test facilities; and

(3) may dispose of any interest in property for adequate compensation, and the amount so received shall—

(A) be credited to the appropriation current when the amount is received;

(B) be merged with and available for the purposes of such appropriation; and

(C) remain available until expended.

(b) PURCHASE OF HOUSING UNITS.—

(1) AUTHORITY.—In carrying out this part, the Administrator may purchase a housing unit (including a condominium or a housing unit in a building owned by a cooperative) that is located outside the contiguous United States if the cost of the unit is \$300,000 or less.

(2) ADJUSTMENTS FOR INFLATION.—For fiscal years beginning after September 30, 1997, the Administrator may adjust the dollar amount specified in paragraph (1) to take into account increases in local housing costs.

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

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

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

(B) a certification that the price does not exceed the median price of housing units in the area; and

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

(5) PAYMENT OF FEES.—The Administrator may pay, when due, fees resulting from the purchase of a housing unit under this subsection from any amounts made available to the Administrator.

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

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

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

(3) construct, or acquire an interest in, a public building (as defined in section 3301(a) of title 40) only under a delegation of authority from the Administrator of General Services; and

(4) dispose of property under subsection (a)(2) of this section, except for airport and airway property and technical equipment used for the special purposes of the Administration, only under sections 121, 123, and 126 and chapter 5 of title 40.

(d) ACQUISITION MANAGEMENT SYSTEM.—

(1) IN GENERAL.—In consultation with such non-governmental experts in acquisition management systems as the Administrator may employ, and notwithstanding provisions of Federal acquisition law, the Administrator shall develop and implement an acquisition management system for the Administration that addresses the unique needs of the agency and, at a minimum, provides for—

(A) more timely and cost-effective acquisitions of equipment, services, property, and materials; and

(B) the resolution of bid protests and contract disputes related thereto, using consensual alternative dispute resolution techniques to the maximum extent practicable.

(2) APPLICABILITY OF FEDERAL ACQUISITION LAW.—The following provisions of Federal acquisition law shall not apply to the new acquisition management system developed and implemented pursuant to paragraph (1):

(A) Division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41.

(B) Division B (except sections 1704 and 2303) of subtitle I of title 41.

(C) The Federal Acquisition Streamlining Act of 1994 (Public Law 103-355). However, section 4705 of title 41 shall apply to the new acquisition management system developed and implemented pursuant to paragraph (1). For the purpose of applying section 4705 of title 41 to the system, the term “executive agency” is deemed to refer to the Federal Aviation Administration.

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

(E) The Competition in Contracting Act.

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

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

(3) CERTAIN PROVISIONS OF DIVISION B (EXCEPT SECTIONS 1704 AND 2303) OF SUBTITLE I OF TITLE 41.—Notwithstanding paragraph (2)(B), chapter 21 of title 41 shall apply to the new acquisition management system developed and implemented under paragraph (1) with the following modifications:

(A) Sections 2101 and 2106 of title 41 shall not apply.

(B) Within 90 days after the date of the enactment of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, the Administrator shall adopt definitions for the acquisition management system that are consistent with the purpose and intent of the Office of Federal Procurement Policy Act.

(C) After the adoption of those definitions, the criminal, civil, and administrative remedies provided under the Office of Federal Procurement Policy Act apply to the acquisition management system.

(D) In the administration of the acquisition management system, the Administrator may take adverse personnel action under section 27(e)(3)(A)(iv) of the Office of Federal Procurement Policy Act in accordance with the procedures contained in the Administration's personnel management system.

(4) ADJUDICATION OF CERTAIN BID PROTESTS AND CONTRACT DISPUTES.—A bid protest or contract dispute that is not addressed or resolved through alternative dispute resolution shall be adjudicated by the Administrator through Dispute Resolution Officers or Special Masters of the Federal Aviation Administration Office of Dispute Resolution for Acquisition, acting pursuant to sections 46102, 46104, 46105, 46106 and 46107 and shall be subject to judicial review under section 46110 and to section 504 of title 5.

(5) ANNUAL REPORT ON THE PURCHASE OF FOREIGN MANUFACTURED ARTICLES.—

(A) REPORT.—*Not later than 90 days after the end of the fiscal year, the Secretary of Transportation shall submit a report to Congress on the dollar amount of the acquisitions made by the agency from entities that manufacture the articles, materials, or supplies outside of the United States in such fiscal year.*

(B) CONTENTS.—*The report required by subparagraph (A) shall separately indicate—*

*(i) the dollar value of any articles, materials, or supplies purchased that were manufactured outside of the United States; and*

*(ii) a summary of the total procurement funds spent on goods manufactured in the United States versus funds spent on goods manufactured outside of the United States.*

(C) AVAILABILITY OF REPORT.—*The Secretary shall make the report under subparagraph (A) publicly available on the agency's website not later than 30 days after submission to Congress.*

(e) PROHIBITION ON RELEASE OF OFFEROR PROPOSALS.—

(1) GENERAL RULE.—Except as provided in paragraph (2), a proposal in the possession or control of the Administrator may not be made available to any person under section 552 of title 5.

(2) EXCEPTION.—Paragraph (1) shall not apply to any portion of a proposal of an offeror the disclosure of which is authorized by the Administrator pursuant to procedures published in the

Federal Register. The Administrator shall provide an opportunity for public comment on the procedures for a period of not less than 30 days beginning on the date of such publication in order to receive and consider the views of all interested parties on the procedures. The procedures shall not take effect before the 60th day following the date of such publication.

(3) PROPOSAL DEFINED.—In this subsection, the term “proposal” means information contained in or originating from any proposal, including a technical, management, or cost proposal, submitted by an offeror in response to the requirements of a solicitation for a competitive proposal.

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#### § 40116. State taxation

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

(b) PROHIBITIONS.—Except as provided in subsection (c) of this section and section 40117 of this title, a State, a political subdivision of a State, and any person that has purchased or leased an airport under section 47134 of this title may not levy or collect a tax, fee, head charge, or other charge on—

- (1) an individual traveling in air commerce;
- (2) the transportation of an individual traveling in air commerce;
- (3) the sale of air transportation; or
- (4) the gross receipts from that air commerce or transportation.

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

(d) UNREASONABLE BURDENS AND DISCRIMINATION AGAINST INTERSTATE COMMERCE.—(1) In this subsection—

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

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

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

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

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

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

jurisdiction has to the true market value of the other commercial and industrial property.

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

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

(iv) levy or collect a tax, fee, or charge, first taking effect after August 23, 1994, exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee, or charge wholly utilized for airport or aeronautical purposes.

(v) *except as otherwise provided under section 47133, levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that State, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.*

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

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

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

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

(f) PAY OF AIR CARRIER EMPLOYEES.—(1) In this subsection—

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

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

(C) an employee is deemed to have earned 50 percent of the employee’s pay in a State or political subdivision of a State in which the scheduled flight time of the employee in the State or subdivision is more than 50 percent of the total scheduled flight time of the employee when employed during the calendar year.

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

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

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

(3) Compensation paid by an air carrier to an employee described in subsection (a) in connection with such employee’s authorized leave or other authorized absence from regular duties on the carrier’s aircraft in order to perform services on behalf of the employ-

ee's airline union shall be subject to the income tax laws of only the following:

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

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

**§ 40117. Passenger facility charges**

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

(1) AIRPORT, COMMERCIAL SERVICE AIRPORT, AND PUBLIC AGENCY.—The terms “airport”, “commercial service airport”, and “public agency” have the meaning those terms have under section 47102.

(2) ELIGIBLE AGENCY.—The term “eligible agency” means a public agency that controls a commercial service airport.

(3) ELIGIBLE AIRPORT-RELATED PROJECT.—The term “eligible airport-related project” means any of the following projects:

(A) A project for airport development or airport planning under subchapter I of chapter 471.

(B) A project for terminal development described in section 47119(a).

(C) A project for costs of terminal development referred to in subparagraph (B) incurred after August 1, 1986, at an airport that did not have more than .25 percent of the total annual passenger boardings in the United States in the most recent calendar year for which data is available and at which total passenger boardings declined by at least 16 percent between calendar year 1989 and calendar year 1997.

(D) A project for airport noise capability planning under section 47505.

(E) A project to carry out noise compatibility measures eligible for assistance under section 47504, whether or not a program for those measures has been approved under section 47504.

(F) A project for constructing gates and related areas at which passengers board or exit aircraft. In the case of a project required to enable additional air service by an air carrier with less than 50 percent of the annual passenger boardings at an airport, the project for constructing gates and related areas may include structural foundations and floor systems, exterior building walls and load-bearing interior columns or walls, windows, door and roof systems, building utilities (including heating, air conditioning, ventilation, plumbing, and electrical service), and aircraft fueling facilities adjacent to the gate.

(G) A project for converting vehicles and ground support equipment used at a commercial service airport to low-emission technology (as defined in section 47102) or to use cleaner burning conventional fuels, retrofitting of any such vehicles or equipment that are powered by a diesel or gas-



oline engine with emission control technologies certified or verified by the Environmental Protection Agency to reduce emissions, or acquiring for use at a commercial service airport vehicles and ground support equipment that include low-emission technology or use cleaner burning fuels if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47139.

*(H) A project for—*

*(i) converting or retrofitting vehicles and ground support equipment into eligible zero-emission vehicles and equipment (as defined in section 47102); or*

*(ii) acquiring, by purchase or lease, eligible zero-emission vehicles and equipment (as defined in section 47102).*

(4) GROUND SUPPORT EQUIPMENT.—The term “ground support equipment” means service and maintenance equipment used at an airport to support aeronautical operations and related activities.

(5) PASSENGER FACILITY CHARGE.—The term “passenger facility charge” means a **[charge or charge]** charge imposed under this section.

(6) PASSENGER FACILITY REVENUE.—The term “passenger facility revenue” means revenue derived from a passenger facility charge.

(b) GENERAL AUTHORITY.—(1) The Secretary of Transportation may authorize under this section an eligible agency to impose a passenger facility charge of \$1, \$2, **[or \$3]** \$3, \$4, or \$4.50 on each paying passenger of an air carrier or foreign air carrier boarding an aircraft at an airport the agency controls to finance an eligible airport-related project, including making payments for debt service on indebtedness incurred to carry out the project, to be carried out in connection with the airport or any other airport the agency controls.

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

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

**[(4) In lieu of authorizing a charge under paragraph (1), the Secretary may authorize under this section an eligible agency to impose a passenger facility charge of \$4.00 or \$4.50 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, if the Secretary finds—**

**[(A) in the case of an airport that has more than .25 percent of the total number of annual boardings in the United States, that the project will make a significant contribution to improv-**

ing air safety and security, increasing competition among air carriers, reducing current or anticipated congestion, or reducing the impact of aviation noise on people living near the airport; and

【(B) that the project cannot be paid for from funds reasonably expected to be available for the programs referred to in section 48103.】

(5) MAXIMUM COST FOR CERTAIN LOW-EMISSION TECHNOLOGY PROJECTS.—The maximum cost that may be financed by imposition of a passenger facility charge under this section for a project described in subsection (a)(3)(G) with respect to a vehicle or ground support equipment may not exceed the incremental amount of the project cost that is greater than the cost of acquiring a vehicle or equipment that is not low-emission and would be used for the same purpose, or the cost of low-emission retrofitting, as determined by the Secretary.

(6) DEBT SERVICE FOR CERTAIN PROJECTS.—In addition to the uses 【specified in paragraphs (1) and (4)】 *specified in paragraph (1)*, the Secretary may authorize a passenger facility charge 【imposed under paragraph (1) or (4)】 *imposed under paragraph (1)* to be used for making payments for debt service on indebtedness incurred to carry out at the airport a project that is not an eligible airport-related project if the Secretary determines that such use is necessary due to the financial need of the airport.

(7) NOISE MITIGATION FOR CERTAIN SCHOOLS.—

(A) IN GENERAL.—In addition to the uses 【specified in paragraphs (1), (4), and (6)】 *specified in paragraphs (1) and (6)*, the Secretary may authorize a passenger facility charge 【imposed under paragraph (1) or (4)】 *imposed under paragraph (1)* at a large hub airport that is the subject of an amended judgment and final order in condemnation filed on January 7, 1980, by the Superior Court of the State of California for the county of Los Angeles, to be used for a project to carry out noise mitigation for a building, or for the replacement of a relocatable building with a permanent building, in the noise impacted area surrounding the airport at which such building is used primarily for educational purposes, notwithstanding the air easement granted or any terms to the contrary in such judgment and final order, if—

(i) the Secretary determines that the building is adversely affected by airport noise;

(ii) the building is owned or chartered by the school district that was the plaintiff in case number 986,442 or 986,446, which was resolved by such judgment and final order;

(iii) the project is for a school identified in 1 of the settlement agreements effective February 16, 2005, between the airport and each of the school districts;

(iv) in the case of a project to replace a relocatable building with a permanent building, the eligible project costs are limited to the actual structural construction costs necessary to mitigate aircraft noise in instructional classrooms to an interior noise level meeting current standards of the Federal Aviation Administration; and

(v) the project otherwise meets the requirements of this section for authorization of a passenger facility charge.

(B) ELIGIBLE PROJECT COSTS.—In subparagraph (A)(iv), the term “eligible project costs” means the difference between the cost of standard school construction and the cost of construction necessary to mitigate classroom noise to the standards of the Federal Aviation Administration.

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

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

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

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

(C) Not later than 45 days after written notice is provided under subparagraph (A) of this paragraph, the agency must conduct a meeting to provide air carriers and foreign air carriers with descriptions of projects and justifications and a detailed financial plan for projects.

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

(E) The agency must include in its application or notice submitted under subparagraph (A) copies of all certifications of agreement or disagreement received under subparagraph (D).

(F) For the purpose of this section, an eligible agency providing notice and an opportunity for consultation to an air carrier or foreign air carrier is deemed to have satisfied the requirements of this paragraph if the eligible agency limits such notices and consultations to air carriers and foreign air carriers that have a significant business interest at the airport. In the subparagraph, the term “significant business interest” means an air carrier or foreign air carrier that had no less than 1.0 percent of passenger boardings at the airport in the prior calendar year, had at least 25,000 passenger boardings at the airport in the prior calendar year, or provides scheduled service at the airport.

(3) Before submitting an application, the eligible agency must provide reasonable notice and an opportunity for public comment. The Secretary shall prescribe regulations that define reasonable notice and provide for at least the following under this paragraph:

(A) A requirement that the eligible agency provide public notice of intent to collect a passenger facility charge so as to inform those interested persons and agencies that may be affected. The public notice may include—

- (i) publication in local newspapers of general circulation;
- (ii) publication in other local media; and
- (iii) posting the notice on the agency's Internet website.

(B) A requirement for submission of public comments no sooner than 30 days, and no later than 45 days, after the date of the publication of the notice.

(C) A requirement that the agency include in its application or notice submitted under subparagraph (A) copies of all comments received under subparagraph (B).

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

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

(1) the amount and duration of the proposed passenger facility charge 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;

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

(4) in the case of an application to impose a charge of more than \$3.00 for an eligible surface transportation or terminal project, the agency has made adequate provision for financing the airside needs of the airport, including runways, taxiways, aprons, and aircraft gates.

(e) LIMITATIONS ON IMPOSING CHARGES.—(1) An eligible agency may impose a passenger facility charge only—

- (A) if the Secretary approves an application that the agency has submitted under subsection (c) of this section; and
- (B) subject to terms the Secretary may prescribe to carry out the objectives of this section.

(2) A passenger facility charge 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) 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;

(D) on flights, including flight segments, between 2 or more points in Hawaii;

(E) in Alaska aboard an aircraft having a seating capacity of less than 60 passengers; and

(F) enplaning at an airport if the passenger did not pay for the air transportation which resulted in such enplanement due to charter arrangements and payment by the Department of Defense.

(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 charge or to use the passenger facility revenue as provided in this section.

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

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

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

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

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

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

(h) COMPLIANCE.—(1) As necessary to ensure compliance with this section, the Secretary shall prescribe regulations requiring rec-

ordkeeping and auditing of accounts maintained by an air carrier or foreign air carrier and its agent collecting a passenger facility charge and by the eligible agency imposing the charge.

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

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

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

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

(2) shall—

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

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

(C) ensure that the money, less a uniform amount the Secretary determines reflects the average necessary and reasonable expenses (net of interest accruing to the carrier and agent after collection and before remittance) incurred in collecting and handling the charge, 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; and

(3) may permit an eligible agency to request that collection of a passenger facility charge be waived for—

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

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

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

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

(j) LIMITATION ON CERTAIN ACTIONS.—A State, political subdivision of a State, or authority of a State or political subdivision that is not the eligible agency may not tax, regulate, or prohibit or otherwise attempt to control in any manner, the imposition or collection of a passenger facility charge or the use of the revenue from the passenger facility charge.

(k) COMPETITION PLANS.—

(1) IN GENERAL.—Beginning in fiscal year 2001, no eligible agency may impose a passenger facility charge under this section with respect to a covered airport (as such term is defined in section 47106(f)) unless the agency has submitted to the Secretary a written competition plan in accordance with such section. This subsection does not apply to passenger facility charges in effect before the date of the enactment of this subsection.

(2) SECRETARY SHALL ENSURE IMPLEMENTATION AND COMPLIANCE.—The Secretary shall review any plan submitted under paragraph (1) to ensure that it meets the requirements of this section, and shall review its implementation from time-to-time to ensure that each covered airport successfully implements its plan.

(1) PILOT PROGRAM FOR PASSENGER FACILITY CHARGE AUTHORIZATIONS [AT NONHUB AIRPORTS].—

(1) IN GENERAL.—The Secretary shall establish a pilot program to test alternative procedures for authorizing eligible agencies for [nonhub] airports to impose passenger facility charges. An eligible agency may impose in accordance with the provisions of this subsection a passenger facility charge under this section. For purposes of the pilot program, the procedures in this subsection shall apply instead of the procedures otherwise provided in this section.

(2) NOTICE AND OPPORTUNITY FOR CONSULTATION.—The eligible agency must provide reasonable notice and an opportunity for consultation to air carriers and foreign air carriers in accordance with subsection (c)(2) and must provide reasonable notice and opportunity for public comment in accordance with subsection (c)(3).

(3) NOTICE OF INTENTION.—The eligible agency must submit to the Secretary a notice of intention to impose a passenger facility charge under this subsection. The notice shall include—

(A) information that the Secretary may require by regulation on each project for which authority to impose a passenger facility charge is sought;

(B) the amount of revenue from passenger facility charges that is proposed to be collected for each project; and

(C) the level of the passenger facility charge that is proposed.

(4) ACKNOWLEDGEMENT OF RECEIPT AND INDICATION OF OBJECTION.—The Secretary shall acknowledge receipt of the notice and indicate any objection to the imposition of a passenger facility charge under this subsection for any project identified in the notice within 30 days after receipt of the eligible agency's notice.

(5) AUTHORITY TO IMPOSE CHARGE.—Unless the Secretary objects within 30 days after receipt of the eligible agency's notice, the eligible agency is authorized to impose a passenger facility charge in accordance with the terms of its notice under this subsection.

(6) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall propose such regulations as may be necessary to carry out this subsection.

(7) ACKNOWLEDGEMENT NOT AN ORDER.—An acknowledgement issued under paragraph (4) shall not be considered an order issued by the Secretary for purposes of section 46110.

(m) FINANCIAL MANAGEMENT OF CHARGES.—

(1) HANDLING OF CHARGES.—A covered air carrier shall segregate in a separate account passenger facility revenue equal to the average monthly liability for charges collected under this section by such carrier or any of its agents for the benefit of the eligible agencies entitled to such revenue.

(2) TRUST FUND STATUS.—If a covered air carrier or its agent fails to segregate passenger facility revenue in violation of the subsection, the trust fund status of such revenue shall not be defeated by an inability of any party to identify and trace the precise funds in the accounts of the air carrier.

(3) PROHIBITION.—A covered air carrier and its agents may not grant to any third party any security or other interest in passenger facility revenue.

(4) COMPENSATION TO ELIGIBLE ENTITIES.—A covered air carrier that fails to comply with any requirement of this subsection, or otherwise unnecessarily causes an eligible entity to expend funds, through litigation or otherwise, to recover or retain payment of passenger facility revenue to which the eligible entity is otherwise entitled shall be required to compensate the eligible agency for the costs so incurred.

(5) INTEREST ON AMOUNTS.—A covered air carrier that collects passenger facility charges is entitled to receive the interest on passenger facility charge accounts if the accounts are established and maintained in compliance with this subsection.

(6) EXISTING REGULATIONS.—The provisions of section 158.49 of title 14, Code of Federal Regulations, that permit the commingling of passenger facility charges with other air carrier revenue shall not apply to a covered air carrier.

(7) COVERED AIR CARRIER DEFINED.—In this section, the term “covered air carrier” means an air carrier that files for chapter 7 or chapter 11 of title 11 bankruptcy protection, or has an involuntary chapter 7 of title 11 bankruptcy proceeding commenced against it, after the date of enactment of this subsection.

(n) USE OF REVENUES AT PREVIOUSLY ASSOCIATED AIRPORT.—Notwithstanding the requirements relating to airport control under subsection (b)(1), the Secretary may authorize use of a passenger facility charge under subsection (b) to finance an eligible airport-related project if—

(1) the eligible agency seeking to impose the new charge controls an airport where a \$2.00 passenger facility charge became effective on January 1, 2013; and

(2) the location of the project to be financed by the new charge is at an airport that was under the control of the same eligible agency that had controlled the airport described in paragraph (1).

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

(a) IN GENERAL.—



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

(2) DISPUTE RESOLUTION.—

(A) MEDIATION.—If the Administrator does not reach an agreement under paragraph (1) or the provisions referred to in subsection (g)(2)(C) with the exclusive bargaining representative of the employees, the Administrator and the bargaining representative—

(i) shall use the services of the Federal Mediation and Conciliation Service to attempt to reach such agreement in accordance with part 1425 of title 29, Code of Federal Regulations (as in effect on the date of enactment of the FAA Modernization and Reform Act of 2012); or

(ii) may by mutual agreement adopt alternative procedures for the resolution of disputes or impasses arising in the negotiation of the collective-bargaining agreement.

(B) MID-TERM BARGAINING.—If the services of the Federal Mediation and Conciliation Service under subparagraph (A)(i) do not lead to the resolution of issues in controversy arising from the negotiation of a mid-term collective-bargaining agreement, the Federal Service Impasses Panel shall assist the parties in resolving the impasse in accordance with section 7119 of title 5.

(C) BINDING ARBITRATION FOR TERM BARGAINING.—

(i) ASSISTANCE FROM FEDERAL SERVICE IMPASSES PANEL.—If the services of the Federal Mediation and Conciliation Service under subparagraph (A)(i) do not lead to the resolution of issues in controversy arising from the negotiation of a term collective-bargaining agreement, the Administrator and the exclusive bargaining representative of the employees (in this subparagraph referred to as the “parties”) shall submit their issues in controversy to the Federal Service Impasses Panel. The Panel shall assist the parties in resolving the impasse by asserting jurisdiction and ordering binding arbitration by a private arbitration board consisting of 3 members.

(ii) APPOINTMENT OF ARBITRATION BOARD.—The Executive Director of the Panel shall provide for the appointment of the 3 members of a private arbitration board under clause (i) by requesting the Director of the Federal Mediation and Conciliation Service to prepare a list of not less than 15 names of arbitrators with Federal sector experience and by providing the list to the parties. Not later than 10 days after receiving the list, the parties shall each select one person from the list. The 2 arbitrators selected by the parties shall then select a third person from the list not later

than 7 days after being selected. If either of the parties fails to select a person or if the 2 arbitrators are unable to agree on the third person in 7 days, the parties shall make the selection by alternately striking names on the list until one arbitrator remains.

(iii) FRAMING ISSUES IN CONTROVERSY.—If the parties do not agree on the framing of the issues to be submitted for arbitration, the arbitration board shall frame the issues.

(iv) HEARINGS.—The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence in support of their claims and an opportunity to present their case in person, by counsel, or by other representative as they may elect.

(v) DECISIONS.—The arbitration board shall render its decision within 90 days after the date of its appointment. Decisions of the arbitration board shall be conclusive and binding upon the parties.

(vi) MATTERS FOR CONSIDERATION.—The arbitration board shall take into consideration such factors as—

(I) the effect of its arbitration decisions on the Federal Aviation Administration's ability to attract and retain a qualified workforce;

(II) the effect of its arbitration decisions on the Federal Aviation Administration's budget; and

(III) any other factors whose consideration would assist the board in fashioning a fair and equitable award.

(vii) COSTS.—The parties shall share costs of the arbitration equally.

(3) RATIFICATION OF AGREEMENTS.—Upon reaching a voluntary agreement or at the conclusion of the binding arbitration under paragraph (2)(C), the final agreement, except for those matters decided by an arbitration board, shall be subject to ratification by the exclusive bargaining representative of the employees, if so requested by the bargaining representative, and the final agreement shall be subject to approval by the head of the agency in accordance with the provisions referred to in subsection (g)(2)(C).

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

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

(b) EXPERT EVALUATION.—On the date that is 3 years after the personnel management system is implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. For this purpose, the Administrator may utilize the services of ex-

perts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

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

(d) **ETHICS.**—The Administration shall be subject to Executive Order No. 12674 and regulations and opinions promulgated by the Office of Government Ethics, including those set forth in section 2635 of title 5 of the Code of Federal Regulations.

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

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

(g) **PERSONNEL MANAGEMENT SYSTEM.**—

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

(2) **APPLICABILITY OF TITLE 5.**—The provisions of title 5 shall not apply to the new personnel management system developed and implemented pursuant to paragraph (1), with the exception of—

(A) section 2302(b), relating to whistleblower protection, including the provisions for investigation and enforcement as provided in chapter 12 of title 5;

(B) sections 3304(f), 3308-3320, 3330a, 3330b, 3330c, and 3330d, relating to veterans' preference;

(C) chapter 71, relating to labor-management relations;

(D) section 7204, relating to antidiscrimination;

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

(F) chapter 81, relating to compensation for work injury;

(G) chapters 83-85, 87, and 89, relating to retirement, unemployment compensation, and insurance coverage;

(H) sections 1204, 1211-1218, 1221, and 7701-7703, relating to the Merit Systems Protection Board;

(I) subsections (b), (c), and (d) of section 4507 (relating to Meritorious Executive or Distinguished Executive rank awards) and subsections (b) and (c) of section 4507a (relating to Meritorious Senior Professional or Distinguished Senior Professional rank awards), except that—

(i) for purposes of applying such provisions to the personnel management system—

(I) the term “agency” means the Department of Transportation;

(II) the term “senior executive” means a Federal Aviation Administration executive;

(III) the term “career appointee” means a Federal Aviation Administration career executive; and

(IV) the term “senior career employee” means a Federal Aviation Administration career senior professional;

(ii) receipt by a career appointee or a senior career employee of the rank of Meritorious Executive or Meritorious Senior Professional entitles the individual to a lump-sum payment of an amount equal to 20 percent of annual basic pay, which shall be in addition to the basic pay paid under the Federal Aviation Administration Executive Compensation Plan; and

(iii) receipt by a career appointee or a senior career employee of the rank of Distinguished Executive or Distinguished Senior Professional entitles the individual to a lump-sum payment of an amount equal to 35 percent of annual basic pay, which shall be in addition to the basic pay paid under the Federal Aviation Administration Executive Compensation Plan; and

(J) subject to paragraph (4) of this subsection, section 6329, relating to disabled veteran leave.

(3) APPEALS TO MERIT SYSTEMS PROTECTION BOARD.—Under the new personnel management system developed and implemented under paragraph (1), an employee of the Administration may submit an appeal to the Merit Systems Protection Board and may seek judicial review of any resulting final orders or decisions of the Board from any action that was appealable to the Board under any law, rule, or regulation as of March 31, 1996. Notwithstanding any other provision of law, retroactive to April 1, 1996, the Board shall have the same remedial authority over such employee appeals that it had as of March 31, 1996.

(4) CERTIFICATION OF DISABLED VETERAN LEAVE.—In order to verify that leave credited to an employee pursuant to paragraph (2)(J) is used for treating a service-connected disability, that employee shall, notwithstanding section 6329(c) of title 5, submit to the Assistant Administrator for Human Resource Management of the Federal Aviation Administration certification, in such form and manner as the Administrator of the Federal Aviation Administration may prescribe, that the employee used that leave for purposes of being furnished treatment for that disability by a health care provider.

(5) EFFECTIVE DATE.—This subsection shall take effect on April 1, 1996.

(h) **RIGHT TO CONTEST ADVERSE PERSONNEL ACTIONS.**—An employee of the Federal Aviation Administration who is the subject of a major adverse personnel action may contest the action either through any contractual grievance procedure that is applicable to the employee as a member of the collective bargaining unit or through the Administration’s internal process relating to review of major adverse personnel actions of the Administration, known as Guaranteed Fair Treatment, or under section 40122(g)(3).

(i) **ELECTION OF FORUM.**—Where a major adverse personnel action may be contested through more than one of the indicated forums (such as the contractual grievance procedure, the Federal Aviation Administration’s internal process, or that of the Merit Systems Protection Board), an employee must elect the forum through which the matter will be contested. Nothing in this section is intended to allow an employee to contest an action through more than one forum unless otherwise allowed by law.

(j) **DEFINITION.**—In this section, the term “major adverse personnel action” means a suspension of more than 14 days, a reduction in pay or grade, a removal for conduct or performance, a non-disciplinary removal, a furlough of 30 days or less (but not including placement in a nonpay status as the result of a lapse of appropriations or an enactment by Congress), or a reduction in force action.

\* \* \* \* \*

#### **§ 40125. Qualifications for public aircraft status**

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

(1) **COMMERCIAL PURPOSES.**—The term “commercial purposes” means the transportation of persons or property for compensation or hire, but does not include the operation of an aircraft by the armed forces for reimbursement when that reimbursement is required by any Federal statute, regulation, or directive, in effect on November 1, 1999, or by one government on behalf of another government under a cost reimbursement agreement if the government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat.

(2) **GOVERNMENTAL FUNCTION.**—The term “governmental function” means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management.

(3) **QUALIFIED NON-CREWMEMBER.**—The term “qualified non-crewmember” means an individual, other than a member of the crew, aboard an aircraft—

(A) operated by the armed forces or an intelligence agency of the United States Government; or

(B) whose presence is required to perform, or is associated with the performance of, a governmental function.

(4) **ARMED FORCES.**—The term “armed forces” has the meaning given such term by section 101 of title 10.

(b) AIRCRAFT OWNED BY GOVERNMENTS.—An aircraft described in subparagraph (A), (B), (C), **[or (D)]** (D), or (F) of section 40102(a)(41) does not qualify as a public aircraft under such section when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

(c) AIRCRAFT OWNED OR OPERATED BY THE ARMED FORCES.—

(1) IN GENERAL.—Subject to paragraph (2), an aircraft described in section 40102(a)(41)(E) qualifies as a public aircraft if—

(A) the aircraft is operated in accordance with title 10;

(B) the aircraft is operated in the performance of a governmental function under title 14, 31, 32, or 50 and the aircraft is not used for commercial purposes; or

(C) the aircraft is chartered to provide transportation or other commercial air service to the armed forces and the Secretary of Defense (or the Secretary of the department in which the Coast Guard is operating) designates the operation of the aircraft as being required in the national interest.

(2) LIMITATION.—An aircraft that meets the criteria set forth in paragraph (1) and that is owned or operated by the National Guard of a State, the District of Columbia, or any territory or possession of the United States, qualifies as a public aircraft only to the extent that it is operated under the direct control of the Department of Defense.

(d) SEARCH AND RESCUE PURPOSES.—An aircraft described in section 40102(a)(41)(D) that is not exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of 1 of those governments, qualifies as a public aircraft if the Administrator determines that—

(1) there are extraordinary circumstances;

(2) the aircraft will be used for the performance of search and rescue missions;

(3) a community would not otherwise have access to search and rescue services; and

(4) a government entity demonstrates that granting the waiver is necessary to prevent an undue economic burden on that government.

\* \* \* \* \*

#### § 40128. Overflights of national parks

(a) IN GENERAL.—

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

(A) in accordance with this section;

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

(C) in accordance with any applicable air tour management plan or voluntary agreement under subsection (b)(7) for the park or tribal lands.

(2) APPLICATION FOR OPERATING AUTHORITY.—

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

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

(i) the safety record of the person submitting the proposal or pilots employed by the person;

(ii) any quiet aircraft technology proposed to be used by the person submitting the proposal;

(iii) the experience of the person submitting the proposal with commercial air tour operations over other national parks or scenic areas;

(iv) the financial capability of the person submitting the proposal;

(v) any training programs for pilots provided by the person submitting the proposal; and

(vi) responsiveness of the person submitting the proposal to any relevant criteria developed by the National Park Service for the affected park.

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

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

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

(F) PRIORITY.—In acting on applications under this paragraph to provide commercial air tour operations over a national park, the Administrator shall give priority to an application under this paragraph in any case in which a new entrant commercial air tour operator is seeking operating authority with respect to that national park.

(3) EXCEPTION.—Notwithstanding paragraph (1), commercial air tour operators may conduct commercial air tour operations over a national park [under part 91 of the title 14,] *under part 91 of title 14*, Code of Federal Regulations if—

(A) such activity is permitted under part 119 of such title;

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

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

(4) SPECIAL RULE FOR SAFETY REQUIREMENTS.—Notwithstanding subsection (c), an existing commercial air tour operator shall apply, not later than 90 days after the date of the enactment of this section, for operating authority under part 119, 121, or 135 of title 14, Code of Federal Regulations. A new entrant commercial air tour operator shall apply for such authority before conducting commercial air tour operations over a national park or tribal lands. The Administrator shall make every effort to act on any such application for a new entrant and issue a decision on the application not later than 24 months after it is received or amended.

(5) EXEMPTION FOR NATIONAL PARKS WITH 50 OR FEWER FLIGHTS EACH YEAR.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a national park that has 50 or fewer commercial air tour operations over the park each year shall be exempt from the requirements of this section, except as provided in subparagraph (B).

(B) WITHDRAWAL OF EXEMPTION.—If the Director determines that an air tour management plan or voluntary agreement is necessary to protect park resources and values or park visitor use and enjoyment, the Director shall withdraw the exemption of a park under subparagraph (A).

(C) LIST OF PARKS.—

(i) IN GENERAL.—The Director and Administrator shall jointly publish a list each year of national parks that are covered by the exemption provided under this paragraph.

(ii) NOTIFICATION OF WITHDRAWAL OF EXEMPTION.—The Director shall inform the Administrator, in writing, of each determination to withdraw an exemption under subparagraph (B).

(D) ANNUAL REPORT.—A commercial air tour operator conducting commercial air tour operations over a national park that is exempt from the requirements of this section



shall submit to the Administrator and the Director a report each year that includes the number of commercial air tour operations the operator conducted during the preceding 1-year period over such park.

(b) AIR TOUR MANAGEMENT PLANS.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—The Administrator, in cooperation with the Director, shall establish an air tour management plan for any national park or tribal land for which such a plan is not in effect whenever a person applies for authority to conduct a commercial air tour operation over the park. The air tour management plan shall be developed by means of a public process in accordance with paragraph (4).

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

(C) EXCEPTION.—An application to begin or expand commercial air tour operations at Crater Lake National Park or Great Smoky Mountains National Park may be denied without the establishment of an air tour management plan by the Director of the National Park Service if the Director determines that such operations would adversely affect park resources or visitor experiences.

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

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

(A) may prohibit commercial air tour operations over a national park in whole or in part;

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

(C) shall apply to all commercial air tour operations over a national park that are also within 1/2 mile outside the boundary of a national park;

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

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

(F) shall justify and document the need for measures taken pursuant to subparagraphs (A) through (E) and include such justifications in the record of decision.

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

(A) hold at least one public meeting with interested parties to develop the air tour management plan;

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

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

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

(5) JUDICIAL REVIEW.—An air tour management plan developed under this subsection shall be subject to judicial review.

(6) AMENDMENTS.—The Administrator, in cooperation with the Director, may make amendments to an air tour management plan. Any such amendments shall be published in the Federal Register for notice and comment. A request for amendment of an air tour management plan shall be made in such form and manner as the Administrator may prescribe.

(7) VOLUNTARY AGREEMENTS.—

(A) IN GENERAL.—As an alternative to an air tour management plan, the Director and the Administrator may enter into a voluntary agreement with a commercial air tour operator (including a new entrant commercial air tour operator and an operator that has interim operating authority) that has applied to conduct commercial air tour operations over a national park to manage commercial air tour operations over such national park.

(B) PARK PROTECTION.—A voluntary agreement under this paragraph with respect to commercial air tour operations over a national park shall address the management issues necessary to protect the resources of such park and visitor use of such park without compromising aviation safety or the air traffic control system and may—

(i) include provisions such as those described in subparagraphs (B) through (E) of paragraph (3);

(ii) include provisions to ensure the stability of, and compliance with, the voluntary agreement; and

(iii) provide for fees for such operations.

(C) PUBLIC REVIEW.—The Director and the Administrator shall provide an opportunity for public review of a proposed voluntary agreement under this paragraph and shall consult with any Indian tribe whose tribal lands are, or may be, flown over by a commercial air tour operator under a voluntary agreement under this paragraph. After such opportunity for public review and consultation, the voluntary agreement may be implemented without further administrative or environmental process beyond that described in this subsection.

(D) TERMINATION.—

(i) IN GENERAL.—A voluntary agreement under this paragraph may be terminated at any time at the discretion of—

(I) the Director, if the Director determines that the agreement is not adequately protecting park resources or visitor experiences; or

(II) the Administrator, if the Administrator determines that the agreement is adversely affecting aviation safety or the national aviation system.

(ii) EFFECT OF TERMINATION.—If a voluntary agreement with respect to a national park is terminated under this subparagraph, the operators shall conform to the requirements for interim operating authority under subsection (c) until an air tour management plan for the park is in effect.

(c) INTERIM OPERATING AUTHORITY.—

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

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

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

(i) the number of flights used by the operator to provide the commercial air tour operations over a national park within the 12-month period prior to the date of the enactment of this section; or

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

(B) may not provide for an increase in the number of commercial air tour operations over a national park conducted during any time period by the commercial air tour operator above the number that the air tour operator was originally granted unless such an increase is agreed to by the Administrator and the Director;

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

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

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

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

(G) shall promote safe commercial air tour operations;

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

(I) may allow for modifications of the interim operating authority without further environmental review beyond that described in this subsection, if—

(i) adequate information regarding the existing and proposed operations of the operator under the interim operating authority is provided to the Administrator and the Director;

(ii) the Administrator determines that there would be no adverse impact on aviation safety or the air traffic control system; and

(iii) the Director agrees with the modification, based on the professional expertise of the Director regarding the protection of the resources, values, and visitor use and enjoyment of the park.

(3) NEW ENTRANT AIR TOUR OPERATORS.—

(A) IN GENERAL.—The Administrator, in cooperation with the Director, may grant interim operating authority under this paragraph to an air tour operator for a national park or tribal lands for which that operator is a new entrant air tour operator without further environmental process beyond that described in this paragraph, if—

(i) adequate information on the proposed operations of the operator is provided to the Administrator and the Director by the operator making the request;

(ii) the Administrator agrees that there would be no adverse impact on aviation safety or the air traffic control system; and

(iii) the Director agrees, based on the Director's professional expertise regarding the protection of park resources and values and visitor use and enjoyment.

(B) SAFETY LIMITATION.—The Administrator may not grant interim operating authority under subparagraph (A) if the Administrator determines that it would create a safety problem at the park or on the tribal lands, or the Director determines that it would create a noise problem at the park or on the tribal lands.

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

(d) COMMERCIAL AIR TOUR OPERATOR REPORTS.—

(1) REPORT.—Each commercial air tour operator conducting a commercial air tour operation over a national park under interim operating authority granted under subsection (c) or in ac-

cordance with an air tour management plan or voluntary agreement under subsection (b) shall submit to the Administrator and the Director a report regarding the number of commercial air tour operations over each national park that are conducted by the operator and such other information as the Administrator and Director may request in order to facilitate administering the provisions of this section.

(2) REPORT SUBMISSION.—Not later than 90 days after the date of enactment of the FAA Modernization and Reform Act of 2012, the Administrator and the Director shall jointly issue an initial request for reports under this subsection. The reports shall be submitted to the Administrator and the Director with a frequency and in a format prescribed by the Administrator and the Director.

(e) EXEMPTIONS.—This section shall not apply to—

- (1) the Grand Canyon National Park; or
- (2) tribal lands within or abutting the Grand Canyon National Park.

(f) LAKE MEAD.—This section shall not apply to any air tour operator while flying over or near the Lake Mead National Recreation Area, solely as a transportation route, to conduct an air tour over the Grand Canyon National Park. For purposes of this subsection, an air tour operator flying over the Hoover Dam in the Lake Mead National Recreation Area en route to the Grand Canyon National Park shall be deemed to be flying solely as a transportation route.

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

(1) COMMERCIAL AIR TOUR OPERATOR.—The term “commercial air tour operator” means any person who conducts a commercial air tour operation over a national park.

(2) EXISTING COMMERCIAL AIR TOUR OPERATOR.—The term “existing commercial air tour operator” means a commercial air tour operator that was actively engaged in the business of providing commercial air tour operations over a national park at any time during the 12-month period ending on the date of the enactment of this section.

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

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

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

(4) COMMERCIAL AIR TOUR OPERATION OVER A NATIONAL PARK.—

(A) IN GENERAL.—The term “commercial air tour operation over a national park” means any flight, conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing over a national park, within 1/2 mile outside the boundary of any national park (except the Grand Canyon National Park), or over tribal lands (except those within or abutting the Grand Canyon National Park), during which the aircraft flies—

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

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

(ii) less than 1 mile laterally from any geographic feature within the park (unless more than 1/2 mile outside the boundary).

(B) FACTORS TO CONSIDER.—In making a determination of whether a flight is a commercial air tour operation over a national park for purposes of this section, the Administrator may consider—

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

(ii) whether a narrative that referred to areas or points of interest on the surface below the route of the flight was provided by the person offering the flight;

(iii) the area of operation;

(iv) the frequency of flights conducted by the person offering the flight;

(v) the route of flight;

(vi) the inclusion of sightseeing flights as part of any travel arrangement package offered by the person offering the flight;

(vii) whether the flight would have been canceled based on poor visibility of the surface below the route of the flight; and

(viii) any other factors that the Administrator and the Director consider appropriate.

(5) NATIONAL PARK.—The term “national park” means any unit of the National Park System.

(6) TRIBAL LANDS.—The term “tribal lands” means Indian country (as that term is defined in section 1151 of title 18) that is within or abutting a national park.

(7) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Federal Aviation Administration.

(8) DIRECTOR.—The term “Director” means the Director of the National Park Service.

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**SUBPART II—ECONOMIC REGULATION**

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**CHAPTER 413—FOREIGN AIR TRANSPORTATION**

\* \* \* \* \*

**§ 41302. Permits of foreign air carriers**

The Secretary of Transportation may issue a permit to a person (except a citizen of the United States) authorizing the person to provide foreign air transportation as a foreign air carrier if the Secretary finds that—

(1) the person is fit, willing, and able to provide the foreign air transportation to be authorized by the permit and to comply with this part and regulations of the Secretary; and

(2)(A) the person is qualified, and has been designated by the government of its country, to provide the foreign air transportation [under an agreement with the United States Government; or]; and

(B) [the foreign air transportation] *after considering the totality of the circumstances, including the factors set forth in section 40101(a), the foreign air transportation to be provided under the permit will be in the public interest.*

\* \* \* \* \*

**§ 41313. Plans to address needs of families of passengers involved in foreign air carrier accidents**

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

(1) AIRCRAFT ACCIDENT.—The term “aircraft accident” means any aviation disaster, regardless of its cause or suspected cause, that occurs within the United States; and

(2) PASSENGER.—The term “passenger” has the meaning given such term by section 1136.

(b) SUBMISSION OF PLANS.—A foreign air carrier providing foreign air transportation under this chapter shall transmit to the Secretary of Transportation and the Chairman of the National Transportation Safety Board a plan for addressing the needs of the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a major loss of life.

(c) CONTENTS OF PLANS.—To the extent permitted by foreign law which was in effect on the date of the enactment of this section, a plan submitted by a foreign air carrier under subsection (b) shall include the following:

(1) TELEPHONE NUMBER.—A plan for publicizing a reliable, toll-free telephone number and staff to take calls to such number from families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life.

(2) NOTIFICATION OF FAMILIES.—A process for notifying, in person to the extent practicable, the families of passengers involved in an aircraft accident that involves an aircraft under the control of the foreign air carrier and results in a significant loss of life before providing any public notice of the names of such passengers. Such notice shall be provided by using the services of—

(A) the organization designated for the accident under section 1136(a)(2); or

(B) other suitably trained individuals.

(3) NOTICE PROVIDED AS SOON AS POSSIBLE.—An assurance that the notice required by paragraph (2) shall be provided as soon as practicable after the foreign air carrier has verified the identity of a passenger on the foreign aircraft, whether or not the names of all of the passengers have been verified.

(4) LIST OF PASSENGERS.—An assurance that the foreign air carrier shall provide, immediately upon request, and update a list (based on the best available information at the time of the

request) of the names of the passengers aboard the aircraft (whether or not such names have been verified), to—

(A) the director of family support services designated for the accident under section 1136(a)(1); and

(B) the organization designated for the accident under section 1136(a)(2).

(5) CONSULTATION REGARDING DISPOSITION OF REMAINS AND EFFECTS.—An assurance that the family of each passenger will be consulted about the disposition of any remains and personal effects of the passenger that are within the control of the foreign air carrier.

(6) RETURN OF POSSESSIONS.—An assurance that, if requested by the family of a passenger, any possession (regardless of its condition) of that passenger that is within the control of the foreign air carrier will be returned to the family unless the possession is needed for the accident investigation or a criminal investigation.

(7) UNCLAIMED POSSESSIONS RETAINED.—An assurance that any unclaimed possession of a passenger within the control of the foreign air carrier will be retained by the foreign air carrier for not less than 18 months after the date of the accident.

(8) MONUMENTS.—An assurance that the family of each passenger will be consulted about construction by the foreign air carrier of any monument to the passengers built in the United States, including any inscription on the monument.

(9) EQUAL TREATMENT OF PASSENGERS.—An assurance that the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

(10) SERVICE AND ASSISTANCE TO FAMILIES OF PASSENGERS.—An assurance that the foreign air carrier will work with any organization designated under section 1136(a)(2) on an ongoing basis to ensure that families of passengers receive an appropriate level of services and assistance following an accident.

(11) COMPENSATION TO SERVICE ORGANIZATIONS.—An assurance that the foreign air carrier will provide reasonable compensation to any organization designated under section 1136(a)(2) for services and assistance provided by the organization.

(12) TRAVEL AND CARE EXPENSES.—An assurance that the foreign air carrier will assist the family of any passenger in traveling to the location of the accident and provide for the physical care of the family while the family is staying at such location.

(13) RESOURCES FOR PLAN.—An assurance that the foreign air carrier will commit sufficient resources to carry out the plan.

(14) SUBSTITUTE MEASURES.—If a foreign air carrier does not wish to comply with paragraph (10), (11), or (12), a description of proposed adequate substitute measures for the requirements of each paragraph with which the foreign air carrier does not wish to comply.

(15) TRAINING OF EMPLOYEES AND AGENTS.—An assurance that the foreign air carrier will provide adequate training to



the employees and agents of the carrier to meet the needs of survivors and family members following an accident.

(16) CONSULTATION ON CARRIER RESPONSE NOT COVERED BY PLAN.— [An assurance that the foreign air carrier] *An assurance that*, in the event that the foreign air carrier volunteers assistance to United States citizens within the United States with respect to an aircraft accident outside the United States involving major loss of life, the foreign air carrier will consult with the Board and the Department of State on the provision of the assistance.

(17) NOTICE CONCERNING LIABILITY FOR MANMADE STRUCTURES.—

(A) IN GENERAL.—An assurance that, in the case of an accident that results in significant damage to a manmade structure or other property on the ground that is not government-owned, the foreign air carrier will promptly provide notice, in writing, to the extent practicable, directly to the owner of the structure or other property about liability for any property damage and means for obtaining compensation.

(B) MINIMUM CONTENTS.—At a minimum, the written notice shall advise an owner (i) to contact the insurer of the property as the authoritative source for information about coverage and compensation; (ii) to not rely on unofficial information offered by foreign air carrier representatives about compensation by the foreign air carrier for accident-site property damage; and (iii) to obtain photographic or other detailed evidence of property damage as soon as possible after the accident, consistent with restrictions on access to the accident site.

(18) SIMULTANEOUS ELECTRONIC TRANSMISSION OF NTSB HEARING.—An assurance that, in the case of an accident in which the National Transportation Safety Board conducts a public hearing or comparable proceeding at a location greater than 80 miles from the accident site, the foreign air carrier will ensure that the proceeding is made available simultaneously by electronic means at a location open to the public at both the origin city and destination city of the foreign air carrier's flight if that city is located in the United States.

(d) PERMIT AND EXEMPTION REQUIREMENT.—The Secretary shall not approve an application for a permit under section 41302 unless the applicant has included as part of the application or request for exemption a plan that meets the requirements of subsection (c).

(e) LIMITATION ON LIABILITY.—A foreign air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of the foreign air carrier in preparing or providing a passenger list pursuant to a plan submitted by the foreign air carrier under subsection (c), unless the liability was caused by conduct of the foreign air carrier which was grossly negligent or which constituted intentional misconduct.

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**CHAPTER 417—OPERATIONS OF CARRIERS**

SUBCHAPTER I—REQUIREMENTS

Sec.

41701. Classification of air carriers.

\* \* \* \* \*

**[41718. Special Rules for Ronald Reagan Washington National Airport.]**

*41718. Special rules for Ronald Reagan Washington National Airport.*

\* \* \* \* \*

*41725. Prohibition on certain cell phone voice communications.*

SUBCHAPTER I—REQUIREMENTS

\* \* \* \* \*

**§ 41706. Prohibitions against smoking on passenger flights**

(a) **SMOKING PROHIBITION IN INTERSTATE AND INTRASTATE AIR TRANSPORTATION.**—An individual may not smoke—

(1) in an aircraft in scheduled passenger interstate or intrastate air transportation; or

(2) in an aircraft in nonscheduled passenger interstate or intrastate air transportation, if a flight attendant is a required crewmember on the aircraft (as determined by the Administrator of the Federal Aviation Administration).

(b) **SMOKING PROHIBITION IN FOREIGN AIR TRANSPORTATION.**—The Secretary of Transportation shall require all air carriers and foreign air carriers to prohibit smoking—

(1) in an aircraft in scheduled passenger foreign air transportation; and

(2) in an aircraft in nonscheduled passenger foreign air transportation, if a flight attendant is a required crewmember on the aircraft (as determined by the Administrator or a foreign government).

(c) **LIMITATION ON APPLICABILITY.**—

(1) **IN GENERAL.**—If a foreign government objects to the application of subsection (b) on the basis that subsection (b) provides for an extraterritorial application of the laws of the United States, the Secretary shall waive the application of subsection (b) to a foreign air carrier licensed by that foreign government at such time as an alternative prohibition negotiated under paragraph (2) becomes effective and is enforced by the Secretary.

(2) **ALTERNATIVE PROHIBITION.**—If, pursuant to paragraph (1), a foreign government objects to the prohibition under subsection (b), the Secretary shall enter into bilateral negotiations with the objecting foreign government to provide for an alternative smoking prohibition.

(d) **ELECTRONIC CIGARETTES.**—

(1) **INCLUSION.**—*The use of an electronic cigarette shall be treated as smoking for purposes of this section.*

(2) **ELECTRONIC CIGARETTE DEFINED.**—*In this section, the term “electronic cigarette” means a device that delivers nicotine to a user of the device in the form of a vapor that is inhaled to simulate the experience of smoking.*

[(d)] (e) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary to carry out this section.

\* \* \* \* \*

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

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

(b) E-TICKET EXPIRATION NOTICE.—It shall be an unfair or deceptive practice under subsection (a) for any air carrier, foreign air carrier, or ticket agent utilizing electronically transmitted tickets for air transportation to fail to notify the purchaser of such a ticket of its expiration date, if any.

(c) DISCLOSURE REQUIREMENT FOR SELLERS OF TICKETS FOR FLIGHTS.—

(1) IN GENERAL.—It shall be an unfair or deceptive practice under subsection (a) for any ticket agent, air carrier, foreign air carrier, or other person offering to sell tickets for air transportation on a flight of an air carrier to fail to disclose, whether verbally in oral communication or in writing in written or electronic communication, prior to the purchase of a ticket—

(A) the name of the air carrier providing the air transportation; and

(B) if the flight has more than one flight segment, the name of each air carrier providing the air transportation for each such flight segment.

(2) INTERNET OFFERS.—In the case of an offer to sell tickets described in paragraph (1) on an Internet Web site, disclosure of the information required by paragraph (1) shall be provided on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer.

(d) FULL FARE ADVERTISING.—

(1) IN GENERAL.—*It shall not be an unfair or deceptive practice under subsection (a) for a covered entity to state in an advertisement or solicitation for passenger air transportation the base airfare for the air transportation if the covered entity clearly and separately discloses—*

*(A) the government-imposed fees and taxes associated with the air transportation; and*

*(B) the total cost of the air transportation.*

(2) FORM OF DISCLOSURE.—

(A) *IN GENERAL.*—For purposes of paragraph (1), the information described in paragraphs (1)(A) and (1)(B) shall be disclosed in the advertisement or solicitation in a manner that clearly presents the information to the consumer.

(B) *INTERNET ADVERTISEMENTS AND SOLICITATIONS.*—For purposes of paragraph (1), with respect to an advertisement or solicitation for passenger air transportation that appears on an internet website or a mobile application, the information described in paragraphs (1)(A) and (1)(B) may be disclosed through a link or pop-up, as such terms may be defined by the Secretary, that displays the information in a manner that is easily accessible and viewable by the consumer.

(3) *DEFINITIONS.*—In this subsection, the following definitions apply:

(A) *BASE AIRFARE.*—The term “base airfare” means the cost of passenger air transportation, excluding government-imposed fees and taxes.

(B) *COVERED ENTITY.*—The term “covered entity” means an air carrier, including an indirect air carrier, foreign air carrier, ticket agent, or other person offering to sell tickets for passenger air transportation or a tour or tour component that must be purchased with air transportation.

(e) *DISCLOSURE OF FEES.*—

(1) *IN GENERAL.*—It shall be an unfair or deceptive practice under subsection (a) for any air carrier, foreign air carrier, or ticket agent to fail to include, in an internet fare quotation for a specific itinerary in air transportation selected by a consumer—

(A) a clear and prominent statement that additional fees for checked baggage and carry-on baggage may apply; and

(B) a prominent link that connects directly to a list of all such fees.

(2) *SAVINGS PROVISION.*—Nothing in this subsection may be construed to derogate or limit any responsibilities of an air carrier, foreign air carrier, or ticket agent under section 399.85 of title 14, Code of Federal Regulations, or any successor provision.

(f) *INVOLUNTARILY DENIED BOARDING AFTER AIRCRAFT BOARDED.*—

(1) *IN GENERAL.*—It shall be an unfair or deceptive practice under subsection (a) for an air carrier or foreign air carrier subject to part 250 of title 14, Code of Federal Regulations, to involuntarily deplane a revenue passenger onboard an aircraft, if the revenue passenger—

(A) is traveling on a confirmed reservation; and

(B) checked-in for the relevant flight prior to the check-in deadline.

(2) *SAVINGS PROVISION.*—Nothing in this subsection may be construed to limit the authority of an air carrier, foreign air carrier, or airman to remove a passenger in accordance with—

(A) section 91.3, 121.533(d), or 121.580 of title 14, Code of Federal Regulations, or any successor provision; or

(B) any other applicable Federal, State, or local law.

\* \* \* \* \*

**§41725. Prohibition on certain cell phone voice communications**

(a) *PROHIBITION.*—*The Secretary of Transportation shall issue regulations—*

(1) *to prohibit an individual on an aircraft from engaging in voice communications using a mobile communications device during a flight of that aircraft in scheduled passenger interstate or intrastate air transportation; and*

(2) *that exempt from the prohibition described in paragraph (1) any—*

(A) *member of the flight crew on duty on an aircraft;*

(B) *flight attendant on duty on an aircraft; and*

(C) *Federal law enforcement officer acting in an official capacity.*

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

(1) *FLIGHT.*—*The term “flight” means, with respect to an aircraft, the period beginning when the aircraft takes off and ending when the aircraft lands.*

(2) *MOBILE COMMUNICATIONS DEVICE.*—

(A) *IN GENERAL.*—*The term “mobile communications device” means any portable wireless telecommunications equipment utilized for the transmission or reception of voice data.*

(B) *LIMITATION.*—*The term “mobile communications device” does not include a phone installed on an aircraft.*

**SUBCHAPTER II—SMALL COMMUNITY AIR SERVICE**

**§ 41731. Definitions**

(a) *GENERAL.*—*In this subchapter—*

(1) *“eligible place” means a place in the United States that—*

(A)(i)(I) *was an eligible point under section 419 of the Federal Aviation Act of 1958 before October 1, 1988;*

(II) *received scheduled air transportation at any time after January 1, 1990; and*

(III) *is not listed in Department of Transportation Orders 89-9-37 and 89-12-52 as a place ineligible for compensation under this subchapter; or*

(ii) *was determined, on or after October 1, 1988, and before the date of the enactment of the [Wendell H. Ford Aviation Investment and Reform Act for the 21st Century,] FAA Extension, Safety, and Security Act of 2016 (Public Law 114–190), under this subchapter by the Secretary of Transportation to be eligible to receive subsidized small community air service under section 41736(a);*

(B) *had an average of 10 enplanements per service day or more, as determined by the Secretary, during the most recent fiscal year beginning after September 30, 2012;*

(C) *had an average subsidy per passenger of less than \$1,000 during the most recent fiscal year, as determined by the Secretary; and*

(D) *is a community that, at any time during the period between September 30, 2010, and September 30, 2011, inclusive—*

- (i) received essential air service for which compensation was provided to an air carrier under this subchapter; or
- (ii) received a 90-day notice of intent to terminate essential air service and the Secretary required the air carrier to continue to provide such service to the community.

(2) “enhanced essential air service” means scheduled air transportation to an eligible place of a higher level or quality than basic essential air service described in section 41732 of this title.

(b) LIMITATION ON AUTHORITY TO DECIDE A PLACE NOT AN ELIGIBLE PLACE.—The Secretary may not decide that a place described in subsection (a)(1) of this section is not an eligible place on any basis that is not specifically stated in this subchapter.

(c) EXCEPTION FOR LOCATIONS IN ALASKA AND HAWAII.—Subparagraphs (B), (C), and (D) of subsection (a)(1) shall not apply with respect to locations in the State of Alaska or the State of Hawaii.

(d) EXCEPTIONS FOR LOCATIONS MORE THAN 175 DRIVING MILES FROM THE NEAREST LARGE OR MEDIUM HUB AIRPORT.—Subsection (a)(1)(B) shall not apply with respect to locations that are more than 175 driving miles from the nearest large or medium hub airport.

(e) WAIVERS.—For fiscal year 2013 and each fiscal year thereafter, the Secretary may waive, on an annual basis, subsection (a)(1)(B) with respect to a location if the location demonstrates to the Secretary’s satisfaction that the reason the location averages fewer than 10 enplanements per day is due to a temporary decline in enplanements.

(f) DEFINITION.—For purposes of subsection (a)(1)(B), the term “enplanements” means the number of passengers enplaning, at an eligible place, on flights operated by the subsidized essential air service carrier.

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**§ 41736. Air transportation to noneligible places**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Secretary may require the State or local government or person agreeing to pay compensation under this section to make

advance payments or provide other security to ensure that timely payments are made.

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

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

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

(h) SUNSET.—

(1) PROPOSALS.—*No proposal under subsection (a) may be accepted by the Secretary after the date of enactment of this subsection.*

(2) PROGRAM.—*The Secretary may not provide any compensation under this section after the date that is 2 years after the date of enactment of this subsection.*

\* \* \* \* \*

**§ 41742. Essential air service authorization**

(a) IN GENERAL.—

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

(2) ADDITIONAL FUNDS.—In addition to amounts authorized under paragraph (1), there is authorized to be appropriated out of the Airport and Airway Trust Fund (established under section 9502 of the Internal Revenue Code of 1986) ~~【\$150,000,000 for fiscal year 2011, \$143,000,000 for fiscal year 2012, \$118,000,000 for fiscal year 2013, \$107,000,000 for fiscal year 2014, \$93,000,000 for fiscal year 2015, and \$175,000,000 for each of fiscal years 2016 and 2017】~~ *\$178,000,000 for fiscal year 2018, \$182,000,000 for fiscal year 2019, \$185,000,000 for fiscal*



year 2020, \$327,000,000 for fiscal year 2021, \$337,000,000 for fiscal year 2022, and \$347,000,000 for fiscal year 2023 to carry out the essential air service program under this subchapter of which not more than \$12,000,000 per fiscal year may be used for the marketing incentive program for communities and for State marketing assistance.

(3) **AUTHORIZATION FOR ADDITIONAL EMPLOYEES.**—In addition to amounts authorized under paragraphs (1) and (2), there are authorized to be appropriated such sums as may be necessary for the Secretary of Transportation to hire and employ 4 additional employees for the office responsible for carrying out the essential air service program.

(b) **DISTRIBUTION OF ADDITIONAL FUNDS.**—Notwithstanding any other provision of law, in any fiscal year in which funds credited to the account established under section 45303, including the funds derived from fees imposed under the authority contained in section 45301(a), exceed the \$50,000,000 made available under subsection (a)(1), such funds shall be made available immediately for obligation and expenditure to carry out the essential air service program under this subchapter.

(c) **AVAILABILITY OF FUNDS.**—The funds made available under this section shall remain available until expended.

#### **§ 41743. Airports not receiving sufficient service**

(a) **SMALL COMMUNITY AIR SERVICE DEVELOPMENT PROGRAM.**—The Secretary of Transportation shall establish a program that meets the requirements of this section for improving air carrier service to airports not receiving sufficient air carrier service.

(b) **APPLICATION REQUIRED.**—In order to participate in the program established under subsection (a), a community or consortium of communities shall submit an application to the Secretary in such form, at such time, and containing such information as the Secretary may require, including—

(1) an assessment of the need of the community or consortium for access, or improved access, to the national air transportation system; and

(2) an analysis of the application of the criteria in subsection (c) to that community or consortium.

(c) **CRITERIA FOR PARTICIPATION.**—In selecting communities, or consortia of communities, for participation in the program established under subsection (a), the Secretary shall apply the following criteria:

[(1) **SIZE.**—For calendar year 1997, the airport serving the community or consortium was not larger than a small hub airport, and—

[(A) had insufficient air carrier service; or

[(B) had unreasonably high air fares.]

(1) **SIZE.**—On the date of submission of the relevant application under subsection (b), the airport serving the community or consortium—

(A) is not larger than a small hub airport, as determined using the Department of Transportation's most recently published classification; and

(B) has—

(i) insufficient air carrier service; or

(ii) *unreasonably high air fares.*

(2) CHARACTERISTICS.—The airport presents characteristics, such as geographic diversity or unique circumstances, that will demonstrate the need for, and feasibility of, the program established under subsection (a).

(3) STATE LIMIT.—Not more than 4 communities or consortia of communities, or a combination thereof, from the same State may be selected to participate in the program in any fiscal year.

(4) OVERALL LIMIT.—No more than 40 communities or consortia of communities, or a combination thereof, may be selected to participate in the program in each year for which funds are appropriated for the program. No community, consortia of communities, nor combination thereof may participate in the program in support of the same project more than **[once,]** *once in a 10-year period*, but any community, consortia of communities, or combination thereof may apply, subsequent to such participation, to participate in the program in support of a different project *at any time*.

(5) PRIORITIES.—The Secretary shall give priority to communities or consortia of communities where—

(A) air fares are higher than the average air fares for all communities;

(B) the community or consortium will provide a portion of the cost of the activity to be assisted under the program from local sources other than airport revenues;

(C) the community or consortium has established, or will establish, a public-private partnership to facilitate air carrier service to the public;

(D) the assistance will provide material benefits to a broad segment of the travelling public, including business, educational institutions, and other enterprises, whose access to the national air transportation system is limited;

(E) *the assistance will be used to help restore scheduled passenger air service that has been terminated;*

**[(E)]** (F) the assistance will be used in a timely fashion; and

**[(F)]** (G) multiple communities cooperate to submit a regional or multistate application to consolidate air service into one regional airport.

(d) TYPES OF ASSISTANCE.—The Secretary may use amounts made available under this section—

(1) to provide assistance to an air carrier to subsidize service to and from an underserved airport for a period not to exceed 3 years;

(2) to provide assistance to an underserved airport to obtain service to and from the underserved airport; and

(3) to provide assistance to an underserved airport to implement such other measures as the Secretary, in consultation with such airport, considers appropriate to improve air service both in terms of the cost of such service to consumers and the availability of such service, including improving air service through marketing and promotion of air service and enhanced utilization of airport facilities.

(e) AUTHORITY TO MAKE AGREEMENTS.—

(1) IN GENERAL.—The Secretary may make agreements to provide assistance under this section.

【(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary \$6,000,000 for each of fiscal years 2012 through 2015 to carry out this section. Such sums shall remain available until expended.】

(2) AUTHORIZATION OF APPROPRIATIONS.—*There is authorized to be appropriated to the Secretary \$10,000,000 for each of fiscal years 2018 through 2023 to carry out this section, of which \$4,800,000 per fiscal year shall be used to carry out the pilot program established under subsection (i). Such sums shall remain available until expended.*

(f) ADDITIONAL ACTION.—Under the program established under subsection (a), the Secretary shall work with air carriers providing service to participating communities and major air carriers (as defined in section 41716(a)(2)) serving large hub airports to facilitate joint-fare arrangements consistent with normal industry practice.

(g) DESIGNATION OF RESPONSIBLE OFFICIAL.—The Secretary shall designate an employee of the Department of Transportation—

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

(2) to carry out this section;

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

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

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

(h) AIR SERVICE DEVELOPMENT ZONE.—The Secretary shall designate an airport in the program as an Air Service Development Zone and work with the community or consortium on means to attract business to the area surrounding the airport, to develop land use options for the area, and provide data, working with the Department of Commerce and other agencies.

(i) REGIONAL AIR TRANSPORTATION PILOT PROGRAM.—

(1) ESTABLISHMENT.—*The Secretary shall establish a regional air transportation pilot program to provide operating assistance to air carriers in order to provide air service to communities not receiving sufficient air carrier service.*

(2) GRANTS.—*The Secretary shall provide grants under the program to encourage and maintain air service at reasonable airfares between communities that have experienced, as determined by the Secretary, significant declines in air service.*

(3) APPLICATION REQUIRED.—*In order to participate in the program, a State, local government, economic development authority, or other public entity shall submit to the Secretary an application, in a manner that the Secretary prescribes, that contains—*

(A) *an identification of an air carrier that has provided a written agreement to provide the air service in partnership with the applicant;*

(B) assurances that the applicant will provide the non-Federal share and that the non-Federal share is not derived from airport revenue;

(C) a proposed route structure serving not more than 8 communities; and

(D) a timeline for commencing the air service to the communities within the proposed route structure.

(4) CRITERIA FOR PARTICIPATION.—The Secretary may approve up to 3 applications each fiscal year, subject to the availability of funds, if the Secretary determines that—

(A) the proposal of the applicant can reasonably be expected to encourage and improve levels of air service between the relevant communities;

(B) the applicant has adequate financial resources to ensure the commitment to the communities;

(C) the airports serving the communities are nonhub, small hub, or medium hub airports, as determined using the Department of Transportation’s most recently published classifications; and

(D) the air carrier commits to serving the communities for at least 2 years.

(5) PRIORITIES.—The Secretary shall prioritize applications that—

(A) would initiate new or reestablish air service in communities where air fares are higher than the average air fares for all communities;

(B) are more likely to result in self-sustaining air service at the end of the program;

(C) request a Federal share lower than 50 percent; and

(D) propose to use grant funds in a timely fashion.

(6) FEDERAL SHARE.—The Federal share of the cost of operating assistance provided under the program may not exceed 50 percent.

(7) SUNSET.—This subsection shall cease to be effective on October 1, 2023.

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**CHAPTER 419—TRANSPORTATION OF MAIL**

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**§ 41902. Schedules for certain transportation of mail**

(a) REQUIREMENT.—Except as provided in [section 41906] section 41905 of this title and section 5402 of title 39, an air carrier may transport mail by aircraft between places in Alaska only under a schedule designated or required to be established under subsection (c) of this section for the transportation of mail.

(b) STATEMENTS ON PLACES AND SCHEDULES.—Every air carrier shall file with the United States Postal Service a statement showing—

(1) the places between which the carrier is authorized to transport mail in Alaska;

(2) every schedule of aircraft regularly operated by the carrier between places described in paragraph (1) and every change in each schedule; and

- (3) for each schedule, the places served by the carrier and the time of arrival at, and departure from, each such place.
- (c) DESIGNATING AND ADDITIONAL SCHEDULES.—The Postal Service may—
  - (1) designate any schedule of an air carrier filed under subsection (b)(2) of this section for the transportation of mail between the places between which the carrier is authorized by its certificate to transport mail; and
  - (2) require the carrier to establish additional schedules for the transportation of mail between those places.
- (d) CHANGING SCHEDULES.—A schedule designated or required to be established for the transportation of mail under subsection (c) of this section may be changed only after 10 days' notice of the change is filed as provided in subsection (b)(2) of this section. The Postal Service may disapprove a proposed change in a schedule or amend or modify the schedule or proposed change.

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**§ 41907. Weighing mail**

The United States Postal Service may weigh mail transported by aircraft between places in Alaska and make statistical [and - administrative] *and administrative* computations necessary in the interest of mail service. When the Secretary of Transportation decides that additional or more frequent weighings of mail are advisable or necessary to carry out this part, the Postal Service shall provide the weighings, but it is not required to provide them for continuous periods of more than 30 days.

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**CHAPTER 423—PASSENGER AIR SERVICE IMPROVEMENTS**

Sec.							
42301. Emergency contingency plans.	*	*	*	*	*	*	*
42304. <i>Widespread disruptions.</i>	*	*	*	*	*	*	*

**§ 42302. Consumer complaints**

- (a) IN GENERAL.—The Secretary of Transportation shall establish a consumer complaints toll-free hotline telephone number for the use of passengers in air transportation (*including transportation by air ambulance*) and shall take actions to notify the public of—
  - (1) that telephone number; and
  - (2) the Internet Web site of the Aviation Consumer Protection Division of the Department of Transportation.
- (b) NOTICE TO PASSENGERS ON THE INTERNET.—An air carrier or foreign air carrier providing scheduled air transportation using any aircraft that as originally designed has a passenger capacity of 30 or more passenger seats, *and an air ambulance operator*, shall include [on the] *in a prominent place on the homepage of the primary* Internet Web site of the carrier or operator —
  - (1) the hotline telephone number established under subsection (a);

(2) the e-mail address, telephone number, and mailing address of the air carrier *or operator* for the submission of complaints by passengers about air travel service problems; **[and]**

(3) the Internet Web site and mailing address of the Aviation Consumer Protection Division of the Department of Transportation for the submission of complaints by passengers about air travel service problems**[.]**; *and*

(4) *the air carrier's customer service plan.*

**[(c) NOTICE TO PASSENGERS ON BOARDING DOCUMENTATION.—**An air carrier or foreign air carrier providing scheduled air transportation using any aircraft that as originally designed has a passenger capacity of 30 or more passenger seats shall include the hotline telephone number established under subsection (a) on—

**[(1) prominently displayed signs of the carrier at the airport ticket counters in the United States where the air carrier operates; and**

**[(2) any electronic confirmation of the purchase of a passenger ticket for air transportation issued by the air carrier.]**

**(c) NOTICE TO PASSENGERS ON BOARDING OR BILLING DOCUMENTATION.—**

**(1) AIR CARRIERS AND FOREIGN AIR CARRIERS.—***An air carrier or foreign air carrier providing scheduled air transportation using any aircraft that as originally designed has a passenger capacity of 30 or more passenger seats shall include the hotline telephone number established under subsection (a) on—*

*(A) prominently displayed signs of the carrier at the airport ticket counters in the United States where the air carrier operates; and*

*(B) any electronic confirmation of the purchase of a passenger ticket for air transportation issued by the air carrier.*

**(2) AIR AMBULANCE OPERATORS.—***An air ambulance operator shall include the hotline telephone number established under subsection (a) on any invoice, bill, or other communication provided to a passenger or customer of the operator.*

**(d) USE OF NEW TECHNOLOGIES.—***The Secretary shall periodically evaluate the benefits of using mobile phone applications or other widely used technologies to provide new means for air passengers to communicate complaints in addition to the telephone number established under subsection (a) and shall provide such new means as the Secretary determines appropriate.*

### **§ 42303. Use of insecticides in passenger aircraft**

**(a) INFORMATION TO BE PROVIDED ON THE INTERNET.—**The Secretary of Transportation shall establish, and make available to the general public, an Internet Web site that contains a listing of countries that may require an air carrier or foreign air carrier to treat an aircraft passenger cabin with insecticides prior to a flight in foreign air transportation to that country or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers.

**[(b) REQUIRED DISCLOSURES.—**An air carrier, foreign air carrier, or ticket agent selling, in the United States, a ticket for a flight in foreign air transportation to a country listed on the Internet Web site established under subsection (a) shall refer the purchaser of

the ticket to the Internet Web site established under subsection (a) for additional information.】

(b) *REQUIRED DISCLOSURES.*—An air carrier, foreign air carrier, or ticket agent selling, in the United States, a ticket for a flight in foreign air transportation to a country listed on the internet website established under subsection (a) shall—

(1) disclose, on its own internet website or through other means, that the destination country may require the air carrier or foreign air carrier to treat an aircraft passenger cabin with insecticides prior to the flight or to apply an aerosol insecticide in an aircraft cabin used for such a flight when the cabin is occupied with passengers; and

(2) refer the purchaser of the ticket to the internet website established under subsection (a) for additional information.

**§ 42304. Widespread disruptions**

(a) *GENERAL REQUIREMENTS.*—In the event of a widespread disruption, a covered air carrier shall immediately publish, via a prominent link on the air carrier’s public internet website, a clear statement indicating whether, with respect to a passenger of the air carrier whose travel is interrupted as a result of the widespread disruption, the air carrier will—

- (1) provide for hotel accommodations;
- (2) arrange for ground transportation;
- (3) provide meal vouchers;
- (4) arrange for air transportation on another air carrier or foreign air carrier to the passenger’s destination; and
- (5) provide for sleeping facilities inside the airport terminal.

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

(1) *WIDESPREAD DISRUPTION.*—The term “widespread disruption” means, with respect to a covered air carrier, the interruption of all or the overwhelming majority of the air carrier’s systemwide flight operations, including flight delays and cancellations, as the result of the failure of 1 or more computer systems or computer networks of the air carrier.

(2) *COVERED AIR CARRIER.*—The term “covered air carrier” means an air carrier that provides scheduled passenger air transportation by operating an aircraft that as originally designed has a passenger capacity of 30 or more seats.

(c) *SAVINGS PROVISION.*—Nothing in this section may be construed to modify, abridge, or repeal any obligation of an air carrier under section 42301.

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**SUBPART III—SAFETY**

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**CHAPTER 441—REGISTRATION AND RECORDATION OF AIRCRAFT**

\* \* \* \* \*

**§ 44112. Limitation of liability**

(a) *DEFINITIONS.*—In this section—

(1) “lessor” means a person leasing for at least 30 days a civil aircraft, aircraft engine, or propeller.

(2) “owner” means a person that owns a civil aircraft, aircraft engine, or propeller.

(3) “secured party” means a person having a security interest in, or security title to, a civil aircraft, aircraft engine, or propeller under a conditional sales contract, equipment trust contract, chattel or corporate mortgage, or similar instrument.

(b) LIABILITY.—A lessor, owner, or secured party is liable for personal injury, death, or property loss or damage [on land or water] only when a civil aircraft, aircraft engine, or propeller is in the actual possession or *operational* control of the lessor, owner, or secured party, and the personal injury, death, or property loss or damage occurs because of—

(1) the aircraft, engine, or propeller; or

(2) the flight of, or an object falling from, the aircraft, engine, or propeller.

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## 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] *Before the date of transfer (as defined in section 90101(a)), 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 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;

(2) for the first and 2d years of the plan, detailed annual estimates of—

(A) the number, type, location, and cost of acquiring, operating, and maintaining required facilities and services;

(B) the cost of research, engineering, and development required to improve safety, system capacity, and efficiency; and

(C) personnel levels required for the activities described in subclauses (A) and (B) of this clause;



(3) for the 3d, 4th, and 5th years of the plan, estimates of the total cost of each major program for the 3-year period, and additional major research programs, acquisition of systems and facilities, and changes in personnel levels that may be required to meet long range objectives and that may have significant impact on future funding requirements;

(4) a 10-year investment plan that considers long range objectives that the Administrator 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; **[and]**

(5) a list of capital projects that are part of the Next Generation Air Transportation System and funded by amounts appropriated under section 48101(a)**[.].**; and

(6) *for fiscal years 2017 through 2020, a process under which the Administrator shall continue to comply with the requirements of this section before the date of transfer (as defined in section 90101(a)).*

(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 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 5-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—

(i) provide estimates by year of the schedule, cost, and work force levels for each active and planned major research and development project under sections 40119, 44504, 44505, 44507, 44509, 44511-44513, and 44912 of this title, including activities carried out under cooperative agreements with other Federal departments and agencies;

(ii) specify the goals and the priorities for allocation of resources among the major categories of research and development activities, including the rationale for the priorities identified;

(iii) identify the allocation of resources among long-term research, near-term research, and development activities;

(iv) identify the individual research and development projects in each funding category that are described in the annual budget request;

(v) highlight the research and development activities that address specific recommendations of the research advisory committee established under section 44508 of this title, and document the recommendations of the committee that are not accepted, specifying the reasons for nonacceptance; and

(vi) highlight the research and development technology transfer activities that promote technology sharing among government, industry, and academia through the Stevenson-Wydler Technology Innovation Act of 1980.

(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, including a description of the dissemination to the private sector of research results and a description of any new technologies developed. 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. The report shall be prepared in accordance with requirements of section 1116 of title 31.

#### **§ 44502. General facilities and personnel authority**

(a) GENERAL AUTHORITY.—(1) **[The Administrator of the Federal Aviation Administration may]** *Before the date of transfer (as defined in section 90101(a)), the Secretary of Transportation 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]** *Before the date of transfer (as defined in section 90101(a)), the cost* of site preparation work associated with acquiring, establishing, or improving an air navigation facility under paragraph (1)(A) of this subsection shall be charged to amounts available for that purpose appropriated under section 48101(a) of this title. The Secretary of Transportation may make an agreement with an airport owner or sponsor (as defined in section 47102 of this title) so that the owner or sponsor will provide the work and be paid or reimbursed by the Secretary from the appropriated amounts.

(3) **[The Secretary]** *Before the date of transfer (as defined in section 90101(a)), the Secretary of Transportation may authorize a department, agency, or instrumentality of the United States Government to carry out any duty or power under this subsection with the consent of the head of the department, agency, or instrumentality.*

**[(4) PURCHASE OF INSTRUMENT LANDING SYSTEM.—**

**[(A) ESTABLISHMENT OF PROGRAM.—**The Secretary shall purchase precision approach instrument landing system equipment for installation at airports on an expedited basis.

**[(B) AUTHORIZATION.—**No less than \$30,000,000 of the amounts appropriated under section 48101(a) for each of fiscal years 2000 through 2002 shall be used for the purpose of carrying out this paragraph, including acquisition under new or existing contracts, site preparation work, installation, and related expenditures.]

**[(5)] (4) IMPROVEMENTS ON LEASED PROPERTIES.— [The Administrator]** *Before the date of transfer (as defined in section 90101(a)), the Secretary of Transportation may make improvements to real property leased for no or nominal consideration for an air navigation facility, regardless of whether the cost of making the improvements exceeds the cost of leasing the real property, if—*

- (A) the improvements primarily benefit the Government;
- (B) the improvements are essential for accomplishment of the mission of the Federal Aviation Administration; and
- (C) the interest of the United States Government in the improvements is protected.

(b) CERTIFICATION OF NECESSITY.— **[Except]** *Before the date of transfer (as defined in section 90101(a)), 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]** *the Secretary of Transportation* certifies in writing that the facility is reasonably necessary for use in air commerce or for the national defense. An interested person may apply for a certificate for a facility to be acquired, established, constructed, operated, repaired, altered, or maintained by or for the person.

(c) ENSURING CONFORMITY WITH PLANS AND POLICIES.—(1) To ensure conformity with plans and policies for, and allocation of, airspace **[by the Administrator of the Federal Aviation Administration under section 40103(b)(1) of this title]**, a military airport, military landing area, or missile or rocket site may be acquired, established, or constructed, or a runway may be altered substantially, only if the **[Administrator of the Federal Aviation Administration]** *Secretary of Transportation* is given reasonable prior notice so that the **[Administrator of the Federal Aviation Administration]** *Secretary of Transportation* may advise the appropriate committees of **[Congress]** *Congress, the American Air Navigation Services Corporation*, 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]** *Secretary of Transportation* 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]** *Secretary of Transportation* is given reasonable prior notice so **[that the Administrator]** *that the Secretary* may provide advice on the effects of the establishment, construction, or alteration on the use of airspace by aircraft.

(d) PUBLIC USE AND EMERGENCY ASSISTANCE.—(1) The head of a department, agency, or instrumentality of the Government having jurisdiction over an air navigation facility owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for public use of the facility.

(2) The head of a department, agency, or instrumentality of the Government having jurisdiction over an airport or emergency landing field owned or operated by the Government may provide, under regulations the head of the department, agency, or instrumentality prescribes, for assistance, and the sale of fuel, oil, equipment, and supplies, to an aircraft, but only when necessary, because of an

emergency, to allow the aircraft to continue to the nearest airport operated by private enterprise. The head of the department, agency, or instrumentality shall provide for the assistance and sale at the prevailing local fair market value as determined by the head of the department, agency, or instrumentality. An amount that the head decides is equal to the cost of the assistance provided and the fuel, oil, equipment, and supplies sold shall be credited to the appropriation from which the cost was paid. The balance shall be credited to miscellaneous receipts.

(e) TRANSFERS OF INSTRUMENT LANDING SYSTEMS.— [An airport may transfer] *Before the date of transfer (as defined in section 90101(a)), an airport may transfer* , without consideration, to the Administrator of the Federal Aviation Administration an instrument landing system (and associated approach lighting equipment and runway visual range equipment) that conforms to performance specifications of the Administrator if a Government airport aid program, airport development aid program, or airport improvement project grant was used to assist in purchasing the system. The Administrator shall accept the system and operate and maintain it under criteria of the Administrator.

(f) AIRPORT SPACE.—

(1) *IN GENERAL.—Except as provided in paragraph (2), the Administrator of the Federal Aviation Administration may not require an airport owner, operator, or sponsor (as defined in section 47102) to provide building construction, maintenance, utilities, administrative support, or space on airport property to the Federal Aviation Administration without adequate compensation.*

(2) *EXCEPTIONS.—Paragraph (1) does not apply in any case in which an airport owner, operator, or sponsor—*

*(A) provides land or buildings without compensation prior to the date of transfer (as defined in section 90101(a)) to the Federal Aviation Administration for facilities used to carry out activities related to air traffic control or navigation pursuant to a grant assurance; or*

*(B) provides goods or services to the Federal Aviation Administration without compensation or at below-market rates pursuant to a negotiated agreement between the owner, operator, or sponsor and the Administrator.*

\* \* \* \* \*

**§ 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) methods for improving and accelerating future air traffic controller training through the application of advanced training techniques, including the use of simulation technology;

(2) the role of automation in the air traffic control system and its physical and psychological effects on air traffic controllers;

(3) the attributes and aptitudes needed to function well in a highly automated air traffic control system and the development of appropriate testing methods for identifying individuals with those attributes and aptitudes;

(4) innovative methods for training potential air traffic controllers to enhance the benefits of automation and maximize the effectiveness of the air traffic control system; and

(5) new technologies and procedures for exploiting automated communication systems, including Mode S Transponders, to improve information transfers between air traffic controllers and aircraft pilots.

(b) RESEARCH ON HUMAN FACTOR ASPECTS OF AUTOMATION.—The Administrators of the Federal Aviation Administration and 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) under which the institutions prepare students for the position of air traffic controller with the Department of Transportation (as defined in section 2109 of title 5). The Administrator 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, 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.

(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) AIR TRAFFIC CONTROL SPECIALIST QUALIFICATION TRAINING.—

(1) APPOINTMENT OF AIR TRAFFIC CONTROL SPECIALISTS.—The Administrator is authorized to appoint a qualified air traffic control specialist candidate for placement in an airport traffic control facility if the candidate has—

(A) received a control tower operator certification (referred to in this subsection as a “CTO” certificate); and

(B) satisfied all other applicable qualification requirements for an air traffic control specialist position, including successful completion of orientation training at the Federal Aviation Administration Academy.

(2) COMPENSATION AND BENEFITS.—An individual appointed under paragraph (1) shall receive the same compensation and benefits, and be treated in the same manner as, any other individual appointed as a developmental air traffic controller.

(3) REPORT.—Not later than 2 years after the date of enactment of the FAA Modernization and Reform Act of 2012, the Administrator shall submit to Congress a report that evaluates the effectiveness of the air traffic control specialist qualification training provided pursuant to this section, including the graduation rates of candidates who received a CTO certificate and are working in airport traffic control facilities.

(4) ADDITIONAL APPOINTMENTS.—If the Administrator determines that air traffic control specialists appointed pursuant to this subsection are more successful in carrying out the duties of an air traffic controller than air traffic control specialists hired from the general public without any such certification, the Administrator shall increase, to the maximum extent practicable, the number of appointments of candidates who possess such certification.

(5) REIMBURSEMENT FOR TRAVEL EXPENSES ASSOCIATED WITH CERTIFICATIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Administrator may accept reimbursement from an educational entity that provides training to an air traffic control specialist candidate to cover reasonable travel expenses of the Administrator associated with issuing certifications to such candidates.

(B) TREATMENT OF REIMBURSEMENTS.—Notwithstanding section 3302 of title 31, any reimbursement authorized to be collected under subparagraph (A) shall—

(i) be credited as offsetting collections to the account that finances the activities and services for which the reimbursement is accepted;

(ii) be available for expenditure only to pay the costs of activities and services for which the reimbursement is accepted, including all costs associated with collecting such reimbursement; and

(iii) remain available until expended.

(e) STAFFING REPORT.—The Administrator of the Federal Aviation Administration shall submit annually to the Committee on 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.
- (f) **HIRING OF CERTAIN AIR TRAFFIC CONTROL SPECIALISTS.—**
- (1) **CONSIDERATION OF APPLICANTS.—**
    - (A) **ENSURING SELECTION OF MOST QUALIFIED APPLICANTS.—**In appointing individuals to the position of air traffic controller, the Administrator shall give preferential consideration to qualified individuals maintaining 52 consecutive weeks of air traffic control experience involving the full-time active separation of air traffic after receipt of an air traffic certification or air traffic control facility rating within 5 years of application while serving at—
      - (i) a Federal Aviation Administration air traffic control facility;
      - (ii) a civilian or military air traffic control facility of the Department of Defense; or
      - (iii) a tower operating under contract with the Federal Aviation Administration under section 47124.
    - (B) **CONSIDERATION OF ADDITIONAL APPLICANTS.—**
      - (i) **IN GENERAL.—**After giving preferential consideration to applicants under subparagraph (A), the Administrator shall consider additional applicants for the position of air traffic controller by referring an approximately equal number of individuals for appointment among the 2 applicant pools described in this subparagraph. The number of individuals referred for consideration from each group shall not differ by more than 10 percent.
      - (ii) **POOL 1.—**Pool 1 applicants are individuals who—
        - (I) have successfully completed air traffic controller training and graduated from an institution participating in the Collegiate Training Initiative program maintained under subsection (c)(1) and who have received from the institution—
          - (aa) an appropriate recommendation; or
          - (bb) an endorsement certifying that the individual would have met the requirements in effect as of December 31, 2013, for an appropriate recommendation;
        - (II) are eligible for a veterans recruitment appointment pursuant to section 4214 of title 38 and provide a Certificate of Release or Discharge from Active Duty within 120 days of the announcement closing;
        - (III) are eligible veterans (as defined in section 4211 of title 38) maintaining aviation experience obtained in the course of the individual's military experience; or
        - (IV) are preference eligible veterans (as defined in section 2108 of title 5).

(iii) POOL 2.—Pool 2 applicants are individuals who apply under a vacancy announcement recruiting from all United States citizens.

(2) USE OF BIOGRAPHICAL ASSESSMENTS.—

(A) BIOGRAPHICAL ASSESSMENTS.—The Administrator shall not use any biographical assessment when hiring under paragraph (1)(A) or paragraph (1)(B)(ii).

(B) RECONSIDERATION OF APPLICANTS DISQUALIFIED ON BASIS OF BIOGRAPHICAL ASSESSMENTS.—

(i) IN GENERAL.—If an individual described in paragraph (1)(A) or paragraph (1)(B)(ii), who applied for the position of air traffic controller with the Administration in response to Vacancy Announcement FAA-AMC-14-ALLSRCE-33537 (issued on February 10, 2014), was disqualified from the position as the result of a biographical assessment, the Administrator shall provide the applicant an opportunity to reapply for the position as soon as practicable under the revised hiring practices.

(ii) WAIVER OF AGE RESTRICTION.—The Administrator shall waive any maximum age restriction for the position of air traffic controller with the Administration that would otherwise disqualify an individual from the position if the individual—

(I) is reapplying for the position pursuant to clause (i) on or before December 31, 2017; and

(II) met the maximum age requirement on the date of the individual’s previous application for the position during the interim hiring process.

(3) MAXIMUM ENTRY AGE FOR EXPERIENCED CONTROLLERS.—

Notwithstanding section 3307 of title 5, *except for individuals covered by a program described in paragraph (4)*, the maximum limit of age for an original appointment to a position as an air traffic controller shall be 35 years of age for those maintaining 52 weeks of air traffic control experience involving the full-time active separation of air traffic after receipt of an air traffic certification or air traffic control facility rating in a civilian or military air traffic control facility.

(4) RETIRED MILITARY CONTROLLERS.—*The Administrator may establish a program to provide an original appointment to a position as an air traffic controller for individuals who—*

*(A) are on terminal leave pending retirement from active duty military service or have retired from active duty military service within 5 years of applying for the appointment; and*

*(B) within 5 years of applying for the appointment, have held either an air traffic control specialist certification or a facility rating according to Administration standards.*

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**CHAPTER 447—SAFETY REGULATION**

Sec.  
44701. General requirements.

\* \* \* \* \*



44736. *Organization designation authorizations.*

44737. *Training on human trafficking for certain staff.*

**§ 44701. General requirements**

(a) **PROMOTING SAFETY.**—The Administrator of the Federal Aviation Administration shall promote safe flight of civil aircraft in air commerce by prescribing—

(1) minimum standards required in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers;

(2) regulations and minimum standards in the interest of safety for—

(A) inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances;

(B) equipment and facilities for, and the timing and manner of, the inspecting, servicing, and overhauling; and

(C) a qualified private person, instead of an officer or employee of the Administration, to examine and report on the inspecting, servicing, and overhauling;

(3) regulations required in the interest of safety for the reserve supply of aircraft, aircraft engines, propellers, appliances, and aircraft fuel and oil, including the reserve supply of fuel and oil carried in flight;

(4) regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers; and

(5) regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.

(b) **PRESCRIBING MINIMUM SAFETY STANDARDS.**—The Administrator may prescribe minimum safety standards for—

(1) an air carrier to whom a certificate is issued under section 44705 of this title; and

(2) operating an airport serving any passenger operation of air carrier aircraft designed for at least 31 passenger seats.

(c) **REDUCING AND ELIMINATING ACCIDENTS.**—The Administrator shall carry out this chapter in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation. However, the Administrator is not required to give preference either to air transportation or to other air commerce in carrying out this chapter.

(d) **CONSIDERATIONS AND CLASSIFICATION OF REGULATIONS AND STANDARDS.**—When prescribing a regulation or standard under subsection (a) or (b) of this section or any of sections 44702-44716 of this title, the Administrator shall—

(1) consider—

(A) the duty of an air carrier to provide service with the highest possible degree of safety in the public interest; and

(B) differences between air transportation and other air commerce; and

(2) classify a regulation or standard appropriate to the differences between air transportation and other air commerce.

(e) **BILATERAL EXCHANGES OF SAFETY OVERSIGHT RESPONSIBILITIES.**—

(1) **IN GENERAL.**—Notwithstanding the provisions of this chapter, the Administrator, pursuant to Article 83 bis of the Convention on International Civil Aviation and by a bilateral agreement with the aeronautical authorities of another country, may exchange with that country all or part of their respective functions and duties with respect to registered aircraft under the following articles of the Convention: Article 12 (Rules of the Air); Article 31 (Certificates of Airworthiness); or Article 32a (Licenses of Personnel).

(2) **RELINQUISHMENT AND ACCEPTANCE OF RESPONSIBILITY.**—The Administrator relinquishes responsibility with respect to the functions and duties transferred by the Administrator as specified in the bilateral agreement, under the Articles listed in paragraph (1) for United States-registered aircraft described in paragraph (4)(A) transferred abroad and accepts responsibility with respect to the functions and duties under those Articles for aircraft registered abroad and described in paragraph (4)(B) that are transferred to the United States.

(3) **CONDITIONS.**—The Administrator may predicate, in the agreement, the transfer of functions and duties under this subsection on any conditions the Administrator deems necessary and prudent, except that the Administrator may not transfer responsibilities for United States registered aircraft described in paragraph (4)(A) to a country that the Administrator determines is not in compliance with its obligations under international law for the safety oversight of civil aviation.

(4) **REGISTERED AIRCRAFT DEFINED.**—In this subsection, the term “registered aircraft” means—

(A) aircraft registered in the United States and operated pursuant to an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business or, if it has no such place of business, its permanent residence in another country; and

(B) aircraft registered in a foreign country and operated under an agreement for the lease, charter, or interchange of the aircraft or any similar arrangement by an operator that has its principal place of business or, if it has no such place of business, its permanent residence in the United States.

(5) **FOREIGN AIRWORTHINESS DIRECTIVES.**—

(A) **ACCEPTANCE.**—*The Administrator may accept an airworthiness directive issued by an aeronautical safety authority of a foreign country, and leverage that authority’s regulatory process, if—*

*(i) the country is the state of design for the product that is the subject of the airworthiness directive;*

*(ii) the United States has a bilateral safety agreement relating to aircraft certification with the country;*

*(iii) as part of the bilateral safety agreement with the country, the Administrator has determined that such aeronautical safety authority has a certification system relating to safety that produces a level of safety equivalent to the level produced by the system of the Federal Aviation Administration;*

(iv) the aeronautical safety authority of the country utilizes an open and transparent notice and comment process in the issuance of airworthiness directives; and

(v) the airworthiness directive is necessary to provide for the safe operation of the aircraft subject to the directive.

(B) *ALTERNATIVE APPROVAL PROCESS.*—Notwithstanding subparagraph (A), the Administrator may issue a Federal Aviation Administration airworthiness directive instead of accepting an airworthiness directive otherwise eligible for acceptance under such subparagraph, if the Administrator determines that such issuance is necessary for safety or operational reasons due to the complexity or unique features of the Federal Aviation Administration airworthiness directive or the United States aviation system.

(C) *ALTERNATIVE MEANS OF COMPLIANCE.*—The Administrator may—

(i) accept an alternative means of compliance, with respect to an airworthiness directive accepted under subparagraph (A), that was approved by the aeronautical safety authority of the foreign country that issued the airworthiness directive; or

(ii) notwithstanding subparagraph (A), and at the request of any person affected by an airworthiness directive accepted under such subparagraph, approve an alternative means of compliance with respect to the airworthiness directive.

(D) *LIMITATION.*—The Administrator may not accept an airworthiness directive issued by an aeronautical safety authority of a foreign country if the airworthiness directive addresses matters other than those involving the safe operation of an aircraft.

(f) *EXEMPTIONS.*—The Administrator may grant an exemption from a requirement of a regulation prescribed under subsection (a) or (b) of this section or any of sections 44702-44716 of this title if the Administrator finds the exemption is in the public interest.

\* \* \* \* \*

**§ 44704. Type certificates, production certificates, [airworthiness certificates,] airworthiness certificates, and design and production organization certificates**

(a) *TYPE CERTIFICATES.*—

(1) *ISSUANCE, INVESTIGATIONS, AND TESTS.*—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 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 shall investigate the application and may conduct a hearing. The Administrator shall make, or require the appli-

cant to make, tests the Administrator considers necessary in the interest of safety.

(2) SPECIFICATIONS.—The Administrator 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.

(3) SPECIAL RULES FOR NEW AIRCRAFT AND APPLIANCES.—Except as provided in paragraph (4), if the holder of a type certificate agrees to permit another person to use the certificate to manufacture a new aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. Such other person may manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate only if such other person is the holder of the type certificate or has permission from the holder.

(4) LIMITATION FOR AIRCRAFT MANUFACTURED BEFORE AUGUST 5, 2004.—Paragraph (3) shall not apply to a person who began the manufacture of an aircraft before August 5, 2004, and who demonstrates to the satisfaction of the Administrator that such manufacture began before August 5, 2004, if the name of the holder of the type certificate for the aircraft does not appear on the airworthiness certificate or identification plate of the aircraft. The holder of the type certificate for the aircraft shall not be responsible for the continued airworthiness of the aircraft. A person may invoke the exception provided by this paragraph with regard to the manufacture of only one aircraft.

(5) RELEASE OF DATA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Administrator may make available upon request, to a person seeking to maintain the airworthiness or develop product improvements of an aircraft, engine, propeller, or appliance, engineering data in the possession of the Administration relating to a type certificate or a supplemental type certificate for such aircraft, engine, propeller, or appliance, without the consent of the owner of record, if the Administrator determines that—

(i) the certificate containing the requested data has been inactive for 3 or more years, except that the Administrator may reduce this time if required to address an unsafe condition associated with the product;

(ii) after using due diligence, the Administrator is unable to find the owner of record, or the owner of record's heir, of the type certificate or supplemental type certificate; and

(iii) making such data available will enhance aviation safety.

(B) ENGINEERING DATA DEFINED.—In this section, the term “engineering data” as used with respect to an air-

craft, engine, propeller, or appliance means type design drawing and specifications for the entire aircraft, engine, propeller, or appliance or change to the aircraft, engine, propeller, or appliance, including the original design data, and any associated supplier data for individual parts or components approved as part of the particular certificate for the aircraft, engine, propeller, or appliance.

(C) REQUIREMENT TO MAINTAIN DATA.—The Administrator shall maintain engineering data in the possession of the Administration relating to a type certificate or a supplemental type certificate that has been inactive for 3 or more years.

(6) TYPE CERTIFICATION RESOLUTION PROCESS.—

(A) IN GENERAL.—*Not later than 15 months after the date of enactment of this paragraph, the Administrator shall establish an effective, timely, and milestone-based issue resolution process for type certification activities under this subsection.*

(B) PROCESS REQUIREMENTS.—*The resolution process shall provide for—*

(i) *resolution of technical issues at pre-established stages of the certification process, as agreed to by the Administrator and the type certificate applicant;*

(ii) *automatic elevation to appropriate management personnel of the Federal Aviation Administration and the type certificate applicant of any major certification process milestone that is not completed or resolved within a specific period of time agreed to by the Administrator and the type certificate applicant; and*

(iii) *resolution of a major certification process milestone elevated pursuant to clause (ii) within a specific period of time agreed to by the Administrator and the type certificate applicant.*

(C) MAJOR CERTIFICATION PROCESS MILESTONE DEFINED.—*In this paragraph, the term “major certification process milestone” means a milestone related to a type certification basis, type certification plan, type inspection authorization, issue paper, or other major type certification activity agreed to by the Administrator and the type certificate applicant.*

(b) SUPPLEMENTAL TYPE CERTIFICATES.—

(1) ISSUANCE.—The Administrator may issue a type certificate designated as a supplemental type certificate for a change to an aircraft, aircraft engine, propeller, or appliance.

(2) CONTENTS.—A supplemental type certificate issued under paragraph (1) shall consist of the change to the aircraft, aircraft engine, propeller, or appliance with respect to the previously issued type certificate for the aircraft, aircraft engine, propeller, or appliance.

(3) REQUIREMENT.—If the holder of a supplemental type certificate agrees to permit another person to use the certificate to modify an aircraft, aircraft engine, propeller, or appliance, the holder shall provide the other person with written evidence, in a form acceptable to the Administrator, of that agreement. A person may change an aircraft, aircraft engine, pro-

PELLER, OR APPLIANCE BASED ON A SUPPLEMENTAL TYPE CERTIFICATE ONLY IF THE PERSON REQUESTING THE CHANGE IS THE HOLDER OF THE SUPPLEMENTAL TYPE CERTIFICATE OR HAS PERMISSION FROM THE HOLDER TO MAKE THE CHANGE.

(c) PRODUCTION CERTIFICATES.—The Administrator 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 finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing of, a duplicate to ensure that it conforms to the requirements of the certificate. The Administrator may include in a production certificate terms required in the interest of safety.

(d) AIRWORTHINESS CERTIFICATES.—(1) The registered owner of an aircraft may apply to the Administrator for an airworthiness certificate for the aircraft. The Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation. The Administrator shall register each airworthiness certificate and may include appropriate information in the certificate. The certificate number or other individual designation the Administrator requires shall be displayed on the aircraft. The Administrator 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 decides is necessary to identify each person having a property interest in the aircraft and the kind and extent of the interest.

(e) DESIGN AND PRODUCTION ORGANIZATION CERTIFICATES.—

(1) ISSUANCE.—Beginning January 1, 2013, the Administrator may issue a certificate to a design organization, production organization, or design and production organization to authorize the organization to certify compliance of aircraft, aircraft engines, propellers, and appliances with the requirements and minimum standards prescribed under section 44701(a). An organization holding a certificate issued under this subsection shall be known as a certified design and production organization (in this subsection referred to as a “CDPO”).

(2) APPLICATIONS.—On receiving an application for a CDPO certificate, the Administrator shall examine and rate the organization submitting the application, in accordance with regulations to be prescribed by the Administrator, to determine whether the organization has adequate engineering, design, and production capabilities, standards, and safeguards to make certifications of compliance as described in paragraph (1).

(3) ISSUANCE OF CERTIFICATES BASED ON CDPO FINDINGS.—The Administrator may rely on certifications of compliance by a CDPO when making determinations under this section.

(4) PUBLIC SAFETY.—The Administrator shall include in a CDPO certificate terms required in the interest of safety.

(5) NO EFFECT ON POWER OF REVOCATION.—Nothing in this subsection affects the authority of the Secretary of Transportation to revoke a certificate.

(f) FUNDING FOR ADDITIONAL SAFETY NEEDS.—

(1) ACCEPTANCE OF APPLICANT-PROVIDED FUNDS.—*Notwithstanding any other provision of law, the Administrator may accept funds from an applicant for a certificate under this section to hire additional staff or obtain the services of consultants and experts to facilitate the timely processing, review, and issuance of certificates under this section.*

(2) RULES OF CONSTRUCTION.—

(A) IN GENERAL.—*Nothing in this section may be construed as permitting the Administrator to grant priority or afford any preference to an applicant providing funds under paragraph (1).*

(B) POLICIES AND PROCEDURES.—*The Administrator shall implement such policies and procedures as may be required to ensure that the acceptance of funds under paragraph (1) does not prejudice the Administrator in the issuance of any certificate to an applicant.*

(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—*Notwithstanding section 3302 of title 31, any funds accepted under this subsection—*

(A) *shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;*

(B) *shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and*

(C) *shall remain available until expended.*

\* \* \* \* \*

#### **§ 44718. Structures interfering with air commerce or national security**

(a) NOTICE.—By regulation or by order when necessary, the Secretary of Transportation shall require a person to give adequate public notice, in the form and way the Secretary 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;

(2) the efficient use and preservation of the navigable airspace and of airport traffic capacity at public-use airports; or

(3) the interests of national security, as determined by the Secretary of Defense.

(b) STUDIES.—

(1) IN GENERAL.—Under regulations prescribed by the Secretary, if the Secretary decides that constructing or altering a structure may result in an obstruction of the navigable airspace, an interference with [air navigation facilities and equipment] *air or space navigation facilities and equipment* or the navigable airspace, or, after consultation with the Secretary of Defense, an adverse impact on military operations and readiness, the Secretary of Transportation 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 shall—

(A) consider factors relevant to the efficient and effective use of the navigable airspace, including—

(i) the impact on arrival, departure, and en route procedures for aircraft operating under visual flight rules;

(ii) the impact on arrival, departure, and en route procedures for aircraft operating under instrument flight rules;

(iii) the impact on existing public-use airports and aeronautical facilities;

(iv) the impact on planned public-use airports and aeronautical facilities;

(v) the cumulative impact resulting from the proposed construction or alteration of a structure when combined with the impact of other existing or proposed structures; **[and]**

*(vi) the impact on launch and reentry for launch and reentry vehicles arriving or departing from a launch site or reentry site licensed by the Secretary of Transportation; and*

**[(vi)]** *(vii) other factors relevant to the efficient and effective use of navigable airspace; and*

(B) include the finding made by the Secretary of Defense under subsection (f).

(2) REPORT.—On completing the study, the Secretary of Transportation shall issue a report disclosing the extent of the—

(A) adverse impact on the safe and efficient use of the navigable airspace that the Secretary finds will result from constructing or altering the structure; and

(B) unacceptable risk to the national security of the United States, as determined by the Secretary of Defense under subsection (f).

(3) SEVERABILITY.—A determination by the Secretary of Transportation on hazard to air navigation under this section shall remain independent of a determination of unacceptable risk to the national security of the United States by the Secretary of Defense under subsection (f).

(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.

(d) LIMITATION ON CONSTRUCTION OF LANDFILLS.—

(1) IN GENERAL.—No person shall construct or establish a municipal solid waste landfill (as defined in section 258.2 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this subsection) that receives putrescible waste (as defined in section 257.3-8 of such title) within 6 miles of a public airport that has received grants under chap-



ter 471 and is primarily served by general aviation aircraft and regularly scheduled flights of aircraft designed for 60 passengers or less unless the State aviation agency of the State in which the airport is located requests that the Administrator of the Federal Aviation Administration exempt the landfill from the application of this subsection and the Administrator determines that such exemption would have no adverse impact on aviation safety.

(2) LIMITATION ON APPLICABILITY.—Paragraph (1) shall not apply in the State of Alaska and shall not apply to the construction, establishment, expansion, or modification of, or to any other activity undertaken with respect to, a municipal solid waste landfill if the construction or establishment of the landfill was commenced on or before the date of the enactment of this subsection.

(e) REVIEW OF AERONAUTICAL STUDIES.—The Administrator of the Federal Aviation Administration shall develop procedures to allow the Department of Defense and the Department of Homeland Security to review and comment on an aeronautical study conducted pursuant to subsection (b) prior to the completion of the study.

(f) NATIONAL SECURITY FINDING.—As part of an aeronautical study conducted under subsection (b), the Secretary of Defense shall—

(1) make a finding on whether the construction, alteration, establishment, or expansion of a structure or sanitary landfill included in the study would result in an unacceptable risk to the national security of the United States; and

(2) transmit the finding to the Secretary of Transportation for inclusion in the report required under subsection (b)(2).

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

(1) ADVERSE IMPACT ON MILITARY OPERATIONS AND READINESS.—The term “adverse impact on military operations and readiness” has the meaning given the term in section 211.3 of title 32, Code of Federal Regulations, as in effect on January 6, 2014.

(2) UNACCEPTABLE RISK TO THE NATIONAL SECURITY OF THE UNITED STATES.—The term “unacceptable risk to the national security of the United States” has the meaning given the term in section 211.3 of title 32, Code of Federal Regulations, as in effect on January 6, 2014.

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#### **§ 44736. Organization designation authorizations**

(a) DELEGATIONS OF FUNCTIONS.—

(1) IN GENERAL.—Except as provided in paragraph (3), when overseeing an ODA holder, the Administrator of the FAA shall—

(A) require, based on an application submitted by the ODA holder and approved by the Administrator (or the Administrator’s designee), a procedures manual that addresses all procedures and limitations regarding the functions to be performed by the ODA holder;

(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, un-

less the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to 1 or more of the functions; and

(C) conduct regular oversight activities by inspecting the ODA holder's delegated functions and taking action based on validated inspection findings.

(2) **DUTIES OF ODA HOLDERS.**—An ODA holder shall—

(A) perform each function delegated to the ODA holder in accordance with the approved procedures manual for the delegation;

(B) make the procedures manual available to each member of the appropriate ODA unit; and

(C) cooperate fully with oversight activities conducted by the Administrator in connection with the delegation.

(3) **EXISTING ODA HOLDERS.**—With regard to an ODA holder operating under a procedures manual approved by the Administrator before the date of enactment of this section, the Administrator shall—

(A) at the request of the ODA holder and in an expeditious manner, approve revisions to the ODA holder's procedures manual;

(B) delegate fully to the ODA holder each of the functions to be performed as specified in the procedures manual, unless the Administrator determines, after the date of the delegation and as a result of an inspection or other investigation, that the public interest and safety of air commerce requires a limitation with respect to one or more of the functions; and

(C) conduct regular oversight activities by inspecting the ODA holder delegated functions and taking action based on validated inspection findings.

(b) **ODA OFFICE.**—

(1) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this section, the Administrator of the FAA shall identify, within the FAA Office of Aviation Safety, a centralized policy office to be known as the Organization Designation Authorization Office or the ODA Office.

(2) **PURPOSE.**—The purpose of the ODA Office shall be to oversee and ensure the consistency of the FAA's audit functions under the ODA program across the FAA.

(3) **FUNCTIONS.**—The ODA Office shall—

(A) improve performance and ensure full utilization of the authorities delegated under the ODA program;

(B) create a more consistent approach to audit priorities, procedures, and training under the ODA program;

(C) review, in a timely fashion, a random sample of limitations on delegated authorities under the ODA program to determine if the limitations are appropriate;

(D) ensure national consistency in the interpretation and application of the requirements of the ODA program, including any limitations, and in the performance of the ODA program; and

- (E) at the request of an ODA holder, review and approve new limitations to ODA functions.
- (c) DEFINITIONS.—In this section, the following definitions apply:
- (1) FAA.—The term “FAA” means the Federal Aviation Administration.
  - (2) ODA HOLDER.—The term “ODA holder” means an entity authorized to perform functions pursuant to a delegation made by the Administrator of the FAA under section 44702(d).
  - (3) ODA UNIT.—The term “ODA unit” means a group of 2 or more individuals who perform, under the supervision of an ODA holder, authorized functions under an ODA.
  - (4) ORGANIZATION.—The term “organization” means a firm, partnership, corporation, company, association, joint-stock association, or governmental entity.
  - (5) ORGANIZATION DESIGNATION AUTHORIZATION; ODA.—The term “Organization Designation Authorization” or “ODA” means an authorization by the FAA under section 44702(d) for an organization comprised of 1 or more ODA units to perform approved functions on behalf of the FAA.

**§44737. Training on human trafficking for certain staff**

In addition to other training requirements, each air carrier shall provide training—

- (1) to ticket counter agents, gate agents, and other air carrier workers whose jobs require regular interaction with passengers; and
- (2) on recognizing and responding to potential human trafficking victims.

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**CHAPTER 453—FEES**

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**§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 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 incurs expenses in carrying out chapter 441 and sections 44701-44716 of this title (except sections 44701(c), [44703(f)(2)] 44703(g)(2) , and 44713(d)(2)). The money is available to the Administrator to pay expenses for which the fees are collected.

(e) EFFECTIVE DATE.—(1) IN GENERAL.—A fee may not be imposed under this section before the date on which the regulations prescribed under sections 44111(d), [44703(f)(2)] 44703(g)(2) , and 44713(d)(2) of this title take effect.

(2) EFFECT OF IMPOSITION OF OTHER FEES.—A fee may not be imposed for a service or activity under this section during any period in which a fee for the same service or activity is imposed under section 45305.

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#### § 45305. Registration, certification, and related fees

(a) GENERAL AUTHORITY AND FEES.— [Subject to subsection (b)] *Subject to subsection (c)* , the Administrator of the Federal Aviation Administration shall establish and collect a fee for each of the following services and activities of the Administration that does not exceed the estimated costs of the service or activity:

- (1) Registering an aircraft.
- (2) Reregistering, replacing, or renewing an aircraft registration certificate.
- (3) Issuing an original dealer's aircraft registration certificate.
- (4) Issuing an additional dealer's aircraft registration certificate (other than the original).
- (5) Issuing a special registration number.
- (6) Issuing a renewal of a special registration number reservation.
- (7) Recording a security interest in an aircraft or aircraft part.
- (8) Issuing an airman certificate.
- (9) Issuing a replacement airman certificate.
- (10) Issuing an airman medical certificate.
- (11) Providing a legal opinion pertaining to aircraft registration or recordation.

(b) CERTIFICATION SERVICES.—*Subject to subsection (c), and notwithstanding section 45301(a), the Administrator may establish and collect a fee from a foreign government or entity for services related to certification, regardless of where the services are provided, if the fee—*

- (1) *is established and collected in a manner consistent with aviation safety agreements; and*
- (2) *does not exceed the estimated costs of the services.*

[(b)] (c) LIMITATION ON COLLECTION.—No fee may be collected under this section unless the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act.

[(c)] (d) FEES CREDITED AS OFFSETTING COLLECTIONS.—

- (1) IN GENERAL.—Notwithstanding section 3302 of title 31, any fee authorized to be collected under this section shall—

(A) be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

(B) be available for expenditure only to pay the costs of activities and services for which the fee is imposed, including all costs associated with collecting the fee; and

(C) remain available until expended.

(2) CONTINUING APPROPRIATIONS.—The Administrator may continue to assess, collect, and spend fees established under this section during any period in which the funding for the Federal Aviation Administration is provided under an Act providing continuing appropriations in lieu of the Administration's regular appropriations.

(3) ADJUSTMENTS.—The Administrator shall adjust a fee established under subsection (a) for a service or activity if the Administrator determines that the actual cost of the service or activity is higher or lower than was indicated by the cost data used to establish such fee.

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## CHAPTER 455—UNMANNED AIRCRAFT SYSTEMS

Sec.

45501. *Definitions.*

45502. *Integration of civil unmanned aircraft systems into national airspace system.*

45503. *Risk-based permitting of unmanned aircraft systems.*

45504. *Public unmanned aircraft systems.*

45505. *Special rules for certain unmanned aircraft systems.*

45506. *Certification of new air navigation facilities for unmanned aircraft and other aircraft.*

45507. *Special rules for certain UTM and low-altitude CNS.*

45508. *Operation of small unmanned aircraft.*

45509. *Special rules for model aircraft.*

45510. *Carriage of property for compensation or hire.*

45511. *Micro UAS operations.*

### §45501. *Definitions*

*In this chapter, the following definitions apply:*

(1) **AERIAL DATA COLLECTION.**—*The term “aerial data collection” means the gathering of data by a device aboard an unmanned aircraft during flight, including imagery, sensing, and measurement by such device.*

(2) **ARCTIC.**—*The term “Arctic” means the United States zone of the Chukchi Sea, Beaufort Sea, and Bering Sea north of the Aleutian chain.*

(3) **CERTIFICATE OF WAIVER; CERTIFICATE OF AUTHORIZATION.**—*The terms “certificate of waiver” and “certificate of authorization” mean a Federal Aviation Administration grant of approval for a specific flight operation.*

(4) **CNS.**—*The term “CNS” means a communication, navigation, or surveillance system or service.*

(5) **MODEL AIRCRAFT.**—*the term “model aircraft” means an unmanned aircraft that is—*

*(A) capable of sustained flight in the atmosphere;*

*(B) flown within visual line of sight of the person operating the aircraft; and*

*(C) flown for hobby or recreational purposes.*

(6) *PERMANENT AREAS.*—The term “permanent areas” means areas on land or water that provide for launch, recovery, and operation of small unmanned aircraft.

(7) *PUBLIC UNMANNED AIRCRAFT SYSTEM.*—The term “public unmanned aircraft system” means an unmanned aircraft system that meets the qualifications and conditions required for operation of a public aircraft (as defined in section 40102(a)).

(8) *SENSE-AND-AVOID CAPABILITY.*—The term “sense-and-avoid capability” means the capability of an unmanned aircraft to remain a safe distance from and to avoid collisions with other airborne aircraft.

(9) *SMALL UNMANNED AIRCRAFT.*—The term “small unmanned aircraft” means an unmanned aircraft weighing less than 55 pounds, including everything that is on board the aircraft.

(10) *UNMANNED AIRCRAFT.*—The term “unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(11) *UNMANNED AIRCRAFT SYSTEM.*—The term “unmanned aircraft system” means an unmanned aircraft and associated elements (including communication links and the components that control the unmanned aircraft) that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(12) *UTM.*—The term “UTM” means an unmanned aircraft traffic management system or service.

**§ 45502. Integration of civil unmanned aircraft systems into national airspace system**

(a) *REQUIRED PLANNING FOR INTEGRATION.*—

(1) *COMPREHENSIVE PLAN.*—Not later than November 10, 2012, the Secretary of Transportation, in consultation with representatives of the aviation industry, Federal agencies that employ unmanned aircraft systems technology in the national airspace system, and the unmanned aircraft systems industry, shall develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national airspace system.

(2) *CONTENTS OF PLAN.*—The plan required under paragraph (1) shall contain, at a minimum, recommendations or projections on—

(A) the rulemaking to be conducted under subsection (b), with specific recommendations on how the rulemaking will—

(i) define the acceptable standards for operation and certification of civil unmanned aircraft systems;

(ii) ensure that any civil unmanned aircraft system includes a sense-and-avoid capability; and

(iii) establish standards and requirements for the operator and pilot of a civil unmanned aircraft system, including standards and requirements for registration and licensing;

(B) the best methods to enhance the technologies and subsystems necessary to achieve the safe and routine operation of civil unmanned aircraft systems in the national airspace system;

(C) a phased-in approach to the integration of civil unmanned aircraft systems into the national airspace system;

(D) a timeline for the phased-in approach described under subparagraph (C);

(E) creation of a safe airspace designation for cooperative manned and unmanned flight operations in the national airspace system;

(F) establishment of a process to develop certification, flight standards, and air traffic requirements for civil unmanned aircraft systems at test ranges where such systems are subject to testing;

(G) the best methods to ensure the safe operation of civil unmanned aircraft systems and public unmanned aircraft systems simultaneously in the national airspace system; and

(H) incorporation of the plan into the annual NextGen Implementation Plan document (or any successor document) of the Federal Aviation Administration.

(3) **DEADLINE.**—The plan required under paragraph (1) shall provide for the safe integration of civil unmanned aircraft systems into the national airspace system as soon as practicable, but not later than September 30, 2015.

(4) **REPORT TO CONGRESS.**—Not later than February 14, 2013, the Secretary shall submit to Congress a copy of the plan required under paragraph (1).

(5) **ROADMAP.**—Not later than February 14, 2013, the Secretary shall approve and make available in print and on the Administration's internet website a 5-year roadmap for the introduction of civil unmanned aircraft systems into the national airspace system, as coordinated by the Unmanned Aircraft Program Office of the Administration. The Secretary shall update the roadmap annually.

(b) **RULEMAKING.**—Not later than 18 months after the date on which the plan required under subsection (a)(1) is submitted to Congress under subsection (a)(4), the Secretary shall publish in the Federal Register—

(1) a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under section 45508;

(2) a notice of proposed rulemaking to implement the recommendations of the plan required under subsection (a)(1), with the final rule to be published not later than 16 months after the date of publication of the notice; and

(3) an update to the Administration's most recent policy statement on unmanned aircraft systems, contained in Docket No. FAA-2006-25714.

(c) **EXPANDING USE OF UNMANNED AIRCRAFT SYSTEMS IN ARCTIC.**—

(1) **IN GENERAL.**—Not later than August 12, 2012, the Secretary shall develop a plan and initiate a process to work with relevant Federal agencies and national and international communities to designate permanent areas in the Arctic where small unmanned aircraft may operate 24 hours per day for re-

search and commercial purposes. The plan for operations in these permanent areas shall include the development of processes to facilitate the safe operation of unmanned aircraft beyond line of sight. Such areas shall enable over-water flights from the surface to at least 2,000 feet in altitude, with ingress and egress routes from selected coastal launch sites.

(2) **AGREEMENTS.**—To implement the plan under paragraph (1), the Secretary may enter into an agreement with relevant national and international communities.

(3) **AIRCRAFT APPROVAL.**—Not later than 1 year after the entry into force of an agreement necessary to effectuate the purposes of this subsection, the Secretary shall work with relevant national and international communities to establish and implement a process, or may apply an applicable process already established, for approving the use of unmanned aircraft in the designated permanent areas in the Arctic without regard to whether an unmanned aircraft is used as a public aircraft, a civil aircraft, or a model aircraft.

**§ 45503. Risk-based permitting of unmanned aircraft systems**

(a) **IN GENERAL.**—Not later than 120 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish procedures for issuing permits under this section with respect to certain unmanned aircraft systems and operations thereof.

(b) **PERMITTING STANDARDS.**—Upon the submission of an application in accordance with subsection (d), the Administrator shall issue a permit with respect to the proposed operation of an unmanned aircraft system if the Administrator determines that the unmanned aircraft system and the proposed operation achieve a level of safety that is equivalent to—

(1) other unmanned aircraft systems and operations permitted under regulation, exemption, or other authority granted by the Administrator; or

(2) any other aircraft operation approved by the Administrator with similar risk characteristics or profiles.

(c) **SAFETY CRITERIA FOR CONSIDERATION.**—In determining whether a proposed operation meets the standards described in subsection (b), the Administrator shall consider the following safety criteria:

(1) The kinetic energy of the unmanned aircraft system.

(2) The location of the proposed operation, including the proximity to—

(A) structures;

(B) congested areas;

(C) special-use airspace; and

(D) persons on the ground.

(3) The nature of the operation, including any proposed risk mitigation.

(4) Any known hazard of the proposed operation and the severity and likelihood of such hazard.

(5) Any known failure modes of the unmanned aircraft system, failure mode effects and criticality, and any mitigating features or capabilities.



(6) *The operational history of relevant technologies, if available.*

(7) *Any history of civil penalties or certificate actions by the Administrator against the applicant seeking the permit.*

(8) *Any other safety criteria the Administrator considers appropriate.*

(d) *APPLICATION.—An application under this section shall include evidence that the unmanned aircraft system and the proposed operation thereof meet the standards described in subsection (b) based on the criteria described in subsection (c).*

(e) *SCOPE OF PERMIT.—A permit issued under this section shall—*

(1) *be valid for 5 years;*

(2) *constitute approval of both the airworthiness of the unmanned aircraft system and the proposed operation of such system;*

(3) *be renewable for additional 5-year periods; and*

(4) *contain any terms necessary to ensure aviation safety.*

(f) *NOTICE.—Not later than 120 days after the Administrator receives a complete application under subsection (d), the Administrator shall provide the applicant written notice of a decision to approve or disapprove of the application or to request a modification of the application that is necessary for approval of the application.*

(g) *PERMITTING PROCESS.—The Administrator shall issue a permit under this section without regard to subsections (b) through (d) of section 553 of title 5 and chapter 35 of title 44 if the Administrator determines that the operation permitted will not occur near a congested area.*

(h) *EXEMPTION FROM CERTAIN REQUIREMENTS.—To the extent consistent with aviation safety, the Administrator may exempt applicants under this section from paragraphs (1) through (3) of section 44711(a).*

(i) *WITHDRAWAL.—The Administrator may, at any time, modify or withdraw a permit issued under this section.*

(j) *APPLICABILITY.—This section shall not apply to small unmanned aircraft systems and operations authorized by the final rule on small unmanned aircraft systems issued pursuant to section 45502(b)(1).*

(k) *EXPEDITED REVIEW.—The Administrator shall review and act upon applications under this section on an expedited basis for unmanned aircraft systems and operations thereof to be used primarily in, or primarily in direct support of, emergency preparedness, emergency response, or disaster recovery efforts, including efforts in connection with natural disasters and severe weather events.*

#### **§ 45504. Public unmanned aircraft systems**

(a) *GUIDANCE.—Not later than November 10, 2012, the Secretary of Transportation shall issue guidance regarding the operation of public unmanned aircraft systems to—*

(1) *expedite the issuance of a certificate of authorization process;*

(2) *provide for a collaborative process with public agencies to allow for an incremental expansion of access to the national airspace system as technology matures and the necessary safety analysis and data become available, and until standards are completed and technology issues are resolved;*

(3) *facilitate the capability of public agencies to develop and use test ranges, subject to operating restrictions required by the Federal Aviation Administration, to test and operate unmanned aircraft systems; and*

(4) *provide guidance on a public entity's responsibility when operating an unmanned aircraft without a civil airworthiness certificate issued by the Administration.*

(b) **STANDARDS FOR OPERATION AND CERTIFICATION.**—*Not later than December 31, 2015, the Administrator shall develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system.*

(c) **AGREEMENTS WITH GOVERNMENT AGENCIES.**—

(1) **IN GENERAL.**—*Not later than May 14, 2012, the Secretary shall enter into agreements with appropriate government agencies to simplify the process for issuing certificates of waiver or authorization with respect to applications seeking authorization to operate public unmanned aircraft systems in the national airspace system.*

(2) **CONTENTS.**—*The agreements shall—*

(A) *with respect to an application described in paragraph (1)—*

- (i) *provide for an expedited review of the application;*
- (ii) *require a decision by the Administrator on approval or disapproval within 60 business days of the date of submission of the application; and*
- (iii) *allow for an expedited appeal if the application is disapproved;*

(B) *allow for a one-time approval of similar operations carried out during a fixed period of time; and*

(C) *allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less, if operated—*

- (i) *within the line of sight of the operator;*
- (ii) *less than 400 feet above the ground;*
- (iii) *during daylight conditions;*
- (iv) *within Class G airspace; and*
- (v) *outside of 5 statute miles from any airport, heliport, seaplane base, spaceport, or other location with aviation activities.*

**§ 45505. Special rules for certain unmanned aircraft systems**

(a) **IN GENERAL.**—*Notwithstanding any other requirement of this subtitle, and not later than August 12, 2012, the Secretary of Transportation shall determine if certain unmanned aircraft systems may operate safely in the national airspace system before completion of the plan and rulemaking required by section 45502 or the guidance required under section 45504.*

(b) **ASSESSMENT OF UNMANNED AIRCRAFT SYSTEMS.**—*In making the determination under subsection (a), the Secretary shall determine, at a minimum—*

- (1) *which types of unmanned aircraft systems, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national*

airspace system or the public or pose a threat to national security; and

(2) whether a certificate of waiver, certificate of authorization, or airworthiness certification under section 44704 is required for the operation of unmanned aircraft systems identified under paragraph (1).

(c) **REQUIREMENTS FOR SAFE OPERATION.**—If the Secretary determines under this section that certain unmanned aircraft systems may operate safely in the national airspace system, the Secretary shall establish requirements for the safe operation of such aircraft systems in the national airspace system.

**§ 45506. Certification of new air navigation facilities for unmanned aircraft and other aircraft**

(a) **IN GENERAL.**—Not later than 18 months after the date of enactment of this section, and notwithstanding section 2208 of the FAA Extension, Safety, and Security Act of 2016 (49 U.S.C. 40101 note), the Administrator of the Federal Aviation Administration shall initiate a rulemaking to establish procedures for issuing air navigation facility certificates pursuant to section 44702 to operators of—

(1) UTM for unmanned aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below; and

(2) low-altitude CNS for aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below.

(b) **MINIMUM REQUIREMENTS.**—In issuing a final rule pursuant to subsection (a), the Administrator, at a minimum, shall provide for the following:

(1) **CERTIFICATION STANDARDS.**—The Administrator shall issue an air navigation facility certificate under the final rule if the Administrator determines that a UTM or low-altitude CNS facilitates or improves the safety of unmanned aircraft or other aircraft operations that occur primarily or exclusively in airspace 400 feet above ground level and below, including operations conducted under a waiver issued pursuant to subpart D of part 107 of title 14, Code of Federal Regulations.

(2) **CRITERIA FOR CONSIDERATION.**—In determining whether a UTM or low-altitude CNS meets the standard described in paragraph (1), the Administrator shall, as appropriate, consider—

(A) protection of persons and property on the ground;

(B) remote identification of aircraft;

(C) collision avoidance with respect to obstacles and aircraft;

(D) deconfliction of aircraft trajectories;

(E) safe and reliable interoperability or noninterference with air traffic control and other systems operated in the national airspace system;

(F) detection of noncooperative aircraft;

(G) geographic and local factors;

(H) aircraft equipage; and

(I) qualifications, if any, necessary to operate the UTM or low-altitude CNS.

(3) *APPLICATION.*—An application for an air navigation facility certificate under the final rule shall include evidence that the UTM or low-altitude CNS meets the standard described in paragraph (1) based on the criteria described in paragraph (2).

(4) *SCOPE OF CERTIFICATE.*—The Administrator shall ensure that an air navigation facility certificate issued under the final rule—

(A) constitutes approval of the UTM or low-altitude CNS for the duration of the term of the certificate;

(B) constitutes authorization to operate the UTM or low-altitude CNS for the duration of the term of the certificate; and

(C) contains such limitations and conditions as may be necessary to ensure aviation safety.

(5) *NOTICE.*—Not later than 120 days after the Administrator receives a complete application under the final rule, the Administrator shall provide the applicant with a written approval, disapproval, or request to modify the application.

(6) *LOW RISK AREAS.*—Under the final rule, the Administrator shall establish expedited procedures for approval of UTM or low-altitude CNS operated in—

(A) airspace away from congested areas; or

(B) other airspace above areas in which operations of unmanned aircraft pose very low risk.

(7) *EXEMPTION FROM CERTAIN REQUIREMENTS.*—To the extent consistent with aviation safety, the Administrator may exempt applicants under the final rule from requirements under sections 44702, 44703, and 44711.

(8) *CERTIFICATE MODIFICATIONS AND REVOCATIONS.*—A certificate issued under the final rule may, at any time, be modified or revoked by the Administrator.

(c) *CONSULTATION.*—In carrying out this section, the Administrator shall consult with other Federal agencies, as appropriate.

**§45507. Special rules for certain UTM and low-altitude CNS**

(a) *IN GENERAL.*—Notwithstanding any other requirement of this chapter, and not later than 120 days after the date of enactment of this section, the Secretary of Transportation shall determine if certain UTM and low-altitude CNS may operate safely in the national airspace system before completion of the rulemaking required by section 45506.

(b) *ASSESSMENT OF UTM AND LOW-ALTITUDE CNS.*—In making the determination under subsection (a), the Secretary shall determine, at a minimum, which types of UTM and low-altitude CNS, if any, as a result of their operational capabilities, reliability, intended use, and areas of operation, and the characteristics of the aircraft involved, do not create a hazard to users of the national airspace system or the public.

(c) *REQUIREMENTS FOR SAFE OPERATION.*—If the Secretary determines that certain UTM and low-altitude CNS may operate safely in the national airspace system, the Secretary shall establish requirements for their safe operation in the national airspace system.

(d) *EXPEDITED PROCEDURES.*—The Secretary shall provide expedited procedures for reviewing and approving UTM or low-altitude

CNS operated to monitor or control aircraft operated primarily or exclusively in airspace above—

- (1) croplands;
- (2) areas other than congested areas; and
- (3) other areas in which the operation of unmanned aircraft poses very low risk.

(e) CONSULTATION.—In carrying out this section, the Administrator shall consult with other Federal agencies, as appropriate.

**§ 45508. Operation of small unmanned aircraft**

(a) EXEMPTION AND CERTIFICATE OF WAIVER OR AUTHORIZATION FOR CERTAIN OPERATIONS.—Not later than 270 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall establish a procedure for granting an exemption and issuing a certificate of waiver or authorization for the operation of a small unmanned aircraft system in United States airspace for the purposes described in section 45501(1).

(b) OPERATION OF EXEMPTION AND CERTIFICATE OF WAIVER OR AUTHORIZATION.—

(1) EXEMPTION.—An exemption granted under this section shall—

(A) exempt the operator of a small unmanned aircraft from the provisions of title 14, Code of Federal Regulations, that are exempted in Exemption No. 11687, issued on May 26, 2015, Regulatory Docket Number FAA-2015-0117, or in a subsequent exemption; and

(B) contain conditions and limitations described in paragraphs 3 through 31 of such Exemption No. 11687, or conditions and limitations of a subsequent exemption.

(2) CERTIFICATE OF WAIVER OR AUTHORIZATION.—A certificate of waiver or authorization issued under this section shall allow the operation of small unmanned aircraft according to—

(A) the standard provisions and air traffic control special provisions of the certificate of waiver or authorization FAA Form 7711-1 (7-74); or

(B) the standard and special provisions of a subsequent certificate of waiver or authorization.

(c) NOTICE TO ADMINISTRATOR.—Before operating a small unmanned aircraft pursuant to a certificate of waiver or authorization granted under this section, the operator shall provide written notice to the Administrator, in a form and manner specified by the Administrator, that contains such information and assurances as the Administrator determines necessary in the interest of aviation safety and the efficiency of the national airspace system, including a certification that the operator has read, understands, and will comply with all terms, conditions, and limitations of the certificate of waiver or authorization.

(d) WAIVER OF AIRWORTHINESS CERTIFICATE.—Notwithstanding section 44711(a)(1), the holder of a certificate of waiver or authorization granted under this section may operate a small unmanned aircraft under the terms, conditions, and limitations of such certificate without an airworthiness certificate.

(e) PROCEDURE.—The granting of an exemption or the issuance of a certificate of waiver or authorization, or any other action authorized by this section, shall be made without regard to—

(1) section 553 of title 5; or

(2) chapter 35 of title 44.

(f) **STATUTORY CONSTRUCTION.**—Nothing in this section may be construed to—

(1) affect the issuance of a rule by or any other activity of the Secretary of Transportation or the Administrator under any other provision of law; or

(2) invalidate an exemption or certificate of waiver or authorization issued by the Administrator before the date of enactment of this section.

(g) **EFFECTIVE PERIODS.**—An exemption or certificate of waiver or authorization issued under this section, or an amendment of such exemption or certificate, shall cease to be valid on the effective date of a final rule on small unmanned aircraft systems issued under section 45502(b)(1).

#### **§ 45509. Special rules for model aircraft**

(a) **IN GENERAL.**—Notwithstanding any other provision of law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies, including this subtitle, the Administrator of the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft or an aircraft being developed as a model aircraft (other than the registration of certain model aircraft pursuant to section 44103), if—

(1) the aircraft is flown strictly for hobby or recreational use;

(2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a community-based organization;

(3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;

(4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft;

(5) the aircraft is not operated over or within the property of a fixed site facility that operates amusement rides available for use by the general public or the property extending 500 lateral feet beyond the perimeter of such facility unless the operation is authorized by the owner of the amusement facility; and

(6) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

(b) **COMMERCIAL OPERATION FOR INSTRUCTIONAL OR EDUCATIONAL PURPOSES.**—A flight of an unmanned aircraft shall be treated as a flight of a model aircraft for purposes of subsection (a) (regardless of any compensation, reimbursement, or other consideration exchanged or incidental economic benefit gained in the course of planning, operating, or supervising the flight), if the flight is—

(1) conducted for instructional or educational purposes; and

(2) operated or supervised by a member of a community-based organization recognized pursuant to subsection (e).

(c) **STATUTORY CONSTRUCTION.**—Nothing in this section may be construed to limit the authority of the Administrator to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system.

(d) **COMMUNITY-BASED ORGANIZATION DEFINED.**—In this section, the term “community-based organization” means an entity that—

(1) is described in section 501(c)(3) of the Internal Revenue Code of 1986;

(2) is exempt from tax under section 501(a) of the Internal Revenue Code of 1986;

(3) the mission of which is demonstrably the furtherance of model aviation;

(4) provides a comprehensive set of safety guidelines for all aspects of model aviation addressing the assembly and operation of model aircraft and that emphasize safe aeromodeling operations within the national airspace system and the protection and safety of individuals and property on the ground;

(5) provides programming and support for any local charter organizations, affiliates, or clubs; and

(6) provides assistance and support in the development and operation of locally designated model aircraft flying sites.

(e) **RECOGNITION OF COMMUNITY-BASED ORGANIZATIONS.**—Not later than 180 days after the date of enactment of this section, the Administrator shall establish, and make available to the public, a process for recognizing community-based organizations that meet the eligibility criteria under subsection (d).

#### **§ 45510. Carriage of property for compensation or hire**

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this section, the Secretary of Transportation shall issue a final rule authorizing the carriage of property by operators of small unmanned aircraft systems for compensation or hire within the United States.

(b) **CONTENTS.**—The final rule required under subsection (a) shall provide for the following:

(1) **SMALL UAS AIR CARRIER CERTIFICATE.**—The Administrator of the Federal Aviation Administration, at the direction of the Secretary, shall establish a small UAS air carrier certificate for persons that undertake directly, or by lease or other arrangement, the operation of small unmanned aircraft systems to carry property in air transportation, including commercial fleet operations with highly automated unmanned aircraft systems. The requirements to obtain a small UAS air carrier certificate shall—

(A) account for the unique characteristics of highly automated small unmanned aircraft systems; and

(B) include only those obligations necessary for the safe operation of small unmanned aircraft systems.

(2) **SMALL UAS AIR CARRIER CERTIFICATION PROCESS.**—The Administrator, at the direction of the Secretary, shall establish a process for the issuance of a small UAS air carrier certificate described in paragraph (1) that is streamlined, simple, perform-

ance-based, and risk-based. Such certification process shall consider—

(A) safety and the mitigation of operational risks from highly automated small unmanned aircraft systems to the safety of other aircraft, and persons and property on the ground;

(B) the safety and reliability of highly automated small unmanned aircraft system design, including technological capabilities and operational limitations to mitigate such risks; and

(C) the competencies and compliance programs of manufacturers, operators, and companies that both manufacture and operate small unmanned aircraft systems and components.

(3) **SMALL UAS AIR CARRIER CLASSIFICATION.**—The Secretary shall develop a classification system for small unmanned aircraft systems air carriers to establish economic authority for the carriage of property by small unmanned aircraft systems for compensation or hire. Such classification shall only require—

(A) registration with the Department of Transportation; and

(B) a valid small UAS air carrier certificate as described in paragraph (1).

#### **§45511. Micro UAS operations**

(a) **IN GENERAL.**—Not later than 60 days after the date of enactment of this section, the Administrator of the Federal Aviation Administration shall charter an aviation rulemaking advisory committee to develop recommendations for regulations under which any person may operate a micro unmanned aircraft system, the aircraft component of which weighs 4.4 pounds or less, including payload, without the person operating the system being required to pass any airman certification requirement, including any requirements under section 44703, part 61 of title 14, Code of Federal Regulations, or any other rule or regulation relating to airman certification.

(b) **CONSIDERATIONS.**—In developing recommendations for the operation of micro unmanned aircraft systems under subsection (a), the members of the aviation rulemaking advisory committee shall consider rules for operation of such systems—

(1) at an altitude of less than 400 feet above ground level;

(2) with an airspeed of not greater than 40 knots;

(3) within the visual line of sight of the operator;

(4) during the hours between sunrise and sunset;

(5) by an operator who has passed an aeronautical knowledge and safety test administered by the Federal Aviation Administration online specifically for the operation of micro unmanned aircraft systems, with such test being of a length and difficulty that acknowledges the reduced operational complexity and low risk of micro unmanned aircraft systems;

(6) not over unprotected persons uninvolved in its operation; and

(7) at least 5 statute miles from the geographic center of a tower-controlled airport or airport denoted on a current Federal Aviation Administration-published aeronautical chart, except



*that a micro unmanned aircraft system may be operated closer than 5 statute miles to the airport if the operator—*

*(A) provides prior notice to the airport operator; and*

*(B) receives, for a tower-controlled airport, prior approval from the air traffic control facility located at the airport.*

*(c) CONSULTATION.—*

*(1) IN GENERAL.—In developing recommendations for recommended regulations under subsection (a), the aviation rule-making advisory committee shall consult with—*

*(A) unmanned aircraft systems stakeholders, including manufacturers of micro unmanned aircraft systems;*

*(B) community-based aviation organizations;*

*(C) the Center of Excellence for Unmanned Aircraft Systems; and*

*(D) appropriate Federal agencies.*

*(2) FACCA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to an aviation rulemaking advisory committee chartered under this section.*

*(d) RULEMAKING.—Not later than 180 days after the date of receipt of the recommendations under subsection (a), the Administrator shall issue regulations incorporating recommendations of the aviation rulemaking advisory committee that provide for the operation of micro unmanned aircraft systems in the United States—*

*(1) without an airman certificate; and*

*(2) without an airworthiness certificate for the associated unmanned aircraft.*

*(e) SCOPE OF REGULATIONS.—*

*(1) IN GENERAL.—In determining whether a person may operate an unmanned aircraft system under 1 or more of the circumstances described under paragraphs (1) through (3) of subsection (b), the Administrator shall use a risk-based approach and consider, at a minimum, the physical and functional characteristics of the unmanned aircraft system.*

*(2) LIMITATION.—The Administrator may only issue regulations under this section for unmanned aircraft systems that the Administrator determines may be operated safely in the national airspace system pursuant to those regulations.*

*(f) RULES OF CONSTRUCTION.—Nothing in this section may be construed—*

*(1) to prohibit a person from operating an unmanned aircraft system under a circumstance described under paragraphs (1) through (3) of subsection (b) if—*

*(A) the circumstance is allowed by regulations issued under this section; and*

*(B) the person operates the unmanned aircraft system in a manner prescribed by the regulations; or*

*(2) to limit or affect in any way the Administrator's authority to conduct a rulemaking, make a determination, or carry out any activity related to unmanned aircraft or unmanned aircraft systems under any other provision of law.*

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## SUBPART IV—ENFORCEMENT AND PENALTIES

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### CHAPTER 461—INVESTIGATIONS AND PROCEEDINGS

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#### § 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 Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator of the Federal Aviation Administration with respect to aviation duties and powers designated to be carried out by the Administrator) in whole or in part under this part, part B, [or subsection (l) or (s) of section 114] *subsection (l) or (s) of section 114, or section 90501* 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, Under Secretary, or Administrator, as appropriate. The Secretary, Under Secretary, or Administrator 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, Under Secretary, or Administrator, the court has exclusive jurisdiction to affirm, amend, modify, or set aside any part of the order and may order the Secretary, Under Secretary, or Administrator to conduct further proceedings. After reasonable notice to the Secretary, Under Secretary, or Administrator, 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, Under Secretary, or Administrator, 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, Under Secretary, or Administrator only if the objection was made in the proceeding conducted by the Secretary, Under Secretary, or Administrator 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.

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## CHAPTER 463—PENALTIES

### § 46301. Civil penalties

(a) GENERAL PENALTY.—(1) A person is liable to the United States Government for a civil penalty of not more than \$25,000 (or \$1,100 if the person is an individual or small business concern) for violating—

(A) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II or III of chapter 421, chapter 423, chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), and 44908), chapter 451, *chapter 455*, section 47107(b) (including any assurance made under such section), **[or section 47133]** *section 47133, or section 90501(b)(3)* of this title;

(B) a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies;

(C) any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title; or

(D) a regulation of the United States Postal Service under this part.

(2) A separate violation occurs under this subsection for each day the violation (other than a violation of section 41719) continues or, if applicable, for each flight involving the violation (other than a violation of section 41719).

(3) PENALTY FOR DIVERSION OF AVIATION REVENUES.—The amount of a civil penalty assessed under this section for a violation of section 47107(b) of this title (or any assurance made under such section) or section 47133 of this title may be increased above the otherwise applicable maximum amount under this section to an amount not to exceed 3 times the amount of revenues that are used in violation of such section.

(4) Aviation security violations- Notwithstanding paragraph (1) of this subsection, the maximum civil penalty for violating chapter 449 shall be \$10,000; except that the maximum civil penalty shall be \$25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

(5) PENALTIES APPLICABLE TO INDIVIDUALS AND SMALL BUSINESS CONCERNS.—

(A) An individual (except an airman serving as an airman) or small business concern is liable to the Government for a civil penalty of not more than \$10,000 for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), section 44502 (b) or (c), chapter 447 (except sections 44717-44723), chapter 449 (except sections 44902, 44903(d), 44904, and 44907-44909), **[or chapter 451,]** *chapter 451, chapter 455, or section 46314(a)* of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) applies.

(B) A civil penalty of not more than \$10,000 may be imposed for each violation under paragraph (1) committed by an individual or small business concern related to—

- (i) the transportation of hazardous material;
- (ii) the registration or recordation under chapter 441 of an aircraft not used to provide air transportation;
- (iii) a violation of section 44718(d), relating to the limitation on construction or establishment of landfills;
- (iv) a violation of section 44725, relating to the safe disposal of life-limited aircraft parts; or
- (v) a violation of section 40127 or section 41705, relating to discrimination.

(C) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41719 committed by an individual or small business concern shall be \$5,000 instead of \$1,000.

(D) Notwithstanding paragraph (1), the maximum civil penalty for a violation of section 41712 (including a regulation prescribed or order issued under such section) or any other regulation prescribed by the Secretary by an individual or small business concern that is intended to afford consumer protection to commercial air transportation passengers shall be \$2,500 for each violation.

(6) FAILURE TO COLLECT AIRPORT SECURITY BADGES.—Notwithstanding paragraph (1), any employer (other than a governmental entity or airport operator) who employs an employee to whom an airport security badge or other identifier used to obtain access to a secure area of an airport is issued before, on, or after the date of enactment of this paragraph and who does not collect or make reasonable efforts to collect such badge from the employee on the date that the employment of the employee is terminated and does not notify the operator of the airport of such termination within 24 hours of the date of such termination shall be liable to the Government for a civil penalty not to exceed \$10,000.

(b) SMOKE ALARM DEVICE PENALTY.—(1) A passenger may not tamper with, disable, or destroy a smoke alarm device located in a lavatory on an aircraft providing air transportation or intrastate air transportation.

(2) An individual violating this subsection is liable to the Government for a civil penalty of not more than \$2,000.

(c) PROCEDURAL REQUIREMENTS.—(1) The Secretary of Transportation may impose a civil penalty for the following violations only after notice and an opportunity for a hearing:

(A) a violation of subsection (b) of this section or chapter 411, chapter 413 (except sections 41307 and 41310(b)-(f)), chapter 415 (except sections 41502, 41505, and 41507-41509), chapter 417 (except sections 41703, 41704, 41710, 41713, and 41714), chapter 419, subchapter II of chapter 421, chapter 423, or section 44909 of this title.

(B) a violation of a regulation prescribed or order issued under any provision to which clause (A) of this paragraph applies.

(C) a violation of any term of a certificate or permit issued under section 41102, 41103, or 41302 of this title.

(D) a violation under subsection (a)(1) of this section related to the transportation of hazardous material.

(2) The Secretary shall give written notice of the finding of a violation and the civil penalty under paragraph (1) of this subsection.

(d) ADMINISTRATIVE IMPOSITION OF PENALTIES.—(1) In this subsection—

(A) “flight engineer” means an individual who holds a flight engineer certificate issued under part 63 of title 14, Code of Federal Regulations.

(B) “mechanic” means an individual who holds a mechanic certificate issued under part 65 of title 14, Code of Federal Regulations.

(C) “pilot” means an individual who holds a pilot certificate issued under part 61 of title 14, Code of Federal Regulations.

(D) “repairman” means an individual who holds a repairman certificate issued under part 65 of title 14, Code of Federal Regulations.

(2) The Administrator of the Federal Aviation Administration may impose a civil penalty for a violation of chapter 401 (except sections 40103(a) and (d), 40105, 40106(b), 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 451, *chapter 455*, section 46301(b), section 46302 (for a violation relating to section 46504), section 46318, section 46319, section 46320, or section 47107(b) (as further defined by the Secretary under section 47107(k) 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 Secretary of Homeland Security may impose a civil penalty for a violation of chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909), section 46302 (except for a violation relating to section 46504), or section 46303 of this title or a regulation prescribed or order issued under any of those provisions. The Secretary of Homeland Security or Administrator shall give written notice of the finding of a violation and the penalty.

(3) In a civil action to collect a civil penalty imposed by the Secretary of Homeland Security or Administrator under this subsection, the issues of liability and the amount of the penalty may not be reexamined.

(4) Notwithstanding paragraph (2) of this subsection, the district courts of the United States have exclusive jurisdiction of a civil action involving a penalty the Secretary of Homeland Security or Administrator initiates if—

(A) the amount in controversy is more than—

(i) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100-- Century of Aviation Reauthorization Act;

(ii) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(iii) \$50,000 if the violation was committed by an individual or small business concern on or after that date;

(B) the action is in rem or another action in rem based on the same violation has been brought;

(C) the action involves an aircraft subject to a lien that has been seized by the Government; or

(D) another action has been brought for an injunction based on the same violation.

(5)(A) The Administrator may issue an order imposing a penalty under this subsection against an individual acting as a pilot, flight engineer, mechanic, or repairman only after advising the individual of the charges or any reason the Administrator relied on for the proposed penalty and providing the individual an opportunity to answer the charges and be heard about why the order shall not be issued.

(B) An individual acting as a pilot, flight engineer, mechanic, or repairman may appeal an order imposing a penalty under this subsection to the National Transportation Safety Board. After notice and an opportunity for a hearing on the record, the Board shall affirm, modify, or reverse the order. The Board may modify a civil penalty imposed to a suspension or revocation of a certificate.

(C) When conducting a hearing under this paragraph, the Board is not bound by findings of fact of the Administrator but is bound by all validly adopted interpretations of laws and regulations the Administrator carries out and of written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds an interpretation is arbitrary, capricious, or otherwise not according to law.

(D) When an individual files an appeal with the Board under this paragraph, the order of the Administrator is stayed.

(6) An individual substantially affected by an order of the Board under paragraph (5) of this subsection, or the Administrator when the Administrator decides that an order of the Board under paragraph (5) will have a significant adverse impact on carrying out this part, may obtain judicial review of the order under section 46110 of this title. The Administrator shall be made a party to the judicial review proceedings. Findings of fact of the Board are conclusive if supported by substantial evidence.

(7)(A) The Administrator may impose a penalty on a person (except an individual acting as a pilot, flight engineer, mechanic, or repairman) only after notice and an opportunity for a hearing on the record.

(B) In an appeal from a decision of an administrative law judge as the result of a hearing under subparagraph (A) of this paragraph, the Administrator shall consider only whether—

- (i) each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;
- (ii) each conclusion of law is made according to applicable law, precedent, and public policy; and
- (iii) the judge committed a prejudicial error that supports the appeal.

(C) Except for good cause, a civil action involving a penalty under this paragraph may not be initiated later than 2 years after the violation occurs.

(D) In the case of a violation of section 47107(b) of this title or any assurance made under such section—

- (i) a civil penalty shall not be assessed against an individual;
- (ii) a civil penalty may be compromised as provided under subsection (f); and
- (iii) judicial review of any order assessing a civil penalty may be obtained only pursuant to section 46110 of this title.

(8) The maximum civil penalty the Under Secretary, Administrator, or Board may impose under this subsection is—

(A) \$50,000 if the violation was committed by any person before the date of enactment of the Vision 100--Century of Aviation Reauthorization Act;

(B) \$400,000 if the violation was committed by a person other than an individual or small business concern on or after that date; or

(C) \$50,000 if the violation was committed by an individual or small business concern on or after that date.

(9) This subsection applies only to a violation occurring after August 25, 1992.

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty under subsection (a)(3) of this section related to transportation of hazardous material, the Secretary shall consider—

(1) the nature, circumstances, extent, and gravity of the violation;

(2) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(3) other matters that justice requires.

(f) COMPROMISE AND SETOFF.—(1)(A) The Secretary may compromise the amount of a civil penalty imposed for violating—

(i) chapter 401 (except sections 40103(a) and (d), 40105, 40116, and 40117), chapter 441 (except section 44109), section 44502(b) or (c), chapter 447 (except sections 44717 and 44719-44723), chapter 449 (except sections 44902, 44903(d), 44904, 44907(a)-(d)(1)(A) and (d)(1)(C)-(f), 44908, and 44909), [or chapter 451] *chapter 451, or chapter 455* of this title; or

(ii) a regulation prescribed or order issued under any provision to which clause (i) of this subparagraph applies.

(B) The Postal Service may compromise the amount of a civil penalty imposed under subsection (a)(1)(D) of this section.

(2) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(g) JUDICIAL REVIEW.—An order of the Secretary or the Administrator imposing a civil penalty may be reviewed judicially only under section 46110 of this title.

(h) NONAPPLICATION.—(1) This section does not apply to the following when performing official duties:

(A) a member of the armed forces of the United States.

(B) a civilian employee of the Department of Defense subject to the Uniform Code of Military Justice.

(2) The appropriate military authority is responsible for taking necessary disciplinary action and submitting to the Secretary (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator with respect to aviation safety duties and powers designated to be carried out by the Administrator) a timely report on action taken.

(i) SMALL BUSINESS CONCERN DEFINED.—In this section, the term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

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**CHAPTER 465—SPECIAL AIRCRAFT JURISDICTION OF THE UNITED STATES**

Sec.  
46501. Definitions.  
\* \* \* \* \*

**[46503. Repealed.]**  
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**PART B—AIRPORT DEVELOPMENT AND NOISE**

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**CHAPTER 471—AIRPORT DEVELOPMENT**

SUBCHAPTER I—AIRPORT IMPROVEMENT

Sec.  
47101. Policies.  
\* \* \* \* \*

**[47136. Inherently low-emission airport vehicle pilot program.**  
**[47136a. Zero-emission airport vehicles and infrastructure.]**  
*47136. Zero-emission airport vehicles and infrastructure.*  
\* \* \* \* \*

**[47140. Airport ground support equipment emissions retrofit pilot program.**  
**[47140a. Increasing the energy efficiency of airport power sources.]**  
*47140. Increasing the energy efficiency of airport power sources.*  
\* \* \* \* \*

SUBCHAPTER III—AVIATION DEVELOPMENT STREAMLINING

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SUBCHAPTER I—AIRPORT IMPROVEMENT

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**§ 47102. Definitions**

In this subchapter—

- (1) “air carrier airport” means a public airport regularly served by—
  - (A) an air carrier certificated by the Secretary of Transportation under section 41102 of this title (except a charter air carrier); or
  - (B) at least one air carrier—
    - (i) operating under an exemption from section 41101(a)(1) of this title that the Secretary grants; and
    - (ii) having at least 2,500 passenger boardings at the airport during the prior calendar year.
- (2) “airport”—
  - (A) means—
    - (i) an area of land or water used or intended to be used for the landing and taking off of aircraft;
    - (ii) an appurtenant area used or intended to be used for airport buildings or other airport facilities or rights of way; and
    - (iii) airport buildings and facilities located in any of those areas; and



(B) includes a heliport.

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

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

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

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

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

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

(ii) safety or security equipment, including explosive detection devices, universal access systems, and emergency call boxes, the Secretary requires by regulation for, or approves as contributing significantly to, the safety or security of individuals and property at the airport and integrated in-pavement lighting systems for runways and taxiways and other runway and taxiway incursion prevention devices;

(iii) equipment to remove snow, to measure runway surface friction, or for aviation-related weather reporting, including closed circuit weather surveillance equipment if the airport is located in Alaska;

(iv) firefighting and rescue equipment at an airport that serves scheduled passenger operations of air carrier aircraft designed for more than 9 passenger seats;

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

(vi) interactive training systems;

(vii) windshear detection equipment that is certified by the Administrator of the Federal Aviation Administration;

(viii) stainless steel adjustable lighting extensions approved by the Administrator;

(ix) engineered materials arresting systems as described in the Advisory Circular No. 150/5220-22 published by the Federal Aviation Administration on August 21, 1998, including any revision to the circular; and

(x) replacement of baggage conveyor systems, and reconfiguration of terminal baggage areas, that the Secretary determines are necessary to install bulk explosive detection devices; except that such activities shall be eligible for funding under this subchapter only using amounts apportioned under section 47114.

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

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

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

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

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

(F) constructing, reconstructing, repairing, or improving an airport, or purchasing capital equipment for an airport, if necessary for compliance with the responsibilities of the operator or owner of the airport under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), the Clean Air Act (42 U.S.C. 7401 et seq.), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), except constructing or purchasing capital equipment that would benefit primarily a revenue-producing area of the airport used by a nonaeronautical business.

(G) acquiring land for, or work necessary to construct, a pad suitable for deicing aircraft before takeoff at a commercial service airport, including constructing or reconstructing paved areas, drainage collection structures, treatment and discharge systems, appropriate lighting, paved access for deicing vehicles and aircraft, and including acquiring glycol recovery vehicles, but not including acquiring aircraft deicing fluids or constructing or reconstructing storage facilities for aircraft deicing equipment or fluids.

(H) routine work to preserve and extend the useful life of runways, taxiways, and aprons at nonhub airports and airports that are not primary airports, under guidelines issued by the Administrator of the Federal Aviation Administration.

(I) constructing, reconstructing, or improving an airport, or purchasing nonrevenue generating capital equipment to be owned by an airport, for the purpose of transferring passengers, cargo, or baggage between the aeronautical and ground transportation modes on airport property.

(J) constructing an air traffic control tower or acquiring and installing air traffic control, communications, and related equipment at an air traffic control tower under the terms specified in section 47124(b)(4).

(K) work necessary to construct or modify airport facilities to provide low-emission fuel systems, gate electrification, and other related air quality improvements at a commercial service airport if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175A of the Clean Air Act (42 U.S.C.

7501(2); 7505a) and if such project will result in an airport receiving appropriate emission credits, as described in section 47139.

(L) a project for the acquisition or conversion of vehicles and ground support equipment, owned by a commercial service airport, to low-emission technology, if the airport is located in an air quality nonattainment or maintenance area (as defined in sections 171(2) and 175A of the Clean Air Act (42 U.S.C. 7501(2); 7505a) and if such project will result in an airport receiving appropriate emission credits as described in section 47139.

(M) construction of mobile refueler parking within a fuel farm at a nonprimary airport meeting the requirements of section 112.8 of title 40, Code of Federal Regulations.

(N) terminal development under section 47119(a).

(O) acquiring and installing facilities and equipment to provide air conditioning, heating, or electric power from terminal-based, nonexclusive use facilities to aircraft parked at a public use airport for the purpose of reducing energy use or harmful emissions as compared to the provision of such air conditioning, heating, or electric power from aircraft-based systems.

*(P) converting or retrofitting vehicles and ground support equipment into eligible zero-emission vehicles and equipment or acquiring, by purchase or lease, eligible zero-emission vehicles and equipment.*

*(Q) constructing or modifying airport facilities to install a microgrid in order to provide increased resilience to severe weather, terrorism, and other causes of grid failures.*

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

(5) “airport planning” means planning as defined by regulations the Secretary prescribes and includes—

(A) integrated airport system planning;

(B) developing an environmental management system; and

(C) developing a plan for recycling and minimizing the generation of airport solid waste, consistent with applicable State and local recycling laws, including the cost of a waste audit.

(6) “amount made available under section 48103” or “amount newly made available” means the amount authorized for grants under section 48103 as that amount may be limited in that year by a subsequent law, but as determined without regard to grant obligation recoveries made in that year or amounts covered by section 47107(f).

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

(8) “general aviation airport” means a public airport that is located in a State and that, as determined by the Secretary—

(A) does not have scheduled service; or

- (B) has scheduled service with less than 2,500 passenger boardings each year.
- (9) “integrated airport system planning” means developing for planning purposes information and guidance to decide the extent, kind, location, and timing of airport development needed in a specific area to establish a viable, balanced, and integrated system of public-use airports, including—
- (A) identifying system needs;
  - (B) developing an estimate of systemwide development costs;
  - (C) conducting studies, surveys, and other planning actions, including those related to airport access, needed to decide which aeronautical needs should be met by a system of airports; and
  - (D) standards prescribed by a State, except standards for safety of approaches, for airport development at nonprimary public-use airports.
- (10) “landed weight” means the weight of aircraft transporting only cargo in intrastate, interstate, and foreign air transportation, as the Secretary determines under regulations the Secretary prescribes.
- (11) “large hub airport” means a commercial service airport that has at least 1.0 percent of the passenger boardings.
- (12) “low-emission technology” means technology for vehicles and equipment whose emission performance is the best achievable under emission standards established by the Environmental Protection Agency and that relies exclusively on alternative fuels that are substantially nonpetroleum based, as defined by the Department of Energy, but not excluding hybrid systems or natural gas powered vehicles.
- (13) “medium hub airport” means a commercial service airport that has at least 0.25 percent but less than 1.0 percent of the passenger boardings.
- (14) “nonhub airport” means a commercial service airport that has less than 0.05 percent of the passenger boardings.
- (15) “passenger boardings”—
- (A) means, unless the context indicates otherwise, revenue passenger boardings in the United States in the prior calendar year on an aircraft in service in air commerce, as the Secretary determines under regulations the Secretary prescribes; and
  - (B) includes passengers who continue on an aircraft in international flight that stops at an airport in the 48 contiguous States, Alaska, or Hawaii for a nontraffic purpose.
- (16) “primary airport” means a commercial service airport the Secretary determines to have more than 10,000 passenger boardings each year.
- (17) “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.
- (18) “project cost” means a cost involved in carrying out a project.
- (19) “project grant” means a grant of money the Secretary makes to a sponsor to carry out at least one project.

- (20) “public agency” means—
- (A) a State or political subdivision of a State;
  - (B) a tax-supported organization; or
  - (C) an Indian tribe or pueblo.
- (21) “public airport” means an airport used or intended to be used for public purposes—
- (A) that is under the control of a public agency; and
  - (B) of which the area used or intended to be used for the landing, taking off, or surface maneuvering of aircraft is publicly owned.
- (22) “public-use airport” means—
- (A) a public airport; or
  - (B) a privately-owned airport used or intended to be used for public purposes that is—
    - (i) a reliever airport; or
    - (ii) determined by the Secretary to have at least 2,500 passenger boardings each year and to receive scheduled passenger aircraft service.
- (23) “reliever airport” means an airport the Secretary designates to relieve congestion at a commercial service airport and to provide more general aviation access to the overall community.
- (24) “revenue producing aeronautical support facilities” means fuel farms, hangar buildings, self-service credit card aeronautical fueling systems, airplane wash racks, major rehabilitation of a hangar owned by a sponsor, or other aeronautical support facilities that the Secretary determines will increase the revenue producing ability of the airport.
- (25) “small hub airport” means a commercial service airport that has at least 0.05 percent but less than 0.25 percent of the passenger boardings.
- (26) “sponsor” means—
- (A) a public agency that submits to the Secretary under this subchapter an application for financial assistance; and
  - (B) a private owner of a public-use airport that submits to the Secretary under this subchapter an application for financial assistance for the airport.
- (27) “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.
- (28) “terminal development” means—
- (A) development of—
    - (i) an airport passenger terminal building, including terminal gates;
    - (ii) access roads servicing exclusively airport traffic that leads directly to or from an airport passenger terminal building; and
    - (iii) walkways that lead directly to or from an airport passenger terminal building; and
  - (B) the cost of a vehicle described in section 47119(a)(1)(B).
- (29) “lactation area” means a room or other location in a commercial service airport that—

(A) provides a location for members of the public to express breast milk that is shielded from view and free from intrusion from the public;

(B) has a door that can be locked;

(C) includes a place to sit, a table or other flat surface, and an electrical outlet;

(D) is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs; and

(E) is not located in a restroom.

(30) “eligible zero-emission vehicle and equipment” means a zero-emission vehicle, equipment related to such a vehicle, and ground support equipment that includes zero-emission technology that is—

(A) used exclusively at a commercial service airport; or

(B) used exclusively to transport people or materials to and from a commercial service airport.

(31) “microgrid” means a localized grouping of electricity sources and loads that normally operates connected to and synchronous with the traditional centralized electrical grid, but can disconnect and function autonomously as physical or economic conditions dictate.

(32) “zero-emission vehicle” means a zero-emission vehicle as defined in section 88.102–94 of title 40, Code of Federal Regulations, or a vehicle that produces zero exhaust emissions of any criteria pollutant (or precursor pollutant) under any possible operational modes and conditions.

\* \* \* \* \*

#### § 47104. Project grant authority

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

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

(c) EXPIRATION OF AUTHORITY.—After **September 30, 2017,** *September 30, 2023*, the Secretary may not incur obligations under subsection (b) of this section, except for obligations of amounts—

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

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

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**§ 47106. Project grant application approval conditioned on satisfaction of project requirements**

(a) PROJECT GRANT APPLICATION APPROVAL.—The Secretary of Transportation may approve an application under this subchapter for a project grant only if the Secretary 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;

(5) the sponsor has authority to carry out the project as proposed; and

(6) if the project is for an airport that has an airport master plan *that includes the project*, the master plan addresses issues relating to solid waste recycling at the airport, including—

(A) the feasibility of solid waste recycling at the airport;

(B) minimizing the generation of solid waste at the airport;

(C) operation and maintenance requirements;

(D) the review of waste management contracts; and

(E) the potential for cost savings or the generation of revenue.

(b) AIRPORT DEVELOPMENT PROJECT GRANT APPLICATION APPROVAL.—The Secretary may approve an application under this subchapter for an airport development project grant for an airport only if the Secretary 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, 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 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 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;

(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 about a proposed project; and

(iii) with respect to an airport development project involving the location of an airport, runway, or major runway extension at a medium or large hub airport, the airport sponsor has made available to and has provided upon request to the metropolitan planning organization in the area in which the airport is located, if any, a copy of the proposed amendment to the airport layout plan to depict the project and a copy of any airport master plan in which the project is described or depicted; and

(B) 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 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 3” 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 request, the sponsor shall give the Secretary a copy of the transcript of any hearing held under paragraph (1)(A) of this subsection.

(4) The Secretary may make a finding under paragraph (1)(B) 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 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 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 discovers the noncompliance, the Secretary finds that a violation has occurred.

(2) The 180-day period may be extended by—

(A) agreement between the Secretary 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 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 cir-



cuit 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 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.

(f) **COMPETITION PLANS.**—

(1) **PROHIBITION.**—Beginning in fiscal year 2001, no passenger facility charge may be approved for a covered airport under section 40117 and no grant may be made under this subchapter for a covered airport unless the airport has submitted to the Secretary a written competition plan in accordance with this subsection.

(2) **CONTENTS.**—A competition plan under this subsection shall include information on the availability of airport gates and related facilities, leasing and sub-leasing arrangements, gate-use requirements, gate-assignment policy, financial constraints, airport controls over air- and ground-side capacity, and whether the airport intends to build or acquire gates that would be used as common facilities.

(3) **SPECIAL RULE FOR FISCAL YEAR 2002.**—This subsection does not apply to any passenger facility fee approved, or grant made, in fiscal year 2002 if the fee or grant is to be used to improve security at a covered airport.

(4) **COVERED AIRPORT DEFINED.**—In this subsection, the term “covered airport” means a commercial service airport—

(A) that has more than .25 percent of the total number of passenger boardings each year at all such airports; and

(B) at which one or two air carriers control more than 50 percent of the passenger boardings.

(g) **CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.**—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.

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

(a) **GENERAL WRITTEN ASSURANCES.**—The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that—

- (1) the airport will be available for public use on reasonable conditions and without unjust discrimination;
- (2) air carriers making similar use of the airport will be subject to substantially comparable charges—
  - (A) for facilities directly and substantially related to providing air transportation; and
  - (B) regulations and conditions, except for differences based on reasonable classifications, such as between—
    - (i) tenants and nontenants; and
    - (ii) signatory and nonsignatory carriers;
- (3) the airport operator will not withhold unreasonably the classification or status of tenant or signatory from an air carrier that assumes obligations substantially similar to those already imposed on air carriers of that classification or status;
- (4) a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport, with a right given to only one fixed-base operator to provide services at an airport deemed not to be an exclusive right if—
  - (A) the right would be unreasonably costly, burdensome, or impractical for more than one fixed-base operator to provide the services; and
  - (B) allowing more than one fixed-base operator to provide the services would require reducing the space leased under an existing agreement between the one fixed-base operator and the airport owner or operator;
- (5) fixed-base operators similarly using the airport will be subject to the same charges;
- (6) an air carrier using the airport may service itself or use any fixed-base operator allowed by the airport operator to service any carrier at the airport;
- (7) the airport and facilities on or connected with the airport will be operated and maintained suitably, with consideration given to climatic and flood conditions;
- (8) a proposal to close the airport temporarily for a nonaeronautical purpose must first be approved by the Secretary;
- (9) appropriate action will be taken to ensure that terminal airspace required to protect instrument and visual operations to the airport (including operations at established minimum flight altitudes) will be cleared and protected by mitigating existing, and preventing future, airport hazards;
- (10) appropriate action, including the adoption of zoning laws, has been or will be taken to the extent reasonable to restrict the use of land next to or near the airport to uses that are compatible with normal airport operations;
- (11) each of the airport's facilities developed with financial assistance from the United States Government and each of the airport's facilities usable for the landing and taking off of aircraft always will be available without charge for use by Government aircraft in common with other aircraft, except that if the use is substantial, the Government may be charged a reasonable share, proportionate to the use, of the cost of operating and maintaining the facility used;
- (12) the airport owner or operator will provide, without charge to the Government, property interests of the sponsor in

land or water areas or buildings that the Secretary decides are desirable for, and that will be used for, constructing at Government expense, facilities for carrying out activities related to air traffic control or navigation;

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

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

(B) without including in the rate base used for the charges the Government's share of costs for any project for which a grant is made under this subchapter or was made under the Federal Airport Act or the Airport and Airway Development Act of 1970;

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

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

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

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

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

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

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

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

(ii) bear all cost of relocating the property or its replacement to a site acceptable to the Secretary and of restoring the property or its replacement to the level of safety, utility, efficiency, and cost of operation that existed before the alteration was made, except in the case of a relocation or replacement of an existing airport facility that meets the conditions of section 47110(d);

(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 chapter 11 of title 40 or an equivalent qualifications-based requirement prescribed for or by the sponsor;

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

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

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

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

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

(21) if the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long-term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose~~[\.]~~; *and*

(22) *with respect to a medium or large hub airport, the airport owner or operator will maintain a lactation area in each passenger terminal building of the airport in the sterile area (as defined in section 1540.5 of title 49, Code of Federal Regulations) of the building.*

(b) WRITTEN ASSURANCES ON USE OF REVENUE.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

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

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

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

(c) WRITTEN ASSURANCES ON ACQUIRING LAND.—(1) In this subsection, land is needed for an airport purpose (except a noise compatibility purpose) if—

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

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

(B) for land purchased with a grant the owner or operator received not later than December 30, 1987, the Secretary of Transportation or the department, agency, or instrumentality of the Government that made the grant was notified by the owner or operator of the use of the land and did not object to the use and the land is still being used for that purpose.

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

(A) if the land was or will be acquired for a noise compatibility purpose (including land serving as a noise buffer either by being undeveloped or developed in a way that is compatible with using the land for noise buffering purposes)—

(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 reinvested in another project at the airport or transferred to another airport as the Secretary prescribes under paragraph (4); or

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

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

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

(iii) the part of the proceeds from disposing of the land that is proportional to the Government's share of the cost of acquiring the land will be reinvested in another project at the airport or transferred to another airport as the Secretary prescribes under paragraph (4).

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

(4) In approving the reinvestment or transfer of proceeds under paragraph (2)(A)(iii) or (2)(B)(iii), the Secretary shall give preference, in descending order, to the following actions:

(A) Reinvestment in an approved noise compatibility project.

(B) Reinvestment in an approved project that is eligible for funding under section 47117(e).

(C) Reinvestment in an approved airport development project that is eligible for funding under section 47114, 47115, or 47117.

(D) Transfer to a sponsor of another public airport to be reinvested in an approved noise compatibility project at that airport.

(E) Payment to the Secretary for deposit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986.

(5)(A) A lease at fair market value by an airport owner or operator of land acquired for a noise compatibility purpose using a grant provided under this subchapter shall not be considered a disposal for purposes of paragraph (2).

(B) The airport owner or operator may use revenues from a lease described in subparagraph (A) for an approved airport development project that is eligible for funding under section 47114, 47115, or 47117.

(C) The Secretary shall coordinate with each airport owner or operator to ensure that leases described in subparagraph (A) are consistent with noise buffering purposes.

(D) The provisions of this paragraph apply to all land acquired before, on, or after the date of enactment of this paragraph.

(d) ASSURANCES OF CONTINUATION AS PUBLIC-USE AIRPORT.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a privately owned public-use airport only if the Secretary receives appropriate assurances that the airport will continue to function as a public-use airport during the economic life (that must be at least 10 years) of any facility at the airport that was developed with Government financial assistance under this subchapter.

(e) WRITTEN ASSURANCES OF OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—(1) The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that the airport owner or operator will take necessary action to ensure, to the maximum extent practicable, that at least 10 percent of all businesses at the airport selling consumer products or providing consumer services to the public are small business concerns (as defined by regulations of the Secretary) owned and controlled by a socially and economically disadvantaged individual (as defined in section 47113(a) of this title) or qualified HUBZone small business concerns (as defined in section 3(p) of the Small Business Act).

(2) An airport owner or operator may meet the percentage goal of paragraph (1) of this subsection by including any business oper-

ated through a management contract or subcontract. The dollar amount of a management contract or subcontract with a disadvantaged business enterprise shall be added to the total participation by disadvantaged business enterprises in airport concessions and to the base from which the airport's percentage goal is calculated. The dollar amount of a management contract or subcontract with a non-disadvantaged business enterprise and the gross revenue of business activities to which the management contract or subcontract pertains may not be added to this base.

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

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

(B) An airport owner or operator may require a car rental firm to meet a requirement under paragraph (1) of this subsection by purchasing or leasing goods or services from a disadvantaged business enterprise. If an owner or operator requires such a purchase or lease, a car rental firm shall be permitted to meet the requirement by including purchases or leases of vehicles from any vendor that qualifies as a small business concern owned and controlled by a socially and economically disadvantaged individual or as a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

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

(5) This subsection does not preempt—

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

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

(6) An airport owner or operator may provide opportunities for a small business concern owned and controlled by a socially and economically disadvantaged individual or a qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act) to participate through direct contractual agreement with that concern.

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

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

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

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

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

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

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

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

(g) ENSURING COMPLIANCE.—(1) To ensure compliance with this section, the Secretary of Transportation—

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

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

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

(h) MODIFYING ASSURANCES AND REQUIRING COMPLIANCE WITH ADDITIONAL ASSURANCES.—

(1) IN GENERAL.—Subject to paragraph (2), before modifying an assurance required of a person receiving a grant under this subchapter and in effect after December 29, 1987, or to require compliance with an additional assurance from the person, the Secretary of Transportation must—

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

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

(2) PUBLIC NOTICE BEFORE WAIVER OF AERONAUTICAL LAND-USE ASSURANCE.—Before modifying an assurance under subsection (c)(2)(B) that requires any property to be used for an aeronautical purpose, the Secretary must provide notice to the public not less than 30 days before making such modification.

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

(j) USE OF REVENUE IN HAWAII.—(1) In this subsection—

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



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

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

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

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

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

(5) Hawaii shall determine costs, revenue, and projected revenue increases referred to in this subsection and shall submit the determinations to the Secretary of Transportation. A determination is approved unless the Secretary disapproves it not later than 30 days after it is submitted.

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

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

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

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

(1) IN GENERAL.—Not later than 90 days after August 23, 1994, the Secretary of Transportation shall establish policies and procedures that will assure the prompt and effective enforcement of subsections (a)(13) and (b) of this section and grant assurances made under such subsections. Such policies and procedures shall recognize the exemption provision in subsection (b)(2) of this section and shall respond to the information contained in the reports of the Inspector General of the Department of Transportation on airport revenue diversion and such other relevant information as the Secretary may by law consider.

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

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

(B) use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

(C) payments in lieu of taxes or other assessments that exceed the value of services provided; or

(D) payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

(3) EFFORTS TO BE SELF-SUSTAINING.—With respect to subsection (a)(13) of this section, policies and procedures to be established pursuant to paragraph (1) of this subsection shall take into account, at a minimum, whether owners and operators of airports, when entering into new or revised agreements or otherwise establishing rates, charges, and fees, have undertaken reasonable efforts to make their particular airports as self-sustaining as possible under the circumstances existing at such airports.

(4) ADMINISTRATIVE SAFEGUARDS.—Policies and procedures to be established pursuant to paragraph (1) shall mandate internal controls, auditing requirements, and increased levels of Department of Transportation personnel sufficient to respond fully and promptly to complaints received regarding possible violations of subsections (a)(13) and (b) of this section and grant assurances made under such subsections and to alert the Secretary to such possible violations.

(5) STATUTE OF LIMITATIONS.—In addition to the statute of limitations specified in subsection (m)(7), with respect to project grants made under this chapter—

(A) any request by a sponsor or any other governmental entity to any airport for additional payments for services conducted off of the airport or for reimbursement for capital contributions or operating expenses shall be filed not later than 6 years after the date on which the expense is incurred; and

(B) any amount of airport funds that are used to make a payment or reimbursement as described in subparagraph

- (A) after the date specified in that subparagraph shall be considered to be an illegal diversion of airport revenues that is subject to subsection (m).
- (l) AUDIT CERTIFICATION.—
- (1) IN GENERAL.—The Secretary of Transportation, acting through the Administrator of the Federal Aviation Administration, shall include a provision in the compliance supplement provisions to require a recipient of a project grant (or any other recipient of Federal financial assistance that is provided for an airport) to include as part of an annual audit conducted under sections 7501 through 7505 of title 31, a review concerning the funding activities with respect to an airport that is the subject of the project grant (or other Federal financial assistance) and the sponsors, owners, or operators (or other recipients) involved.
- (2) CONTENT OF REVIEW.—A review conducted under paragraph (1) shall provide reasonable assurances that funds paid or transferred to sponsors are paid or transferred in a manner consistent with the applicable requirements of this chapter and any other applicable provision of law (including regulations promulgated by the Secretary or the Administrator).
- (m) RECOVERY OF ILLEGALLY DIVERTED FUNDS.—
- (1) IN GENERAL.—Not later than 180 days after the issuance of an audit or any other report that identifies an illegal diversion of airport revenues (as determined under subsections (b) and (k) and section 47133), the Secretary, acting through the Administrator, shall—
- (A) review the audit or report;
- (B) perform appropriate factfinding; and
- (C) conduct a hearing and render a final determination concerning whether the illegal diversion of airport revenues asserted in the audit or report occurred.
- (2) NOTIFICATION.—Upon making such a finding, the Secretary, acting through the Administrator, shall provide written notification to the sponsor and the airport of—
- (A) the finding; and
- (B) the obligations of the sponsor to reimburse the airport involved under this paragraph.
- (3) ADMINISTRATIVE ACTION.—The Secretary may withhold any amount from funds that would otherwise be made available to the sponsor, including funds that would otherwise be made available to a State, municipality, or political subdivision thereof (including any multimodal transportation agency or transit authority of which the sponsor is a member entity) as part of an apportionment or grant made available pursuant to this title, if the sponsor—
- (A) receives notification that the sponsor is required to reimburse an airport; and
- (B) has had an opportunity to reimburse the airport, but has failed to do so.
- (4) CIVIL ACTION.—If a sponsor fails to pay an amount specified under paragraph (3) during the 180-day period beginning on the date of notification and the Secretary is unable to withhold a sufficient amount under paragraph (3), the Secretary, acting through the Administrator, may initiate a civil action

under which the sponsor shall be liable for civil penalty in an amount equal to the illegal diversion in question plus interest (as determined under subsection (n)).

(5) DISPOSITION OF PENALTIES.—

(A) AMOUNTS WITHHELD.—The Secretary or the Administrator shall transfer any amounts withheld under paragraph (3) to the Airport and Airway Trust Fund.

(B) CIVIL PENALTIES.—With respect to any amount collected by a court in a civil action under paragraph (4), the court shall cause to be transferred to the Airport and Airway Trust Fund any amount collected as a civil penalty under paragraph (4).

(6) REIMBURSEMENT.—The Secretary, acting through the Administrator, shall, as soon as practicable after any amount is collected from a sponsor under paragraph (4), cause to be transferred from the Airport and Airway Trust Fund to an airport affected by a diversion that is the subject of a civil action under paragraph (4), reimbursement in an amount equal to the amount that has been collected from the sponsor under paragraph (4) (including any amount of interest calculated under subsection (n)).

(7) STATUTE OF LIMITATIONS.—No person may bring an action for the recovery of funds illegally diverted in violation of this section (as determined under subsections (b) and (k)) or section 47133 after the date that is 6 years after the date on which the diversion occurred.

(n) INTEREST.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary, acting through the Administrator, shall charge a minimum annual rate of interest on the amount of any illegal diversion of revenues referred to in subsection (m) in an amount equal to the average investment interest rate for tax and loan accounts of the Department of the Treasury (as determined by the Secretary of the Treasury) for the applicable calendar year, rounded to the nearest whole percentage point.

(2) ADJUSTMENT OF INTEREST RATES.—If, with respect to a calendar quarter, the average investment interest rate for tax and loan accounts of the Department of the Treasury exceeds the average investment interest rate for the immediately preceding calendar quarter, rounded to the nearest whole percentage point, the Secretary of the Treasury may adjust the interest rate charged under this subsection in a manner that reflects that change.

(3) ACCRUAL.—Interest assessed under subsection (m) shall accrue from the date of the actual illegal diversion of revenues referred to in subsection (m).

(4) DETERMINATION OF APPLICABLE RATE.—The applicable rate of interest charged under paragraph (1) shall—

(A) be the rate in effect on the date on which interest begins to accrue under paragraph (3); and

(B) remain at a rate fixed under subparagraph (A) during the duration of the indebtedness.

(o) PAYMENT BY AIRPORT TO SPONSOR.—If, in the course of an audit or other review conducted under this section, the Secretary or the Administrator determines that an airport owes a sponsor

funds as a result of activities conducted by the sponsor or expenditures by the sponsor for the benefit of the airport, interest on that amount shall be determined in the same manner as provided in paragraphs (1) through (4) of subsection (n), except that the amount of any interest assessed under this subsection shall be determined from the date on which the Secretary or the Administrator makes that determination.

(p) Notwithstanding any written assurances prescribed in subsections (a) through (o), a general aviation airport with more than 300,000 annual operations may be exempt from having to accept scheduled passenger air carrier service, provided that the following conditions are met:

(1) No scheduled passenger air carrier has provided service at the airport within 5 years prior to January 1, 2002.

(2) The airport is located within or underneath the Class B airspace of an airport that maintains an airport operating certificate pursuant to section 44706 of title 49.

(3) The certificated airport operating under section 44706 of title 49 does not contribute to significant passenger delays as defined by DOT/FAA in the "Airport Capacity Benchmark Report 2001".

(q) An airport that meets the conditions of paragraphs (1) through (3) of subsection (p) is not subject to section 47524 of title 49 with respect to a prohibition on all scheduled passenger service.

(r) COMPETITION DISCLOSURE REQUIREMENT.—

(1) IN GENERAL.—The Secretary of Transportation may approve an application under this subchapter for an airport development project grant for a large hub airport or a medium hub airport only if the Secretary receives assurances that the airport sponsor will provide the information required by paragraph (2) at such time and in such form as the Secretary may require.

(2) COMPETITIVE ACCESS.—On February 1 and August 1 of each year, an airport that during the previous 6-month period has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to provide service to the airport or to expand service at the airport shall transmit a report to the Secretary that—

(A) describes the requests;

(B) provides an explanation as to why the requests could not be accommodated; and

(C) provides a time frame within which, if any, the airport will be able to accommodate the requests.

(3) SUNSET PROVISION.—This subsection shall cease to be effective beginning **[October 1, 2017]** *October 1, 2023*.

(s) AGREEMENTS GRANTING THROUGH-THE-FENCE ACCESS TO GENERAL AVIATION AIRPORTS.—

(1) IN GENERAL.—Subject to paragraph (2), a sponsor of a general aviation airport shall not be considered to be in violation of this subtitle, or to be in violation of a grant assurance made under this section or under any other provision of law as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor enters into an agreement that grants to a person that owns residential real

property adjacent to or near the airport access to the airfield of the airport for the following:

- (A) Aircraft of the person.
- (B) Aircraft authorized by the person.
- (2) THROUGH-THE-FENCE AGREEMENTS.—
  - (A) IN GENERAL.—An agreement described in paragraph (1) between an airport sponsor and a property owner (or an association representing such property owner) shall be a written agreement that prescribes the rights, responsibilities, charges, duration, and other terms the airport sponsor determines are necessary to establish and manage the airport sponsor's relationship with the property owner.
  - (B) TERMS AND CONDITIONS.—An agreement described in paragraph (1) between an airport sponsor and a property owner (or an association representing such property owner) shall require the property owner, at minimum—
    - (i) to pay airport access charges that, as determined by the airport sponsor, are comparable to those charged to tenants and operators on-airport making similar use of the airport;
    - (ii) to bear the cost of building and maintaining the infrastructure that, as determined by the airport sponsor, is necessary to provide aircraft located on the property adjacent to or near the airport access to the airfield of the airport;
    - (iii) to maintain the property for residential, non-commercial use for the duration of the agreement;
    - (iv) to prohibit access to the airport from other properties through the property of the property owner; and
    - (v) to prohibit any aircraft refueling from occurring on the property.
- (t) RENEWAL OF CERTAIN LEASES.—
  - (1) IN GENERAL.—Notwithstanding subsection (a)(13), an airport owner or operator who renews a covered lease shall not be treated as violating a written assurance requirement under this section as a result of such renewal.
  - (2) COVERED LEASE DEFINED.—In this subsection, the term "covered lease" means a lease—
    - (A) originally entered into before the date of enactment of this subsection;
    - (B) under which a nominal lease rate is provided;
    - (C) under which the lessee is a Federal or State government entity; and
    - (D) that supports the operation of military aircraft by the Air Force or Air National Guard—
      - (i) at the airport; or
      - (ii) remotely from the airport.
- (u) CONSTRUCTION OF RECREATIONAL AIRCRAFT.—
  - (1) IN GENERAL.—*The construction of a covered aircraft shall be treated as an aeronautical activity for purposes of—*
    - (A) *determining an airport's compliance with a grant assurance made under this section or any other provision of law; and*
    - (B) *the receipt of Federal financial assistance for airport development.*

(2) *COVERED AIRCRAFT DEFINED.*—*In this subsection, the term “covered aircraft” means an aircraft—*

(A) *used or intended to be used exclusively for recreational purposes; and*

(B) *constructed or under construction by a private individual at a general aviation airport.*

(v) *COMMUNITY USE OF AIRPORT LAND.*—

(1) *IN GENERAL.*—*Notwithstanding subsection (a)(13), and subject to paragraph (2), the sponsor of a public-use airport shall not be considered to be in violation of this subtitle, or to be found in violation of a grant assurance made under this section, or under any other provision of law, as a condition for the receipt of Federal financial assistance for airport development, solely because the sponsor has entered into an agreement, including a revised agreement, with a local government providing for the use of airport property for an interim compatible recreational purpose at below fair market value.*

(2) *RESTRICTIONS.*—*This subsection shall apply only—*

(A) *to an agreement regarding airport property that was initially entered into before the publication of the Federal Aviation Administration’s Policy and Procedures Concerning the Use of Airport Revenue, dated February 16, 1999;*

(B) *if the agreement between the sponsor and the local government is subordinate to any existing or future agreements between the sponsor and the Secretary, including agreements related to a grant assurance under this section;*

(C) *to airport property that was acquired under a Federal airport development grant program;*

(D) *if the airport sponsor has provided a written statement to the Administrator that the property made available for a recreational purpose will not be needed for any aeronautical purpose during the next 10 years;*

(E) *if the agreement includes a term of not more than 2 years to prepare the airport property for the interim compatible recreational purpose and not more than 10 years of use for that purpose;*

(F) *if the recreational purpose will not impact the aeronautical use of the airport;*

(G) *if the airport sponsor provides a certification that the sponsor is not responsible for preparation, start-up, operations, maintenance, or any other costs associated with the recreational purpose; and*

(H) *if the recreational purpose is consistent with Federal land use compatibility criteria under section 47502.*

(3) *STATUTORY CONSTRUCTION.*—*Nothing in this subsection may be construed as permitting a diversion of airport revenue for the capital or operating costs associated with the community use of airport land.*

\* \* \* \* \*

#### **§ 47109. United States Government’s share of project costs**

(a) *GENERAL.*—*Except as otherwise provided in this section, the United States Government’s share of allowable project costs is—*

(1) 75 percent for a project at a [primary airport having at least .25 percent of the total number of passenger boardings each year at all commercial service airports;] *medium or large hub airport*;

(2) not more than 90 percent for a project funded by a grant issued to and administered by a State under section 47128, relating to the State block grant program;

(3) 90 percent for a project at any other airport;

(4) 70 percent for a project funded by the Administrator from the discretionary fund under section 47115 at an airport receiving an exemption under section 47134; and

[(5) for fiscal year 2002, 100 percent for a project described in section 47102(3)(J), 47102(3)(K), or 47102(3)(L). ]

(5) *95 percent for a project that—*

(A) *the Administrator determines is a successive phase of a multi-phase construction project for which the sponsor received a grant in fiscal year 2011; and*

(B) *for which the United States Government's share of allowable project costs could otherwise be 90 percent under paragraph (2) or (3).*

(b) INCREASED GOVERNMENT SHARE.—If, under subsection (a) of this section, the Government's share of allowable costs of a project in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, is less than the share applied on June 30, 1975, under section 17(b) of the Airport and Airway Development Act of 1970, the Government's share under subsection (a) of this section shall be increased by the lesser of—

(1) 25 percent;

(2) one-half of the percentage that the area of unappropriated and unreserved public lands and nontaxable Indian lands in the State is of the total area of the State; or

(3) the percentage necessary to increase the Government's share to the percentage that applied on June 30, 1975, under section 17(b) of the Act.

(c) GRANDFATHER RULE.—

(1) IN GENERAL.—In the case of any project approved after September 30, 2003, at a small hub airport or nonhub airport that is located in a State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) of more than 5 percent of the total area of all lands in the State, the Government's share of allowable costs of the project shall be increased by the same ratio as the basic share of allowable costs of a project divided into the increased (Public Lands States) share of allowable costs of a project as shown on documents of the Federal Aviation Administration dated August 3, 1979, at airports for which the general share was 80 percent on August 3, 1979. This subsection shall apply only if—

(A) the State contained unappropriated and unreserved public lands and nontaxable Indian lands of more than 5 percent of the total area of all lands in the State on August 3, 1979; and



(B) the application under subsection (b), does not increase the Government's share of allowable costs of the project.

(2) LIMITATION.—The Government's share of allowable project costs determined under this subsection shall not exceed the lesser of 93.75 percent or the highest percentage Government share applicable to any project in any State under subsection (b), except that at a primary non-hub and non-primary commercial service airport located in a State as set forth in paragraph (1) of this subsection that is within 15 miles of another State as set forth in paragraph (1) of this subsection, the Government's share shall be an average of the Government share applicable to any project in each of the States.

(d) SPECIAL RULE FOR PRIVATELY OWNED RELIEVER AIRPORTS.—If a privately owned reliever airport contributes any lands, easements, or rights-of-way to carry out a project under this subchapter, the current fair market value of such lands, easements, or rights-of-way shall be credited toward the non-Federal share of allowable project costs.

(e) SPECIAL RULE FOR TRANSITION FROM SMALL HUB TO MEDIUM HUB STATUS.—If the status of a small hub airport changes to a medium hub airport, the Government's share of allowable project costs for the airport may not exceed 90 percent for the first 2 fiscal years after such change in hub status.

(f) SPECIAL RULE FOR ECONOMICALLY DISTRESSED COMMUNITIES.—The Government's share of allowable project costs shall be 95 percent for a project at an airport that—

(1) is receiving essential air service for which compensation was provided to an air carrier under subchapter II of chapter 417; and

(2) is located in an area that meets one or more of the criteria established in section 301(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161(a)), as determined by the Secretary of Commerce.

\* \* \* \* \*

#### **§ 47112. Carrying out airport development projects**

(a) CONSTRUCTION WORK.—The Secretary of Transportation 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 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.

(b) PREVAILING WAGES.—A contract for more than \$2,000 involving labor for an airport development project carried out under a grant agreement under this subchapter must require contractors to pay labor minimum wage rates as determined by the Secretary of Labor under sections 3141-3144, 3146, and 3147 of title 40. The minimum rates must be included in the bids for the work and in the invitation for those bids.

(c) VETERANS' PREFERENCE.—(1) In this subsection—

(A) “disabled veteran” has the same meaning given that term in section 2108 of title 5.

(B) “Vietnam-era veteran” means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces for more than 180 consecutive days, any part of which occurred after August 4, 1964, and before May 8, 1975, and who was discharged or released from active duty in the armed forces under honorable conditions.

(C) “Afghanistan-Iraq war veteran” means an individual who served on active duty (as defined in section 101 of title 38) in the armed forces in support of Operation Enduring Freedom, Operation Iraqi Freedom, [or Operation New Dawn for more] *Operation New Dawn, Operation Inherent Resolve, Operation Freedom’s Sentinel, or any successor contingency operation to such operations for more than 180 consecutive days, any part of which occurred after September 11, 2001, and before the date prescribed by presidential proclamation or by law as the last day of Operation Enduring Freedom, Operation Iraqi Freedom, [or Operation New Dawn (whichever is later)] Operation New Dawn, Operation Inherent Resolve, Operation Freedom’s Sentinel, or any successor contingency operation to such operations (whichever is later)* , and who was discharged or released from active duty in the armed forces under honorable conditions.

(D) “Persian Gulf veteran” means an individual who served on active duty in the armed forces in the Southwest Asia theater of operations during the Persian Gulf War for more than 180 consecutive days, any part of which occurred after August 2, 1990, and before the date prescribed by presidential proclamation or by law, and who was discharged or released from active duty in the armed forces under honorable conditions.

(2) A contract involving labor for carrying out an airport development project under a grant agreement under this subchapter must require that preference in the employment of labor (except in executive, administrative, and supervisory positions) be given to Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined in section 3 of the Small Business Act (15 U.S.C. 632)) owned and controlled by disabled veterans when they are available and qualified for the employment.

\* \* \* \* \*

**§ 47114. Apportionments**

(a) DEFINITION.—In this section, “amount subject to apportionment” means the amount newly made available under section 48103 of this title for a fiscal year.

(b) APPORTIONMENT DATE.—On the first day of each fiscal year, the Secretary of Transportation shall apportion the amount subject to apportionment for that fiscal year as provided in this section.

(c) AMOUNTS APPORTIONED TO SPONSORS.—

(1) PRIMARY AIRPORTS.—

(A) APPORTIONMENT.—The Secretary shall apportion to the sponsor of each primary airport for each fiscal year an amount equal to—

(i) \$7.80 for each of the first 50,000 passenger boardings at the airport during the prior calendar year;

(ii) \$5.20 for each of the next 50,000 passenger boardings at the airport during the prior calendar year;

(iii) \$2.60 for each of the next 400,000 passenger boardings at the airport during the prior calendar year;

(iv) \$.65 for each of the next 500,000 passenger boardings at the airport during the prior calendar year; and

(v) \$.50 for each additional passenger boarding at the airport during the prior calendar year.

(B) MINIMUM AND MAXIMUM APPORTIONMENTS.—Not less than \$650,000 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.

(C) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more—

(i) the amount to be apportioned to a sponsor under subparagraph (A) shall be increased by doubling the amount that would otherwise be apportioned;

(ii) the minimum apportionment to a sponsor under subparagraph (B) shall be \$1,000,000 rather than \$650,000; and

(iii) the maximum apportionment to a sponsor under subparagraph (B) shall be \$26,000,000 rather than \$22,000,000.

(D) NEW AIRPORTS.—Notwithstanding subparagraph (A), the Secretary shall apportion on the first day of the first fiscal year following the official opening of a new airport with scheduled passenger air transportation an amount equal to the minimum amount set forth in subparagraph (B) or (C), as appropriate, to the sponsor of such airport.

(E) USE OF PREVIOUS FISCAL YEAR'S APPORTIONMENT.—Notwithstanding subparagraph (A), the Secretary may apportion to an airport sponsor in a fiscal year an amount equal to the amount apportioned to that sponsor in the previous fiscal year if the Secretary finds that—

(i) passenger boardings at the airport fell below 10,000 in the calendar year used to calculate the apportionment;

(ii) the airport had at least 10,000 passenger boardings in the calendar year prior to the calendar year used to calculate apportionments to airport sponsors in a fiscal year; and

(iii) the cause of the shortfall in passenger boardings was a temporary but significant interruption in service by an air carrier to that airport due to an employment action, natural disaster, or other event unrelated to the demand for air transportation at the affected airport.

(F) SPECIAL RULE FOR FISCAL YEAR 2017.—Notwithstanding subparagraph (A), the Secretary shall apportion to a sponsor of an airport under that subparagraph for fiscal year 2017 an amount based on the number of passenger boardings at the airport during calendar year 2012 if the airport—

(i) had 10,000 or more passenger boardings during calendar year 2012;

(ii) had fewer than 10,000 passenger boardings during the calendar year used to calculate the apportionment for fiscal year 2017 under subparagraph (A); and

(iii) had scheduled air service at any point during the calendar year used to calculate the apportionment for fiscal year 2017 under subparagraph (A).

(2) CARGO AIRPORTS.—

(A) APPORTIONMENT.—Subject to subparagraph (D), the Secretary shall apportion an amount equal to 3.5 percent of the amount subject to apportionment each fiscal year to the sponsors of airports served by aircraft providing air transportation of only cargo with a total annual landed weight of more than 100,000,000 pounds.

(B) SUBALLOCATION FORMULA.—Any funds apportioned under subparagraph (A) to sponsors of airports described in subparagraph (A) shall be allocated among those airports in the proportion that the total annual landed weight of aircraft described in subparagraph (A) landing at each of those airports bears to the total annual landed weight of those aircraft landing at all those airports.

(C) LIMITATION.—In any fiscal year in which the total amount made available under section 48103 is less than \$3,200,000,000, not more than 8 percent of the amount apportioned under subparagraph (A) may be apportioned for any one airport.

(D) DISTRIBUTION TO OTHER AIRPORTS.—Before apportioning amounts to the sponsors of airports under subparagraph (A) for a fiscal year, the Secretary may set-aside a portion of such amounts for distribution to the sponsors of other airports, selected by the Secretary, that the Secretary finds will be served primarily by aircraft providing air transportation of only cargo.

(E) DETERMINATION OF LANDED WEIGHT.—Landed weight under this paragraph is the landed weight of aircraft landing at each airport described in subparagraph (A) during the prior calendar year.

(d) AMOUNTS APPORTIONED FOR GENERAL AVIATION AIRPORTS.—

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) AREA.—The term “area” includes land and water.

(B) POPULATION.—The term “population” means the population stated in the latest decennial census of the United States.

(2) APPORTIONMENT.—Except as provided in paragraph (3), the Secretary shall apportion to the States 18.5 percent of the amount subject to apportionment for each fiscal year as follows:

(A) 0.66 percent of the apportioned amount to Guam, American Samoa, the Northern Mariana Islands, and the Virgin Islands.

(B) Except as provided in paragraph (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) 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 (4), 49.67 percent of the apportioned amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in subparagraph (A) in the proportion that the area of each of those States bears to the total area of all of those States.

(3) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, rather than making an apportionment under paragraph (2), the Secretary shall apportion 20 percent of the amount subject to apportionment for each fiscal year as follows:

(A) To each airport, excluding primary airports but including reliever and nonprimary commercial service airports, in States the lesser of—

(i) \$150,000; or

(ii) 1/5 of the most recently published estimate of the 5-year costs for airport improvement for the airport, as listed in the national plan of integrated airport systems developed by the Federal Aviation Administration under section 47103.

(B) Any remaining amount to States as follows:

(i) 0.62 percent of the remaining amount to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

(ii) Except as provided in paragraph (4), 49.69 percent of the remaining amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in clause (i) in the proportion that the population of each of those States bears to the total population of all of those States.

(iii) Except as provided in paragraph (4), 49.69 percent of the remaining amount for airports, excluding primary airports but including reliever and nonprimary commercial service airports, in States not named in clause (i) in the proportion that the area of each of those States bears to the total area of all of those States.

(C) *During fiscal years 2018 through 2020—*

*(i) an airport that accrued apportionment funds under subparagraph (A) in fiscal year 2013 that is listed as having an unclassified status under the most recent national plan of integrated airport systems shall continue to accrue apportionment funds under subparagraph (A) at the same amount the airport accrued*

*apportionment funds in fiscal year 2013, subject to the conditions of this paragraph;*

*(ii) notwithstanding the period of availability as described in section 47117(b), an amount apportioned to an airport under clause (i) shall be available to the airport only during the fiscal year in which the amount is apportioned; and*

*(iii) notwithstanding the waiver permitted under section 47117(c)(2), an airport receiving apportionment funds under clause (i) may not waive its claim to any part of the apportioned funds in order to make the funds available for a grant for another public-use airport.*

*(D) An airport that re-establishes its classified status shall be eligible to accrue apportionment funds pursuant to subparagraph (A) so long as such airport retains its classified status.*

(4) AIRPORTS IN ALASKA, PUERTO RICO, AND HAWAII.—An amount apportioned under paragraph (2) or (3) to Alaska, Puerto Rico, or Hawaii for airports in such State may be made available by the Secretary for any public airport in those respective jurisdictions.

(5) USE OF STATE HIGHWAY SPECIFICATIONS.—

(A) IN GENERAL.—The Secretary may permit the use of State highway specifications for airfield pavement construction using funds made available under this subsection at nonprimary airports with runways of 5,000 feet or shorter serving aircraft that do not exceed 60,000 pounds gross weight if the Secretary determines that—

(i) safety will not be negatively affected; and

(ii) the life of the pavement will not be shorter than it would be if constructed using Administration standards.

(B) LIMITATION.—An airport may not seek funds under this subchapter for runway rehabilitation or reconstruction of any such airfield pavement constructed using State highway specifications for a period of 10 years after construction is completed unless the Secretary determines that the rehabilitation or reconstruction is required for safety reasons.

(6) INTEGRATED AIRPORT SYSTEM PLANNING.—Notwithstanding any other provision of this subsection, funds made available under this subsection may be used for integrated airport system planning that encompasses one or more primary airports.

(7) Eligibility to receive primary airport minimum apportionment amount.—Notwithstanding any other provision of this subsection, the Secretary may apportion to an airport sponsor in a fiscal year an amount equal to the minimum apportionment available under subsection (c)(1)(B) if the Secretary finds that the airport—

(A) received scheduled or unscheduled air service from a large certificated air carrier (as defined in part 241 of title 14, Code of Federal Regulations, or such other regulations as may

be issued by the Secretary under the authority of section 41709) in the calendar year used to calculate the apportionment; and

(B) had more than 10,000 passenger boardings in the calendar year used to calculate the apportionment.

(e) SUPPLEMENTAL APPORTIONMENT FOR ALASKA.—

(1) IN GENERAL.—Notwithstanding subsections (c) and (d) of this section, the Secretary may apportion amounts for airports in Alaska in the way in which amounts were apportioned in the fiscal year ending September 30, 1980, under section 15(a) of the Act. However, in apportioning amounts for a fiscal year under this subsection, the Secretary shall apportion—

(A) for each primary airport at least as much as would be apportioned for the airport under subsection (c)(1) of this section; and

(B) a total amount at least equal to the minimum amount required to be apportioned to airports in Alaska in the fiscal year ending September 30, 1980, under section 15(a)(3)(A) of the Act.

(2) AUTHORITY FOR DISCRETIONARY GRANTS.—This subsection does not prohibit the Secretary from making project grants for airports in Alaska from the discretionary fund under section 47115 of this title.

(3) AIRPORTS ELIGIBLE FOR FUNDS.—An amount apportioned under this subsection may be used for any public airport in Alaska.

(4) SPECIAL RULE.—In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, the amount that may be apportioned for airports in Alaska under paragraph (1) shall be increased by doubling the amount that would otherwise be apportioned.

(f) REDUCING APPORTIONMENTS.—

(1) IN GENERAL.—Subject to paragraph (3), 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 charge is imposed in the fiscal year under section 40117 of this title shall be reduced by an amount equal to—

(A) in the case of a charge of \$3.00 or less—

(i) except as provided in clause (ii), 50 percent of the projected revenues from the charge in the fiscal year but not by more than 50 percent of the amount that otherwise would be apportioned under this section; or

(ii) with respect to an airport in Hawaii, 50 percent of the projected revenues from the charge in the fiscal year but not by more than 50 percent of the excess of—

(I) the amount that otherwise would be apportioned under this section; over

(II) the amount equal to the amount specified in subclause (I) multiplied by the percentage of the total passenger boardings at the applicable airport that are comprised of interisland passengers; and

(B) in the case of a charge of more than \$3.00—

(i) except as provided in clause (ii), 75 percent of the projected revenues from the charge in the fiscal year but not by more than 75 percent of the amount that otherwise would be apportioned under this section; or  
 (ii) with respect to an airport in Hawaii, 75 percent of the projected revenues from the charge in the fiscal year but not by more than 75 percent of the excess of—

(I) the amount that otherwise would be apportioned under this section; over

(II) the amount equal to the amount specified in subclause (I) multiplied by the percentage of the total passenger boardings at the applicable airport that are comprised of interisland passengers.

(2) EFFECTIVE DATE OF REDUCTION.—A reduction in an apportionment required by paragraph (1) shall not take effect until the first fiscal year following the year in which the collection of the charge imposed under section 40117 is begun.

(3) SPECIAL RULE FOR TRANSITIONING AIRPORTS.—

(A) IN GENERAL.—Beginning with the fiscal year following the first calendar year in which the sponsor of an airport has more than .25 percent of the total number of boardings in the United States, the sum of the amount that would be apportioned under this section after application of paragraph (1) in a fiscal year to such sponsor and the projected revenues to be derived from the charge in such fiscal year shall not be less than the sum of the apportionment to such airport for the preceding fiscal year and the revenues derived from such charge in the preceding fiscal year.

(B) EFFECTIVE PERIOD.—Subparagraph (A) shall be in effect for fiscal year 2004.

(g) SUPPLEMENTAL APPORTIONMENT FOR PUERTO RICO AND UNITED STATES TERRITORIES.—The Secretary shall apportion amounts for airports in Puerto Rico and all other United States territories in accordance with this section. This subsection does not prohibit the Secretary from making project grants for airports in Puerto Rico or other United States territories from the discretionary fund under section 47115.

#### **§ 47115. Discretionary fund**

(a) EXISTENCE AND AMOUNTS IN FUND.—The Secretary of Transportation has a discretionary fund. The fund consists of—

- (1) amounts subject to apportionment for a fiscal year that are not apportioned under section 47114(c)-(e) of this title; and
- (2) 12.5 percent of amounts not apportioned under section 47114 of this title because of section 47114(f).

(b) AVAILABILITY OF AMOUNTS.—Subject to subsection (c) of this section and section 47117(e) of this title, the fund is available for making grants for any purpose for which amounts are made available under section 48103 of this title that the Secretary considers most appropriate to carry out this subchapter.

(c) MINIMUM PERCENTAGE FOR PRIMARY AND RELIEVER AIRPORTS.—At least 75 percent of the amount in the fund and distrib-



uted by the Secretary in a fiscal year shall be used for making grants—

(1) to preserve and enhance capacity, safety, and security at primary and reliever airports; and

(2) to carry out airport noise compatibility planning and programs at primary and reliever airports.

(d) CONSIDERATIONS.—

(1) FOR CAPACITY ENHANCEMENT PROJECTS.—In selecting a project for a grant to preserve and improve capacity funded in whole or in part from the fund, the Secretary shall consider—

(A) the effect that the project will have on overall national transportation system capacity;

(B) the benefit and cost of the project, including, in the case of a project at a reliever airport, the number of operations projected to be diverted from a primary airport to the reliever airport as a result of the project, as well as the cost savings projected to be realized by users of the local airport system;

(C) the financial commitment from non-United States Government sources to preserve or improve airport capacity;

(D) the airport improvement priorities of the States to the extent such priorities are not in conflict with subparagraphs (A) and (B);

(E) the projected growth in the number of passengers or aircraft that will be using the airport at which the project will be carried out; and

(F) the ability of the project to foster United States competitiveness in securing global air cargo activity at a United States airport.

(2) FOR ALL PROJECTS.—In selecting a project for a grant under this section, the Secretary shall consider among other factors whether—

(A) funding has been provided for all other projects qualifying for funding during the fiscal year under this chapter that have attained a higher score under the numerical priority system employed by the Secretary in administering the fund; and

(B) the sponsor will be able to commence the work identified in the project application in the fiscal year in which the grant is made or within 6 months after the grant is made, whichever is later.

(e) WAIVING PERCENTAGE REQUIREMENT.—If the Secretary decides the Secretary cannot comply with the percentage requirement of subsection (c) of this section in a fiscal year because there are insufficient qualified grant applications to meet that percentage, the amount the Secretary determines will not be distributed as required by subsection (c) is available for obligation during the fiscal year without regard to the requirement.

(f) CONSIDERATION OF DIVERSION OF REVENUES IN AWARDING DISCRETIONARY GRANTS.—

(1) GENERAL RULE.—Subject to paragraph (2), in deciding whether or not to distribute funds to an airport from the discretionary funds established by subsection (a) of this section and section 47116 of this title, the Secretary shall consider as

a factor militating against the distribution of such funds to the airport the fact that the airport is using revenues generated by the airport or by local taxes on aviation fuel for purposes other than capital or operating costs of the airport or the local airports system or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.

(2) REQUIRED FINDING.—Paragraph (1) shall apply only when the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of such revenues in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(g) MINIMUM AMOUNT TO BE CREDITED.—

(1) GENERAL RULE.—In a fiscal year, there shall be credited to the fund, out of amounts made available under section 48103 of this title, an amount that is at least equal to the sum of—

(A) \$148,000,000; plus

(B) the total amount required from the fund to carry out in the fiscal year letters of intent issued before January 1, 1996, under section 47110(e) of this title or the Airport and Airway Improvement Act of 1982.

The amount credited is exclusive of amounts that have been apportioned in a prior fiscal year under section 47114 of this title and that remain available for obligation.

(2) REDUCTION OF APPORTIONMENTS.—In a fiscal year in which the amount credited under subsection (a) is less than the minimum amount to be credited under paragraph (1), the total amount calculated under paragraph (3) shall be reduced by an amount that, when credited to the fund, together with the amount credited under subsection (a), equals such minimum amount.

(3) AMOUNT OF REDUCTION.—For a fiscal year, the total amount available to make a reduction to carry out paragraph (2) is the total of the amounts determined under sections 47114(c)(1)(A), 47114(c)(2), 47114(d), and 47117(e) of this title. Each amount shall be reduced by an equal percentage to achieve the reduction.

(h) PRIORITY FOR LETTERS OF INTENT.—In making grants in a fiscal year with funds made available under this section, the Secretary shall fulfill intentions to obligate under section 47110(e).

[(i) CONSIDERATIONS FOR PROJECT UNDER EXPANDED SECURITY ELIGIBILITY.—In order to assure that funding under this subchapter is provided to the greatest needs, the Secretary, in selecting a project described in section 47102(3)(J) for a grant, shall consider the non-federal resources available to sponsor, the use of such non-federal resources, and the degree to which the sponsor is providing increased funding for the project.]

[(j)] (i) MARSHALL ISLANDS, MICRONESIA, AND PALAU.—For [fiscal years 2012 through 2017] *fiscal years 2017 through 2023*, the

sponsors of airports located in the Republic of the Marshall Islands, Federated States of Micronesia, and Republic of Palau shall be eligible for grants under this section and section 47116.

\* \* \* \* \*

#### § 47117. Use of apportioned amounts

(a) GRANT PURPOSE.—Except as provided in this section, an amount apportioned under section 47114(c)(1) or (d)(2) of this title is available for making grants for any purpose for which amounts are made available under section 48103 of this title.

(b) PERIOD OF AVAILABILITY.—An amount apportioned under section 47114 of this title is available to be obligated for grants under the apportionment only during the fiscal year for which the amount was apportioned and the 2 fiscal years immediately after that year or the 3 fiscal years immediately following that year in the case of a nonhub airport or any airport that is not a commercial service airport. 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) WAIVER.—A sponsor of an airport may make an agreement with the Secretary of Transportation waiving the sponsor's claim to any part of the amount apportioned for the airport under sections 47114(c) and 47114(d)(3)(A) if the Secretary agrees to make the waived amount available for a grant for another public-use airport in the same State or geographical area as the airport, as determined by the Secretary.

(d) STATE USE.—An amount apportioned to a State under—

(1) section 47114(d)(2)(A) of this title is available for grants for airports located in the State; and

(2) section 47114(d)(2)(B) or (C) of this title is available for grants for airports described in section 47114(d)(2)(B) or (C) and located in the State.

(e) SPECIAL APPORTIONMENT CATEGORIES.—(1) The Secretary shall use amounts available to the discretionary fund under section 47115 of this title for each fiscal year as follows:

(A) At least 35 percent, but not more than \$300,000,000, for grants for airport noise compatibility planning under section 47505(a)(2), for carrying out noise compatibility programs under section 47504(c), for noise mitigation projects approved in an environmental record of decision for an airport development project under this title, for compatible land use planning and projects carried out by State and local governments under section 47141, for airport development described in section 47102(3)(P), for airport development described in section 47102(3)(F), 47102(3)(K), or 47102(3)(L) to comply with the Clean Air Act (42 U.S.C. 7401 et seq.), and for water quality mitigation projects to comply with the Act of June 30, 1948 (33 U.S.C. 1251 et seq.), approved in an environmental record of decision for an airport development project under this title. The Secretary may count the amount of grants made for such planning and programs with funds apportioned under section 47114 in that fiscal year in determining whether or not the re-

quirements of the preceding sentence are being met in that fiscal year.

(B) at least 4 percent to sponsors of current or former military airports designated by the Secretary under section 47118(a) of this title for grants for developing current and former military airports to improve the capacity of the national air transportation system and to sponsors of noncommercial service airports for grants for operational and maintenance expenses at any such airport if the amount of such grants to the sponsor of the airport does not exceed \$30,000 in that fiscal year, if the Secretary determines that the airport is adversely affected by the closure or realignment of a military base, and if the sponsor of the airport certifies that the airport would otherwise close if the airport does not receive the grant.

(C) In any fiscal year in which the total amount made available under section 48103 is \$3,200,000,000 or more, at least two-thirds of 1 percent for grants to sponsors of reliever airports which have—

- (i) more than 75,000 annual operations;
- (ii) a runway with a minimum usable landing distance of 5,000 feet;
- (iii) a precision instrument landing procedure;
- (iv) a minimum number of aircraft, to be determined by the Secretary, based at the airport; and
- (v) been designated by the Secretary as a reliever airport to an airport with 20,000 hours of annual delays in commercial passenger aircraft takeoffs and landings.

(2) If the Secretary decides that an amount required to be used for grants under paragraph (1) of this subsection cannot be used for a fiscal year because there are insufficient qualified grant applications, the amount the Secretary determines cannot be used is available during the fiscal year for grants for other airports or for other purposes for which amounts are authorized for grants under section 48103 of this title.

(3) PRIORITY.—The Secretary shall give priority in making grants under paragraph (1)(A) to applications for airport noise compatibility planning and programs at and around—

- (A) Chicago O'Hare International Airport;
- (B) LaGuardia Airport;
- (C) John F. Kennedy International Airport; and
- (D) Ronald Reagan Washington National Airport.

(f) DISCRETIONARY USE OF APPORTIONMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), if the Secretary finds that all or part of an amount of an apportionment under section 47114 is not required during a fiscal year to fund a grant for which the apportionment may be used, the Secretary may use during such fiscal year the amount not so required to make grants for any purpose for which grants may be made under section 48103. The finding may be based on the notifications that the Secretary receives under section 47105(f) or on other information received from airport sponsors.

(2) RESTORATION OF APPORTIONMENTS.—

(A) IN GENERAL.—If the fiscal year for which a finding is made under paragraph (1) with respect to an apportionment is not the last fiscal year of availability of the appor-

tionment under subsection (b), the Secretary shall restore to the apportionment an amount equal to the amount of the apportionment used under paragraph (1) for a discretionary grant whenever a sufficient amount is made available under section 48103.

(B) PERIOD OF AVAILABILITY.—If restoration under this paragraph is made in the fiscal year for which the finding is made or the succeeding fiscal year, the amount restored shall be subject to the original period of availability of the apportionment under subsection (b). If the restoration is made thereafter, the amount restored shall remain available in accordance with subsection (b) for the original period of availability of the apportionment plus the number of fiscal years during which a sufficient amount was not available for the restoration.

(3) NEWLY AVAILABLE AMOUNTS.—

(A) RESTORED AMOUNTS TO BE UNAVAILABLE FOR DISCRETIONARY GRANTS.—Of an amount newly available under section 48103 of this title, an amount equal to the amounts restored under paragraph (2) shall not be available for discretionary grant obligations under section 47115.

(B) USE OF REMAINING AMOUNTS.—Subparagraph (A) does not impair the Secretary's authority under paragraph (1), after a restoration under paragraph (2), to apply all or part of a restored amount that is not required to fund a grant under an apportionment to fund discretionary grants.

(4) LIMITATIONS ON OBLIGATIONS APPLY.—Nothing in this subsection shall be construed to authorize the Secretary to incur grant obligations under section 47104 for a fiscal year in an amount greater than the amount made available under section 48103 for such obligations for such fiscal year.

(g) LIMITING AUTHORITY OF SECRETARY.—The authority of the Secretary to make grants during a fiscal year from amounts that were apportioned for a prior fiscal year and remain available for approved airport development project grants under subsection (b) of this section may be impaired only by a law enacted after September 3, 1982, that expressly limits that authority.

\* \* \* \* \*

**§ 47119. Terminal development costs**

(a) TERMINAL DEVELOPMENT PROJECTS.—

(1) IN GENERAL.—The Secretary of Transportation may approve a project for terminal development (including multimodal terminal development) in a nonrevenue-producing public-use area of a commercial service airport—

(A) if the sponsor certifies that the airport, on the date the grant application is submitted to the Secretary, has—

(i) all the safety equipment required for certification of the airport under section 44706;

(ii) all the security equipment required by regulation; and

(iii) provided for access by passengers to the area of the airport for boarding or exiting aircraft that are not 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) PROJECT IN REVENUE-PRODUCING AREAS AND NONREVENUE-PRODUCING PARKING LOTS.—In making a decision under paragraph (1), the Secretary may approve as allowable costs the expenses of terminal development in a revenue-producing area and construction, reconstruction, repair, and improvement in a nonrevenue-producing parking lot if—

(A) except as provided in section 47108(e)(3), the airport does not have more than .05 percent of the total annual passenger boardings in the United States; and

(B) the sponsor certifies that any needed airport development project affecting safety, security, or capacity will not be deferred because of the Secretary's approval.

(3) LACTATION AREAS.—*In addition to the projects described in paragraph (1), the Secretary may approve a project for terminal development for the construction or installation of a lactation area at a commercial service airport.*

(b) REPAYING BORROWED MONEY.—

(1) TERMINAL DEVELOPMENT COSTS INCURRED AFTER JUNE 30, 1970, AND BEFORE JULY 12, 1976.—An amount apportioned under section 47114 and made available to the sponsor of a commercial service airport at which terminal development was carried out after June 30, 1970, and before July 12, 1976, is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d) if they had been incurred after September 3, 1982.

(2) TERMINAL DEVELOPMENT COSTS INCURRED BETWEEN JANUARY 1, 1992, AND OCTOBER 31, 1992.—An amount apportioned under section 47114 and made available to the sponsor of a nonhub airport at which terminal development was carried out between January 1, 1992, and October 31, 1992, is available to repay immediately money borrowed and to pay the costs for such terminal development if those costs would be allowable project costs under section 47110(d).

(3) TERMINAL DEVELOPMENT COSTS AT PRIMARY AIRPORTS.—An amount apportioned under section 47114 or available under subsection (b)(3) to a primary airport—

(A) that was a nonhub airport in the most recent year used to calculate apportionments under section 47114;

(B) that is a designated airport under section 47118 in fiscal year 2003; and

(C) at which terminal development is carried out between January 2003 and August 2004, is available to repay immediately money borrowed and used to pay the costs for such terminal development if those costs would be allowable project costs under subsection (a).

(4) CONDITIONS FOR GRANT.—An amount is available for a grant under this subsection only if—

(A) the sponsor submits the certification required under subsection (a);

(B) the Secretary 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 1 year beginning on the date the grant is used to repay the borrowed money.

(5) APPLICABILITY OF CERTAIN LIMITATIONS.—A grant under this subsection shall be subject to the limitations in subsections (c)(1) and (c)(2).

(c) AVAILABILITY OF AMOUNTS.—In a fiscal year, the Secretary 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 subsection (a);

(2) on approval of the Secretary, 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 subsection (a); and

(B) to a sponsor of a reliever airport for the types of project costs allowable under subsection (a), 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 subsection (a);

(4) not more than \$25,000,000 to pay project costs allowable for the fiscal year under subsection (a) 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; or

(5) to a sponsor of a nonprimary airport, any part of amounts apportioned to the sponsor for the fiscal year under section 47114(d)(3)(A) for project costs allowable under subsection (a).

(d) 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 may approve the use of the amounts described in subsection (a) notwithstanding the requirements of sections 47107(a)(17), 47112, and 47113.

(e) DETERMINATION OF PASSENGER BOARDING AT COMMERCIAL SERVICE AIRPORTS.—For the purpose of determining whether an amount may be distributed for a fiscal year from the discretionary fund in accordance with subsection (b)(2)(A) to a commercial service airport, the Secretary shall make the determination of whether

or not a public airport is a commercial service airport on the basis of the number of passenger boardings and type of air service at the public airport in the calendar year that includes the first day of such fiscal year or the preceding calendar year, whichever is more beneficial to the airport.

(f) **LIMITATION ON DISCRETIONARY FUNDS.**—The Secretary may distribute not more than \$20,000,000 from the discretionary fund established under section 47115 for terminal development projects at a nonhub airport or a small hub airport that is eligible to receive discretionary funds under section 47108(e)(3).

\* \* \* \* \*

### § 47123. Nondiscrimination

**【The Secretary of Transportation】** (a) *IN GENERAL.*— *The Secretary of Transportation 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 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.*

(b) *INDIAN EMPLOYMENT.*—

(1) *TRIBAL SPONSOR PREFERENCE.*—*Consistent with section 703(i) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2(i)), nothing in this section shall preclude the preferential employment of Indians living on or near a reservation on a project or contract at—*

(A) *an airport sponsored by an Indian tribal government;*

*or*

(B) *an airport located on an Indian reservation.*

(2) *STATE PREFERENCE.*—*A State may implement a preference for employment of Indians on a project carried out under this subchapter near an Indian reservation.*

(3) *IMPLEMENTATION.*—*The Secretary shall cooperate with Indian tribal governments and the States to implement this subsection.*

(4) *INDIAN TRIBAL GOVERNMENT DEFINED.*—*In this section, the term “Indian tribal government” has the same meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).*

### § 47124. Agreements for State and local operation of airport facilities

(a) **GOVERNMENT RELIEF FROM LIABILITY.**—The Secretary of Transportation shall ensure that an agreement under this subchapter with a qualified entity (as determined by the Secretary), State, or a political subdivision of a State to allow the entity, State, or subdivision to operate an airport facility relieves the United States Government from any liability arising out of, or related to, acts or omissions of employees of the entity, State, or subdivision in operating the airport facility.

(b) **AIR TRAFFIC CONTROL CONTRACT PROGRAM.**—

(1) **CONTRACT TOWER PROGRAM.**—



(A) CONTINUATION.—The Secretary 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.

(B) SPECIAL RULE.—If the Secretary determines that a tower already operating under the program continued under this paragraph has a benefit-to-cost ratio of less than 1.0, the airport sponsor or State or local government having jurisdiction over the airport shall not be required to pay the portion of the costs that **exceeds the benefit for a period of 18 months after such determination is made** *exceeds the benefit*—

(i) *for the 1-year period after such determination is made; or*

(ii) *if an appeal of such determination is requested, for the 1-year period described in subsection (d)(4)(D).*

(C) USE OF EXCESS FUNDS.—If the Secretary finds that all or part of an amount made available to carry out the program continued under this paragraph is not required during a fiscal year, the Secretary may use, during such fiscal year, the amount not so required to carry out the program established under paragraph (3).

(2) GENERAL AUTHORITY.—The Secretary may make a contract with a qualified entity (as determined by the Secretary) or, on a sole source basis, with a State or a political subdivision of a State to allow the entity, State, or subdivision to operate an airport traffic control tower classified as a level I (Visual Flight Rules) tower if the Secretary decides that the entity, State, or subdivision has the capability to comply with the requirements of this paragraph. The contract shall require that the entity, State, or subdivision comply with applicable safety regulations in operating the facility and with applicable competition requirements in making a sub-contract to perform work to carry out the contract.

(3) CONTRACT AIR TRAFFIC CONTROL TOWER PROGRAM.—

(A) IN GENERAL.—The Secretary shall establish a program to contract for air traffic control services at nonapproach control towers, as defined by the Secretary, that do not qualify for the contract tower program established under subsection (a) and continued under paragraph (1) (in this paragraph referred to as the “Contract Tower Program”).

(B) PROGRAM COMPONENTS.—In carrying out the program, the Secretary shall—

(i) utilize for purposes of cost-benefit analyses, current, actual, site-specific data, forecast estimates, or airport master plan data provided by a facility owner or operator and verified by the Secretary; and

(ii) approve for participation only facilities willing to fund a pro rata share of the operating costs of the air traffic control tower to achieve a 1-to-1 benefit-to-cost ratio using actual site-specific contract tower operating costs in any case in which there is an operating air traffic control tower, as required for eligibility under the Contract Tower Program.

(C) PRIORITY.—In selecting facilities to participate in the program, the Secretary shall give priority to the following facilities:

(i) Air traffic control towers that are participating in the Contract Tower Program but have been notified that they will be terminated from such program because the Secretary has determined that the benefit-to-cost ratio for their continuation in such program is less than 1.0.

(ii) Air traffic control towers that the Secretary determines have a benefit-to-cost ratio of at least .50.

(iii) Air traffic control towers of the Federal Aviation Administration that are closed as a result of the air traffic controllers strike in 1981.

(iv) Air traffic control towers located at airports or points at which an air carrier is receiving compensation under the essential air service program under this chapter.

(v) Air traffic control towers located at airports that are prepared to assume partial responsibility for maintenance costs.

(vi) Air traffic control towers located at airports with safety or operational problems related to topography, weather, runway configuration, or mix of aircraft.

(vii) Air traffic control towers located at an airport at which the community has been operating the tower at its own expense.

(D) COSTS EXCEEDING BENEFITS.—If the costs of operating an air traffic tower under the program exceed the benefits, the airport sponsor or State or local government having jurisdiction over the airport shall pay the portion of the costs that exceed such benefit, with the maximum allowable local cost share capped at 20 percent.

**[(E) FUNDING.—Of the amounts appropriated pursuant to section 106(k)(1), not more than \$10,350,000 for each of fiscal years 2012 through 2017 may be used to carry out this paragraph.]**

*(E) FUNDING.—Amounts appropriated pursuant to section 106(k)(1) may be used to carry out this paragraph.*

(F) USE OF EXCESS FUNDS.—If the Secretary finds that all or part of an amount made available under this paragraph is not required during a fiscal year, the Secretary may use, during such fiscal year, the amount not so required to carry out the program continued under paragraph (1).

*(G) BENEFIT-TO-COST CALCULATION.—Not later than 90 days after receiving an application to the Contract Tower Program, the Secretary shall calculate a benefit-to-cost ratio (as described in subsection (d)) for the applicable air traffic control tower for purposes of selecting towers for participation in the Contract Tower Program.*

(4) CONSTRUCTION OF AIR TRAFFIC CONTROL TOWERS.—

(A) GRANTS.—The Secretary may provide grants to a sponsor of—

(i) a primary airport—

(I) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for the construction or improvement of a nonapproach control tower, as defined

by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;

(II) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of construction or improvement of a nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and

(III) from amounts made available under sections 47114(c)(1) and 47114(c)(2) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996, *including remote air traffic control tower equipment certified by the Federal Aviation Administration* ; and

(ii) a public-use airport that is not a primary airport—

(I) from amounts made available under sections 47114(c)(2) and 47114(d) for the construction or improvement of a nonapproach control tower, as defined by the Secretary, and for the acquisition and installation of air traffic control, communications, and related equipment to be used in that tower;

(II) from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of construction or improvement of a nonapproach control tower, as defined by the Secretary, incurred after October 1, 1996, if the sponsor complied with the requirements of sections 47107(e), 47112(b), and 47112(c) in constructing or improving that tower; and

(III) from amounts made available under sections 47114(c)(2) and 47114(d)(3)(A) for reimbursement for the cost of acquiring and installing in that tower air traffic control, communications, and related equipment that was acquired or installed after October 1, 1996, *including remote air traffic control tower equipment certified by the Federal Aviation Administration* .

**[(B) ELIGIBILITY.—**An airport sponsor shall be eligible for a grant under this paragraph only if—

**[(i)(I)** the sponsor is a participant in the Federal Aviation Administration contract tower program established under subsection (a) and continued under paragraph (1) or the pilot program established under paragraph (3); or

**[(II)** construction of a nonapproach control tower would qualify the sponsor to be eligible to participate in such program;

**[(ii)** the sponsor certifies that it will pay not less than 10 percent of the cost of the activities for which the sponsor is receiving assistance under this paragraph;

**[(iii)** the Secretary affirmatively accepts the proposed contract tower into a contract tower program under this section and certifies that the Secretary will seek future appropriations to pay the Federal Aviation Administration's

cost of the contract to operate the tower to be constructed under this paragraph;

[(iv) the sponsor certifies that it will pay its share of the cost of the contract to operate the tower to be constructed under this paragraph; and

[(v) in the case of a tower to be constructed under this paragraph from amounts made available under section 47114(d)(2) or 47114(d)(3)(B), the Secretary certifies that—

[(I) the Federal Aviation Administration has consulted the State within the borders of which the tower is to be constructed and the State supports the construction of the tower as part of its State airport capital plan; and

[(II) the selection of the tower for funding is based on objective criteria.

[(C) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of construction of a nonapproach control tower under this paragraph may not exceed \$2,000,000.]

(B) ELIGIBILITY.—

(i) BEFORE DATE OF TRANSFER.—*Before the date of transfer (as defined in section 90101(a)), an airport sponsor shall be eligible for a grant under this paragraph only if—*

*(I)(aa) the sponsor is a participant in the Federal Aviation Administration contract tower program established under subsection (a) and continued under paragraph (1) or the pilot program established under paragraph (3); or*

*(bb) construction of a nonapproach control tower would qualify the sponsor to be eligible to participate in such program;*

*(II) the sponsor certifies that it will pay not less than 10 percent of the cost of the activities for which the sponsor is receiving assistance under this paragraph;*

*(III) the Secretary affirmatively accepts the proposed contract tower into a contract tower program under this section and certifies that the Secretary will seek future appropriations to pay the Federal Aviation Administration's cost of the contract to operate the tower to be constructed under this paragraph;*

*(IV) the sponsor certifies that it will pay its share of the cost of the contract to operate the tower to be constructed under this paragraph; and*

*(V) in the case of a tower to be constructed under this paragraph from amounts made available under section 47114(d)(2) or 47114(d)(3)(B), the Secretary certifies that—*

*(aa) the Federal Aviation Administration has consulted the State within the borders of which the tower is to be constructed and the State supports the construction of the tower as part of its State airport capital plan; and*

*(bb) the selection of the tower for funding is based on objective criteria.*

(ii) ON AND AFTER DATE OF TRANSFER.—*On and after the date of transfer (as defined in section 90101(a)), an airport*

sponsor shall be eligible for a grant under this paragraph only if—

(I) the Secretary determines that the tower to be constructed at the sponsor's airport using the amounts of the grant will be operated pursuant to an agreement entered into by the American Air Navigation Services Corporation and an entity pursuant to section 90302(c)(3);

(II) the sponsor certifies that it will pay not less than 10 percent of the cost of the activities for which the sponsor is receiving assistance under this paragraph; and

(III) in the case of a tower to be constructed under this paragraph from amounts made available under section 47114(d)(2) or 47114(d)(3)(B), the Secretary certifies that—

(aa) the Federal Aviation Administration has consulted the State within the borders of which the tower is to be constructed and the State supports the construction of the tower as part of its State airport capital plan; and

(bb) the selection of the tower for funding is based on objective criteria.

(c) SAFETY AUDITS.— **【The Secretary】**

(1) BEFORE DATE OF TRANSFER.—Before the date of transfer (as defined in section 90101(a)), the Secretary shall establish uniform standards and requirements for regular safety assessments of air traffic control towers that receive funding under this section.

(2) ON AND AFTER DATE OF TRANSFER.—On and after the date of transfer (as defined in section 90101(a)), oversight of air traffic control towers that receive funding under this section shall be carried out in accordance with performance-based regulations and minimum safety standards prescribed under section 90501.

(d) CRITERIA TO EVALUATE PARTICIPANTS.—

(1) TIMING OF EVALUATIONS.—

(A) TOWERS PARTICIPATING IN COST-SHARE PROGRAM.—In the case of an air traffic control tower that is operated under the program established under subsection (b)(3), the Secretary shall annually calculate a benefit-to-cost ratio with respect to the tower.

(B) TOWERS PARTICIPATING IN CONTRACT TOWER PROGRAM.—In the case of an air traffic control tower that is operated under the program established under subsection (a) and continued under subsection (b)(1), the Secretary shall not calculate a benefit-to-cost ratio after the date of enactment of this subsection with respect to the tower unless the Secretary determines that the annual aircraft traffic at the airport where the tower is located has decreased—

(i) by more than 25 percent from the previous year;

or

(ii) by more than 60 percent cumulatively in the preceding 3-year period.

(2) *COSTS TO BE CONSIDERED.*—In establishing a benefit-to-cost ratio under this section with respect to an air traffic control tower, the Secretary shall consider only the following costs:

(A) *The Federal Aviation Administration's actual cost of wages and benefits of personnel working at the tower.*

(B) *The Federal Aviation Administration's actual telecommunications costs directly associated with the tower.*

(C) *The Federal Aviation Administration's costs of purchasing and installing any air traffic control equipment that would not have been purchased or installed except for the operation of the tower.*

(D) *The Federal Aviation Administration's actual travel costs associated with maintaining air traffic control equipment that is owned by the Administration and would not be maintained except for the operation of the tower.*

(3) *OTHER CRITERIA TO BE CONSIDERED.*—In establishing a benefit-to-cost ratio under this section with respect to an air traffic control tower, the Secretary shall add a 10 percentage point margin of error to the benefit-to-cost ratio determination to acknowledge and account for the direct and indirect economic and other benefits that are not included in the criteria the Secretary used in calculating that ratio.

(4) *REVIEW OF COST-BENEFIT DETERMINATIONS.*—In issuing a benefit-to-cost ratio determination under this section with respect to an air traffic control tower located at an airport, the Secretary shall implement the following procedures:

(A) *The Secretary shall provide the airport (or the State or local government having jurisdiction over the airport) at least 90 days following the date of receipt of the determination to submit to the Secretary a request for an appeal of the determination, together with updated or additional data in support of the appeal.*

(B) *Upon receipt of a request for an appeal submitted pursuant to subparagraph (A), the Secretary shall—*

*(i) transmit to the Administrator of the Federal Aviation Administration any updated or additional data submitted in support of the appeal; and*

*(ii) provide the Administrator not more than 90 days to review the data and provide a response to the Secretary based on the review.*

(C) *After receiving a response from the Administrator pursuant to subparagraph (B), the Secretary shall—*

*(i) provide the airport, State, or local government that requested the appeal at least 30 days to review the response; and*

*(ii) withhold from taking further action in connection with the appeal during that 30-day period.*

(D) *If, after completion of the appeal procedures with respect to the determination, the Secretary requires the tower to transition into the program established under subsection (b)(3), the Secretary shall not require a cost-share payment from the airport, State, or local government for 1 year following the last day of the 30-day period described in subparagraph (C).*

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**§ 47128. State block grant program**

(a) GENERAL REQUIREMENTS.—The Secretary of Transportation shall issue guidance to carry out a State block grant program. The guidance shall provide that the Secretary may designate [not more than 9 qualified States for fiscal years 2000 and 2001 and 10 qualified States for each fiscal year thereafter] *not more than 20 qualified States for each fiscal year* 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.—A State wishing to participate in the program must submit an application to the Secretary. The Secretary shall select a State on the basis of its application only after—

(1) deciding the State has an organization capable of effectively administering a block grant made under this section;

(2) deciding the State uses a satisfactory airport system planning process;

(3) deciding the State uses a programming process acceptable to the Secretary;

(4) finding that the State has agreed to comply with United States Government standard requirements for administering the block grant, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), State and local environmental policy acts, Executive orders, agency regulations and guidance, and other Federal environmental requirements; and

(5) finding that the State has agreed to provide the Secretary with program information the Secretary requires.

(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)(2) or (b)(3) of this section, the Secretary shall ensure that the process provides for meeting critical safety and security needs and that the programming process ensures that the needs of the national airport system will be addressed in deciding which projects will receive money from the Government. In carrying out this subsection, the Secretary shall permit a State to use the priority system of the State if such system is not inconsistent with the national priority system.

(d) ENVIRONMENTAL ANALYSIS AND COORDINATION REQUIREMENTS.—A Federal agency, other than the Federal Aviation Administration, that is responsible for issuing an approval, license, or permit to ensure compliance with a Federal environmental requirement applicable to a project or activity to be carried out by a State using amounts from a block grant made under this section shall—

(1) coordinate and consult with the State;

(2) use the environmental analysis prepared by the State for the project or activity if such analysis is adequate; and

(3) as necessary, consult with the State to describe the supplemental analysis the State must provide to meet applicable Federal requirements.

\* \* \* \* \*

**§ 47136. Inherently low-emission airport vehicle pilot program**

[(a) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program at not more than 10 public-use airports under which the sponsors of such airports may use funds made available under section 48103 for use at such airports to carry out inherently low-emission vehicle activities. Notwithstanding any other provision of this subchapter, inherently low-emission vehicle activities shall for purposes of the pilot program be treated as eligible for assistance under this subchapter.

[(b) LOCATION IN AIR QUALITY NONATTAINMENT AREAS.—

[(1) IN GENERAL.—A public-use airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))).

[(2) SHORTAGE OF CANDIDATES.—If the Secretary receives an insufficient number of applications from public-use airports located in such areas, then the Secretary may consider applications from public-use airports that are not located in such areas.

[(c) SELECTION CRITERIA.—In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

[(d) UNITED STATES GOVERNMENT'S SHARE.—Notwithstanding any other provision of this subchapter, the United States Government's share of the costs of a project carried out under the pilot program shall be 50 percent.

[(e) MAXIMUM AMOUNT.—Not more than \$2,000,000 may be expended under the pilot program at any single public-use airport.

[(f) TECHNICAL ASSISTANCE.—

[(1) IN GENERAL.—The sponsor of a public-use airport carrying out inherently low-emission vehicle activities under the pilot program may use not more than 10 percent of the amounts made available for expenditure at the airport in a fiscal year under the pilot program to receive technical assistance in carrying out such activities.

[(2) UNIVERSITY TRANSPORTATION CENTER.—To the maximum extent practicable, participants in the pilot program shall use a university transportation center (as defined in section 5506 of this title) in the region of the airport to receive technical assistance described in paragraph (1).

[(g) MATERIALS IDENTIFYING BEST PRACTICES.—The Administrator may develop and make available materials identifying best practices for carrying out low-emission vehicle activities based on the projects carried out under the pilot program and other sources.

[(h) REPORT TO CONGRESS.—Not later than 18 months after the date of the enactment of this section, the Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing—

[(1) an evaluation of the effectiveness of the pilot program;

[(2) an identification of other public-use airports that expressed an interest in participating in the pilot program; and



[(3) a description of the mechanisms used by the Secretary to ensure that the information and know-how gained by participants in the pilot program is transferred among the participants and to other interested parties, including other public-use airports.

[(i) **INHERENTLY LOW-EMISSION VEHICLE ACTIVITY DEFINED.**—In this section, the term “inherently low-emission vehicle activity” means—

[(1) the construction of infrastructure or modifications at public-use airports to enable the delivery of fuel and services necessary for the use of vehicles that are certified as inherently low-emission vehicles under title 40 of the Code of Federal Regulations and that—

[(A) operate exclusively on compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, hydrogen, or a blend at least 85 percent of which is methanol;

[(B) are labeled in accordance with section 88.312-93(c) of such title; and

[(C) are located or primarily used at public-use airports;

[(2) the construction of infrastructure or modifications at public-use airports to enable the delivery of fuel and services necessary for the use of nonroad vehicles that—

[(A) operate exclusively on compressed natural gas, liquefied natural gas, liquefied petroleum gas, electricity, hydrogen, or a blend at least 85 percent of which is methanol;

[(B) meet or exceed the standards set forth in section 86.1708-99 of such title or the standards set forth in section 89.112(a) of such title, and are in compliance with the requirements of section 89.112(b) of such title; and

[(C) are located or primarily used at public-use airports;

[(3) the payment of that portion of the cost of acquiring vehicles described in this subsection that exceeds the cost of acquiring other vehicles or engines that would be used for the same purpose; or

[(4) the acquisition of technological capital equipment to enable the delivery of fuel and services necessary for the use of vehicles described in paragraph (1).]

**§ [47136a.] 47136. Zero-emission airport vehicles and infrastructure**

[(a) **IN GENERAL.**—The Secretary of Transportation may establish a pilot program under which the sponsor of a public-use airport may use funds made available under section 47117 or section 48103 for use at such airport to carry out activities associated with the acquisition and operation of zero-emission vehicles (as defined in section 88.102-94 of title 40, Code of Federal Regulations), including the construction or modification of infrastructure to facilitate the delivery of fuel and services necessary for the use of such vehicles.

[(b) **LOCATION IN AIR QUALITY NONATTAINMENT AREAS.**—

[(1) **IN GENERAL.**—A public-use airport may be eligible for participation in the program only if the airport is located in a

nonattainment area (as defined in section 171 of the Clean Air Act (42 U.S.C. 7501)).

[(2) SHORTAGE OF APPLICANTS.—If the Secretary receives an insufficient number of applications from public-use airports located in such areas, the Secretary may permit public-use airports that are not located in such areas to participate in the program.]

(a) *IN GENERAL.*—*The Secretary of Transportation may establish a pilot program under which the sponsors of not less than 10 public-use airports may use funds made available under this chapter or section 48103 for use at such airports to carry out—*

(1) *activities associated with the acquisition, by purchase or lease, and operation of zero-emission vehicles, including removable power sources for such vehicles; and*

(2) *the construction or modification of infrastructure to facilitate the delivery of fuel and services necessary for the use of such vehicles.*

(b) *ELIGIBILITY.*—*A public-use airport is eligible for participation in the program if the vehicles or ground support equipment are—*

(1) *used exclusively at the airport; or*

(2) *used exclusively to transport people or materials to and from the airport.*

(c) *SELECTION CRITERIA.*—*In selecting from among applicants for participation in the program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the program.*

[(d) *FEDERAL SHARE.*—*Notwithstanding any other provision of this subchapter, the Federal share of the costs of a project carried out under the program shall be 50 percent.*

[(e) *TECHNICAL ASSISTANCE.*—

[(1) *IN GENERAL.*—*The sponsor of a public-use airport carrying out activities funded under the program may not use more than 10 percent of the amounts made available under the program in any fiscal year for technical assistance in carrying out such activities.*

[(2) *USE OF UNIVERSITY TRANSPORTATION CENTER.*—*Participants in the program may use a university transportation center receiving grants under section 5506 in the region of the airport to receive the technical assistance described in paragraph (1).]*

(d) *FEDERAL SHARE.*—*The Federal share of the cost of a project carried out under the program shall be the Federal share specified in section 47109.*

(e) *TECHNICAL ASSISTANCE.*—

(1) *IN GENERAL.*—*The sponsor of a public-use airport may use not more than 10 percent of the amounts made available to the sponsor under the program in any fiscal year for—*

(A) *technical assistance; and*

(B) *project management support to assist the airport with the solicitation, acquisition, and deployment of zero-emission vehicles, related equipment, and supporting infrastructure.*

(2) *PROVIDERS OF TECHNICAL ASSISTANCE.*—To receive the technical assistance or project management support described in paragraph (1), participants in the program may use—

- (A) a nonprofit organization selected by the Secretary; or
- (B) a university transportation center receiving grants under section 5505 in the region of the airport.

(f) *MATERIALS IDENTIFYING BEST PRACTICES.*—The Secretary may develop and make available materials identifying best practices for carrying out activities funded under the program based on projects carried out under [section 47136] *the inherently low emission airport vehicle pilot program* and other sources.

(g) *ALLOWABLE PROJECT COST.*—The allowable project cost for the acquisition of a zero-emission vehicle shall be the total cost of purchasing or leasing the vehicle, including the cost of technical assistance or project management support described in subsection (e).

(h) *FLEXIBLE PROCUREMENT.*—A sponsor of a public-use airport may use funds made available under the program to acquire, by purchase or lease, a zero-emission vehicle and a removable power source in separate transactions, including transactions by which the airport purchases the vehicle and leases the removable power source.

(i) *TESTING REQUIRED.*—A sponsor of a public-use airport may not use funds made available under the program to acquire a zero-emission vehicle unless that make, model, or type of vehicle has been tested by a Federal vehicle testing facility acceptable to the Secretary.

(j) *REMOVABLE POWER SOURCE DEFINED.*—In this section, the term “removable power source” means a power source that is separately installed in, and removable from, a zero-emission vehicle and may include a battery, a fuel cell, an ultra-capacitor, or other advanced power source used in a zero-emission vehicle.

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#### **§ 47140. Airport ground support equipment emissions retrofit pilot program**

[(a) *IN GENERAL.*—The Secretary of Transportation shall carry out a pilot program at not more than 10 commercial service airports under which the sponsors of such airports may use an amount made available under section 48103 to retrofit existing eligible airport ground support equipment that burns conventional fuels to achieve lower emissions utilizing emission control technologies certified or verified by the Environmental Protection Agency.

[(b) *LOCATION IN AIR QUALITY NONATTAINMENT OR MAINTENANCE AREAS.*—A commercial service airport shall be eligible for participation in the pilot program only if the airport is located in an air quality nonattainment area (as defined in section 171(2) of the Clean Air Act (42 U.S.C. 7501(2))) or a maintenance area referred to in section 175A of such Act (42 U.S.C. 7505a).

[(c) *SELECTION CRITERIA.*—In selecting from among applicants for participation in the pilot program, the Secretary shall give priority consideration to applicants that will achieve the greatest air quality benefits measured by the amount of emissions reduced per dollar of funds expended under the pilot program.

[(d) MAXIMUM AMOUNT.—Not more than \$500,000 may be expended under the pilot program at any single commercial service airport.]

[(e) GUIDELINES.—The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall establish guidelines regarding the types of retrofit projects eligible under the pilot program by considering remaining equipment useful life, amounts of emission reduction in relation to the cost of projects, and other factors necessary to carry out this section. The Secretary may give priority to ground support equipment owned by the airport and used for airport purposes.]

[(f) ELIGIBLE EQUIPMENT DEFINED.—In this section, the term “eligible equipment” means ground service or maintenance equipment that is located at the airport, is used to support aeronautical and related activities at the airport, and will remain in operation at the airport for the life or useful life of the equipment, whichever is earlier.]

**§ [47140a.] 47140. Increasing the energy efficiency of airport power sources**

(a) IN GENERAL.—The Secretary of Transportation shall establish a program under which the Secretary shall encourage the sponsor of each public-use airport to assess the airport’s energy requirements, including heating and cooling, base load, back-up power, and power for on-road airport vehicles and ground support equipment, in order to identify opportunities to increase energy efficiency at the airport.

(b) GRANTS.—

(1) IN GENERAL.—The Secretary may make grants from amounts made available under section 48103 to assist airport sponsors that have completed the assessment described in subsection (a) to acquire or construct equipment, including hydrogen equipment and related infrastructure, that will increase energy efficiency at the airport.

(2) APPLICATION.—To be eligible for a grant under paragraph (1), the sponsor of a public-use airport shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

**§ 47141. Compatible land use planning and projects by State and local governments**

(a) IN GENERAL.—The Secretary of Transportation may make grants, from amounts set aside under section 47117(e)(1)(A), to States and units of local government for development and implementation of land use compatibility plans and implementation of land use compatibility projects resulting from those plans for the purposes of making the use of land areas around large hub airports and medium hub airports compatible with aircraft operations. The Secretary may make a grant under this section for a land use compatibility plan or a project resulting from such plan only if—

(1) the airport operator has not submitted a noise compatibility program to the Secretary under section 47504 or has not updated such program within the preceding 10 years; and

(2) the land use plan or project meets the requirements of this section.

(b) ELIGIBILITY.—In order to receive a grant under this section, a State or unit of local government must—

(1) have the authority to plan and adopt land use control measures, including zoning, in the planning area in and around a large or medium hub airport;

(2) enter into an agreement with the airport owner or operator that the development of the land use compatibility plan will be done cooperatively; and

(3) provide written assurance to the Secretary that it will achieve, to the maximum extent possible, compatible land uses consistent with Federal land use compatibility criteria under section 47502(3) and that those compatible land uses will be maintained.

(c) ASSURANCES.—The Secretary shall require a State or unit of local government to which a grant may be made under this section for a land use plan or a project resulting from such plan to provide—

(1) assurances satisfactory to the Secretary that the plan—

(A) is reasonably consistent with the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses;

(B) addresses ways to achieve and maintain compatible land uses, including zoning, building codes, and any other land use compatibility measures under section 47504(a)(2) that are within the authority of the State or unit of local government to implement;

(C) uses noise contours provided by the airport operator that are consistent with the airport operation and planning, including any noise abatement measures adopted by the airport operator as part of its own noise mitigation efforts;

(D) does not duplicate, and is not inconsistent with, the airport operator's noise compatibility measures for the same area; and

(E) has been approved jointly by the airport owner or operator and the State or unit of local government; and

(2) such other assurances as the Secretary determines to be necessary to carry out this section.

(d) GUIDELINES.—The Secretary shall establish guidelines to administer this section in accordance with the purposes and conditions described in this section. The Secretary may require a State or unit of local government to which a grant may be made under this section to provide progress reports and other information as the Secretary determines to be necessary to carry out this section.

(e) ELIGIBLE PROJECTS.—The Secretary may approve a grant under this section to a State or unit of local government for a project resulting from a land use compatibility plan only if the Secretary is satisfied that the project is consistent with the guidelines established by the Secretary under this section, the State or unit of local government has provided the assurances required by this section, the State or unit of local government has implemented (or has made provision to implement) those elements of the plan that are not eligible for Federal financial assistance, and that the project is not inconsistent with applicable Federal Aviation Administration standards.

(f) SUNSET.—This section shall not be in effect after [September 30, 2017] *September 30, 2023* .

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SUBCHAPTER III—AVIATION DEVELOPMENT  
STREAMLINING

**§ 47171. Expedited, coordinated environmental review process**

(a) AVIATION PROJECT REVIEW PROCESS.—The Secretary of Transportation shall develop and implement an expedited and coordinated environmental review process for airport capacity enhancement projects at congested airports, aviation safety projects, and aviation security projects that—

(1) provides for better coordination among the Federal, regional, State, and local agencies concerned with the preparation of environmental impact statements or environmental assessments under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) provides that all environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor for such a project will be conducted concurrently, to the maximum extent practicable; and

(3) provides that any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal agency or airport sponsor for such a project will be completed within a time period established by the Secretary, in cooperation with the agencies identified under subsection (d) with respect to the project.

(b) AVIATION PROJECTS SUBJECT TO A STREAMLINED ENVIRONMENTAL REVIEW PROCESS.—

(1) AIRPORT CAPACITY ENHANCEMENT PROJECTS AT CONGESTED AIRPORTS.—An airport capacity enhancement project at a congested airport shall be subject to the coordinated and expedited environmental review process requirements set forth in this section.

(2) AVIATION SAFETY AND AVIATION SECURITY PROJECTS.—

(A) IN GENERAL.—The Administrator of the Federal Aviation Administration may designate an aviation safety project or aviation security project for priority environmental review. The Administrator may not delegate this designation authority. A designated project shall be subject to the coordinated and expedited environmental review process requirements set forth in this section.

(B) PROJECT DESIGNATION CRITERIA.—The Administrator shall establish guidelines for the designation of an aviation safety project or aviation security project for priority environmental review. Such guidelines shall provide for consideration of—

(i) the importance or urgency of the project;

(ii) the potential for undertaking the environmental review under existing emergency procedures under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

- (iii) the need for cooperation and concurrent reviews by other Federal or State agencies;
- (iv) the prospect for undue delay if the project is not designated for priority review; and
- (v) for aviation security projects, the views of the Department of Homeland Security.

(c) HIGH PRIORITY OF AND AGENCY PARTICIPATION IN COORDINATED REVIEWS.—

(1) HIGH PRIORITY FOR ENVIRONMENTAL REVIEWS.—Each Federal agency with jurisdiction over an environmental review, analysis, opinion, permit, license, or approval shall accord any such review, analysis, opinion, permit, license, or approval involving an airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2) the highest possible priority and conduct the review, analysis, opinion, permit, license, or approval expeditiously.

(2) AGENCY PARTICIPATION.—Each Federal agency described in subsection (d) shall formulate and implement administrative, policy, and procedural mechanisms to enable the agency to participate in the coordinated environmental review process under this section and to ensure completion of environmental reviews, analyses, opinions, permits, licenses, and approvals described in subsection (a) in a timely and environmentally responsible manner.

(d) IDENTIFICATION OF JURISDICTIONAL AGENCIES.—With respect to each airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2), the Secretary shall identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

(e) STATE AUTHORITY.—Under a coordinated review process being implemented under this section by the Secretary with respect to a project at an airport within the boundaries of a State, the Governor of the State, consistent with State law, may choose to participate in such process and provide that all State agencies that have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project, be subject to the process.

(f) MEMORANDUM OF UNDERSTANDING.—The coordinated review process developed under this section may be incorporated into a memorandum of understanding for a project between the Secretary and the heads of other Federal and State agencies identified under subsection (d) with respect to the project and, if applicable, the airport sponsor.

(g) USE OF INTERAGENCY ENVIRONMENTAL IMPACT STATEMENT TEAMS.—

(1) IN GENERAL.—The Secretary may utilize an interagency environmental impact statement team to expedite and coordinate the coordinated environmental review process for a project under this section. When utilizing an interagency envi-

ronmental impact statement team, the Secretary shall invite Federal, State and Tribal agencies with jurisdiction by law, and may invite such agencies with special expertise, to participate on an interagency environmental impact statement team.

(2) RESPONSIBILITY OF INTERAGENCY ENVIRONMENTAL IMPACT STATEMENT TEAM.—Under a coordinated environmental review process being implemented under this section, the interagency environmental impact statement team shall assist the Federal Aviation Administration in the preparation of the environmental impact statement. To facilitate timely and efficient environmental review, the team shall agree on agency or Tribal points of contact, protocols for communication among agencies, and deadlines for necessary actions by each individual agency (including the review of environmental analyses, the conduct of required consultation and coordination, and the issuance of environmental opinions, licenses, permits, and approvals). The members of the team may formalize their agreement in a written memorandum.

(h) LEAD AGENCY RESPONSIBILITY.—The Federal Aviation Administration shall be the lead agency for projects designated under subsection (b)(2) and airport capacity enhancement projects at congested airports and shall be responsible for defining the scope and content of the environmental impact statement, consistent with regulations issued by the Council on Environmental Quality. Any other Federal agency or State agency that is participating in a coordinated environmental review process under this section shall give substantial deference, to the extent consistent with applicable law and policy, to the aviation expertise of the Federal Aviation Administration.

(i) EFFECT OF FAILURE TO MEET DEADLINE.—

(1) NOTIFICATION OF CONGRESS AND CEQ.—If the Secretary determines that a Federal agency, State agency, or airport sponsor that is participating in a coordinated review process under this section with respect to a project has not met a deadline established under subsection (a)(3) for the project, the Secretary shall notify, within 30 days of the date of such determination, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, the Council on Environmental Quality, and the agency or sponsor involved about the failure to meet the deadline.

(2) AGENCY REPORT.—Not later than 30 days after date of receipt of a notice under paragraph (1), the agency or sponsor involved shall submit a report to the Secretary, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Council on Environmental Quality explaining why the agency or sponsor did not meet the deadline and what actions it intends to take to complete or issue the required review, analysis, opinion, permit, license, or approval.

(j) PURPOSE AND NEED.—For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in a coordinated review process under this section and that requires an analysis of



purpose and need for the project, the agency, notwithstanding any other provision of law, shall be bound by the project purpose and need as defined by the Secretary.

(k) ALTERNATIVES ANALYSIS.—The Secretary shall determine the reasonable alternatives to an airport capacity enhancement project at a congested airport or a project designated under subsection (b)(2). Any other Federal agency, or State agency that is participating in a coordinated review process under this section with respect to the project shall consider only those alternatives to the project that the Secretary has determined are reasonable.

(l) SOLICITATION AND CONSIDERATION OF COMMENTS.—In applying subsections (j) and (k), the Secretary shall solicit and consider comments from interested persons and governmental entities in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. [4371] 4321 et seq.).

(m) MONITORING BY TASK FORCE.—The Transportation Infrastructure Streamlining Task Force, established by Executive Order 13274 (67 Fed. Reg. 59449; relating to environmental stewardship and transportation infrastructure project reviews), may monitor airport projects that are subject to the coordinated review process under this section.

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**CHAPTER 475—NOISE**

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**SUBCHAPTER I—NOISE ABATEMENT**

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**§ 47503. Noise exposure maps**

(a) SUBMISSION AND PREPARATION.—An airport operator may submit to the Secretary of Transportation 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 a forecast period that is at least 5 years in the future 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, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration, the airport operator shall submit a revised noise exposure map to the Secretary showing the new non-compatible use or noise reduction.]

(b) REVISED MAPS.—

(1) IN GENERAL.—An airport operator that submitted a noise exposure map under subsection (a) shall submit a revised map to the Secretary if, in an area surrounding an airport, a change in the operation of the airport would establish a substantial new noncompatible use, or would significantly reduce noise over

*existing noncompatible uses, that is not reflected in either the existing conditions map or forecast map currently on file with the Federal Aviation Administration.*

(2) *TIMING.*—A submission under paragraph (1) shall be required only if the relevant change in the operation of the airport occurs during—

(A) *the forecast period of the applicable noise exposure map submitted by an airport operator under subsection (a);*

*or*

(B) *the implementation period of the airport operator's noise compatibility program.*

#### **§ 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 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 sound-proofing 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 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 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 does not act within the 180-day period.

(3) The Secretary 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 shall approve or disapprove that part of the program.

(4) The Secretary shall not approve in fiscal years 2004 through 2007 a program submitted under subsection (a) if the program requires the expenditure of funds made available under section 48103 for mitigation of aircraft noise less than 65 DNL.

(c) GRANTS.—(1) The Secretary 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 decides the unit is able to carry out the project.

(2) SOUNDPROOFING AND ACQUISITION OF CERTAIN RESIDENTIAL BUILDINGS AND PROPERTIES.—The Secretary 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; and
  - (iii) if the Secretary 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; and
  - (iii) if the Secretary 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 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;

(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 decides is adversely affected by airport noise; **[and]**

(E) to an airport operator of a congested airport (as defined in section 47175) and a unit of local government referred to in paragraph (1)(B) of this subsection to carry out a project to mitigate noise in the area surrounding the airport if the project is included as a commitment in a record of decision of the Federal Aviation Administration for an airport capacity enhancement project (as defined in section 47175) even if that airport has not met the requirements of part 150 of title 14, Code of Federal Regulations**[.]**; *and*

*(F) to an airport operator of a congested airport (as defined in section 47175) and a unit of local government referred to in paragraph (1)(B) to carry out a project to mitigate noise, if the project—*

*(i) consists of—*

*(I) replacement windows, doors, and the installation of through-the-wall air-conditioning units; or*

*(II) a contribution of the equivalent costs to be used for reconstruction, if reconstruction is the preferred local solution;*

*(ii) is located at a school near the airport; and*

*(iii) is included in a memorandum of agreement entered into before September 30, 2002, even if the airport has not met the requirements of part 150 of title 14, Code of Federal Regulations, and only if the financial limitations of the memorandum are applied.*

(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 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 decides is inconsistent with, or unnecessary to carry out, this chapter.

(6) AIRCRAFT NOISE PRIMARILY CAUSED BY MILITARY AIRCRAFT.—The Secretary may make a grant under this subsection for a project even if the purpose of the project is to mitigate the effect of noise primarily caused by military aircraft at an airport.

(d) **GOVERNMENT RELIEF FROM LIABILITY.**—The Government is not liable for damages from aviation noise because of action taken under this section.

(e) **GRANTS FOR ASSESSMENT OF FLIGHT PROCEDURES.**—

(1) **IN GENERAL.**—In accordance with subsection (c)(1), the Secretary may make a grant to an airport operator to assist in completing environmental review and assessment activities for proposals to implement flight procedures at such airport that have been approved as part of an airport noise compatibility program under subsection (b).

(2) **ADDITIONAL STAFF.**—The Administrator may accept funds from an airport operator, including funds provided to the operator under paragraph (1), to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with proposals to implement flight procedures at such airport that have been approved as part of an airport noise compatibility program under subsection (b).

(3) **RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.**—Notwithstanding section 3302 of title 31, any funds accepted under this section—

(A) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

(B) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

(C) shall remain available until expended.

(f) **DETERMINATION OF FAIR MARKET VALUE OF RESIDENTIAL PROPERTIES.**—In approving a project to acquire residential real property using financial assistance made available under this section or chapter 471, the Secretary shall ensure that the appraisal of the property to be acquired disregards any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

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**PART C—FINANCING**

\* \* \* \* \*

**CHAPTER 481—AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS**

Sec.  
48101. Air navigation facilities and equipment.  
48101a. *Other facilities and equipment.*

\* \* \* \* \*

**[48112. Adjustment to AIP program funding.]**

\* \* \* \* \*

**§ 48101. Air navigation facilities and equipment**

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—Not more than a total of the following amounts may be appropriated to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to acquire, establish, and improve air navigation facilities under section 44502(a)(1)(A) of this title:

- [(1) \$2,731,000,000 for fiscal year 2012.
- [(2) \$2,715,000,000 for fiscal year 2013.
- [(3) \$2,730,000,000 for fiscal year 2014.
- [(4) \$2,730,000,000 for fiscal year 2015.
- [(5) \$2,855,000,000 for each of fiscal years 2016 and 2017.]
- (1) \$2,920,000,000 for fiscal year 2018.
- (2) \$2,984,000,000 for fiscal year 2019.
- (3) \$3,049,000,000 for fiscal year 2020.

(b) AVAILABILITY OF AMOUNTS.—Amounts appropriated under this section remain available until expended.

(c) AUTOMATED SURFACE OBSERVATION SYSTEM/AUTOMATED WEATHER OBSERVING SYSTEM UPGRADE.—Of the amounts appropriated under subsection (a), such sums as may be necessary may be used for the implementation and use of upgrades to the current automated surface observation system/automated weather observing system, if the upgrade is successfully demonstrated.

(d) LIFE-CYCLE COST ESTIMATES.—The Administrator of the Federal Aviation Administration shall establish life-cycle cost estimates for any air traffic control modernization project, *carried out using amounts appropriated under subsection (a)*, the total life-cycle costs of which equal or exceed \$50,000,000.

**§ 48101a. Other facilities and equipment**

*There is authorized to be appropriated to the Secretary of Transportation to acquire, establish, and improve facilities and equipment (other than facilities and equipment relating to air traffic services)—*

- (1) \$189,000,000 for fiscal year 2021;
- (2) \$193,000,000 for fiscal year 2022; and
- (3) \$198,000,000 for fiscal year 2023.

\* \* \* \* \*

**§ 48103. Airport planning and development and noise compatibility planning and programs**

(a) IN GENERAL.—There shall be available to the Secretary of Transportation out of the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 to make grants for airport planning and airport development under section 47104, airport noise compatibility planning under section 47505(a)(2), and carrying out noise compatibility programs under [section 47504(c) \$3,350,000,000 for each of fiscal years 2012 through 2017.] *section 47504(c)*—

- (1) \$3,597,000,000 for fiscal year 2018;
- (2) \$3,666,000,000 for fiscal year 2019;
- (3) \$3,746,000,000 for fiscal year 2020;
- (4) \$3,829,000,000 for fiscal year 2021;
- (5) \$3,912,000,000 for fiscal year 2022; and

(6) \$3,998,000,000 for fiscal year 2023.

(b) AVAILABILITY OF AMOUNTS.—Amounts made available under subsection (a) shall remain available until expended.

\* \* \* \* \*

**§ 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, *48101a*, 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 Transportation and Infrastructure and Appropriations of the House, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

\* \* \* \* \*

**§ 48112. Adjustment to AIP program funding**

【On the effective date of a general appropriations Act providing appropriations for a fiscal year beginning after September 30, 2000, for the Federal Aviation Administration, the amount made available for a fiscal year under section 48103 shall be increased by the amount, if any, by which—

【(1) the amount authorized to be appropriated under section 48101 for such fiscal year; exceeds

【(2) the amounts appropriated for programs funded under such section for such fiscal year.

Any contract authority made available by this section shall be subject to an obligation limitation.】

**§ 48113. Reprogramming notification requirement**

Before reprogramming any amounts appropriated under section 106(k), 48101(a), *48101a*, or 48103, for which notification of the Committees on Appropriations of the Senate and the House of Representatives is required, the Secretary of Transportation shall transmit a written explanation of the proposed reprogramming to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.

**§ 48114. Funding for aviation programs**

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) AIRPORT AND AIRWAY TRUST FUND GUARANTEE.—

(A) IN GENERAL.—The total budget resources made available from the Airport and Airway Trust Fund each fiscal year pursuant to sections 48101, 48102, 48103, and 106(k) shall—

(i) in fiscal year 2013, be equal to 90 percent of the estimated level of receipts plus interest credited to the Airport and Airway Trust Fund for that fiscal year; and

(ii) ~~in fiscal year 2014 and each fiscal year thereafter~~ *in fiscal years 2014 through 2017*, be equal to the sum of—

(I) 90 percent of the estimated level of receipts plus interest credited to the Airport and Airway Trust Fund for that fiscal year; and

(II) the actual level of receipts plus interest credited to the Airport and Airway Trust Fund for the second preceding fiscal year minus the total amount made available for obligation from the Airport and Airway Trust Fund for the second preceding fiscal year.

Such amounts may be used only for the aviation investment programs listed in subsection (b)(1).

(B) GUARANTEE.—No funds may be appropriated or limited for aviation investment programs listed in subsection (b)(1) unless the amount described in subparagraph (A) has been provided.

(2) ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS FROM THE GENERAL FUND.—In any fiscal year through fiscal year 2017, if the amount described in paragraph (1) is appropriated, there is further authorized to be appropriated from the general fund of the Treasury such sums as may be necessary for the Federal Aviation Administration Operations account.

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

(1) TOTAL BUDGET RESOURCES.—The term “total budget resources” means the total amount made available from the Airport and Airway Trust Fund for the sum of obligation limitations and budget authority made available for a fiscal year for the following budget accounts that are subject to the obligation limitation on contract authority provided in this title and for which appropriations are provided pursuant to authorizations contained in this title:

(A) 69-8106-0-7-402 (Grants in Aid for Airports).

(B) 69-8107-0-7-402 (Facilities and Equipment).

(C) 69-8108-0-7-402 (Research and Development).

(D) 69-8104-0-7-402 (Trust Fund Share of Operations).

(2) ESTIMATED LEVEL OF RECEIPTS PLUS INTEREST.—The term “estimated level of receipts plus interest” means the level of excise taxes and interest credited to the Airport and Airway Trust Fund under section 9502 of the Internal Revenue Code of 1986 for a fiscal year as set forth in the President’s budget baseline projection as defined in section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177) (Treasury identification code 20-8103-0-7-402) for that fiscal year submitted pursuant to section 1105 of title 31, United States Code.

(c) ENFORCEMENT OF GUARANTEES.—

(1) TOTAL AIRPORT AND AIRWAY TRUST FUND FUNDING.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause total budget resources in a fiscal year for aviation investment programs described in subsection (b) to be less than the amount required by subsection (a)(1)(A) for such fiscal year.



(2) CAPITAL PRIORITY.—It shall not be in order in the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that provides an appropriation (or any amendment thereto) for any fiscal year through fiscal year 2017 for Research and Development or Operations if the sum of the obligation limitation for Grants-in-Aid for Airports and the appropriation for Facilities and Equipment for such fiscal year is below the sum of the authorized levels for Grants-in-Aid for Airports and for Facilities and Equipment for such fiscal year.

\* \* \* \* \*

## ***Subtitle XI—American Air Navigation Services Corporation***

<i>Chapter</i>	<i>Sec.</i>
<b>901. General Provisions</b> .....	<b>90101</b>
<b>903. Establishment of Air Traffic Services Provider; Transfer of Air Traffic Services</b> .....	<b>90301</b>
<b>905. Regulation of Air Traffic Services Provider</b> .....	<b>90501</b>
<b>907. General Rights of Access to Airspace, Airports, and Air Traffic Services Vital for Ensuring Safe Operations for All Users</b> .....	<b>90701</b>
<b>909. Continuity of Air Traffic Services to Department of Defense and Other Public Agencies</b> .....	<b>90901</b>
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### **CHAPTER 901—GENERAL PROVISIONS**

*Sec.*

90101. *Definitions.*

#### **§90101. Definitions**

(a) *IN GENERAL.*—*In this subtitle, the following definitions apply:*

(1) *ADMINISTRATOR.*—*The term “Administrator” means the Administrator of the FAA.*

(2) *AIR TRAFFIC SERVICES.*—*The term “air traffic services” means services—*

*(A) used for the monitoring, directing, control, and guidance of aircraft or flows of aircraft and for the safe conduct of flight, including communications, navigation, and surveillance services and provision of aeronautical information; and*

*(B) provided directly, or contracted for, by the FAA before the date of transfer.*

(3) *AIR TRAFFIC SERVICES USER.*—*The term “air traffic services user” means any individual or entity using air traffic services provided by the Corporation within United States airspace or international airspace delegated to the United States.*

(4) *BOARD.*—*The term “Board” means the Board of Directors of the Corporation.*

(5) *CEO.*—*The term “CEO” means the Chief Executive Officer of the Corporation.*

(6) *CHARGE; FEE.*—The terms “charge” and “fee” mean any rate, charge, fee, or other service charge for the use of air traffic services.

(7) *CORPORATION.*—The term “Corporation” means the American Air Navigation Services Corporation established under this subtitle.

(8) *DATE OF TRANSFER.*—The term “date of transfer” means the date on which the Corporation assumes operational control of air traffic services from the FAA pursuant to this subtitle, which shall be October 1, 2020.

(9) *DIRECTOR.*—The term “Director” means a Director of the Board.

(10) *FAA.*—The term “FAA” means the Federal Aviation Administration.

(11) *INTERIM CEO.*—The term “Interim CEO” means the Interim Chief Executive Officer of the Corporation.

(12) *REGIONAL AIR CARRIER.*—The term “regional air carrier” means an air carrier operating under part 121 of title 14, Code of Federal Regulations, that—

(A) exclusively or primarily operates aircraft with a seating capacity of 76 seats or fewer; and

(B) is not majority owned or controlled by any other air carrier or air carrier holding company.

(13) *SECRETARY.*—The term “Secretary” means the Secretary of Transportation.

(b) *APPLICABILITY OF OTHER DEFINITIONS.*—Except with respect to the terms specifically defined in this subtitle, the definitions contained in section 40102(a) shall apply to the terms used in this subtitle.

## **CHAPTER 903—ESTABLISHMENT OF AIR TRAFFIC SERVICES PROVIDER; TRANSFER OF AIR TRAFFIC SERVICES**

Sec.

90301. Establishment of Corporation.

90302. Transfer of air traffic services.

90303. Role of Secretary in transferring air traffic services to Corporation.

90304. Status and applicable laws.

90305. Nomination Panels for Board.

90306. Board of Directors.

90307. Fiduciary duties and qualifications of Directors.

90308. Bylaws and duties.

90309. Committees of Board; independent auditors.

90310. Advisory Board.

90311. Officers and their responsibilities.

90312. Authority of Corporation.

90313. Charges and fees for air traffic services.

90314. Preemption of authority over air traffic services.

90315. Actions by and against Corporation.

90316. Transfer of Federal personnel to Corporation.

90317. Transfer of facilities to Corporation.

90318. Approval of transferred air navigation facilities and other equipment.

90319. Use of spectrum systems and data.

90320. Transition plan.

### **§ 90301. Establishment of Corporation**

(a) *FEDERAL CHARTER.*—There is established a federally chartered, not-for-profit corporation to be known as the “American Air

*Navigation Services Corporation”, which shall be incorporated in a State of its choosing.*

(b) **CORPORATION NAME.**—

(1) **IN GENERAL.**—*The Corporation may conduct its business and affairs, and otherwise hold itself out, as the “American Air Navigation Services Corporation” in any jurisdiction.*

(2) **EXCLUSIVE RIGHT.**—*The Corporation shall have the exclusive right to use the name “American Air Navigation Services Corporation”.*

(3) **ALTERNATIVE NAME.**—*The Corporation may do business under a name other than the “American Air Navigation Services Corporation” at its choosing.*

### **§ 90302. Transfer of air traffic services**

(a) **IN GENERAL.**—*The Secretary shall transfer operational control over air traffic services within United States airspace and international airspace delegated to the United States to the Corporation on the date of transfer in a systematic and orderly manner that ensures continuity of safe air traffic services.*

(b) **MANAGEMENT AND OPERATION OF AIR TRAFFIC SERVICES.**—*Subject to section 90501, including the performance-based regulations and minimum safety standards prescribed under that section, the Corporation may establish and carry out plans for the management and operation of air traffic services within United States airspace and international airspace delegated to the United States.*

(c) **ENTITIES AUTHORIZED TO PROVIDE AIR TRAFFIC SERVICES AFTER DATE OF TRANSFER.**—*After the date of transfer, no entity, other than the Corporation, is authorized or permitted to provide air traffic services within United States airspace or international airspace delegated to the United States, except for—*

(1) *the Department of Defense, as authorized by chapter 909;*

(2) *entities to which the United States has delegated certain air traffic services responsibilities;*

(3) *entities with which the Corporation has contracted for the provision of air traffic services; and*

(4) *entities authorized to operate an unmanned aircraft traffic management system or service pursuant to section 45506 or 45507.*

### **§ 90303. Role of Secretary in transferring air traffic services to Corporation**

(a) **IN GENERAL.**—*As appropriate, and except as otherwise provided, the Secretary shall manage and execute the transfer of operational control over air traffic services pursuant to section 90302(a) and any related transition processes and procedures.*

(b) **NONDELEGATION.**—*Except as otherwise provided, the Secretary may not delegate any of the authority or requirements under this subtitle to the Administrator.*

### **§ 90304. Status and applicable laws**

(a) **NON-FEDERAL ENTITY.**—*The Corporation is not a department, agency, or instrumentality of the United States Government, and is not subject to title 31.*

(b) **LIABILITY.**—*The United States Government shall not be liable for the actions or inactions of the Corporation.*

(c) *NOT-FOR-PROFIT CORPORATION.*—The Corporation shall maintain its status as a not-for-profit corporation exempt from taxation under the Internal Revenue Code of 1986.

(d) *NO FEDERAL GUARANTEE.*—Any debt assumed by the Corporation shall not have an implied or explicit Federal guarantee.

**§ 90305. Nomination Panels for Board**

(a) *IN GENERAL.*—The Nomination Panels described in subsection (b) shall be responsible for nominating individuals to serve as Directors pursuant to section 90306.

(b) *NOMINATION PANELS.*—The Nomination Panels shall be as follows:

(1) *PASSENGER AIR CARRIER NOMINATION PANEL.*—A Passenger Air Carrier Nomination Panel composed of passenger air carrier representatives, with each air carrier with more than 30,000,000 annual passenger enplanements designating 1 representative to the Panel.

(2) *CARGO AIR CARRIER NOMINATION PANEL.*—A Cargo Air Carrier Nomination Panel composed of cargo air carrier representatives, with each all-cargo air carrier with more than 1,000,000 total annual enplaned cargo revenue tons designating 1 representative to the Panel.

(3) *REGIONAL AIR CARRIER NOMINATION PANEL.*—A Regional Air Carrier Nomination Panel composed of regional air carrier representatives, with each of the 3 largest regional air carriers, as measured by annual passenger enplanements, designating 1 representative to the Panel.

(4) *GENERAL AVIATION NOMINATION PANEL.*—A General Aviation Nomination Panel composed of 6 representatives designated by the principal organization representing noncommercial owners and recreational operators of general aviation aircraft.

(5) *BUSINESS AVIATION NOMINATION PANEL.*—A Business Aviation Nomination Panel composed of—

(A) 2 representatives designated by the principal organization representing owners, operators, and users of general aviation aircraft used exclusively in furtherance of business enterprises;

(B) 2 representatives designated by the principal organization representing aviation-related businesses, including fixed-base operators; and

(C) 2 representatives designated by the principal organization representing aerospace manufacturers of general aviation aircraft and equipment.

(6) *AIR TRAFFIC CONTROLLER NOMINATION PANEL.*—An Air Traffic Controller Nomination Panel composed of 6 representatives designated by the largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the Corporation.

(7) *AIRPORT NOMINATION PANEL.*—An Airport Nomination Panel composed of—

(A) 3 representatives designated by the principal organization representing commercial service airports; and

(B) 3 representatives designated by the principal organization representing airport executives.

(8) *COMMERCIAL PILOT NOMINATION PANEL.*—A Commercial Pilot Nomination Panel composed of commercial pilot representatives, with each organization engaged in collective bargaining on behalf of air carrier pilots with more than 5,000 members designating 1 member to the Panel.

(c) *DETERMINATION OF ENTITIES.*—

(1) *BEFORE DATE OF TRANSFER.*—Before the date of transfer, and not later than 30 days after the date of enactment of this subtitle, the Secretary shall determine the entities referred to in subsection (b).

(2) *AFTER DATE OF TRANSFER.*—On and after the date of transfer, the Board shall determine the entities referred to in subsection (b), in accordance with the bylaws of the Corporation.

(3) *STATISTICS.*—In determining annual statistics for purposes of this subsection, the Secretary and the Board shall utilize data published by the Department of Transportation for the most recent calendar year.

(4) *LIMITATIONS.*—

(A) *SINGLE DESIGNATION.*—No entity determined under this subsection may designate a representative to more than 1 Nomination Panel.

(B) *CARRIERS OWNED OR CONTROLLED BY SAME HOLDING COMPANY.*—If 2 or more air carriers determined under this subsection are owned or controlled by the same holding company, only 1 of those air carriers may designate a representative to a Nomination Panel.

(d) *TERMS.*—An individual on a Nomination Panel shall serve at the pleasure of the entity that the individual is representing.

(e) *QUALIFICATIONS.*—Only an individual who is a citizen of the United States may be designated to a Nomination Panel.

(f) *PROHIBITIONS.*—An individual may not serve on a Nomination Panel if the individual is—

(1) an officer or employee of the Corporation;

(2) a Member of Congress or an elected official serving in a State, local, or Tribal government; or

(3) an officer or employee of the Federal Government or any State, local, or Tribal government.

(g) *LARGEST ORGANIZATION ENGAGED IN COLLECTIVE BARGAINING ON BEHALF OF AIR TRAFFIC CONTROLLERS EMPLOYED BY THE CORPORATION DEFINED.*—Before the date of transfer, in this section, the term “largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the Corporation” means the largest organization engaged in collective bargaining on behalf of air traffic controllers employed by the FAA.

#### **§ 90306. Board of Directors**

(a) *AUTHORITY.*—The powers of the Corporation shall be vested in a Board of Directors that governs the Corporation.

(b) *COMPOSITION OF BOARD.*—The Board shall be composed of the following Directors:

(1) The CEO.

(2) 2 Directors appointed by the Secretary.

(3) 1 Director nominated by the Passenger Air Carrier Nomination Panel.

(4) 1 Director nominated by the Cargo Air Carrier Nomination Panel.

(5) 1 Director nominated by the Regional Air Carrier Nomination Panel.

(6) 1 Director nominated by the General Aviation Nomination Panel.

(7) 1 Director nominated by the Business Aviation Nomination Panel.

(8) 1 Director nominated by the Air Traffic Controller Nomination Panel.

(9) 1 Director nominated by the Airport Nomination Panel.

(10) 1 Director nominated by the Commercial Pilot Nomination Panel.

(11) 2 Directors nominated and selected by the other Directors.

(c) **NOMINATIONS AND APPOINTMENTS.**—

(1) **PRIOR TO DATE OF TRANSFER.**—

(A) **SUBMISSION OF NOMINATION LISTS.**—*Before the date of transfer, and not later than 60 days after the date of enactment of this subtitle, each Nomination Panel shall submit to the Secretary a list, chosen by consensus, of 4 individuals nominated to be Directors.*

(B) **APPOINTMENT AND SELECTION.**—*Not later than 30 days after the date on which the last nomination list is submitted under subparagraph (A), the Secretary shall—*

(i) *appoint 2 individuals to be Directors under subsection (b)(2); and*

(ii) *select, pursuant to subsection (b), the appropriate number of individuals to be Directors from each nomination list.*

(C) **RESUBMISSION.**—*A Nomination Panel shall resubmit a list submitted under subparagraph (A), not later than 15 days after notification by the Secretary of the need to resubmit the list, if the Secretary determines that an individual on the list is—*

(i) *not qualified to serve as a Director under section 90307; or*

(ii) *otherwise not fit to serve as a Director.*

(D) **AT-LARGE DIRECTORS.**—*Not later than 30 days after the Secretary appoints and selects the Directors pursuant to subparagraph (B), the Board shall nominate and select the additional Directors under subsection (b)(11) by a two-thirds vote.*

(2) **AFTER DATE OF TRANSFER.**—

(A) **NOMINATION.**—*As appropriate, a Nomination Panel shall submit to the Board a list, chosen by consensus, of 4 individuals nominated to be Directors.*

(B) **SELECTION.**—*The Board shall select, pursuant to subsection (b), the appropriate number of individuals to be Directors from a list submitted by a Nomination Panel.*

(C) **RESUBMISSION.**—*A Nomination Panel shall resubmit a list submitted under subparagraph (A), not later than 15 days after notification by the Board of the need to resubmit the list, if the Board determines that more than 1 individual on the list is—*

(i) not qualified to serve as a Director under section 90307; or

(ii) otherwise not fit to serve as a Director.

(D) *AT-LARGE DIRECTORS.*—The Board shall nominate and select Directors under subsection (b)(11) in accordance with the bylaws of the Corporation.

(E) *APPOINTED DIRECTORS.*—None of the Directors appointed by the Secretary under subsection (b)(2) shall be subject to approval by the Board.

(d) *CHAIRPERSON.*—The Chairperson of the Board shall—

(1) be selected from among the Directors (other than the CEO) by a majority vote of the Directors; and

(2) subject to subsection (e), serve until replaced by a majority vote of the Directors.

(e) *TERMS.*—

(1) *INITIAL TERMS.*—The term of each Director appointed, or nominated and selected, before the date of transfer (other than the CEO) shall expire on the date that is 2 years after the date of transfer.

(2) *SUBSEQUENT TERMS.*—The term of each Director appointed, or nominated and selected, on or after the date of transfer (other than the CEO) shall be 4 years, except as provided by paragraph (3).

(3) *STAGGERING.*—The Board shall stagger the duration of the terms of the initial Directors appointed, or nominated and selected, after the date of transfer to promote the stability of the Board.

(4) *TERM LIMIT.*—Except as provided by subsection (f)(3), a Director may not serve on the Board for more than 8 years.

(f) *VACANCIES.*—

(1) *BEFORE DATE OF TRANSFER.*—Before the date of transfer, a vacancy on the Board shall be filled in the manner in which the original appointment or selection was made.

(2) *AFTER DATE OF TRANSFER.*—After the date of transfer, a vacancy on the Board shall be filled in the manner in which the original appointment was made (in the case of Directors appointed under subsection (b)(2)) or in the manner described under subsection (c)(2) (in the case of Directors nominated by Nomination Panels or the Board).

(3) *SERVICE UNTIL SUCCESSOR TAKES OFFICE.*—A Director may serve after the expiration of the Director's term until a successor has been appointed or nominated and selected.

(g) *MEETINGS AND QUORUM.*—

(1) *MEETINGS.*—

(A) *IN GENERAL.*—The Board shall meet at the call of the Chairperson (or as otherwise provided in the bylaws) and, at a minimum, on a quarterly basis.

(B) *INITIAL MEETING.*—Not later than 90 days after the date of enactment of this subtitle, the Board shall hold its initial meeting.

(C) *IN-PERSON MEETING.*—At least 1 meeting of the Board each year shall be conducted in person.

(2) *QUORUM.*—A quorum of the Board, consisting of a majority of the Directors then in office, shall be required to conduct any business of the Board.

(3) *APPROVAL OF BOARD ACTIONS.*—*Except as otherwise provided, the threshold for approving Board actions shall be as set forth in the bylaws.*

(h) *REMOVAL OF DIRECTORS.*—*A Director may be removed in accordance with section 90307(c) and the bylaws of the Corporation.*

**§ 90307. Fiduciary duties and qualifications of Directors**

(a) *FIDUCIARY DUTIES.*—*The fiduciary duties of a Director shall be solely and exclusively to the Corporation.*

(b) *QUALIFICATIONS.*—

(1) *IN GENERAL.*—*Only a citizen of the United States may be appointed or nominated as a Director.*

(2) *PROHIBITIONS.*—*An individual may not serve as a Director if the individual—*

(A) *is an officer, agent, or employee of the Corporation (other than the CEO);*

(B) *is, or has been within the preceding 2 years, a Member of Congress;*

(C) *is an elected official serving in a State, local, or Tribal government;*

(D) *is an officer or employee of the Federal Government or any State, local, or Tribal government;*

(E) *is a director, officer, trustee, agent, or employee of—*  
*(i) a bargaining agent that represents employees of the Corporation;*

*(ii) an entity that has a material interest as a supplier, client, or user of the Corporation's services; or*

*(iii) any of the entities determined under section 90305(c);*

(F) *receives any form of compensation or material benefit from an entity that has a material interest as a supplier, client, or user of the Corporation's services, excluding compensation from a defined benefit plan resulting from the individual's past employment; or*

(G) *has or holds any other fiduciary duty, legal obligation, office, employed position, or material interest that would prevent the individual from satisfying the requirements of subsection (a) under the applicable laws of the State in which the Corporation is incorporated.*

(3) *EXCEPTION.*—*Subparagraphs (C) and (D) of paragraph (2) shall not apply to an individual solely because the individual is an elected member of a school board or is employed by an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).*

(c) *BREACH OF FIDUCIARY DUTY TO CORPORATION.*—

(1) *IN GENERAL.*—*The Board shall remove any Director who breaches a fiduciary duty to the Corporation—*

(A) *pursuant to procedures to be established in the bylaws of the Corporation; and*

(B) *not later than 30 days after determining that a breach has occurred.*

(2) *LIMITED PRIVATE RIGHT OF ACTION.*—*The Corporation shall have the exclusive right to seek injunctive or monetary relief (or both) against a Director or former Director for a breach of a fiduciary duty to the Corporation.*



(d) *PROHIBITION ON INDEMNIFICATION AND CERTAIN INSURANCE.*—Notwithstanding section 90312 or any other provision of law, the Corporation shall neither indemnify nor procure insurance to indemnify any Director for liability relating to a breach of a fiduciary duty to the Corporation.

**§ 90308. Bylaws and duties**

(a) *IN GENERAL.*—The Board shall adopt and amend the bylaws of the Corporation.

(b) *BYLAWS.*—The bylaws of the Corporation shall include, at a minimum—

(1) the duties and responsibilities of the Board (including those described in subsection (c)), officers, Advisory Board, and committees of the Corporation; and

(2) the operational procedures of the Corporation.

(c) *DUTIES AND RESPONSIBILITIES OF BOARD.*—The Board shall be responsible for actions of the Corporation, including—

(1) adoption of an annual budget;

(2) approval of a strategic plan, including updates thereto, and other plans supporting the strategy laid out in the strategic plan;

(3) adoption of an annual action plan;

(4) authorization of any form or instrument of indebtedness, including loans and bond issues;

(5) assessment, modification, and collection of charges and fees for air traffic services in accordance with the standards described in section 90313;

(6) hiring and supervision of the CEO;

(7) establishment and maintenance of an appropriately funded reserve fund;

(8) adoption of a code of conduct and code of ethics for Directors, officers, agents, and employees of the Corporation;

(9) establishment of a process for ensuring that the fiduciary duties of a Director are solely and exclusively to the Corporation;

(10) establishment of a process for the removal of a Director, including the removal of a Director for breach of a fiduciary duty to the Corporation; and

(11) adoption of a process for filling vacancies on the Board.

**§ 90309. Committees of Board; independent auditors**

(a) *COMMITTEES OF BOARD.*—The Board shall establish and maintain a Safety Committee, a Compensation Committee, a Technology Committee, and such other committees as the Board determines are necessary or appropriate to carry out the responsibilities of the Board effectively. Such committees shall be composed solely of Directors.

(b) *INDEPENDENT AUDITORS.*—The Board shall retain independent auditors to conduct annual audits of the Corporation's financial statements and internal controls.

**§ 90310. Advisory Board**

(a) *ESTABLISHMENT.*—There shall be an Advisory Board of the Corporation.

(b) *DUTIES.*—The Advisory Board—

(1) shall conduct such activities as the Board determines appropriate;

(2) shall submit to the Board recommendations for Directors to be nominated and selected under section 90306(b)(11); and

(3) may, on its own initiative, study, report, and make recommendations to the Board on matters relating to the Corporation's provision of air traffic services and associated safety considerations.

(c) **MEMBERSHIP.**—

(1) **NUMBER.**—The Advisory Board shall consist of not more than 15 individuals, who are citizens of the United States, representing interested entities.

(2) **REPRESENTATIVES.**—The members of the Advisory Board shall include, at a minimum, representatives of the following:

(A) Air carriers.

(B) General aviation.

(C) Business aviation.

(D) Commercial service airports.

(E) Operators and manufacturers of commercial unmanned aircraft systems.

(F) Appropriate labor organizations.

(G) The Department of Defense.

(H) Small communities, including at least 1 community primarily served by a nonhub airport.

(d) **STRUCTURE; TERMS.**—The membership and structure of the Advisory Board, including the duration that individuals may serve on the Advisory Board, shall be determined by the Board in accordance with the bylaws of the Corporation.

**§ 90311. Officers and their responsibilities**

(a) **CHIEF EXECUTIVE OFFICER.**—

(1) **HIRING.**—

(A) **IN GENERAL.**—The Corporation shall have a Chief Executive Officer, who shall be hired by the Board to manage the Corporation.

(B) **QUALIFICATIONS.**—The CEO shall be an individual who—

(i) is a citizen of the United States;

(ii) satisfies the qualifications to serve as a Director under section 90307; and

(iii) by reason of professional background and experience, is especially qualified to manage the Corporation.

(2) **DUTIES.**—The CEO shall—

(A) be responsible for the management and direction of the Corporation, including its officers and employees, and for the exercise of all powers and responsibilities of the Corporation;

(B) establish Corporation offices and define the responsibilities and duties of the offices, with full authority to organize the Corporation as required; and

(C) designate an officer of the Corporation who is vested with the authority to act in the capacity of the CEO if the CEO is absent or incapacitated.

(3) **SCOPE OF AUTHORITY.**—

(A) *IN GENERAL.*—The CEO shall be subject to the policy guidance of the Board, report to the Board, and serve at the pleasure of the Board.

(B) *AUTHORITY OF BOARD.*—The Board may modify or revoke actions of the CEO pursuant to procedures set forth in the bylaws of the Corporation.

(b) *OTHER OFFICERS AND EMPLOYEES.*—

(1) *IN GENERAL.*—The CEO shall appoint such other officers and employees of the Corporation as the CEO determines appropriate.

(2) *CHIEF OPERATING OFFICER; CHIEF FINANCIAL OFFICER.*—An appointment of an individual as chief operating officer or chief financial officer by the CEO shall be subject to the approval of the Board.

(3) *DELEGATION OF FUNCTIONS.*—The CEO may delegate to the other officers and employees of the Corporation any of the functions of the Corporation.

(4) *COMPENSATION.*—Compensation for the CEO, chief operating officer, and chief financial officer shall be set by the Board.

(c) *INTERIM CEO.*—

(1) *HIRING.*—Not later than 60 days after the date of the Secretary's appointment and selection of Directors under section 90306(c)(1)(B), the Board shall hire an Interim Chief Executive Officer who meets the qualifications specified in subsection (a)(1)(B).

(2) *AUTHORITY AND TERM.*—

(A) *AUTHORITY.*—The Interim CEO shall—

(i) exercise the same authority as the CEO, including serving on the Board;

(ii) carry out the same duties as the CEO; and

(iii) be subject to the same prohibitions and limitations as the CEO.

(B) *TERM.*—The Interim CEO shall serve until the Board hires a CEO.

(3) *STATUTORY CONSTRUCTION.*—Nothing in this subsection may be construed to restrict the ability of the Board to hire the individual serving as the Interim CEO to be the CEO.

**§ 90312. Authority of Corporation**

(a) *GENERAL AUTHORITY.*—Except as otherwise provided in this subtitle, the Corporation—

(1) shall have perpetual succession in its corporate name unless dissolved by law;

(2) may adopt and use a corporate seal;

(3) may own, lease, use, improve, and dispose of such property as the Corporation considers necessary to carry out the purposes of the Corporation;

(4) may contract with other parties;

(5) may sue or be sued;

(6) may be held liable under civil and criminal law;

(7) may indemnify the Directors, including the Interim CEO or CEO, and other officers, agents, and employees of the Corporation; and

(8) shall have such other corporate powers as are necessary or appropriate to carry out the purposes of this subtitle and of the Corporation.

(b) LIMITATIONS.—

(1) BUSINESS ACTIVITIES.—The Corporation may only engage in business activities that are—

(A) related to carrying out air traffic services; or

(B) ancillary or incidental to carrying out such services.

(2) EQUITY SHARES.—The Corporation may not issue or sell equity shares in the Corporation.

**§90313. Charges and fees for air traffic services**

(a) ASSESSMENT AND COLLECTION OF CHARGES AND FEES.—Beginning on the date of transfer, and subject to this section and section 90502, the Corporation may assess and collect charges and fees from air traffic services users for air traffic services provided by the Corporation in United States airspace or international airspace delegated to the United States.

(b) BOARD APPROVAL OF CHARGES AND FEES.—The Board shall—

(1) approve a proposal for—

(A) an initial schedule of charges and fees pursuant to subsection (g); and

(B) any change in the charges or fees;

(2) provide air traffic services users and other interested persons notice of a proposal approved under paragraph (1) in a manner and form prescribed by the Secretary; and

(3) submit a proposal approved under paragraph (1) (other than a proposal to decrease a charge or fee) to the Secretary 90 days prior to the effective date of the proposal in a manner and form prescribed by the Secretary.

(c) SECRETARIAL REVIEW.—

(1) PUBLIC COMMENT.—Upon receiving a proposal from the Corporation under subsection (b)(3), the Secretary shall solicit public comments on the proposal for a 30-day period.

(2) SECRETARIAL APPROVAL.—

(A) IN GENERAL.—Not later than 15 days after the last day of the 30-day public comment period, the Secretary shall—

(i) approve the proposal upon determining that the proposal complies with the standards in subsection (d);

or

(ii) disapprove the proposal upon determining that the proposal does not comply with the standards in subsection (d).

(B) EFFECTIVENESS OF PROPOSAL.—If the Secretary does not issue a timely decision pursuant to subparagraph (A), the proposal shall be deemed approved.

(d) STANDARDS.—The Secretary shall apply the following standards in reviewing a proposal from the Corporation under subsection (c):

(1) The amount or type of charges and fees paid by an air traffic services user may not—

(A) be determinant of the air traffic services provided to the user; or

- (B) adversely impact the ability of the user to use or access any part of the national airspace system.
- (2) Charges and fees shall be consistent with the document titled "ICAO's Policies on Charges for Airports and Air Navigation Services", Ninth Edition, 2012.
- (3) Charges and fees may not be discriminatory.
- (4) Charges and fees shall be consistent with United States international obligations.
- (5) Certain categories of air traffic services users may be charged on a flat fee basis so long as the charge or fee is otherwise consistent with this subsection.
- (6) Charges and fees may not be imposed for air traffic services provided with respect to operations of aircraft that qualify as public aircraft under sections 40102(a) and 40125.
- (7) Charges and fees may not be imposed for air traffic services provided with respect to aircraft operations conducted pursuant to part 91, 133, 135, 136, or 137 of title 14, Code of Federal Regulations.
- (8) Charges and fees may not be structured such that air traffic services users have incentives to operate in ways that diminish safety to avoid the charges and fees.
- (9) Charges and fees, based on reasonable and financially sound projections, may not generate revenues exceeding the Corporation's current and anticipated financial requirements in relation to the provision of air traffic services.
- (e) CORPORATION'S FINANCIAL REQUIREMENTS.—In determining whether a proposal received from the Corporation under subsection (b) would generate revenues in compliance with subsection (d)(9), the Secretary shall consider costs and other liabilities of the Corporation, including—
- (1) costs incurred before the date of transfer;
  - (2) operations and maintenance costs;
  - (3) management and administrative costs;
  - (4) depreciation costs;
  - (5) interest costs and other expenses related to debt servicing;
  - (6) cash reserves or other requirements needed to maintain credit ratings or comply with debt covenants; and
  - (7) any tax liability.
- (f) PAYMENT OF CHARGES AND FEES.—
- (1) IN GENERAL.—An air traffic services user shall pay a charge or fee assessed by the Corporation under subsection (a) for services rendered and any interest and penalties assessed under paragraph (2).
  - (2) LATE PAYMENT OR NONPAYMENT.—The Corporation may assess and collect interest and penalties for late payment or nonpayment of a charge or fee assessed by the Corporation under subsection (a).
  - (3) PRIVATE RIGHT OF ACTION.—The Corporation may file suit in any district court of the United States having jurisdiction over the parties, without respect to the amount in controversy and without regard to the citizenship of the parties, to enforce this subsection not later than 2 years after the date on which a claim accrues. A claim accrues, under this paragraph, upon the rendering of the relevant air traffic services by the Corporation.

(g) *INITIAL SCHEDULE.*—Notwithstanding subsection (b)(3), the Corporation shall propose an initial schedule of charges and fees at least 180 days before the date of transfer.

(h) *AIRCRAFT OPERATION DEFINED.*—In this section, the term “aircraft operation” means the movement of an aircraft beginning with the take-off of the aircraft and ending with the landing of the aircraft.

**§ 90314. Preemption of authority over air traffic services**

(a) *STATE DEFINED.*—In this section, the term “State” means a State, the District of Columbia, and a territory or possession of the United States.

(b) *PREEMPTION.*—A State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to air traffic services.

(c) *AIRPORT OWNER OR OPERATOR.*—Subsection (b) may not be construed to limit a State, political subdivision of a State, or political authority of at least 2 States that owns or operates a landing area from carrying out its proprietary powers and rights over the landing area.

**§ 90315. Actions by and against Corporation**

(a) *JURISDICTION FOR LEGAL ACTIONS GENERALLY.*—

(1) *JURISDICTION OF UNITED STATES DISTRICT COURTS.*—The United States district courts shall have original jurisdiction over all actions brought by or against the Corporation, except as otherwise provided in this subtitle.

(2) *REMOVAL OF ACTIONS IN STATE COURTS.*—Any action brought in a State court to which the Corporation is a party shall be removed to the appropriate United States district court under the provisions of chapter 89 of title 28.

(b) *TESTIMONY OF CORPORATION EMPLOYEES.*—

(1) *IN GENERAL.*—Except with the consent of the chief legal officer of the Corporation, employees of the Corporation may not provide expert opinion or expert testimony in civil litigation related to the Corporation.

(2) *EXCEPTIONS.*—The Corporation may prescribe the circumstances, if any, under which employees of the Corporation may provide expert opinion or expert testimony in civil litigation related to the Corporation.

**§ 90316. Transfer of Federal personnel to Corporation**

(a) *TRANSFER OF FAA EMPLOYEES TO CORPORATION.*—

(1) *PROCESS.*—Not later than 180 days after the date of enactment of this subtitle, the Secretary, after meeting and conferring with the CEO and representatives of the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees, shall commence a process to determine, consistent with the purposes of this subtitle, which activities and employees, or categories of employees, of the FAA shall be transferred to the Corporation on or before the date of transfer.

(2) *DETERMINATION; TRANSFER.*—The Secretary shall—

(A) not later than 180 days prior to the date of transfer, complete the determination of which activities, employees,

or categories of employees shall be transferred to the Corporation under paragraph (1);

(B) upon completing the determination, notify the CEO, the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees, and all affected employees of such determination; and

(C) on or before the date of transfer, transfer such activities, employees, or categories of employees.

(b) **SUBSEQUENT TRANSFER OF EMPLOYEES.—**

(1) **IN GENERAL.—**

(A) **TRANSFERS FROM FAA TO CORPORATION.—**During the 180-day period beginning on the date of transfer, the Secretary, after meeting and conferring with the CEO and representatives of the certified labor organizations recognized under section 91105 and labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees, may transfer an employee from the FAA to the Corporation if the Secretary, after meeting and conferring with the CEO and the representatives, finds that the determination with respect to the employee under subsection (a) was inconsistent with the purposes of this subtitle.

(B) **TRANSFERS FROM CORPORATION TO FAA.—**During the 180-day period beginning on the date of transfer, the Secretary, after meeting and conferring with the CEO and representatives of the certified labor organizations recognized under section 91105 and labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees, may transfer an employee from the Corporation to the FAA if the Secretary, after the consultation with the CEO and the representatives, finds that the determination with respect to the employee under subsection (a) was inconsistent with the purposes of this subtitle.

(2) **REEMPLOYMENT OF FEDERAL EMPLOYEES.—**An employee transferred from the Corporation to the FAA under this subsection shall be entitled to the same rights and benefits, and re-employment, in the same manner as if covered by section 3582 of title 5 notwithstanding section 8347(o), 8713, or 8914 of such title.

(3) **ELECTION OF BENEFITS FOR EMPLOYEES SUBJECT TO DELAYED TRANSFER TO CORPORATION.—**In the case of an employee of the FAA transferred to the Corporation under this subsection, such employee shall be afforded the opportunity to make the election provided under section 91102(b) with respect to benefits.

(c) **CORPORATION EMPLOYEE BENEFITS.—**At least 180 days before the date of transfer, the Corporation shall establish a compensation and benefits program for—

(1) employees hired by the Corporation after the date of transfer; and

(2) employees that make the election under section 91102(b)(1)(A)(ii).

(d) **PROTECTIONS FOR EMPLOYEES NOT TRANSFERRED TO CORPORATION.—**For those employees of the FAA directly involved in the operation of air traffic services who are not transferred to the Cor-

poration pursuant to subsection (a) or who transferred back to the FAA pursuant to subsection (b), the Secretary shall provide to such employees compensation and benefits consistent with the applicable collective-bargaining agreement that are not less than the level of compensation and benefits provided to such FAA employees prior to the date of transfer unless mutually agreed to by the FAA and representatives of the certified labor organization.

(e) **SUITABILITY, CLEARANCES, AND MEDICAL QUALIFICATIONS.**—All federally issued or federally required credentials, certificates, clearances, medical qualifications, access rights, substance testing results, and any other Federal permissions or approvals held by any employee of the FAA in the operation of air traffic services that are valid and effective on the day prior to the date of transfer shall remain valid and effective after the date of transfer—

(1) unless revoked for cause; or

(2) until equivalent or substantially equivalent credentials, certificates, clearances, medical qualifications, access rights, substance testing results, and any other Federal permissions or approvals have been issued to the employee on or after the date of transfer.

(f) **TRANSITION AGREEMENTS.**—

(1) **BIPARTITE AGREEMENT.**—

(A) **MEETINGS.**—At least 180 days before the date of transfer, the Corporation shall meet with the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees to resolve employment-related transition matters that affect employees represented by those labor organizations and that are not otherwise covered under this section.

(B) **DUTY TO BARGAIN IN GOOD FAITH.**—The Corporation and the labor organizations described in subparagraph (A) (in this subsection referred to as the “parties”) shall be subject to the duty to bargain in good faith under chapter 911 in any meetings pursuant to this paragraph.

(C) **DISPUTE RESOLUTION PROCEDURES.**—If the parties fail to reach an agreement over the initial or subsequent employment-related transition issues not otherwise covered under this section, the matters shall be subject to the dispute resolution procedures established under subsections (a), (b), and (e) of section 91107.

(2) **TRIPARTITE AGREEMENT.**—

(A) **MEETINGS.**—At least 1 year before the date of transfer, the Corporation and the FAA shall meet with the labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees to resolve transition matters related to the separation of air traffic services from the FAA pursuant to this subtitle that affect employees represented by those labor organizations and that are not otherwise covered under this section.

(B) **DUTY TO BARGAIN IN GOOD FAITH.**—To the extent applicable, the Corporation and the labor organizations described in subparagraph (A) shall be subject to the duty to bargain in good faith under chapter 911 in any meetings pursuant to this paragraph.



(C) *DISPUTE RESOLUTION PROCEDURES.*—If the Corporation and the certified labor organizations described in subparagraph (A) fail to reach an agreement over the initial or subsequent transition issues related to the separation of air traffic services from the FAA, not otherwise covered under this section, the matters shall be subject to the dispute resolution procedures established under subsections (a), (b), and (e) of section 91107.

**§90317. Transfer of facilities to Corporation**

(a) *INVENTORY OF FAA PROPERTY AND FACILITIES.*—At least 1 year before the date of transfer, the Secretary, in consultation with the CEO, shall identify the licenses, patents, software rights, and real and personal property, including air navigation facilities (as defined in section 40102(a)) of the United States under FAA jurisdiction, that are necessary and appropriate for the Corporation to carry out the air traffic services transferred to the Corporation under this subtitle.

(b) *TRANSFER OF FEDERAL PROPERTY.*—

(1) *CONVEYANCE OF PROPERTY TO CORPORATION.*—On the date of transfer, the Secretary shall convey, without charge, all right, title, and interest of the United States in, and the use, possession, and control of, properties identified under subsection (a).

(2) *SALE OF PROPERTY BY CORPORATION AFTER DATE OF TRANSFER.*—If the Corporation sells any of the property conveyed to the Corporation under paragraph (1), the Corporation shall use the proceeds received from the sale of such property for the acquisition or improvement of air navigation facilities or other capital assets.

(3) *REVERSIONARY INTEREST.*—Any conveyance of real property under this section located at an FAA technical facility shall be subject to the condition that all right, title, and interest in the real property shall revert to the United States and be placed under the administrative control of the Secretary if—

(A) the Corporation determines the real property is no longer necessary to carry out the air traffic services transferred to the Corporation under this subtitle; and

(B) the Secretary determines the reversion is necessary to protect the interests of the United States.

(4) *SAFETY AIR TRAFFIC SERVICES EQUIPMENT IN REMOTE LOCATIONS.*—

(A) *MAINTENANCE BY CORPORATION.*—Any equipment identified pursuant to subsection (a) and conveyed to the Corporation pursuant to paragraph (1) that is located in a noncontiguous State of the United States and is critical to the safe provision of air traffic services in that State may not be sold and shall be maintained and, as determined necessary by the Corporation, upgraded by the Corporation.

(B) *EQUIPMENT CRITICAL TO SAFE PROVISION OF AIR TRAFFIC SERVICES.*—For purposes of this paragraph, equipment critical to the safe provision of air traffic services includes GPS receivers, data link transceivers, ADS-B, multi-function displays, flight information services, moving map displays, terrain databases, airport lighting, and mountain pass cameras.

(c) **CONSOLIDATION AND REALIGNMENT OF TRANSFERRED SERVICES AND FACILITIES.**—

(1) **IN GENERAL.**—At least 180 days before the date of transfer, and subject to section 91107, the Corporation, in consultation with representatives of labor organizations representing operations and maintenance employees of the air traffic control system, shall establish a process for the realignment and consolidation of services and facilities to be transferred to the Corporation from the FAA.

(2) **MORATORIUM.**—Except as otherwise provided, there shall be a moratorium on any effort by the Administrator or the Corporation to consolidate or realign air traffic services or facilities until the process required by paragraph (1) is established.

**§ 90318. Approval of transferred air navigation facilities and other equipment**

On the date of transfer, the Corporation is authorized to operate all air navigation facilities and other equipment conveyed pursuant to section 90317 without additional approval or certification by the Secretary.

**§ 90319. Use of spectrum systems and data**

Beginning on the date of transfer, the Secretary shall provide the Corporation with such access to the spectrum systems used by the FAA before the date of transfer to provide air traffic services, and any successor spectrum systems, and to the data from such systems, as is necessary to enable the Corporation to provide air traffic services under this subtitle.

**§ 90320. Transition plan**

(a) **TRANSITION TEAM.**—Not later than 120 days after the date of enactment of this subtitle, the Secretary, after meeting and conferring with the CEO or Interim CEO, shall establish a transition team to develop, consistent with this subtitle, a transition plan to be reviewed by the Secretary and, if approved, utilized by the Department of Transportation during the period in which air traffic services are transferred from the FAA to the Corporation.

(b) **MEMBERSHIP.**—The transition team shall consist of 12 individuals, who are citizens of the United States, as follows:

(1) 5 representatives appointed by the Secretary, including—

(A) the Deputy Administrator of the FAA;

(B) the Director of the FAA Mike Monroney Aeronautical Center;

(C) the Director of the FAA William J. Hughes Technical Center; and

(D) 2 representatives from the Office of Management and Budget, appointed with the concurrence of the Director of the Office of Management and Budget.

(2) 1 representative appointed by the exclusive bargaining representative of air traffic controllers certified under section 7111 of title 5.

(3) 1 representative appointed by the exclusive bargaining representative for airway transportation systems specialists in the Air Traffic Organization technical operations services certified under section 7111 of title 5.

(4) 5 representatives appointed by the CEO.

(c) **TRANSITION PLAN.**—

(1) **IN GENERAL.**—Not later than 45 days after the establishment of the transition team, the transition team shall develop and submit to the Secretary an executable transition plan.

(2) **CONTENTS.**—The transition plan shall set forth a plan for the Secretary, in consultation with the CEO or Interim CEO, to—

(A) identify property, facilities, equipment, and obligations, contractual or otherwise, related to the provision of air traffic services; and

(B) safely and efficiently transfer Federal personnel, property, facilities, equipment, and obligations, contractual and otherwise, related to the provision of air traffic services to the Corporation on or before the date of transfer.

(d) **SECRETARIAL REVIEW.**—

(1) **IN GENERAL.**—Not later than 30 days after receipt of the transition plan, the Secretary shall review and, if appropriate, approve the plan.

(2) **DISAPPROVAL.**—If the Secretary does not approve a submitted transition plan, the transition team shall revise the plan and resubmit it to the Secretary not later than 30 days after receiving notice of the disapproval by the Secretary.

(e) **TERMINATION.**—The transition team shall terminate upon approval of a transition plan by the Secretary.

**CHAPTER 905—REGULATION OF AIR TRAFFIC SERVICES PROVIDER**

Sec.

90501. Safety oversight and regulation of Corporation.

90502. Resolution of disputes concerning air traffic services charges and fees.

90503. International agreements and activities.

90504. Availability of safety information.

90505. Reporting of safety violations to FAA.

90506. Insurance requirements.

**§ 90501. Safety oversight and regulation of Corporation**

(a) **PERFORMANCE-BASED REGULATIONS AND MINIMUM SAFETY STANDARDS.**—After consultation with the Corporation and the FAA's certified bargaining representatives and before the date of transfer, the Secretary shall—

(1) prescribe performance-based regulations and minimum safety standards for the operation of air traffic services by the Corporation;

(2) prescribe performance-based regulations and minimum safety standards for the certification and operation of air navigation facilities (other than facilities that may be operated without additional approval or certification pursuant to section 90318); and

(3) identify policies and other administrative materials of the FAA in effect before the date of transfer for providing air traffic services that will apply to the Corporation.

(b) **SAFETY MANAGEMENT SYSTEM.**—

(1) **IN GENERAL.**—The regulations and standards prescribed pursuant to subsection (a) shall include a safety management system for air traffic services provided by the Corporation.

(2) *FOUNDATION.*—The safety management system shall be based on the safety management system used by the Air Traffic Organization of the FAA before the date of transfer.

(3) *USE BY CORPORATION.*—Beginning on the date of transfer, the Corporation shall use the safety management system, including any changes thereto, when assessing and managing risks in all procedures, processes, and practices necessary to provide air traffic services.

(4) *FAA OVERSIGHT.*—To the maximum extent practicable, for at least 2 years after the date of transfer, the Air Traffic Safety Oversight Service of the FAA shall employ the same oversight processes and procedures in use before the date of transfer.

(c) *PROPOSALS TO MODIFY AIR TRAFFIC MANAGEMENT PROCEDURES, ASSIGNMENTS, AND CLASSIFICATIONS OF AIRSPACE.*—

(1) *SUBMISSION OF PROPOSALS TO SECRETARY.*—The Corporation or another interested party may submit to the Secretary a proposal to modify—

(A) air traffic management procedures, assignments, classifications of airspace, or other actions affecting airspace access that are developed pursuant to the safety management system; and

(B) FAA policies and other administrative materials identified under subsection (a)(2).

(2) *REVIEW AND APPROVAL OF PROPOSALS.*—The regulations and standards prescribed under subsection (a)(1) shall include a process for expedited review and approval of a proposal received under paragraph (1).

(3) *STANDARD FOR APPROVAL.*—The Secretary shall approve a proposal received under paragraph (1) if the Secretary determines that the proposal complies with the regulations and standards prescribed under subsection (a)(1) and is otherwise consistent with the public interest, including that the proposal would not materially reduce access to a public-use airport.

(4) *APPROVALS AND DISAPPROVALS.*—

(A) *IN GENERAL.*—During the 45-day period beginning on the date of receipt of a proposal under paragraph (1), the Secretary shall approve or disapprove the proposal.

(B) *WRITTEN EXPLANATION.*—If the Secretary disapproves the proposal, the Secretary shall provide—

(i) a written explanation of the Secretary's decision, including—

(I) any instances of inconsistency with the regulations and standards prescribed under subsection (a)(1); and

(II) any other information that formed the basis for the Secretary's decision; and

(ii) a description of any modifications to the proposal that are necessary to obtain approval.

(5) *FAILURE TO ACT.*—If the Secretary fails to act on a proposal received under paragraph (1) during the 45-day period described in paragraph (4)(A), the Corporation or other party making the proposal shall be entitled to a writ of mandamus in a Federal district court with venue.

(d) *JUDICIAL REVIEW.*—

(1) *IN GENERAL.*—Any decision made by the Secretary to approve or disapprove a proposal received under subsection (c)(1) shall be subject to judicial review pursuant to subsections (a), (b), (d), and (e) of section 46110.

(2) *STANDARD OF REVIEW.*—

(A) *DISAPPROVALS.*—In the case of a petition filed under section 46110(a) to review a decision of the Secretary that disapproves a proposal received from the Corporation under subsection (c)(1), the court shall, without deference to the Secretary's determination, review *de novo* the record to determine if the Secretary's determination is consistent with the regulations and standards prescribed under subsection (a)(1).

(B) *APPROVALS.*—In the case of a petition filed under section 46110(a) to review a decision of the Secretary that approves a proposal received from the Corporation under subsection (c)(1), the court may overturn the approval only upon a finding of clear error or an abuse of discretion.

(e) *COMPILATION.*—

(1) *ESTABLISHMENT.*—The Corporation shall establish and maintain a compilation of the policies and other materials identified under subsection (a)(2).

(2) *UPDATES.*—The Corporation shall update the compilation each time a proposal described in subsection (c)(1)(B) is approved.

(3) *PUBLICATION.*—The Corporation shall make the compilation available to the public.

(f) *SPECIAL RULES FOR PROPOSALS AFFECTING CERTAIN AIRSPACE.*—The regulations and standards prescribed under subsection (a)(1) shall include procedures (including advance submission of necessary supporting data, analysis, and documentation) for the Secretary to evaluate, at least 180 days before its submission under subsection (c)(1), a proposal for an airspace change that would affect airspace that is—

(1) within an area designated as a “Metroplex” by the FAA as of March 30, 2017;

(2) within an area subject to a major, large-scale airspace redesign project; or

(3) adjacent to or containing special use airspace.

(g) *EXEMPTED AIRSPACE ACTIONS.*—The requirements of this section shall not apply to—

(1) temporary airspace actions directed by the Administrator or Secretary;

(2) airspace actions as described in section 90904; or

(3) certain emergency circumstances, as defined by the Secretary by regulation.

(h) *DELEGATION.*—Notwithstanding section 90303(b), and except for the process and procedures required by section 90703(b), the Secretary may delegate safety oversight functions to the Administrator.

**§ 90502. Resolution of disputes concerning air traffic services charges and fees**

(a) *AUTHORITY TO REQUEST SECRETARY'S DETERMINATION.*—

(1) *IN GENERAL.*—The Secretary shall issue a determination as to whether a charge or fee assessed by the Corporation for

*the use of air traffic services in United States airspace or international airspace delegated to the United States is correct if a written complaint for such determination is filed with the Secretary by an air traffic services user not later than 60 days after the air traffic services user receives an assessment or invoice from the Corporation.*

(2) *TREATMENT OF INTEREST AND PENALTIES.—In this section, the terms “charge” and “fee” include any interest and penalty relating thereto.*

(b) *PROCEDURAL REGULATIONS.—At least 270 days before the date of transfer, the Secretary shall publish in the Federal Register final regulations, policy statements, or guidelines establishing the procedures for acting upon written complaints filed under subsection (a)(1) and requests of the Corporation pursuant to subsection (e)(3).*

(c) *DETERMINATION OF CORRECTNESS.—In determining under subsection (a)(1) whether a charge or fee is correct, the Secretary shall determine only if the charge or fee is consistent with approved charges or fees pursuant to section 90313.*

(d) *DECISIONS BY SECRETARY.—The final regulations, policy statements, or guidelines required in subsection (b) shall provide for the following:*

(1) *Not later than 90 days after an air traffic services user files with the Secretary a written complaint relating to an assessed or invoiced air traffic services charge or fee, the Secretary shall issue a final order determining whether the charge or fee is correct.*

(2) *Not later than 30 days after such complaint is filed with the Secretary, the Secretary shall dismiss the complaint if no significant dispute exists or shall assign the matter to an administrative law judge. Thereafter, the matter shall be handled in accordance with part 302 of title 14, Code of Federal Regulations, or as modified by the Secretary, to ensure an orderly disposition of the matter within the 90-day period referred to in paragraph (1) and any specifically applicable provisions of this section.*

(3) *The administrative law judge shall issue a recommended decision not later than 45 days after the complaint is assigned or within such shorter period as the Secretary may specify.*

(4) *If the Secretary, upon the expiration of 90 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.*

(5) *Any party to the dispute may seek review of a final order of the Secretary under this subsection in the Circuit Court of Appeals for the District of Columbia Circuit or the court of appeals in the circuit with venue.*

(6) *Any findings of fact in a final order of the Secretary 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 may be considered by the court unless objection was urged before an administrative law judge or the Secretary at a proceeding under this subsection or, if not so urged, unless there were reasonable grounds for failure to do so.*

*(e) PAYMENT UNDER PROTEST; GUARANTEE OF AIR TRAFFIC SERVICES USER ACCESS.—*

*(1) PAYMENT UNDER PROTEST.—*

*(A) IN GENERAL.—Any charge or fee that is the subject of a complaint that is not dismissed by the Secretary shall be paid by the complainant air traffic services user to the Corporation under protest.*

*(B) REFERRAL OR CREDIT.—Any amounts paid under this subsection by a complainant air traffic services user to the Corporation under protest shall be subject to refund or credit to the air traffic services user in accordance with directions in the final order of the Secretary within 30 days of such order.*

*(C) TIMELY REPAYMENT.—In order to ensure the timely repayment, with interest, of amounts in dispute determined not to be correct by the Secretary, the Corporation 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 90-day period referred to in subsection (d)(1), plus interest, unless the Corporation and the air traffic services user agree otherwise.*

*(D) DEADLINE.—The letter of credit, or surety bond, or other suitable credit facility shall be provided to the Secretary not later than 20 days after the filing of the complaint and shall remain in effect for 30 days after the issuance of a timely final order by the Secretary determining whether such charge or fee is correct.*

*(2) GUARANTEE OF AIR TRAFFIC SERVICES USER ACCESS.—Contingent upon an air traffic services user's compliance with the requirements of paragraph (1) and pending the issuance of a final order by the Secretary determining the correctness of a charge or fee that is the subject of a complaint filed under subsection (a)(1), the Corporation may not withhold air traffic services as a means of enforcing the charge or fee.*

*(3) NONCOMPLIANCE.—Prior to the issuance of a final order by the Secretary determining the correctness of a charge or fee that is the subject of a complaint filed under subsection (a)(1), if an air traffic services user does not comply with the requirements of paragraph (1), the Corporation shall withhold air traffic services from the user if the Corporation requests and receives approval from the Secretary to withhold air traffic services.*

**§ 90503. International agreements and activities**

*(a) CONSISTENCY WITH INTERNATIONAL OBLIGATIONS AND LAWS OF OTHER COUNTRIES.—The Corporation shall provide air traffic services under this subtitle in a manner that is consistent with any obligation assumed by the United States in a treaty, convention, or agreement that may be in force between the United States and a foreign country or foreign countries or between the United States and an international organization, and shall take into consideration any applicable laws and requirements of foreign countries.*

*(b) PROHIBITION.—The Corporation may not negotiate on behalf of or otherwise represent the United States before any foreign government or international organization.*

**§ 90504. Availability of safety information**

(a) *SAFETY INFORMATION.*—The Corporation shall make available to air traffic services users and the public—

(1) the same type of safety information made available by the FAA before the date of transfer;

(2) any additional safety information needed by air traffic services users to operate safely; and

(3) any updates or revisions to the safety information referred to in paragraphs (1) and (2).

(b) *METEOROLOGICAL SERVICES; AERONAUTICAL CHARTS.*—The Corporation may provide for the dissemination of available aviation-related meteorological information and aeronautical charts to air traffic services users.

**§ 90505. Reporting of safety violations to FAA**

(a) *IN GENERAL.*—In a manner, form, and process prescribed by the Administrator, the Corporation shall report to the Administrator complaints or instances of—

(1) noncompliance with or deviations from air traffic control clearances or instructions;

(2) noncompliant operations in controlled airspace or special use airspace; and

(3) any other observed activities endangering persons or property in the air or on the ground.

(b) *ASSISTANCE IN ENFORCEMENT ACTIONS.*—The Corporation shall provide necessary assistance in any enforcement action taken by the Administrator resulting from a report of the Corporation or another person or entity.

(c) *STATUTORY CONSTRUCTION.*—This section may not be construed to limit the authority of the Administrator to undertake enforcement actions upon the Administrator's initiative.

**§ 90506. Insurance requirements**

The Corporation shall maintain adequate liability insurance policies and coverages, as determined by the Secretary, including complete indemnification of employees of the Corporation for acts within the scope of employment.

**CHAPTER 907—GENERAL RIGHTS OF ACCESS TO AIRSPACE, AIRPORTS, AND AIR TRAFFIC SERVICES VITAL FOR ENSURING SAFE OPERATIONS FOR ALL USERS**

Sec.

90701. Access to airspace.

90702. Access to airports.

90703. Contract tower service after date of transfer.

90704. Availability of safety information to general aviation operators.

90705. Special rules and appeals process for air traffic management procedures, assignments, and classifications of airspace.

90706. Definitions.

**§ 90701. Access to airspace**

The Secretary shall take such actions as are necessary to ensure that an air traffic services user is not denied access to airspace or air traffic services on the basis that the user is exempt from charges and fees under section 90313.



**§90702. Access to airports**

*In carrying out section 90501(c)(3), the Secretary shall determine whether a proposal would materially reduce access to a public-use airport, including a general aviation or rural airport.*

**§90703. Contract tower service after date of transfer**

*(a) TRANSFER OF CONTRACT TOWER AGREEMENTS TO CORPORATION.—In carrying out section 91302(e), the Secretary shall take such actions as are necessary to ensure that the Corporation assumes the contract and other obligations associated with the operation of an air traffic control tower that, prior to the date of transfer, was operated under a contract pursuant to section 47124.*

*(b) SPECIAL RULES FOR PROPOSALS RELATING TO OPERATION OF CONTRACT TOWERS.—*

*(1) IN GENERAL.—The regulations and standards prescribed under section 90501(a)(1) shall include procedures for the Secretary to evaluate, under section 90501(c), a proposal for an airspace change, including an airspace reclassification, that results from the proposed closure of a tower that is operating under a contract with the Corporation and that, prior to the date of transfer, was operated under a contract with the Secretary pursuant to section 47124.*

*(2) PROCEDURES.—The procedures required pursuant to paragraph (1) shall include—*

*(A) the advance submission by the Corporation of necessary supporting data, analysis, and documentation related to—*

*(i) the safety risk management assessment of the proposed contract tower closure;*

*(ii) an assessment of the impact of the proposed closure on the operation of the national airspace system;*

*(iii) an assessment of the impact of the proposed closure on local communities, including with respect to air service;*

*(iv) an assessment, in consultation with the Secretary of Defense and the Secretary of Homeland Security, as appropriate, of any impact of the proposed closure on military aviation readiness and training, homeland security aviation operations, emergency management and disaster aviation operations, and law enforcement aviation operations; and*

*(v) any other safety or operational information the Secretary determines to be necessary to understand the safety impact of the proposed closure; and*

*(B) a process to receive input from the public, impacted air traffic services users, local communities, and the airport operator of the airport where the contract tower proposed to be closed is located.*

**§90704. Availability of safety information to general aviation operators**

*In carrying out section 90504, the Corporation shall ensure that the safety information referenced in that section is made available to general aviation operators.*

**§90705. Special rules and appeals process for air traffic management procedures, assignments, and classifications of airspace**

(a) *IN GENERAL.*—If the Corporation proposes to modify, reduce, decommission, or eliminate an air traffic service or air navigation facility that would result in the loss of or material reduction in access to a public-use airport or adjacent airspace for any class, category, or type of aircraft or aircraft operation, as determined by the Secretary, the Secretary shall designate an officer to issue a notice in the Federal Register and establish a docket that includes—

- (1) a copy of the Corporation's proposal;
- (2) available data on the usage of the affected air traffic service or air navigation facility;
- (3) an assessment of the designated officer on the effects of the proposal; and
- (4) an assessment of the designated officer on any proposed action to mitigate the loss of or material reduction in access to the public-use airport or adjacent airspace.

(b) *PROCEEDING.*—The designated officer shall provide an opportunity for public comment on the proposal for a period of at least 60 days.

(c) *DECISION.*—Not later than 30 days after the last day of the public comment period, the designated officer shall—

- (1) determine whether the proposal is in the public interest, including whether any material reduction in access to a public-use airport or adjacent airspace has been mitigated to the maximum extent practicable; and
- (2) approve or disapprove the proposal on that basis.

(d) *RELATIONSHIP TO OTHER REQUIREMENTS.*—Notwithstanding section 90501(c), a proposal described in subsection (a)—

- (1) shall be subject to the process established in this section; and
- (2) may not be implemented unless approved under this section.

(e) *APPEALS AND SECRETARIAL REVIEW.*—

(1) *WRITTEN PETITION FOR REVIEW.*—A petition for an appeal of a decision of the designated officer under subsection (c) shall be submitted in writing to the Secretary not later than 30 days after the date of the decision.

(2) *SECRETARIAL REVIEW.*—The Secretary shall review and make a determination with respect to a timely filed petition under paragraph (1) not later than 30 days after the date of receipt of the petition.

(f) *DECISIONAL STANDARDS.*—In making a determination under this section, neither the Secretary nor the designated officer may consider any factor not directly germane to—

- (1) the safe operation or navigation of an aircraft; or
- (2) the sufficiency of mitigation efforts related to a material reduction in access to a public-use airport or adjacent airspace.

(g) *JUDICIAL REVIEW.*—

(1) *IN GENERAL.*—Any determination made by the Secretary under subsection (e)(2) shall be subject to judicial review pursuant to subsections (a), (b), (d), and (e) of section 46110.

(2) *STANDARD OF REVIEW.*—

(A) *DISAPPROVALS.*—In the case of a petition filed under section 46110(a) to review a determination of the Secretary that disapproves a proposal, the court shall, without deference to the Secretary's determination, review de novo the record to determine if the Secretary's determination is in the public interest.

(B) *APPROVALS.*—In the case of a petition filed under section 46110(a) to review a determination of the Secretary that approves a proposal, the court may overturn the approval only upon a finding of clear error or an abuse of discretion.

### **§ 90706. Definitions**

In this chapter, the following definitions apply:

(1) *MATERIAL REDUCTION.*—The term “material reduction” means, with respect to access to a public-use airport, including a general aviation or rural airport, a materially diminished ability to safely operate or navigate to or from the airport or adjacent airspace during a time of day, weather condition, or season of the year.

(2) *RURAL AIRPORT.*—The term “rural airport” means a public-use airport located in a rural area (as that term is defined in section 520 of the Housing Act of 1949 (42 U.S.C. 1490)).

## **CHAPTER 909—CONTINUITY OF AIR TRAFFIC SERVICES TO DEPARTMENT OF DEFENSE AND OTHER PUBLIC AGENCIES**

Sec.

90901. Continuity of air traffic services provided by Department of Defense.

90902. Military and other public aircraft exempt from user fees.

90903. Air traffic services for Federal agencies.

90904. Emergency powers of Armed Forces.

90905. Adherence to international agreements related to operations of Armed Forces.

90906. Primacy of Armed Forces in times of war.

90907. Cooperation with Department of Defense and other Federal agencies after date of transfer.

### **§ 90901. Continuity of air traffic services provided by Department of Defense**

After the date of transfer, the Department of Defense, as directed by the President, is authorized and permitted to provide air traffic services within United States airspace and international airspace delegated to the United States.

### **§ 90902. Military and other public aircraft exempt from user fees**

The Corporation may not impose charges or fees for operations of aircraft owned or operated by the Armed Forces or other aircraft that qualify as public aircraft under sections 40102(a) and 40125.

### **§ 90903. Air traffic services for Federal agencies**

Before the date of transfer, the Secretary shall establish processes, requirements, procedures, and regulations and take any other measure necessary, consistent with the purposes of this subtitle, to ensure that all United States Government activities supported by the FAA's operation of air traffic services as of the date of transfer receive sup-

port from the Corporation after the date of transfer and on an ongoing basis.

**§ 90904. Emergency powers of Armed Forces**

*The requirements of section 90501 shall not apply to airspace actions necessitated by an exercise of authority under section 40106.*

**§ 90905. Adherence to international agreements related to operations of Armed Forces**

*In carrying out section 90503, the Corporation shall ensure that the obligations described in that section include obligations related to operations of the Armed Forces.*

**§ 90906. Primacy of Armed Forces in times of war**

*The President may make temporary transfers to the Secretary of Defense pursuant to section 40107(b).*

**§ 90907. Cooperation with Department of Defense and other Federal agencies after date of transfer**

*At least 1 year prior to the date of transfer, the Corporation, the Department of Transportation, and each Federal department or agency supported by the FAA's operation of air traffic services, including the Armed Forces, shall enter into a tripartite agreement to—*

- (1) ensure cooperation between the Corporation and the department or agency on the delivery of air traffic services;*
- (2) facilitate the safe provision of air traffic services to the department or agency; and*
- (3) address how the Corporation and the department or agency will coordinate and communicate on the day-to-day operations of the national airspace system.*

**CHAPTER 911—EMPLOYEE MANAGEMENT**

Sec.

91101. Definitions.

91102. Employee management and benefits election.

91103. Labor and employment policy.

91104. Bargaining units.

91105. Recognition of labor organizations.

91106. Collective-bargaining agreements.

91107. Collective-bargaining dispute resolution.

91108. Potential and pending grievances, arbitrations, and settlements.

91109. Prohibition on striking and other activities.

91110. Legal action.

**§ 91101. Definitions**

*In this chapter, the following definitions apply:*

*(1) AGENCY.—The term “Agency” means, as the context requires, the Department of Transportation or the FAA.*

*(2) AIR TRAFFIC CONTROLLER.—*

*(A) IN GENERAL.—The term “air traffic controller” means an employee of the Corporation who, in an air traffic control facility or flight service station facility—*

*(i) 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*

(ii) is the immediate supervisor of any employee described in clause (i).

(B) *LIMITATION.*—Notwithstanding subparagraph (A), the definition of “air traffic controller” for purposes of section 8336(e) of chapter 83 of title 5 and section 8412(e) of chapter 84 of such title shall mean only employees actively engaged in the separation of air traffic and the immediate supervisors of such employees, as set forth in section 8331(30) of such title, and section 8401(35) of such title.

(3) *AUTHORITY.*—The term “Authority” means the Federal Labor Relations Authority, as described in section 7104(a) of title 5.

(4) *SERVICE.*—The term “Service” means the Federal Mediation and Conciliation Service established by section 202 of the Labor Management Relations Act, 1947 (29 U.S.C. 172).

### **§91102. Employee management and benefits election**

#### **(a) AUTHORITY OF CEO.—**

(1) *IN GENERAL.*—Except as otherwise provided by law, the CEO shall classify and fix the compensation and benefits of employees in the Corporation.

(2) *NEGOTIATIONS.*—In developing, making changes to, and implementing wages, hours, and other terms and conditions of employment, including when establishing the compensation and benefits program under section 90316(c), the Corporation shall negotiate with exclusive representatives recognized under section 91105.

(3) *BEFORE DATE OF TRANSFER.*—For purposes of paragraph (2), before the date of transfer, the term “exclusive representatives recognized under section 91105” shall refer to labor organizations recognized under section 7111 of title 5 as exclusive representatives of FAA employees.

#### **(b) FORMER FEDERAL EMPLOYEES.—**

##### **(1) FEDERAL RETIREMENT BENEFITS.—**

(A) *ELECTION OF RETIREMENT BENEFITS.*—At least 90 days before the date of transfer, an employee transferring to the Corporation who will be subject to either the Civil Service Retirement System under chapter 83 of title 5 (in this section referred to as “CSRS”) or the Federal Employees Retirement System under chapter 84 of title 5 (in this section referred to as “FERS”) on the day immediately preceding the date of transfer shall elect either to—

(i) retain the employee’s coverage under either CSRS or FERS, as applicable, in lieu of coverage by the Corporation’s employee benefits system established under section 90316(c); or

(ii) receive a deferred annuity, lump-sum benefit, or any other benefit available to the employee under CSRS or FERS, in the same manner that would have been available to the employee if the employee had voluntarily separated from Federal employment on the day before the date of transfer.

(B) *THRIFT SAVINGS PLAN ACCOUNTS.*—An employee who makes the election under subparagraph (A)(ii) shall have the option to transfer the balance in the employee’s Thrift

*Savings Plan account to the plan under the Corporation's retirement system, consistent with applicable law and the terms of the Corporation's plan.*

(C) *PERIODIC ELECTION.*—*The Corporation shall provide for periodic election seasons during which an employee who transferred to the Corporation on the date of transfer may become eligible for retirement benefits under the Corporation's employee benefits system established under section 90316(c) by making an election under subparagraph (A)(ii).*

(D) *CONTINUITY OF ANNUITANT BENEFITS.*—*Notwithstanding any other provision of law, any individual who is receiving an annuity under chapter 83 or chapter 84 of title 5 may continue to receive such annuity while employed by the Corporation.*

(E) *HIGH-3 DETERMINATION.*—*With respect to any employee who retains CSRS or FERS coverage pursuant to subparagraph (A), such employee's basic pay while with the Corporation shall be included in any determination of such employee's average pay under section 8331(4) or 8401(3), as the case may be, of title 5 when calculating the annuity (if any) of such employee. For purposes of this section, an employee's basic pay shall be defined as such employee's total annual salary or wages from the Corporation, including any location-based adjustment.*

(2) *PAYMENTS TO CIVIL SERVICE RETIREMENT AND DISABILITY FUND.*—*For employees of the Corporation who elect to retain their coverage under either CSRS or FERS pursuant to paragraph (1), the Corporation shall only be required to pay to the Civil Service Retirement and Disability Fund—*

(A) *such employee deductions and agency contributions as are required by sections 8334, 8422, and 8423 of title 5; and*

(B) *such additional amounts, not to exceed 2 percent of the amounts under subparagraph (A), as are determined necessary by the Office of Personnel Management to pay the cost of administering retirement benefits for employees who retire from the Corporation after the date of transfer under either CSRS or FERS, for their survivors, and for survivors of employees of the Corporation who die after the date of transfer (which amounts shall be available to the Office of Personnel Management as provided in section 8348(a)(1)(B) of title 5).*

(3) *THRIFT SAVINGS FUND.*—*The Corporation shall pay to the Thrift Savings Fund such employee and agency contributions as are required by section 8432 of title 5 for employees who elect to retain their coverage under FERS pursuant to paragraph (1).*

(4) *HEALTH BENEFITS PLAN ELECTION.*—*Any employee of the Corporation who was subject to the Federal Employees Health Benefits Program under chapter 89 of title 5 (in this section referred to as "FEHBP") on the day immediately preceding the date of transfer shall have the option to receive health benefits from a health benefit plan established by the Corporation under section 90316(c) or to continue coverage under FEHBP without interruption.*

(5) *PAYMENTS TO EMPLOYEES HEALTH BENEFITS FUND.*—For employees of the Corporation who elect to retain their coverage under FEHBP pursuant to paragraph (4), the Corporation shall pay to the Employees Health Benefits Fund—

(A) such employee deductions and agency contributions as are required by subsections (a) through (f) of section 8906 of title 5; and

(B) such amounts as are determined necessary by the Office of Personnel Management under paragraph (6) to reimburse the Office of Personnel Management for contributions under section 8906(g)(1) of title 5.

(6) *REIMBURSEMENT AMOUNTS.*—The amounts required to be paid by the Corporation under paragraph (5)(B) shall be equal to the amount of Government contributions for retired employees who retire from the Corporation after the date of transfer under either CSRS or FERS, for survivors of such retired employees, and for survivors of employees of the Corporation who die after the date of transfer, with said amounts prorated to reflect only that portion of the total service of such employees and retired persons that was performed for the Corporation after the date of transfer.

(7) *ADDITIONAL BENEFITS.*—Subject to the provisions of this chapter, any employee of the Corporation who was subject to the provisions of subchapter I of chapter 85 (concerning unemployment compensation) and chapters 87 (concerning life insurance), 89A (concerning enhanced dental benefits), and 89B (concerning enhanced vision benefits) of title 5 shall have the option to continue coverage under such provisions without interruption in lieu of applicable coverage by the Corporation's employee benefits system established under section 90316(c). The Corporation shall withhold from pay, and shall make contributions, under the provisions of title 5 referred to in this subsection at the same rates applicable to agencies of the Federal Government for such employees.

(8) *WORKERS COMPENSATION.*—Officers and employees of the Corporation shall be covered by, and shall be considered employees for purposes of, subchapter I of chapter 81 of title 5 (concerning compensation for work injuries). The Corporation shall make contributions to the Employees' Compensation Fund under the provisions of section 8147 of title 5 at the same rates applicable to agencies of the Federal Government.

(9) *NON-FOREIGN AREA.*—To the extent consistent with law, the Non-Foreign Area Retirement Equity Assurance Act of 2009 shall apply to officers and employees of the Corporation transferred under section 90316.

(10) *TRANSFER OF LEAVE.*—Sick and annual leave, credit hours, and compensatory time of officers and employees of the Corporation, whether accrued before or after the date of transfer, shall be obligations of the Corporation under the provisions of this chapter.

(11) *WHISTLEBLOWER PROTECTION.*—Neither the Corporation, nor any officer or employee of the Corporation, may take any action described in subsection (b)(8), (b)(9), or (b)(13), or the final paragraph of subsection (b), of section 2302 of title 5 (relating to whistleblower protection).

**§91103. Labor and employment policy**

(a) *APPLICATION OF CHAPTER 71 OF TITLE 5.*—To the extent not inconsistent with this chapter, labor-management relations shall be subject to the provisions of chapter 71 of title 5, provided that the obligation of the Corporation and an exclusive bargaining representative recognized under section 91105 to bargain collectively in good faith over conditions of employment shall mean to bargain over the same wages, hours, and other terms and conditions of employment as are negotiable under section 8(d) of the Act of July 5, 1935, as amended (29 U.S.C. 158(d)), and without application of section 7103(a)(14) of title 5 and section 7117 of title 5, which shall not apply.

(b) *APPLICABILITY.*—To the limited extent necessary for the implementation of this chapter, the Corporation shall have the rights and obligations of an agency under chapter 71 of title 5.

(c) *APPLICATION OF FAIR LABOR STANDARDS ACT.*—The provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) shall apply to the Corporation and to its officers and employees.

(d) *REPORTING AND DISCLOSURE.*—The provisions of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 401 et seq.) shall be applicable to labor organizations that have or are seeking to attain recognition under section 91105, and to such organizations' officers, agents, shop stewards, other representatives, and members.

(e) *RIGHT TO COLLECTIVELY BARGAIN.*—Each employee of the Corporation shall have the right, freely and without fear of penalty or reprisal, to form, join, and assist a labor organization or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Such right shall include the right to engage in collective bargaining with respect to the same wages, hours, and other terms and conditions of employment as are negotiable under section 8(d) of the Act of July 5, 1935, as amended (29 U.S.C. 158(d)).

**§91104. Bargaining units**

(a) *IN GENERAL.*—Pursuant to section 7112 of title 5 and subject to the requirements of this chapter, the Authority shall decide in each case the unit appropriate for collective bargaining with the Corporation.

(b) *PREVIOUSLY CERTIFIED UNITS.*—Notwithstanding subsection (a), the Authority may not adopt, certify, or decide upon bargaining units that include employees in bargaining units previously certified by the Authority that are smaller in geographic scope than such previously certified bargaining units, unless the Authority finds by compelling evidence that such previously certified units would not, absent modification, remain units appropriate for collective bargaining with the Corporation.

(c) *OTHER UNITS.*—

(1) *PREVIOUS CERTIFICATIONS.*—Notwithstanding subsection (a) or (b), the Authority shall not recognize or certify any bargaining unit different than the bargaining units previously certified by the Authority prior to the date described in section 91105(g).

(2) *SUPERVISORS AND MANAGEMENT OFFICIALS.*—Notwithstanding section 7135(a)(2) of title 5, a bargaining unit may not



include, or be modified to include, any supervisor or management official, as those terms are defined in section 7103(a) of title 5.

**§91105. Recognition of labor organizations**

(a) *APPLICATION OF CHAPTER 71 OF TITLE 5.*—To the extent not inconsistent with this chapter, section 7111 of title 5 shall apply to the recognition and certification of labor organizations for the employees of the Corporation and the Corporation shall accord exclusive recognition to and bargain collectively with a labor organization when the organization has been selected by a majority of the employees in an appropriate unit as their representative.

(b) *RECOGNITION OF EXCLUSIVE REPRESENTATIVE.*—Notwithstanding subsection (a), each labor organization that, immediately before the date of transfer, was recognized as the exclusive representative for a bargaining unit of employees of the Agency shall be deemed to be recognized on the date of transfer or thereafter as the exclusive representative for those employees of the Corporation in the same or similar bargaining unit unless another representative for a bargaining unit of employees is certified pursuant to section 7111 of title 5 and this section.

(c) *EXPIRATION OF TERM.*—Every collective-bargaining agreement or arbitration award that applies to an employee of the Agency and that is in force immediately before the date of transfer continues in force until its term expires. To the extent that the Corporation assumes the functions and responsibilities that, prior to the date of transfer, were conducted by the Agency, agreements and supplements (including any arbitration award, as applicable) covering employees of the Agency that are in effect on the date of transfer shall continue to be recognized by and binding on the Corporation, the bargaining representative, and all covered employees until altered or amended pursuant to law. Any agreement, supplement, or arbitration award continued by this section is deemed to be an agreement, supplement, or arbitration award binding on the Corporation, the bargaining representative, and all covered employees for purposes of this chapter and title 5.

(d) *LIMITATION ON APPLICATION.*—Notwithstanding section 91103, sections 7106 and 7113 of title 5 shall not apply to this chapter.

(e) *CONTINUATION OF BARGAINING.*—If an exclusive representative and the Agency are engaged in bargaining (whether concerning a collective-bargaining agreement, issues related to the transfer of functions and responsibilities from the Agency to the Corporation, or otherwise) prior to the date of transfer, such bargaining shall continue between the exclusive representative and the Corporation, and the Corporation shall be bound by any commitments made during bargaining by the Agency.

(f) *STATUTORY CONSTRUCTION.*—Nothing in this section may be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Authority.

(g) *LIMITATION.*—Notwithstanding any other provision of this chapter or any provision of title 5, no bargaining unit or part of a bargaining unit consisting of employees of the Corporation represented by a labor organization pursuant to subsection (b) may be reviewed, rescinded, amended, altered, or varied, other than—

(1) to include in the unit any employees who are not represented by a labor organization, or

(2) to merge bargaining units that are represented by the same labor organization, before the first day of the last 3 months of the first collective agreement entered into after the date of transfer that applies to those employees and that has resulted from collective bargaining between such labor organization and the Corporation.

(h) DEDUCTION.—

(1) IN GENERAL.—Notwithstanding section 91103, section 7115 of title 5 shall not apply to this chapter.

(2) DUES.—When a labor organization holds exclusive recognition, the Corporation shall deduct the regular and periodic dues, initiation fees, and assessments (not including fines and penalties) of the organization from the pay of all members of the organization in the unit of recognition if the Corporation (or, before the date of transfer, the Agency) has received from each employee, on whose account such deductions are made, a written assignment which shall be irrevocable for a period of not more than 1 year.

(3) CONTINUATION.—Any agreement described in subsection (c) that provides for deduction by the Agency of the regular and periodic dues, initiation fees, and assessments (not including fines and penalties) of the labor organization from the pay of its members shall continue in full force and effect and the obligation for such deductions shall be assumed by the Corporation. No such deduction may be made from the pay of any employee except on the employee's written assignment, which shall be irrevocable for a period of not more than 1 year.

### **§91106. Collective-bargaining agreements**

(a) IN GENERAL.—Except as provided under section 91105(c), collective-bargaining agreements between the Corporation and bargaining representatives shall be effective for not less than 2 years.

(b) PROCEDURES.—Collective-bargaining agreements between the Corporation and bargaining representatives recognized under section 91105 may include procedures for resolution by the parties of grievances and adverse actions arising under the agreement, including procedures culminating in binding third-party arbitration, or the parties may adopt such procedures by mutual agreement in the event of a dispute. Such procedures shall be applicable to disputes arising under section 91109.

(c) LIMITATION ON APPLICATION.—Notwithstanding section 91103, section 7121(c) of title 5 shall not apply to this chapter.

(d) DISPUTE RESOLUTION PROCEDURES.—The Corporation and bargaining representatives recognized under section 91105 may by mutual agreement adopt procedures for the resolution of disputes or impasses arising in the negotiation of a collective-bargaining agreement.

### **§91107. Collective-bargaining dispute resolution**

(a) RESOLUTION OF DISPUTES.—

(1) IN GENERAL.—If, prior to 90 days after the expiration of the term collective-bargaining agreement or 90 days after the parties begin mid-term negotiations, the Corporation and the

*exclusive bargaining representative of the employees of the Corporation (in this section referred to collectively as the "parties") do not reach an agreement under sections 7114(a)(1), 7114(a)(4), and 7114(b) of title 5 (as such sections apply to the Corporation under this chapter), or section 91106(d) of this chapter, the Corporation and the bargaining representative shall use the mediation services of the Service to attempt to reach such agreement in accordance with part 1425 of title 29, Code of Federal Regulations (as in effect on the date of enactment of this subtitle).*

(2) *MEDIATION PERIOD.—The mediation period under paragraph (1) may not exceed 60 days unless extended by written agreement of the parties.*

(b) *BINDING ARBITRATION FOR TERM BARGAINING.—*

(1) *THREE MEMBER PRIVATE ARBITRATION BOARD.—If the mediation services of the Service under subsection (a)(1) do not lead to the resolution of issues in controversy arising from the negotiation of a term collective-bargaining agreement, the parties shall submit their issues in controversy to a private arbitration board consisting of 3 members.*

(2) *APPOINTMENT OF ARBITRATION BOARD.—*

(A) *PREPARATION OF LIST OF ARBITRATORS.—The Director of the Service shall provide for the appointment of the 3 members of an arbitration board by—*

*(i) preparing a list of not fewer than 15 names of arbitrators of nationwide reputation and professional stature with at least 20 years of experience in labor-management arbitration and considerable experience in interest arbitration in major industries; and*

*(ii) providing the list to the parties.*

(B) *SELECTION OF ARBITRATORS BY PARTIES.—Not later than 10 days after receiving a list of names under subparagraph (A), the parties shall each select one arbitrator. The arbitrators selected by the parties do not need to be arbitrators whose names appear on the list.*

(C) *SELECTION OF THIRD ARBITRATOR.—Not later than 7 days after the date on which the 2 arbitrators are selected by the parties under subparagraph (B), the 2 arbitrators, acting jointly, shall select a third person from the list prepared under subparagraph (A).*

(D) *FAILURE TO ACT.—If either of the parties fails to select a person or if the 2 arbitrators are unable to agree on the third person in 7 days, the parties shall make the selection by alternately striking names on the list prepared under subparagraph (A), beginning with the party chosen on a random basis, until one arbitrator remains.*

(3) *FRAMING ISSUES IN CONTROVERSY.—If the parties do not agree on the framing of the issues to be submitted for arbitration, the arbitration board shall frame the issues.*

(4) *HEARINGS.—The arbitration board shall give the parties a full and fair hearing, including an opportunity to present evidence and witnesses in support of their claims and an opportunity to present their case in person, by counsel, or by other representative as they may elect.*

(5) *DECISIONS.*—The arbitration board shall render its written decision not later than 90 days after the date of its appointment. Decisions of the arbitration board shall be conclusive and binding upon the parties.

(6) *EVIDENCE.*—The arbitration board shall consider and afford the proper weight to all of the evidence presented by the parties.

(7) *COSTS.*—The parties shall share costs of the arbitration equally.

(c) *RATIFICATION OF AGREEMENTS.*—Upon reaching a voluntary agreement or at the conclusion of the binding arbitration under subsection (b), the final agreement, except for those matters decided by a private arbitration board, shall be—

(1) subject to ratification by the exclusive bargaining representative of the employees, if so requested by the bargaining representative; and

(2) subject to approval by the head of the Corporation in accordance with section 7114(c) of title 5.

(d) *MID-TERM BARGAINING.*—

(1) *PREPARATION OF LIST OF ARBITRATORS.*—If the mediation services of the Service under subsection (a) do not lead to the resolution of issues in controversy arising from the negotiation of a mid-term collective-bargaining agreement, the Director shall provide the parties a list of not fewer than 10 names of arbitrators of nationwide reputation and professional stature with at least 20 years of experience in labor-management arbitration and considerable experience in interest arbitration in major industries.

(2) *SELECTION OF ARBITRATOR.*—The parties shall alternately strike names on the list, beginning with the party chosen on a random basis, until one arbitrator remains.

(3) *DECISION.*—The arbitrator shall hold a hearing, and not later than 90 days after date of the appointment of the arbitrator, issue a written decision resolving the issues in controversy. The decision shall be conclusive and binding upon the parties.

(e) *ENFORCEMENT.*—To enforce this section, either party may bring suit in the United States District Court for the District of Columbia, which shall hear and resolve the enforcement action on an expedited basis.

(f) *APPLICATION.*—Notwithstanding section 91103(a), section 7119 of title 5 shall not apply to this chapter.

**§91108. Potential and pending grievances, arbitrations, and settlements**

(a) *IN GENERAL.*—The Corporation is deemed to be the employer referred to in any agreement or supplement referred to in section 91105(c) for the purpose of any arbitration proceeding or arbitration award. Any agreement concerning any employee that resolves a potential or filed grievance that is binding on the Agency shall, to the extent that the employee becomes an employee of the Corporation, become binding on the Corporation.

(b) *EXISTING BINDING AGREEMENTS.*—Any agreement or supplement referred to in section 91105(c) is binding on—

(1) the Corporation as if it were the employer referred to in such agreement or supplement;

(2) the bargaining representative that is a party to the agreement or supplement; and

(3) the employees of the Corporation in the bargaining unit with respect to whom that bargaining representative has been certified.

(c) *JURISDICTION.*—Subject to section 91103, the Authority shall retain jurisdiction over all matters arising before the date of transfer in relation to the interpretation and application of any agreement or supplement referred to in section 91105(c), whether or not such agreement or supplement has expired.

(d) *EXISTING GRIEVANCES OR ARBITRATIONS.*—Grievances or arbitrations that were filed or commenced before the date of transfer with respect to any agreement or supplement referred to in section 91105(c) shall be continued as though the Corporation were the employer referred to in the agreement or supplement.

(e) *PROCEEDINGS AFTER DATE OF TRANSFER.*—Where events giving rise to a grievance under any agreement or supplement referred to in section 91105(c) occurred before the date of transfer but the proceedings had not commenced before that date, the proceedings may be commenced on or after the date of transfer in accordance with such agreement or supplement as though the Corporation were the employer referred to in such agreement or supplement.

(f) *ACTIONS DEEMED TO BE BY CORPORATION.*—For the purposes of subsections (c), (d), and (e), anything done, or not done, by the Agency is deemed to have been done, or to have not been done, as the case may be, by the Corporation.

(g) *EXCEPTIONS TO ARBITRAL AWARDS.*—

(1) *IN GENERAL.*—Notwithstanding section 91103, section 7122 of title 5 shall not apply to this chapter.

(2) *ACTIONS TO VACATE.*—Either party to grievance arbitration under this chapter may file an action pursuant to section 91110(a) to enforce the arbitration process or to vacate or enforce an arbitration award. An arbitration award may only be vacated on the grounds, and pursuant to the standards, that would be applicable to an action to vacate an arbitration award brought in the Federal courts under section 301 of the Labor Management Relations Act, 1947 (29 U.S.C. 185).

### **§91109. Prohibition on striking and other activities**

(a) *IN GENERAL.*—Employees of the Corporation are prohibited from—

(1) participating in a strike, work stoppage, or slowdown against the Corporation; or

(2) picketing the Corporation in a labor-management dispute if such picketing interferes with the Corporation's operations.

(b) *TERMINATION.*—An employee who participates in an activity described in subsection (a) shall be terminated from employment with the Corporation.

### **§91110. Legal action**

(a) *IN GENERAL.*—Consistent with the requirements of section 90315, actions to enforce the arbitration process or vacate or enforce an arbitral award under section 91108(g)(2) between the Corpora-

tion and a labor organization representing Corporation employees, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy.

(b) **AUTHORIZED ACTS.**—A labor organization recognized under section 91105 and the Corporation shall be bound by the authorized acts of their agents. Any labor organization may sue or be sued as an entity and on behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) **JURISDICTION.**—Under this subtitle, for the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization—

(1) in the district in which such organization maintains its principal offices; or

(2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) **SUMMONS OR SUBPOENA.**—The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

## **CHAPTER 913—OTHER MATTERS**

Sec.

91301. Termination of Government functions.

91302. Savings provisions.

### **§91301. Termination of Government functions**

Except as otherwise provided in this subtitle, whenever any function vested by law in the Secretary, Administrator, Department of Transportation, or FAA has been transferred to the Corporation pursuant to this subtitle, it shall no longer be a function of the Government.

### **§91302. Savings provisions**

(a) **COMPLETED ADMINISTRATIVE ACTIONS.**—

(1) **IN GENERAL.**—Completed administrative actions of the Department of Transportation or the FAA shall not be affected by the enactment of this subtitle, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law.

(2) **COMPLETED ADMINISTRATIVE ACTION DEFINED.**—In paragraph (1), the term “completed administrative action” includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) **CONTINUED EFFECTIVENESS OF PENDING ACTIONS.**—

(1) **PENDING ACTIONS AND PROCEEDINGS.**—The provisions of this subtitle shall not affect any proceedings of the Department

of Transportation or the FAA pending on the date of transfer, including—

(A) notices of proposed rulemaking related to activities of the FAA, without regard to whether the activities are transferred to the Corporation; and

(B) an application for a license, a permit, a certificate, or financial assistance pending on the date of transfer before the Department of Transportation or the FAA, or any officer thereof, with respect to activities of the Department or the FAA, without regard to whether the activities are transferred to the Corporation.

(2) **EFFECT OF ORDERS.**—Orders issued in any proceedings referred to in paragraph (1) shall continue in effect until modified, terminated, superseded, or revoked in accordance with law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

(c) **CONTINUED EFFECTIVENESS OF ADMINISTRATIVE AND JUDICIAL ACTIONS.**—No causes of action or actions by or against the Department of Transportation or the FAA arising from acts or omissions occurring before the date of transfer shall abate by reason of the enactment of this subtitle.

(d) **SUBSTITUTION OR ADDITION OF PARTIES TO JUDICIAL ACTIONS.**—Except as provided by subsection (e)(2), if, on the date of transfer, the Department of Transportation or the FAA, or any officer thereof in the officer's capacity, is a party to an action and, under this subtitle, the performance of that activity of the Department, FAA, or officer is transferred to the Corporation, such action shall be continued with the CEO substituted or added as a party.

(e) **AIR TRAFFIC SERVICES LIABILITIES AND OBLIGATIONS.**—

(1) **ASSUMPTION OF OBLIGATIONS.**—Except as provided in paragraph (2), the Corporation shall assume—

(A) all obligations (tangible and incorporeal, present, and executory) associated with the air traffic services transferred under this subtitle on the date of transfer, including leases, permits, licenses, contracts, agreements, accounts receivable, and accounts payable; and

(B) all claims and liabilities associated with the air traffic services transferred under this subtitle pending on the date of transfer.

(2) **CLAIMS AND ACTIONS THAT REMAIN LIABILITIES OF UNITED STATES.**—

(A) **CLAIMS AND ACTIONS ARISING IN TORT.**—All claims and actions arising in tort pending on the date of transfer and arising out of the alleged acts or omissions of employees of the FAA who transfer to the Corporation shall remain liabilities of the United States.

(B) **CONTINGENT LIABILITIES.**—All contingent liabilities existing on the date of transfer shall remain with the United States, including (without limitation) environmental and intellectual property infringement claims.

(C) **OTHER CLAIMS AND LIABILITIES.**—All other claims and liabilities arising out of the alleged acts or omissions

of the United States before the date of transfer (including those arising under an agreement referred to in section 91105(c)) whose remedy is financial or monetary in nature shall remain liabilities of the United States.

(D) ACCESS OF FEDERAL REPRESENTATIVES TO EMPLOYEES AND RECORDS.—The Secretary shall ensure that, before the date of transfer, the Corporation has agreed to allow representatives of the Secretary and the Attorney General such access as they may require to employees and records of the Corporation for all purposes relating to the handling of such claims under this paragraph.

### **CHAPTER 915—CONGRESSIONAL OVERSIGHT OF AIR TRAFFIC SERVICES PROVIDER**

Sec.

91501. Inspector General reports to Congress on transition.

91502. State of air traffic services.

91503. Submission of annual financial report.

91504. Submission of strategic plan.

91505. Submission of annual action plan.

#### **§91501. Inspector General reports to Congress on transition**

(a) IN GENERAL.—Before the date of transfer, the Inspector General of the Department of Transportation shall submit regular reports to Congress on the progress of the preparation of the Department of Transportation and of the Corporation for the transfer of operational control of air traffic services under this subtitle.

(b) TIMING.—The reports described in subsection (a) shall be submitted, at a minimum, on a quarterly basis until the date of transfer.

(c) SUNSET.—This section shall expire on the date of transfer.

(d) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to limit the authority of the Inspector General of the Department of Transportation to conduct oversight of the Department of Transportation's interactions with the Corporation after the date of transfer.

#### **§91502. State of air traffic services**

(a) REPORT.—Not later than 2 years after the date of transfer, and on or before March 31 of every second year beginning thereafter—

(1) the Corporation shall submit to the Secretary a report on the state of air traffic services; and

(2) the Secretary shall submit the report to Congress.

(b) CONTENTS.—The report shall include, as appropriate, information on—

(1) access to airports and services for all users, including access with respect to rural areas;

(2) charges and fees, safety, and areas in which the Corporation has identified efficiencies in the system, including staffing and facilities realignment or consolidation;

(3) the safe, fair, and timely provision of air traffic services by the Corporation;

(4) the sound operation of the Corporation and the impact of any activities of the Corporation on United States airspace;

(5) the cooperation and interaction of the Corporation with the Department of Defense, the Department of Transportation,



*the FAA, and other Federal departments and agencies, including any agreements between the Corporation and those departments and agencies;*

*(6) compliance of the Corporation with United States obligations under international treaties and agreements;*

*(7) compliance of the Corporation with Federal safety, environmental, corporate, and tax laws and regulations;*

*(8) compliance of the Corporation with Federal laws related to employees of the Corporation;*

*(9) follow-up on Inspector General and Government Accountability Office audits, investigations, and reports involving the Corporation, including any recommendations included in such reports;*

*(10) compliance of the Corporation with other Federal requirements, including requirements relating to public disclosure, publication of fees, annual reporting, and establishment of the Advisory Board and other committees;*

*(11) actions and activities of the CEO and Board and their adherence to their duties and responsibilities;*

*(12) compliance of the Corporation with requirements related to rural, remote, and small community air traffic services;*

*(13) compliance of the Corporation with requirements related to claims of incorrect fees and resolution of fee disputes;*

*(14) compliance of the Corporation with requirements to report safety violations to the FAA, cooperate with FAA investigations, and assist in FAA enforcement actions;*

*(15) actions in times of emergencies and times of war;*

*(16) progress made by the Corporation in implementing system modernization efforts and ongoing capital investments, plans of the Corporation for next steps in implementing such efforts and investments, current efficiencies and benefits of previously implemented systems improvements, and current needs for improvement; and*

*(17) such other matters as the Secretary, in consultation with the Administrator, determines appropriate.*

### **§91503. Submission of annual financial report**

#### **(a) ANNUAL FINANCIAL REPORT.—**

*(1) IN GENERAL.—Not later than 1 year after the date of transfer, and annually thereafter, the Corporation shall publish a report on the activities of the Corporation during the prior year.*

*(2) CONTENTS; AVAILABILITY.—The annual report shall contain financial and operational performance information regarding the Corporation, as well as information on the compensation (including bonuses and other financial incentives) of each Director, the CEO, and officers of the Corporation, and shall be made publicly available.*

*(3) PROPRIETY INFORMATION.—The Corporation shall ensure that any propriety information that may be contained in the annual report is not made public.*

#### **(b) SUBMISSION.—Each year, on the date the annual report required pursuant to subsection (a) is published—**

*(1) the Corporation shall submit the report to the Secretary; and*

(2) *the Secretary shall submit the report to Congress.*

**§91504. Submission of strategic plan**

(a) *SUBMISSION OF STRATEGIC PLAN.—Not later than 15 days after the initial strategic plan is approved by the Board pursuant to section 90308(c)—*

(1) *the Corporation shall submit the strategic plan to the Secretary; and*

(2) *the Secretary shall submit the strategic plan to Congress.*

(b) *UPDATES TO STRATEGIC PLAN.—Not later than 15 days after an update to the strategic plan is approved by the Board pursuant to section 90308(c)—*

(1) *the Corporation shall submit the updated strategic plan to the Secretary; and*

(2) *the Secretary shall submit the updated strategic plan to Congress.*

**§91505. Submission of annual action plan**

(a) *IN GENERAL.—The Corporation shall develop an annual report on the goals of the Corporation for the following year.*

(b) *CONTENTS.—The report shall contain goals for the Corporation to meet that are specific, tangible, and actionable, in order to expedite improvements to, and maintain the integrity of, air traffic services provided by the Corporation.*

(c) *SUBMISSION.—Not later than 1 year after the date of transfer, and annually thereafter—*

(1) *the Corporation shall submit the report to the Secretary; and*

(2) *the Secretary shall submit the report to Congress.*

(d) *PUBLIC AVAILABILITY.—The Corporation shall publish, and make available to the public, each report submitted to the Secretary under subsection (c).*

(e) *PROPRIETARY INFORMATION.—In carrying out this section, the Corporation may take necessary actions to prevent the public disclosure of proprietary information.*

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**VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT**

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**TITLE I—AIRPORT AND AIRWAY IMPROVEMENTS**

\* \* \* \* \*

**Subtitle D—Miscellaneous**

\* \* \* \* \*

**SEC. 186. MIDWAY ISLAND AIRPORT.**

(a) FINDINGS.—Congress finds that the continued operation of the Midway Island Airport in accordance with the standards of the Federal Aviation Administration applicable to commercial airports is critical to the safety of commercial, military, and general aviation in the mid-Pacific Ocean region.

(b) MEMORANDUM OF UNDERSTANDING ON SALE OF AIRCRAFT FUEL.—The Secretaries of Transportation, Defense, Interior, and Homeland Security shall enter into a memorandum of understanding to facilitate the sale of aircraft fuel on Midway Island at a price that will generate sufficient revenue to improve the ability of the airport to operate on a self-sustaining basis in accordance with the standards of the Federal Aviation Administration applicable to commercial airports. The memorandum shall also address the long-range potential of promoting tourism as a means to generate revenue to operate the airport.

(c) TRANSFER OF NAVIGATION AIDS AT MIDWAY ISLAND AIRPORT.—The Midway Island Airport may transfer, without consideration, to the Administrator the navigation aids at the airport. The Administrator shall accept the navigation aids and operate and maintain the navigation aids under criteria of the Administrator.

(d) FUNDING TO SECRETARY OF THE INTERIOR FOR MIDWAY ISLAND AIRPORT.—The Secretary of Transportation may enter into a reimbursable agreement with the Secretary of the Interior for the purpose of funding airport development, as defined in section 47102(3) of title 49, United States Code, at Midway Island Airport for [fiscal years 2012 through 2017] *fiscal years 2017 through 2023* from amounts available in the discretionary fund established by section 47115 of such title. The maximum obligation under the agreement for any such fiscal year shall be \$2,500,000.

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## TITLE IV—AIRLINE SERVICE IMPROVEMENTS

### Subtitle A—Small Community Air Service

\* \* \* \* \*

**SEC. 409. MEASUREMENT OF HIGHWAY MILES FOR PURPOSES OF DETERMINING ELIGIBILITY OF ESSENTIAL AIR SERVICE SUBSIDIES.**

(a) REQUEST FOR SECRETARIAL REVIEW.—An eligible place (as defined in section 41731 of title 49, United States Code) with respect to which the Secretary has, in the 2-year period ending on the date of enactment of this Act, eliminated (or tentatively eliminated) compensation for essential air service to such place, or terminated (or tentatively terminated) the compensation eligibility of such place for essential air service, under section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (49 U.S.C. 41731 note), section 205 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (49 U.S.C. 41731 note), or any prior law of similar effect based on the highway mileage of such place from the nearest hub airport (as defined in sec-

tion 40102 of such title), may request the Secretary to review such action.

(b) DETERMINATION OF MILEAGE.—In reviewing an action under subsection (a), the highway mileage between an eligible place and the nearest medium hub airport or large hub airport is the highway mileage of the most commonly used route between the place and the medium hub airport or large hub airport. In identifying such route, the Secretary shall identify the most commonly used route for a community by—

(1) consulting with the Governor of a State or the Governor’s designee; and

(2) considering the certification of the Governor of a State or the Governor’s designee as to the most commonly used route.

(c) ELIGIBILITY DETERMINATION.—Not later than 60 days after receiving a request under subsection (a), the Secretary shall—

(1) determine whether the eligible place would have been subject to an elimination of compensation eligibility for essential air service, or termination of the eligibility of such place for essential air service, under the provisions of law referred to in subsection (a) based on the determination of the highway mileage of such place from the nearest medium hub airport or large hub airport under subsection (b); and

(2) issue a final order with respect to the eligibility of such place for essential air service compensation under subchapter II of chapter 417 of title 49, United States Code.

(d) LIMITATION ON PERIOD OF FINAL ORDER.—A final order issued under subsection (c) shall terminate on **September 30, 2017** *September 30, 2023* .

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**FAA MODERNIZATION AND REFORM ACT OF 2012**

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the “FAA Modernization and Reform Act of 2012”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

\* \* \* \* \*

**TITLE III—SAFETY**

\* \* \* \* \*

**Subtitle B—Unmanned Aircraft Systems**

**[Sec. 333. Special rules for certain unmanned aircraft systems.**

**[Sec. 334. Public unmanned aircraft systems.]**

\* \* \* \* \*

**[Sec. 336. Special rule for model aircraft.]**

\* \* \* \* \*

**TITLE III—SAFETY**

\* \* \* \* \*

## Subtitle B—Unmanned Aircraft Systems

\* \* \* \* \*

### SEC. 332. INTEGRATION OF CIVIL UNMANNED AIRCRAFT SYSTEMS INTO NATIONAL AIRSPACE SYSTEM.

#### [(a) REQUIRED PLANNING FOR INTEGRATION.—

[(1) COMPREHENSIVE PLAN.—Not later than 270 days after the date of enactment of this Act, the Secretary of Transportation, in consultation with representatives of the aviation industry, Federal agencies that employ unmanned aircraft systems technology in the national airspace system, and the unmanned aircraft systems industry, shall develop a comprehensive plan to safely accelerate the integration of civil unmanned aircraft systems into the national airspace system.

[(2) CONTENTS OF PLAN.—The plan required under paragraph (1) shall contain, at a minimum, recommendations or projections on—

[(A) the rulemaking to be conducted under subsection (b), with specific recommendations on how the rulemaking will—

[(i) define the acceptable standards for operation and certification of civil unmanned aircraft systems;

[(ii) ensure that any civil unmanned aircraft system includes a sense and avoid capability; and

[(iii) establish standards and requirements for the operator and pilot of a civil unmanned aircraft system, including standards and requirements for registration and licensing;

[(B) the best methods to enhance the technologies and subsystems necessary to achieve the safe and routine operation of civil unmanned aircraft systems in the national airspace system;

[(C) a phased-in approach to the integration of civil unmanned aircraft systems into the national airspace system;

[(D) a timeline for the phased-in approach described under subparagraph (C);

[(E) creation of a safe

[(F) airspace designation for cooperative manned and unmanned flight operations in the national airspace system;

[(G) establishment of a process to develop certification, flight standards, and air traffic requirements for civil unmanned aircraft systems at test ranges where such systems are subject to testing;

[(H) the best methods to ensure the safe operation of civil unmanned aircraft systems and public unmanned aircraft systems simultaneously in the national airspace system; and

[(I) incorporation of the plan into the annual NextGen Implementation Plan document (or any successor document) of the Federal Aviation Administration.

[(3) DEADLINE.—The plan required under paragraph (1) shall provide for the safe integration of civil unmanned aircraft

systems into the national airspace system as soon as practicable, but not later than September 30, 2015.

[(4) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a copy of the plan required under paragraph (1).

[(5) ROADMAP.—Not later than 1 year after the date of enactment of this Act, the Secretary shall approve and make available in print and on the Administration’s Internet Web site a 5-year roadmap for the introduction of civil unmanned aircraft systems into the national airspace system, as coordinated by the Unmanned Aircraft Program Office of the Administration. The Secretary shall update, in coordination with the Administrator of the National Aeronautics and Space Administration (NASA) and relevant stakeholders, including those in industry and academia, the roadmap annually. The roadmap shall include, at a minimum—

[(A) cost estimates, planned schedules, and performance benchmarks, including specific tasks, milestones, and timelines, for unmanned aircraft systems integration into the national airspace system, including an identification of—

[(i) the role of the unmanned aircraft systems test ranges established under subsection (c) and the Unmanned Aircraft Systems Center of Excellence;

[(ii) performance objectives for unmanned aircraft systems that operate in the national airspace system; and

[(iii) research and development priorities for tools that could assist air traffic controllers as unmanned aircraft systems are integrated into the national airspace system, as appropriate;

[(B) a description of how the Administration plans to use research and development, including research and development conducted through NASA’s Unmanned Aircraft Systems Traffic Management initiatives, to accommodate, integrate, and provide for the evolution of unmanned aircraft systems in the national airspace system;

[(C) an assessment of critical performance abilities necessary to integrate unmanned aircraft systems into the national airspace system, and how these performance abilities can be demonstrated; and

[(D) an update on the advancement of technologies needed to integrate unmanned aircraft systems into the national airspace system, including decisionmaking by adaptive systems, such as sense-and-avoid capabilities and cyber physical systems security.

[(b) RULEMAKING.—Not later than 18 months after the date on which the plan required under subsection (a)(1) is submitted to Congress under subsection (a)(4), the Secretary shall publish in the Federal Register—

[(1) a final rule on small unmanned aircraft systems that will allow for civil operation of such systems in the national airspace system, to the extent the systems do not meet the requirements for expedited operational authorization under section 333 of this Act;

【(2) a notice of proposed rulemaking to implement the recommendations of the plan required under subsection (a)(1), with the final rule to be published not later than 16 months after the date of publication of the notice; and

【(3) an update to the Administration's most recent policy statement on unmanned aircraft systems, contained in Docket No. FAA-2006-25714.】

(c) PILOT PROJECTS.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall establish a program to integrate unmanned aircraft systems into the national airspace system at 6 test ranges. The program shall terminate on 【September 30, 2019】 *the date that is 6 years after the date of enactment of the 21st Century AIRR Act* .

(2) PROGRAM REQUIREMENTS.—In establishing the program under paragraph (1), the Administrator shall—

(A) safely designate airspace for integrated manned and unmanned flight operations in the national airspace system;

(B) develop certification standards and air traffic requirements for unmanned flight operations at test ranges;

(C) coordinate with and leverage the resources of the National Aeronautics and Space Administration and the Department of Defense;

(D) address both civil and public unmanned aircraft systems;

(E) ensure that the program is coordinated with the Next Generation Air Transportation System; and

(F) provide for verification of the safety of unmanned aircraft systems and related navigation procedures before integration into the national airspace system.

(3) TEST RANGE LOCATIONS.—In determining the location of the 6 test ranges of the program under paragraph (1), the Administrator shall—

(A) take into consideration geographic and climatic diversity;

(B) take into consideration the location of ground infrastructure and research needs; and

(C) consult with the National Aeronautics and Space Administration and the Department of Defense.

(4) TEST RANGE OPERATION.—A project at a test range shall be operational not later than 180 days after the date on which the project is established.

(5) REPORT TO CONGRESS.—

(A) IN GENERAL.—Not later than 90 days after the date of the termination of the program under paragraph (1), the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Science, Space, and Technology of the House of Representatives a report setting forth the Administrator's findings and conclusions concerning the projects.

(B) ADDITIONAL CONTENTS.—The report under subparagraph (A) shall include a description and assessment of the

progress being made in establishing special use airspace to fill the immediate need of the Department of Defense—

- (i) to develop detection techniques for small unmanned aircraft systems; and
- (ii) to validate the sense and avoid capability and operation of unmanned aircraft systems.

[(d) EXPANDING USE OF UNMANNED AIRCRAFT SYSTEMS IN ARCTIC.—

[(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall develop a plan and initiate a process to work with relevant Federal agencies and national and international communities to designate permanent areas in the Arctic where small unmanned aircraft may operate 24 hours per day for research and commercial purposes. The plan for operations in these permanent areas shall include the development of processes to facilitate the safe operation of unmanned aircraft beyond line of sight. Such areas shall enable over-water flights from the surface to at least 2,000 feet in altitude, with ingress and egress routes from selected coastal launch sites.

[(2) AGREEMENTS.—To implement the plan under paragraph (1), the Secretary may enter into an agreement with relevant national and international communities.

[(3) AIRCRAFT APPROVAL.—Not later than 1 year after the entry into force of an agreement necessary to effectuate the purposes of this subsection, the Secretary shall work with relevant national and international communities to establish and implement a process, or may apply an applicable process already established, for approving the use of unmanned aircraft in the designated permanent areas in the Arctic without regard to whether an unmanned aircraft is used as a public aircraft, a civil aircraft, or a model aircraft. ]

\* \* \* \* \*

**[(SEC. 333. SPECIAL RULES FOR CERTAIN UNMANNED AIRCRAFT SYSTEMS.**

[(a) IN GENERAL.—Notwithstanding any other requirement of this subtitle, and not later than 180 days after the date of enactment of this Act, the Secretary of Transportation shall determine if certain unmanned aircraft systems may operate safely in the national airspace system before completion of the plan and rule-making required by section 332 of this Act or the guidance required by section 334 of this Act.

[(b) ASSESSMENT OF UNMANNED AIRCRAFT SYSTEMS.—In making the determination under subsection (a), the Secretary shall determine, at a minimum—

[(1) which types of unmanned aircraft systems, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national airspace system or the public or pose a threat to national security; and

[(2) whether a certificate of waiver, certificate of authorization, or airworthiness certification under section 44704 of title



49, United States Code, is required for the operation of unmanned aircraft systems identified under paragraph (1).

[(c) REQUIREMENTS FOR SAFE OPERATION.—If the Secretary determines under this section that certain unmanned aircraft systems may operate safely in the national airspace system, the Secretary shall establish requirements for the safe operation of such aircraft systems in the national airspace system.

**[SEC. 334. PUBLIC UNMANNED AIRCRAFT SYSTEMS.**

[(a) GUIDANCE.—Not later than 270 days after the date of enactment of this Act, the Secretary of Transportation shall issue guidance regarding the operation of public unmanned aircraft systems to—

[(1) expedite the issuance of a certificate of authorization process;

[(2) provide for a collaborative process with public agencies to allow for an incremental expansion of access to the national airspace system as technology matures and the necessary safety analysis and data become available, and until standards are completed and technology issues are resolved;

[(3) facilitate the capability of public agencies to develop and use test ranges, subject to operating restrictions required by the Federal Aviation Administration, to test and operate unmanned aircraft systems; and

[(4) provide guidance on a public entity's responsibility when operating an unmanned aircraft without a civil airworthiness certificate issued by the Administration.

[(b) STANDARDS FOR OPERATION AND CERTIFICATION.—Not later than December 31, 2015, the Administrator shall develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system.

[(c) AGREEMENTS WITH GOVERNMENT AGENCIES.—

[(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into agreements with appropriate government agencies to simplify the process for issuing certificates of waiver or authorization with respect to applications seeking authorization to operate public unmanned aircraft systems in the national airspace system.

[(2) CONTENTS.—The agreements shall—

[(A) with respect to an application described in paragraph (1)—

[(i) provide for an expedited review of the application;

[(ii) require a decision by the Administrator on approval or disapproval within 60 business days of the date of submission of the application; and

[(iii) allow for an expedited appeal if the application is disapproved;

[(B) allow for a one-time approval of similar operations carried out during a fixed period of time; and

[(C) allow a government public safety agency to operate unmanned aircraft weighing 4.4 pounds or less, if operated—

[(i) within the line of sight of the operator;

[(ii) less than 400 feet above the ground;

- [(iii) during daylight conditions;
- [(iv) within Class G airspace; and
- [(v) outside of 5 statute miles from any airport, heliport, seaplane base, spaceport, or other location with aviation activities.]

\* \* \* \* \*

**[SEC. 336. SPECIAL RULE FOR MODEL AIRCRAFT.**

[(a) IN GENERAL.—Notwithstanding any other provision of law relating to the incorporation of unmanned aircraft systems into Federal Aviation Administration plans and policies, including this subtitle, the Administrator of the Federal Aviation Administration may not promulgate any rule or regulation regarding a model aircraft, or an aircraft being developed as a model aircraft, if—

- [(1) the aircraft is flown strictly for hobby or recreational use;
- [(2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- [(3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- [(4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- [(5) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation (model aircraft operators flying from a permanent location within 5 miles of an airport should establish a mutually-agreed upon operating procedure with the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport)).

[(b) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Administrator to pursue enforcement action against persons operating model aircraft who endanger the safety of the national airspace system.

[(c) MODEL AIRCRAFT DEFINED.—In this section, the term “model aircraft” means an unmanned aircraft that is—

- [(1) capable of sustained flight in the atmosphere;
- [(2) flown within visual line of sight of the person operating the aircraft; and
- [(3) flown for hobby or recreational purposes.]

**TITLE IV—AIR SERVICE IMPROVEMENTS**

**Subtitle A—Passenger Air Service Improvements**

\* \* \* \* \*

**SEC. 411. ESTABLISHMENT OF ADVISORY COMMITTEE FOR AVIATION CONSUMER PROTECTION.**

(a) **IN GENERAL.**—The Secretary of Transportation shall establish an advisory committee for aviation consumer protection to advise the Secretary in carrying out activities relating to airline customer service improvements.

(b) **MEMBERSHIP.**—The Secretary shall appoint the members of the advisory committee, which shall be comprised of one representative each of—

- (1) air carriers;
- (2) airport operators;
- (3) *independent distributors of travel*;
- ~~[(3)]~~ (4) State or local governments with expertise in consumer protection matters; and
- ~~[(4)]~~ (5) nonprofit public interest groups with expertise in consumer protection matters.

(c) **VACANCIES.**—A vacancy in the advisory committee shall be filled in the manner in which the original appointment was made.

(d) **TRAVEL EXPENSES.**—Members of the advisory committee shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

(e) **CHAIRPERSON.**—The Secretary shall designate, from among the individuals appointed under subsection (b), an individual to serve as chairperson of the advisory committee.

(f) **DUTIES.**—The duties of the advisory committee shall include—

- (1) evaluating existing aviation consumer protection programs and providing recommendations for the improvement of such programs, if needed; and
- (2) providing recommendations for establishing additional aviation consumer protection programs, if needed.

(g) **SELECT SUBCOMMITTEE FOR AVIATION CONSUMERS WITH DISABILITIES.**—

(1) **IN GENERAL.**—*The Secretary shall establish a select subcommittee of the advisory committee to advise the Secretary and the advisory committee on issues related to the air travel needs of passengers with disabilities.*

(2) **DUTIES.**—*The select subcommittee shall—*

*(A) identify the disability-related access barriers encountered by passengers with disabilities;*

*(B) determine the extent to which the programs and activities of the Department of Transportation are addressing the barriers identified under subparagraph (A);*

*(C) recommend consumer protection improvements related to the air travel experience of passengers with disabilities;*

*(D) advise the Secretary with regard to the implementation of section 41705 of title 49, United States Code; and*

*(E) conduct such other activities as the Secretary considers necessary to carry out this subsection.*

(3) **MEMBERSHIP.**—

*(A) COMPOSITION.*—*The select subcommittee shall be composed of members appointed by the Secretary, including at least 1 individual representing each of the following:*

- (i) National disability organizations.*

(ii) Air carriers and foreign air carriers with flights in air transportation.

(iii) Airport operators.

(iv) Contractor service providers.

(B) INCLUSION.—A member of the select subcommittee may also be a member of the advisory committee.

(4) REPORTS.—

(A) IN GENERAL.—Not later than 1 year after the date of establishment of the select subcommittee, the select subcommittee shall submit to the advisory committee and the Secretary a report on the air travel needs of passengers with disabilities that includes—

(i) an assessment of existing disability-related access barriers and any emerging disability-related access barriers that will likely be an issue in the next 5 years;

(ii) an evaluation of the extent to which the programs and activities of the Department of Transportation are eliminating disability-related access barriers;

(iii) a description of consumer protection improvements related to the air travel experience of passengers with disabilities; and

(iv) any recommendations for legislation, regulations, or other actions that the select subcommittee considers appropriate.

(B) REPORT TO CONGRESS.—Not later than 60 days after the date on which the Secretary receives the report under subparagraph (A), the Secretary shall submit to Congress a copy of the report, including any additional findings or recommendations that the Secretary considers appropriate.

(5) CHAIRPERSON.—The Secretary shall designate, from among the individuals appointed under paragraph (3), an individual to serve as chairperson of the select subcommittee.

(6) VACANCIES AND TRAVEL EXPENSES.—Subsections (c) and (d) shall apply to the select subcommittee.

(7) TERMINATION.—The select subcommittee established under this subsection shall terminate upon submission of the report required under paragraph (4)(A).

[(g)] (h) REPORT TO CONGRESS.—Not later than February 1 of each of the [first 2 calendar years] *first 6 calendar years* beginning after the date of enactment of this Act, the Secretary shall transmit to Congress a report containing—

(1) the recommendations made by the advisory committee during the preceding calendar year; and

(2) an explanation of how the Secretary has implemented each recommendation and, for each recommendation not implemented, the Secretary's reason for not implementing the recommendation.

[(h)] (i) TERMINATION.—The advisory committee established under this section shall terminate on [September 30, 2017] *September 30, 2023*.

\* \* \* \* \*

## Subtitle B—Essential Air Service

\* \* \* \* \*

### SEC. 426. ADJUSTMENTS TO COMPENSATION FOR SIGNIFICANTLY INCREASED COSTS.

(a) EMERGENCY ACROSS-THE-BOARD ADJUSTMENT.—Subject to the availability of funds, the [Secretary] *Secretary of Transportation* may increase the rates of compensation payable to air carriers under subchapter II of chapter 417 of title 49, United States Code, to compensate such carriers for increased aviation fuel costs without regard to any agreement or requirement relating to the renegotiation of contracts or any notice requirement under section 41734 of such title.

(b) EXPEDITED PROCESS FOR ADJUSTMENTS TO INDIVIDUAL CONTRACTS.—

(1) IN GENERAL.—Section 41734(d) is amended by striking “continue to pay” and all that follows through “compensation sufficient—” and inserting “provide the carrier with compensation sufficient—”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to compensation to air carriers for air service provided after the 30th day following the date of enactment of this Act.

(c) SUBSIDY CAP.—Subject to the availability of funds, [the Secretary may waive] *the Secretary of Transportation may waive*, on a case-by-case basis, the subsidy-per-passenger cap established by section 332 of the Department of Transportation and Related Agencies Appropriations Act, 2000 (Public Law 106-69; 113 Stat. 1022). A waiver issued under this subsection shall remain in effect for a limited period of time, as determined by the Secretary.

\* \* \* \* \*

## TITLE V—ENVIRONMENTAL STREAMLINING

\* \* \* \* \*

### SEC. 507. AIRCRAFT DEPARTURE QUEUE MANAGEMENT PILOT PROGRAM.

(a) IN GENERAL.—The Secretary of Transportation shall carry out a pilot program at not more than 5 public-use airports under which the Federal Aviation Administration shall use funds made available under [section 48101(a)] *section 48101(a) of title 49, United States Code*, to test air traffic flow management tools, methodologies, and procedures that will allow air traffic controllers of the Administration to better manage the flow of aircraft on the ground and reduce the length of ground holds and idling time for aircraft.

(b) SELECTION CRITERIA.—In selecting from among airports at which to conduct the pilot program, the Secretary shall give priority consideration to airports at which improvements in ground control efficiencies are likely to achieve the greatest fuel savings or air quality or other environmental benefits, as measured by the amount of reduced fuel, reduced emissions, or other environmental benefits per dollar of funds expended under the pilot program.

(c) **MAXIMUM AMOUNT.**—Not more than a total of \$2,500,000 may be expended under the pilot program at any single public-use airport.

\* \* \* \* \*

## TITLE VIII—MISCELLANEOUS

\* \* \* \* \*

### SEC. 804. CONSOLIDATION AND REALIGNMENT OF FAA SERVICES AND FACILITIES.

(a) **NATIONAL FACILITIES REALIGNMENT AND CONSOLIDATION REPORT.**—

(1) **IN GENERAL.**—The Administrator of the Federal Aviation Administration shall develop a report, to be known as the National Facilities Realignment and Consolidation Report, in accordance with the requirements of this subsection.

(2) **PURPOSE.**— **【The purpose of the report shall be—】**

**【(A) to support the transition to the Next Generation Air Transportation System; and】**

**【(B) to reduce】** *The purpose of the report shall be to reduce capital, operating, maintenance, and administrative costs of the FAA where such cost reductions can be implemented without adversely affecting safety.*

(3) **CONTENTS.**—The report shall include—

(A) recommendations of the Administrator on realignment and consolidation of services and facilities (including regional offices) of the FAA; and

(B) for each of the recommendations, a description of—  
 (i) the Administrator’s justification;  
 (ii) the projected costs and savings; and  
 (iii) the proposed timing for implementation.

**【(4) INPUT.**—The report shall be developed by the Administrator (or the Administrator’s designee)—

**【(A) in coordination with the Chief NextGen Officer and the Chief Operating Officer of the Air Traffic Organization of the FAA; and】**

**【(B) with the participation of—】**

**【(i) representatives of labor organizations representing operations and maintenance employees of the air traffic control system; and】**

**【(ii) industry stakeholders.】**

(4) **INPUT.**—*The report shall be prepared by the Administrator (or the Administrator’s designee) with the participation of—*

*(A) representatives of labor organizations representing air traffic control system employees of the FAA; and*

*(B) industry stakeholders.*

(5) **SUBMISSION TO CONGRESS.**—Not later than 120 days after the date of enactment of this Act, the Administrator shall submit the report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(6) PUBLIC NOTICE AND COMMENT.—The Administrator shall publish the report in the Federal Register and allow 45 days for the submission of public comments.

(b) REPORT TO CONGRESS CONTAINING RECOMMENDATIONS OF ADMINISTRATOR.—Not later than 60 days after the last day of the period for public comment under subsection (a)(6), the Administrator shall submit to the committees specified in subsection (a)(5)—

(1) a report containing the recommendations of the Administrator on realignment and consolidation of services and facilities (including regional offices) of the FAA; and

(2) copies of any public comments received by the Administrator under subsection (a)(6).

(c) REALIGNMENT AND CONSOLIDATION OF FAA SERVICES AND FACILITIES.—Except as provided in subsection (d), the Administrator shall realign and consolidate the services and facilities of the FAA in accordance with the recommendations included in the report submitted under subsection (b).

(d) CONGRESSIONAL DISAPPROVAL.—

(1) IN GENERAL.—The Administrator may not carry out a recommendation for realignment or consolidation of services or facilities of the FAA that is included in the report submitted under subsection (b) if a joint resolution of disapproval is enacted disapproving such recommendation before the earlier of—

(A) the last day of the 30-day period beginning on the date of submission of the report; or

(B) the adjournment of Congress sine die for the session during which the report is transmitted.

(2) COMPUTATION OF 30-DAY PERIOD.—For purposes of paragraph (1)(A), the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in computation of the 30-day period.

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

(1) FAA.—The term “FAA” means the Federal Aviation Administration.

(2) REALIGNMENT; CONSOLIDATION.—

(A) IN GENERAL.—The terms “realignment” and “consolidation” include any action that—

(i) relocates functions, services, or personnel positions;

(ii) discontinues or severs existing facility functions or services; or

(iii) combines the results described in clauses (i) and (ii).

(B) EXCLUSION.—The terms do not include a reduction in personnel resulting from workload adjustments.

\* \* \* \* \*

#### SEC. 817. RELEASE FROM RESTRICTIONS.

(a) IN GENERAL.—Subject to subsection (b), the Secretary of Transportation is authorized to grant to an airport, city, or county a release from any of the terms, conditions, reservations, or restrictions contained in a deed under which the United States conveyed to the airport, city, or county an interest in real property for air-

port purposes pursuant to section 16 of the Federal Airport Act (60 Stat. 179) [or section 23], *section 23* of the Airport and Airway Development Act of 1970 (84 Stat. 232), or *section 47125 of title 49, United States Code* .

(b) **CONDITION.**—Any release granted by the Secretary pursuant to subsection (a) shall be subject to the following conditions:

(1) The applicable airport, city, or county shall agree that in conveying any interest in the real property which the United States conveyed to the airport, city, or county, the airport, city, or county will receive consideration for such interest that is equal to its fair market value.

(2) Any consideration received by the airport, city, or county under paragraph (1) shall be used exclusively for the development, improvement, operation, or maintenance of a public airport by the airport, city, or county.

(3) Any other conditions required by the Secretary.

\* \* \* \* \*

**FAA EXTENSION, SAFETY, AND SECURITY ACT OF 2016**

\* \* \* \* \*

**TITLE II—AVIATION SAFETY CRITICAL REFORMS**

**Subtitle A—Safety**

\* \* \* \* \*

**SEC. 2110. TOWER MARKING.**

[(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue regulations to require the marking of covered towers.

[(b) **MARKING REQUIRED.**—The regulations under subsection (a) shall require that a covered tower be clearly marked in a manner that is consistent with applicable guidance under the Federal Aviation Administration Advisory Circular issued December 4, 2015 (AC 70/7460-1L), or other relevant safety guidance, as determined by the Administrator.

[(c) **APPLICATION.**—The regulations issued under subsection (a) shall ensure that—

[(1) all covered towers constructed on or after the date on which such regulations take effect are marked in accordance with subsection (b); and

[(2) a covered tower constructed before the date on which such regulations take effect is marked in accordance with subsection (b) not later than 1 year after such effective date.]

(a) **APPLICATION.**—

(1) *IN GENERAL.*—*Except as provided by paragraph (2), not later than 1 year after the date of enactment of the 21st Century AIRR Act or the availability of the database developed by the Administrator of the Federal Aviation Administration pursuant*



to subsection (c), whichever is later, all covered towers shall be either—

(A) clearly marked consistent with applicable guidance in the advisory circular of the Federal Aviation Administration issued December 4, 2015 (AC 70/7460-IL); or

(B) included in the database described in subsection (c).

(2) *METEOROLOGICAL EVALUATION TOWER*.—A covered tower that is a meteorological evaluation tower shall be subject to the requirements of paragraphs (1)(A) and (1)(B).

[(d)] (b) DEFINITIONS.—

(1) IN GENERAL.—In this section, the following definitions apply:

(A) COVERED TOWER.—

(i) IN GENERAL.—The term “covered tower” means a structure that—

(I) is [self-standing or] a meteorological evaluation tower or tower supported by guy wires and ground anchors;

(II) is 10 feet or less in diameter at the above-ground base, excluding concrete footing;

(III) at the highest point of the structure is at least 50 feet above ground level;

(IV) at the highest point of the structure is not more than 200 feet above ground level;

(V) has accessory facilities on which an antenna, sensor, camera, meteorological instrument, or other equipment is mounted; and

(VI) is located—

(aa) outside the boundaries of an incorporated city or town; or

(bb) on land that is—

(AA) undeveloped; or

(BB) used for agricultural purposes.

(ii) EXCLUSIONS.—The term “covered tower” does not include any structure that—

(I) is adjacent to a house, barn, electric utility station, or other building;

(II) is within the curtilage of a farmstead;

(III) supports electric utility transmission or distribution lines;

(IV) is a wind-powered electrical generator with a rotor blade radius that exceeds 6 feet; [or]

(V) is a street light erected or maintained by a Federal, State, local, or tribal entity[.];

(VI) is located within the right-of-way of a rail carrier, including within the boundaries of a rail yard, and is used for a railroad purpose;

(VII) is determined by the Administrator to pose no hazard to air navigation; or

(VIII) has already mitigated any hazard to aviation safety in accordance with Federal Aviation Administration guidance or as otherwise approved by the Administrator.

(B) UNDEVELOPED.—The term “undeveloped” means a defined geographic area where the Administrator deter-

mines low-flying aircraft are operated on a routine basis, such as low-lying forested areas with predominant tree cover under 200 feet and pasture and range land.

(2) OTHER DEFINITIONS.—The Administrator shall define such other terms as may be necessary to carry out this section. [(e)] (c) DATABASE.—The Administrator shall—

[(1) develop a database that contains the location and height of each covered tower;]

*(1) develop a database that contains the location and height of each covered tower that, pursuant to subsection (a), the owner or operator of such tower elects not to mark, except that meteorological evaluation towers shall be marked and contained in the database;*

(2) keep the database current to the extent practicable;

(3) ensure that any proprietary information in the database is protected from disclosure in accordance with law; [and]

(4) ensure that, by virtue of accessing the database, users agree and acknowledge that information in the database—

(A) may only be used for aviation safety purposes; and

(B) may not be disclosed for purposes other than aviation safety, regardless of whether or not the information is marked or labeled as proprietary or with a similar designation[.];

*(5) ensure that the tower information in the database is de-identified and that the information only includes the location and height of covered towers; and*

*(6) make the database available for use not later than 1 year after the date of enactment of the 21st Century AIRR Act.*

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**TITLE 51, UNITED STATES CODE**

\* \* \* \* \*

**SUBTITLE V—PROGRAMS TARGETING COMMERCIAL OPPORTUNITIES**

\* \* \* \* \*

**CHAPTER 509—COMMERCIAL SPACE LAUNCH ACTIVITIES**

Sec.

50901. Findings and purposes.

\* \* \* \* \*

50924. *Funding to facilitate FAA licensing.*

\* \* \* \* \*

**§ 50924. Funding to facilitate FAA licensing**

*(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Transportation may accept funds from a person applying for a license or permit under this chapter to hire additional staff or obtain the services of consultants and experts—*

(1) to facilitate the timely processing, review, and issuance of licenses or permits issued under this chapter;

(2) to conduct environmental activities, studies, or reviews associated with such licenses or permits; or

(3) to conduct additional activities associated with or necessitated by such licenses or permits, including pre-application consultation, hazard area determination, or on-site inspection.

(b) *RULES OF CONSTRUCTION.*—

(1) *IN GENERAL.*—Nothing in this section may be construed as permitting the Secretary to grant priority or afford any preference to an applicant providing funds under subsection (a).

(2) *POLICIES AND PROCEDURES.*—The Secretary shall implement such policies and procedures as may be required to ensure that the acceptance of funds under subsection (a) does not prejudice the Secretary in the issuance of any license or permit to an applicant.

(c) *RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.*—Notwithstanding section 3302 of title 31, any funds accepted under this section—

(1) shall be credited as offsetting collections to the account that finances the activities and services for which the funds are accepted;

(2) shall be available for expenditure only to pay the costs of activities and services for which the funds are accepted; and

(3) shall remain available until expended.

\* \* \* \* \*

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES  
WASHINGTON, DC 20515

July 11, 2017

The Honorable Bill Shuster  
Chairman  
Committee on Transportation and Infrastructure  
2165 Rayburn House Office Building  
Washington, D.C. 20515

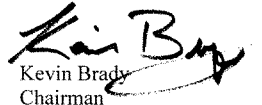
Dear Chairman Shuster,

I am writing with respect to H.R. 2997, the "21<sup>st</sup> Century AIRR Act." As a result of your having consulted with us on provisions on which the Committee on Ways and Means has a jurisdictional interest, I will not request a sequential referral on this measure.

The Committee on Ways and Means takes this action with the mutual understanding that we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and the Committee will be appropriately consulted and involved as the bill or similar legislation moves forward so that we may address any remaining issues that fall within our jurisdiction. The Committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for such request.

Finally, I would appreciate your response to this letter confirming this understanding, and would ask that a copy of our exchange of letters on this matter be included in your committee report and in the *Congressional Record* during floor consideration of H.R. 2997.

Sincerely,

  
Kevin Brady  
Chairman

cc: The Honorable Paul Ryan  
The Honorable Peter A. DeFazio  
The Honorable Richard Neal  
Mr. Tom Wickham, Jr., Parliamentarian



**Committee on Transportation and Infrastructure**  
**U.S. House of Representatives**

**Bill Shuster**  
Chairman

Washington, DC 20515

**Peter A. DeFazio**  
Ranking Member

July 11, 2017

Matthew M. Sturges, Staff Director

Katherine W. Dedrick, Democratic Staff Director

The Honorable Kevin Brady  
Chairman  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Brady:

Thank you for your letter regarding H.R. 2997, the "21<sup>st</sup> Century AIRR Act", which was ordered to be reported from the Committee on Transportation and Infrastructure on June 27, 2017.

I acknowledge that by foregoing a sequential referral on H.R. 2997, the Committee on Ways and Means does not waive any future jurisdictional claim to provisions in this or similar legislation. In addition, should a conference on the bill be necessary, I would support your effort to seek appointment of an appropriate number of conferees to any House-Senate conference involving provisions within this legislation on which the Committee on Ways and Means has a valid jurisdictional claim.

I appreciate your cooperation regarding this legislation and I will include our letters in the report and in the *Congressional Record* during floor consideration of H.R. 2997.

Sincerely,

A handwritten signature in black ink that reads "Bill Shuster".

Bill Shuster  
Chairman

cc: The Honorable Paul D. Ryan  
The Honorable Peter A. DeFazio  
The Honorable Richard Neal  
The Honorable Thomas J. Wickham, Jr., Parliamentarian

## DISSENTING VIEWS

Although many provisions of H.R. 2997, the “21st Century Aviation Innovation, Reform, and Reauthorization Act” (21st Century AIRR Act), are products of bipartisan negotiation and compromise, we strongly object to the bill’s main focus: a controversial and flawed plan to privatize the Nation’s air traffic control system. This privatization plan will disrupt major Federal Aviation Administration (FAA) safety and modernization programs, hand over Federal assets free of charge to a private corporation, threaten access to small, rural, and mid-sized communities, and likely drive up the cost of air travel.

The air traffic control privatization plan (title II of the bill):

- Splits the FAA in two, separating up to 35,000 hard-working employees from Federal service and placing them in the employ of a private corporation called the American Air Navigation Services Corporation.
- Disrupts all FAA programs and fails to solve the most significant problems facing the aviation system. By splitting the FAA in two, the plan leaves critical FAA safety programs, including programs to certify new aircraft and equipment and to conduct robust safety oversight of the airline industry, subject to year-to-year funding uncertainty. These safety programs, primarily funded by the Airport and Airway Trust Fund under current law, are shifted to funding exclusively from the General Fund of the Treasury, together with all the budget uncertainty that it provides.
- Conveys free of charge, to a private corporation, billions of dollars’ worth of assets that American taxpayers have bought and paid for. Taxpayers have invested approximately \$50 billion in these assets since 1996. The plan hands over taxpayer-purchased air traffic control facilities and equipment to a private company. The only two other governments in the world that have privatized their air traffic control systems—Canada and the United Kingdom—received compensation when they transferred public assets. Other governments, even those that have separated their air traffic control systems from safety regulators, own air traffic control assets.
- Places air traffic control under the effective control of airlines, placing access to the aviation system at risk. Under the bill, three of the corporation’s 13 directors are appointed by airlines, with the possibility of four additional appointments of directors friendly to airline interests through two Secretarial appointments and two appointments decided by the members of the board. Thus, the airlines may control a majority of the board and the corporation’s strategic decisions could be designed to benefit airlines, an industry that is under serious criticism for anticompetitive practices. The Government Ac-

countability Office (GAO) reported on February 10, 2016, on aviation experts' concern that "small and rural communities could be negatively affected by a restructured [air traffic control system]." <sup>1</sup>

### A Controversial Plan

Steadfast opposition to H.R. 2997's privatization plan includes bipartisan Senate appropriators as well as a growing list of aviation stakeholders including the Aircraft Owners and Pilots Association; the National Business Aviation Association; the Regional Airline Association; the Professional Aviation Safety Specialists union, which represents FAA safety inspectors and technicians; numerous other FAA labor groups; the United Steel Workers union; the National Air Transportation Association; the Experimental Aircraft Association; the National Consumers League; hundreds of mayors, and even NASCAR, among others. More than 30 general aviation groups criticized the privatization scheme in H.R. 2997 as a "fundamentally flawed" plan that "will produce uncertainty and unintended consequences without achieving the desired outcomes." <sup>2</sup>

Although some countries have separated air traffic control systems from aviation safety regulators, only two—Canada and the United Kingdom (U.K.)—have privatized their systems. But neither government handed over air traffic control assets free of charge, as H.R. 2997 requires, and neither the Canadian nor the U.K. aviation system is remotely comparable to that of the United States in geographic size, complexity, number of facilities, number of general aviation aircraft, number of airports, or even approaches to air traffic control modernization. The Department of Transportation Inspector General concluded in a 2015 report that "[t]here are significant differences between FAA and the foreign [air traffic control providers]." <sup>3</sup>

We agree with numerous aviation stakeholders who are concerned about Congress's inability to promise stable, predictable funding for aviation programs and the need for the swiftest possible implementation of the FAA's Next Generation Air Transportation System (NextGen), which the FAA has already begun delivering. And we agree that the FAA needs secure, continuous funding to embark on major capital investment programs, to operate the air traffic control system, and to vigorously oversee the safety of the flying public without the threat of disruption due to sequestration and government shutdowns.

But we disagree that only the air traffic control system should be protected from these harms. The entire agency, especially aviation safety functions, is just as deserving of insulation from political dysfunction, if not more so. The GAO reported in 2015 that budget uncertainty compromised the FAA's ability to make long-

<sup>1</sup>U.S. Gov't Accountability Office, *Potential Air Traffic Control Transition Issues* 8, Rpt. No. GAO-16-386R (2016).

<sup>2</sup>Aircraft Owners and Pilots Assoc., et al., "Statement of 30 General Aviation Groups United In Opposition to H.R. 2997" (2017).

<sup>3</sup>Dep't of Transp. Office of the Inspector General, *There Are Significant Differences Between FAA and Foreign Countries' Processes for Operating Air Navigation Systems* 3, Rpt. No. AV-2015-084 (2014).

term capital investment decisions that rely on the assurance of stable funding.<sup>4</sup>

#### A Solution in Search of Problems

To the extent H.R. 2997 seeks to deliver predictability and stability for the air traffic control system, it fails to fulfill its essential purpose. For instance, because delegation of a regulatory function such as air traffic control to a private entity is unconstitutional under the non-delegation doctrine,<sup>5</sup> the Republican plan requires the Secretary of Transportation to approve or disapprove numerous important decisions of the American Air Navigation Services Corporation. For example, the Secretary must review regulations and standards proposed by the Corporation; must prescribe performance-based safety regulations and standards; and must specifically review proposals for airspace modifications and procedure changes in busy areas.<sup>6</sup> The Secretary also reviews proposals to decommission air traffic control facilities.<sup>7</sup> This labyrinthine process of Secretarial approval guarantees delays as the Secretary's decisions are challenged in Federal court, and major projects could face years of delay in litigation.<sup>8</sup>

The bill could also drive up the cost of air travel. Last year, Richard Anderson, then-CEO of Delta Air Lines, posited in a letter to Committee Chairman Shuster and Ranking Member DeFazio that “[p]rivatization may increase consumer costs” and asked, “[W]ho will look out for the public interest after privatization?”<sup>9</sup> Moreover, the Corporation would be too big, and too critical to fail. A longtime proponent of privatization, Robert Poole, acknowledged during testimony in the Committee’s February 10, 2016, hearing that “[c]ustomers would have to pay more” if the corporation became insolvent. The U.K. government was forced to bail out the privatized British air traffic services provider in 2002, and Canada’s provider was forced to take special measures to continue operating during the post-2001 crisis.<sup>10</sup>

#### Targeted Solutions

Instead of privatization, we support targeted solutions: removing the FAA from the budget process and the vicissitudes of annual appropriations, and making serious, top-to-bottom reforms of the

<sup>4</sup> Gov’t Accountability Office, *Aviation Finance: Observations on the Effects of Budget Uncertainty on FAA*, Rpt. No. GAO-16-198R (2015).

<sup>5</sup> See, e.g., *Ass’n of Am. R.R. v. U.S. Dep’t of Transp.*, 721 F.3d 666, 670 (D.C. Cir. 2013) (“Federal lawmakers cannot delegate regulatory authority to a private entity.”), *vacated, on other grounds, Dep’t of Transp. v. Ass’n of Am. R.R.*, 575 U.S. \_\_\_\_ (2015); see also Cong. Rsch. Serv., *Memorandum to the Hon. Peter A. DeFazio on Analysis of Constitutional Issues Arising from a Proposal to Authorize a Federally Chartered Private Corporation to Provide Air Traffic Control Services* (April 10, 2015).

<sup>6</sup> 21st Century AIRR Act, § 211 (codifying 49 U.S.C. 90501).

<sup>7</sup> *Id.* (codifying 49 U.S.C. § 90705).

<sup>8</sup> *Id.*

<sup>9</sup> Ltr. from Richard Anderson to The Hon. Bill Shuster and The Hon. Peter A. DeFazio, Feb. 2, 2016 (on file).

<sup>10</sup> Gov’t Accountability Office, *Characteristics and Performance of Selected International Air Navigation Service Providers and Lessons Learned from Their Commercialization* 25, Rpt. No. GAO-05-769 (2005); See Nav Canada, “Details and Principles Regarding Proposed Revised Service Charges” (Oct. 15, 2001), available at <http://www.navcanada.ca/EN/media/Publications/Service%20Charge%20Announcements/SCA-2001-Details-EN.pdf>; Nav Canada, “Notice of Revised Service Charges” (Oct. 2, 2002), available at <http://www.navcanada.ca/EN/media/Publications/Service%20Charge%20Announcements/SCA-2002-Notice-Revised-EN.pdf>.



FAA's cumbersome personnel and procurement rules. These carefully constructed financial and management reforms solve all of the problems that H.R. 2997 purports to solve, while avoiding the tremendous harms that privatization would impose on our aviation system. During Committee consideration of H.R. 2997, we offered an amendment to strike the air traffic control privatization title and insert H.R. 2800, the "Aviation Funding Stability Act", which provides such targeted reforms as off-budget, long-term funding for FAA programs, streamlined and more flexible personnel and procurement regulations, and modernization of air traffic control facilities and equipment. Regrettably, the amendment failed on a party-line vote.

#### Conclusion

While we support bipartisan provisions of the bill reforming the FAA's certification processes, advancing the safe, responsible integration of unmanned aircraft into the National Airspace System, updating rules on flight attendant minimum rest, and others, we object to privatization of air traffic control as a risky experiment that threatens to delay modernization programs, reduce access, and drive up the cost of air travel.

PETER A. DEFAZIO,  
*Ranking Member.*  
 ELEANOR HOLMES NORTON.  
 JERROLD NADLER.  
 EDDIE BERNICE JOHNSON.  
 ELIJAH E. CUMMINGS.  
 RICK LARSEN.  
 MICHAEL E. CAPUANO.  
 GRACE F. NAPOLITANO.  
 DANIEL LIPINSKI.  
 STEVE COHEN.  
 ALBIO SIRES.  
 JOHN GARAMENDI.  
 HENRY C. "HANK" JOHNSON, JR.  
 ANDRE CARSON.  
 RICHARD M. NOLAN.  
 DINA TITUS.  
 SEAN PATRICK MALONEY.  
 ELIZABETH H. ESTY.  
 LOIS FRANKEL.  
 CHERI BUSTOS.  
 JARED HUFFMAN.  
 JULIA BROWNLEY.  
 FEDERICA S. WILSON.  
 DONALD M. PAYNE, JR.  
 ALAN S. LOWENTHAL.  
 BRENDA L. LAWRENCE.  
 MARK DESAULNIER.